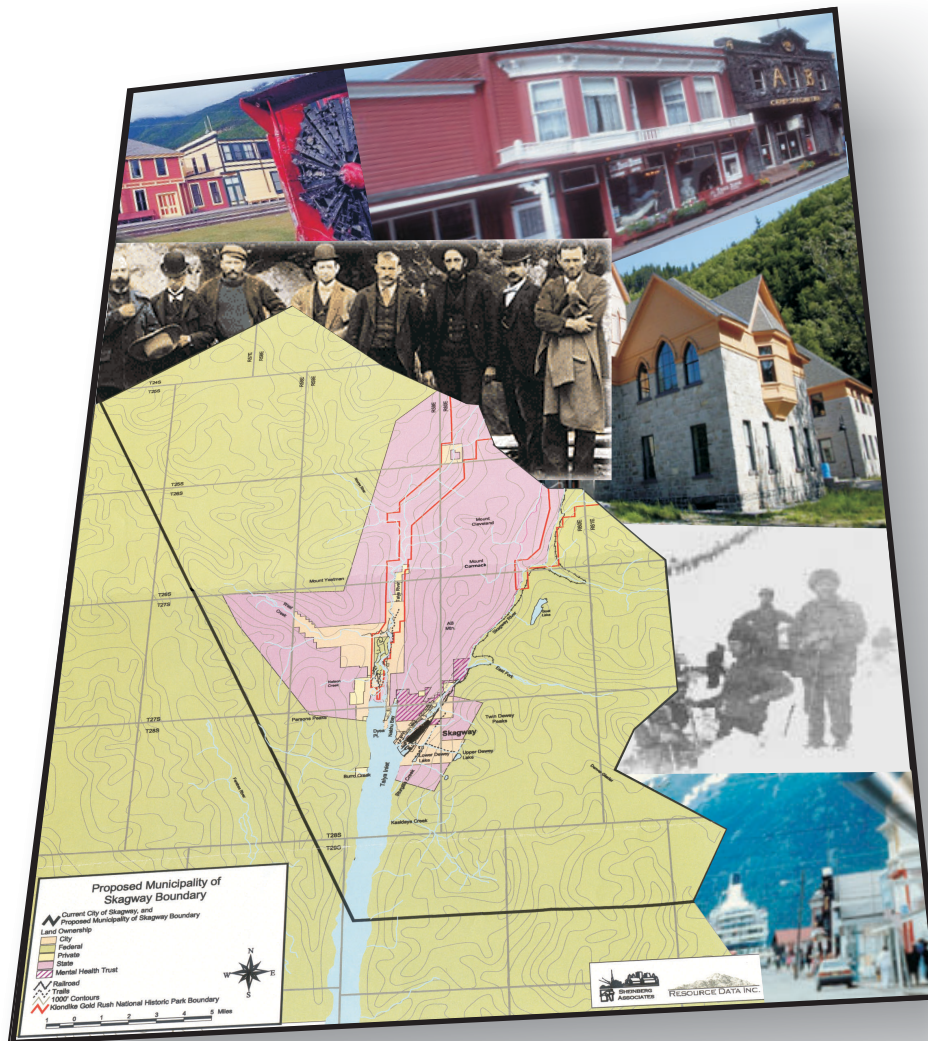


Preliminary Report Regarding the Skagway Borough Incorporation Proposal

June 2002



**Deborah Sedwick
Commissioner**



**Tony Knowles
Governor**

This is the Preliminary Report of the Alaska Department of Community and Economic Development (DCED) regarding the Petition to Incorporate the Skagway Borough and Dissolve the City of Skagway. This report is also available on the Internet at the following address:

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

The Preliminary Report is issued as a draft for public review and comment in accordance with 3 AAC 110.530(b). The law requires DCED to issue a final report after considering written comments on the Preliminary Report.

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.



Invitation to Comment

Readers are encouraged to review and submit written comments on this Preliminary report. Comments may be sent by mail, fax, or e-mail as noted below. The deadline for receipt of written comments is 5:00 p.m., July 31, 2002. All timely comments will become part of the formal record in Skagway incorporation/dissolution proceedings. Timely comments will be considered in development of DCED's final report on the proposal.

Submit comments to:

Local Boundary Commission staff
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

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TABLE OF CONTENTS

CHAPTER 1 - BACKGROUND	1
A. INTRODUCTION	1
B. NATURE OF THE PETITION	1
C. STATED MOTIVES UNDERLYING THE PETITION	1
D. CONCEPT OF BOROUGH GOVERNMENT IN ALASKA	2
E. LOCAL BOUNDARY COMMISSION	4
F. SCOPE OF REVIEW BY THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT	6
G. STANDARDS FOR JUDGING THE MERITS OF THE PETITION	7
CHAPTER 2 - PROCEEDINGS TO DATE AND FUTURE PROCEEDINGS	9
A. PETITION ACCEPTED FOR FILING	9
B. NOTICE OF FILING OF THE PETITION	9
C. RESPONSIVE BRIEFS AND COMMENTS	10
D. REPLY BRIEF	11
E. DCED,S PRELIMINARY REPORT	11
F. DCED%00S FINAL REPORT	12
G. PRE-HEARING REQUIREMENTS	12
H. LBC PUBLIC HEARING	13
I. LBC DECISIONAL MEETING	14
J. RECONSIDERATION	14
K. ELECTION	15
L. JUDICIAL APPEAL	16
CHAPTER 3 - APPLICATION OF STANDARDS TO THE SKAGWAY PETITION	17
A. STANDARD NUMBER 1: CITY DISSOLUTION UPON ASSUMPTION OF AREAWIDE BOROUGH POWERS	17
B. STANDARD NUMBER 2: BOROUGH CLASSIFICATION	19
C. STANDARD NUMBER 3: TRANSITION PLAN	19
D. STANDARD NUMBER 4: CIVIL AND POLITICAL RIGHTS	21
E. STANDARD NUMBER 5: RESOURCES	23
F. STANDARD NUMBER 6: POPULATION SIZE AND STABILITY	44
G. STANDARD NUMBER 7: REBUTTABLE PRESUMPTION CONCERNING MINIMUM OF 1,000 RESIDENTS	53
H. STANDARD NUMBER EIGHT: SOCIAL, CULTURAL, AND ECONOMIC INTERRELATION AND INTEGRATION (COMMON INTERESTS)	55
I. STANDARD NUMBER NINE: REBUTTABLE PRESUMPTION CONCERNING A MINIMUM OF TWO COMMUNITIES	75
J. STANDARD NUMBER TEN: COMMUNICATIONS AND EXCHANGE	87
K. STANDARD NUMBER ELEVEN: ADEQUACY OF ELECTRONIC MEDIA AND LAND, AIR, AND MARINE TRANSPORTATION LINKS	89
L. STANDARD NUMBER TWELVE: BOUNDARIES, CONFORMANCE WITH NATURAL GEOGRAPHY	90
M. STANDARD NUMBER THIRTEEN: INCLUSION OF ALL LAND AND WATER NECESSARY TO PROVIDE ESSENTIAL SERVICES ON AN EFFICIENT, COST-EFFECTIVE LEVEL	93

N. STANDARD NUMBER FOURTEEN: RELATION OF PROPOSED BOROUGH BOUNDARIES TO THE MODEL BOROUGH BOUNDARIES	101
O. STANDARD NUMBER FIFTEEN: RELATION OF PROPOSED BOROUGH BOUNDARIES TO REAA BOUNDARIES	110
P. STANDARD NUMBER SIXTEEN: CONTIGUITY OF TERRITORY PROPOSED FOR INCORPORATION	112
Q. STANDARD NUMBER SEVENTEEN: EXTENT OF ANY OVERLAPPING BOUNDARIES	113
R. STANDARD NUMBER EIGHTEEN: BEST INTEREST OF THE STATE	113

CHAPTER 4 - CONCLUSION & RECOMMENDATION

STANDARD NUMBER ONE - CITY DISSOLUTION	123
STANDARD NUMBER TWO - BOROUGH CLASSIFICATION	123
STANDARD NUMBER THREE - TRANSITION PLAN	124
STANDARD NUMBER FOUR - EFFECT ON CIVIL AND POLITICAL RIGHTS	124
STANDARD NUMBER FIVE - BUDGET FEASIBILITY	124
STANDARD NUMBER SIX - SIZE AND STABILITY OF POPULATION	124
STANDARD NUMBER SEVEN - PRESUMPTION OF 1,000+ RESIDENTS	124
STANDARD NUMBER EIGHT - COMMON SOCIAL, CULTURAL, AND ECONOMIC INTERESTS	124
STANDARD NUMBER NINE - PRESUMPTION OF MULTIPLE COMMUNITIES	125
STANDARD NUMBER TEN - ADEQUATE TRANSPORTATION AND COMMUNICATION FACILITIES AND SERVICES	125
STANDARD NUMBER ELEVEN TRANSPORTATION AND COMMUNICATION LINKS WITH OTHER COMMUNITIES	125
STANDARD NUMBER TWELVE - GENERAL CONFORMANCE WITH NATURAL GEOGRAPHY	125
STANDARD NUMBER THIRTEEN - INCLUSION OF ALL AREAS NEEDED FOR EFFICIENT AND EFFECTIVE DELIVERY OF SERVICES ON REGIONAL SCALE	126
STANDARD NUMBER FOURTEEN -SUITABILITY OF MODEL BOROUGH BOUNDARIES	126
STANDARD NUMBER FIFTEEN - SUITABILITY OF REGIONAL EDUCATIONAL ATTENDANCE AREA BOUNDARIES	126
STANDARD NUMBER SIXTEEN - CONTIGUITY AND INCLUSIVENESS	126
STANDARD NUMBER SEVENTEEN - OVERLAPPING TERRITORY	127
STANDARD NUMBER EIGHTEEN - BEST INTERESTS OF THE STATE	127
RECOMMENDATION	127

APPENDIX A - GLOSSARY	A-1
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APPENDIX B - EXCERPT OF LOCAL GOVERNMENT MATERIAL FROM ALASKA'S CONSTITUTIONAL CONVENTION BY VICTOR FISCHER	B-1
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APPENDIX C - MEMBERS OF THE COMMISSION	C-1
--	-----

APPENDIX D - LBC DECISIONAL STATEMENT - YAKUTAT BOROUGH	D-1
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APPENDIX E - 1962 MEMO FROM SECRETARY OF STATE TO GOVERNOR REGARDING BRISTOL BAY BOROUGH	E-1
APPENDIX F - REVIEW OF SPECIFIC FACTORS IDENTIFIED BY THE ALASKA SUPREME COURT AND SET OUT IN 3 AAC 110.045(A) AS EVIDENCE OF COMMON INTEREST ON A REGIONAL SCALE	F-1
PART A. SERVICE BY STATE FERRY SYSTEM.....	F-1
PART B. DAILY LOCAL AIR TAXI SERVICE	F-3
PART C. COMMON MAJOR ECONOMIC ACTIVITY	F-4
PART D. SHARED FISHING AREAS	F-11
PART E. COMMON INTEREST IN MANAGEMENT OF STATE LANDS	F-15
PART F. PREDOMINATELY NATIVE CHARACTER OF THE POPULACE	F-16
PART G. HISTORICAL LINKS	F-19
PART H. GEOGRAPHIC PROXIMITY	F-27
PART I. DEPENDENCE ON A COMMUNITY FOR TRANSPORTATION, ENTERTAINMENT, NEWS AND PROFESSIONAL SERVICES	F-27
PART J. GEOGRAPHICAL SIMILARITIES	F-32
PART K. HISTORICAL ECONOMIC LINKS	F-33
PART L. COMPATIBILITY OF URBAN AND RURAL AREAS WITHIN THE PROPOSED BOROUGH	F-33
PART M. COMPATIBILITY OF ECONOMIC LIFESTYLES, AND INDUSTRIAL OR COMMERCIAL ACTIVITIES	F-38
PART N. EXISTENCE THROUGHOUT THE PROPOSED BOROUGH OF CUSTOMARY AND SIMPLE TRANSPORTATION AND COMMUNICATION PATTERNS	F-38
PART O. EXTENT AND ACCOMMODATION OF SPOKEN LANGUAGE DIFFERENCES THROUGHOUT THE PROPOSED BOROUGH	F-39
APPENDIX G - KEY COMPONENTS OF 1979 SKAGWAY ANNEXATION RECORD	G-1

CHAPTER 1-BACKGROUND

A. INTRODUCTION

Chapter 1 provides background about the pending *Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough* ("Petition"). It also includes general information relevant to consideration of the Petition. Specifically, this chapter addresses the:

- nature of the Petition;
- stated motives underlying the Petition;
- concept of borough government in Alaska;
- Local Boundary Commission;
- scope of review of the Skagway proposal by the Alaska Department of Community and Economic Development (DCED); and
- standards that govern dissolution of city governments and incorporation of borough governments.

Appendix A is a glossary of acronyms and terms used in this report that have particular meaning in the context of the Skagway proposal.

B. NATURE OF THE PETITION

Voters within the corporate boundaries of the City of Skagway have petitioned the Local Boundary Commission for the following two concurrent actions:

- dissolution of the City of Skagway, a first class city in the unorganized borough; and
- incorporation of the Municipality of Skagway, a first class borough with corporate boundaries identical to those of the existing City of Skagway.

C. STATED MOTIVES UNDERLYING THE PETITION

The Petition (at pages 2 – 5) provides a statement of the reasons for the borough incorporation proposal. The Petitioner's reasons are summarized by DCED as follows:¹

- The proposal is good public policy; alternatives such as annexation to or consolidation with the adjoining Haines Borough would be divisive and result in an inefficient governmental structure.
- The proposal promotes efficient, effective, and responsible local government.
- Approval of the Petition would ensure continued self-determination with regard to local government for citizens of Skagway.
- The Petition is "pro active" in terms of establishing borough government in Skagway (rather than waiting for Skagway to be annexed to the Haines Borough as a result of action by the legislature or others).
- The City of Skagway is currently operating as a *de facto* borough.

¹ While a summary of the Petitioner's motives is given here, the entire Petition, including the Petitioner's four-page discussion of motives, has been provided to each member of the Local Boundary Commission. The entire Petition is available for public review at the Skagway Public Library and the Skagway City Hall. Additionally, the Petition is available for review on the Internet at <http://www.dced.state.ak.us/cbd/lbc/skagway.htm>

Skagway wants borough to avoid being annexed

■ City does not want to become part of Haines

By KRISTAN HUTCHISON
The Juneau Empire

Skagway is ready to form its own borough to avoid becoming part of Haines.

Petitions to dissolve the 100-year-old city government and become a borough instead are gathering signatures at the Skagway city hall and library. Already, more than 50 Skagway residents signed the petition, which needed a minimum of 41 signatures, said Skagway City Clerk Marc Harris.

The government switch would change nothing but the name, said Skagway Mayor John Mielke, who supports it as a way to avoid being annexed by the nearby Haines Borough.

City leaders are also tired of the Legislature lumping Skagway with other communities outside organized boroughs that do not pay local matching funds for their schools. Skagway does pay a percent of school costs, said Skagway City Manager Bob Ward.

The state's Local Boundary

Commission must approve the petition before the issue can go to a vote.

The state Department of Community and Economic Development must first approve the petition. The department is worried about the precedent set if Skagway becomes its own borough, said Dan Bodhorst, who works for the department and the Local Boundary Commission. Boroughs are meant to consolidate local government by incorporating several communities and more than 1,000 people, Bodhorst said. About 100 people live in Skagway.

The transition could also cost the state \$200,000 in grants and possibly even more in lost.

Mayor Mielke realizes the boundary commission is unlikely to approve Skagway's change to a borough government, since the state's Local Boundary Commission Act draws several years ago placed Skagway in the Haines Borough. But he notes Yakutat recently formed a borough with only one community and fewer than 1,000 residents.

Yakutat is more isolated than

Skagway, said Bodhorst, and allowing Skagway to go ahead could open the way for a Pandora's box of other towns that have shown an interest in becoming their own boroughs, including Pelona and Girard.

Currently Skagway is one of 66 cities set to be organized through the boundary commission. The boundary commission has been trying to get those cities annexed into boroughs, something Mielke and the rest of the Skagway City Council are trying to avoid.

"There's a big difference between the two communities that would warrant keeping them separate in their two boroughs," Mielke said. "Even though we're 14 miles apart, we're more similar apart in terms of diversity of community."

"The Haines Borough Assembly hasn't taken a position on whether it would rather annex Skagway or let it form its own borough. The issue may be discussed more in the fall, when people aren't as busy," said Terry Padden, a member of the Haines Borough Assembly.

"There's greater strength in unity if better," Padden said, "rather than division."

Juneau Empire article - July 18, 2000.

- ➔ Geographical, social, cultural, economic, and philosophical differences between Skagway and Haines would render inclusion of Skagway in the Haines Borough inappropriate.
- ➔ The City of Skagway constitutes a large enclave surrounded by other governments (Haines Borough and Canada); it cannot include other unorganized territory within its borough proposal.
- ➔ Skagway meets the criteria for borough incorporation.

A news article in the *Juneau Empire* on July 18, 2000, summarized the motives underlying the Petition in a seven word headline – "Skagway wants borough to avoid being annexed." The article stated in part:

The government switch would change nothing but the name, said Skagway Mayor John Mielke, who supports it as a way to avoid being annexed by the nearby Haines Borough.

City leaders are also tired of the Legislature lumping Skagway with other communities outside organized boroughs that do not pay local matching funds for their schools. Skagway does pay a percent of school costs, said Skagway City Manager Bob Ward.

DCED examines the stated reasons for the Petition in the context of applying the standards for city dissolution and borough incorporation in Chapter 3 of this report.

D. CONCEPT OF BOROUGH GOVERNMENT IN ALASKA

To promote informed discussion concerning the Skagway borough proposal, it is best that participants exhibit an understanding of the concept of borough government in Alaska. While some equate organized boroughs in Alaska to counties in other states, the two are quite distinct.

Borough government in Alaska is unlike any other municipal structure in the nation. Boroughs are an innovative concept established in Alaska's constitution – the most modern constitution of any state in the country.

Alaska's constitution provides for only two principal units of local government – cities and boroughs.² Cities are local (community-based) municipal governments.

Boroughs are regional municipal governments. They are intermediate governmental units, larger than cities and smaller than the state. Vic Fischer, noted constitutional authority and expert on local

² In a very narrow sense, there is one other "unit" of government provided for in Article X of Alaska's constitution. That is the borough service area. A borough service area is not a government unit in the conventional meaning. It has no legislative power and no power to tax. Service areas are created by the borough assembly. A service area is merely a defined area of a borough in which the borough government provides a higher or different level of service than is provided elsewhere in the borough. It is a unit of government in the sense that the constitutional principles discouraging proliferation of local government units apply to service areas as well as cities and boroughs.

government in Alaska, described the borough guidelines set forth by the constitutional convention's Committee on Local Government as follows:³

- Provision should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially, not all need be organized.
- Units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdiction and overlapping, independent districts.
- The state should have power to create, consolidate, subdivide, abolish, and otherwise change local units.

³ Vic Fischer received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. He also received the Littauer Fellowship in public administration from Harvard University (1961-1962). Mr. Fischer has held several planning related positions in Alaska. He was a delegate to the Alaska Constitution Convention in 1955-1956. During the convention he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research of which he was director for ten years. His current work includes studying Alaska Native and regional governance issues.



Alaska Constitutional Convention Local Government Committee in session, February 1956.

- Creation of units should be compulsory, with provision for local initiative.
- Boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interests, and must remain flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions.
- Units should cover large geographic areas with common economic, social, and political interests.
- Local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied by the legislature.

Appendix B of this report is an excerpt from Vic Fischer's book entitled *Alaska's Constitutional Convention*. The excerpt provides detail regarding Alaska's local government system, particularly the concept of borough government.

E. LOCAL BOUNDARY COMMISSION

1. DUTIES AND POWERS OF THE COMMISSION

Petitions for dissolution of city governments and incorporation of borough governments in Alaska are subject to review by the Local Boundary Commission ("Commission" or "LBC"). The LBC has statewide jurisdiction.

In addition to petitions for city dissolution and borough incorporation, the LBC acts on petitions for the following:

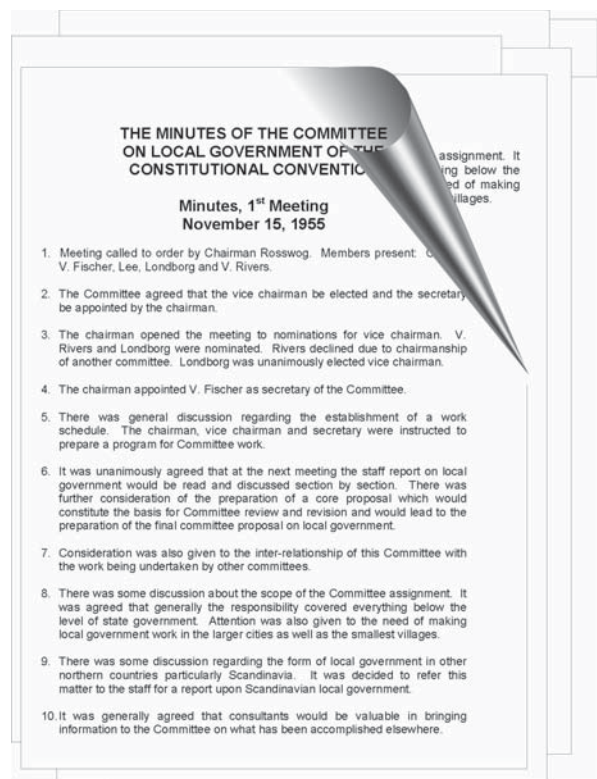
- ➔ annexation to cities and boroughs;
- ➔ incorporation of cities;
- ➔ detachment from cities and boroughs;
- ➔ merger of cities and/or boroughs;
- ➔ consolidation of cities and/or boroughs;
- ➔ dissolution of boroughs; and
- ➔ reclassification of cities.

In addition to the above, the LBC has the duty to make studies of local government boundary problems. (See Article X, § 12, Alaska Constitution; AS 29.04; AS 29.05; AS 29.06; and AS 44.33.810 - 44.33.828.)

2. NATURE OF THE LOCAL BOUNDARY COMMISSION

The Constitution of the State of Alaska (Article X, § 12) provides for the establishment of the LBC to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. In the words of the Alaska Supreme Court:⁴

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that



Minutes of the Local Government Committee.

local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

...lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Among the 116 active State boards and commissions, only the Local Boundary Commission and four others have origins in Alaska's constitution.⁵

⁴ *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

⁵ The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

Decisions of the Local Boundary Commission often involve important social, political, and economic policy issues. In 1974, and again in 1993, the Alaska Supreme Court remarked that:⁶

A determination whether an area is cohesive and prosperous enough for local self-government involves 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.

The Commission consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, "... on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Commission members serve at the pleasure of the Governor. One member is appointed from each of Alaska's four judicial districts while the fifth member is appointed from the state at-large and serves as Chair of the Commission.

Members of the Local Boundary Commission receive no compensation for their service. Biographical information about the current members of the LBC is provided in Appendix C.

3. COMMUNICATIONS WITH THE LBC

The Local Boundary Commission is a quasi-judicial board. To protect the rights of petitioners and others to due process and equal protection, State law (3 AAC 110.500) prohibits private (ex parte) communication between the Commission and all others, apart from its staff, regarding all pending petitions.

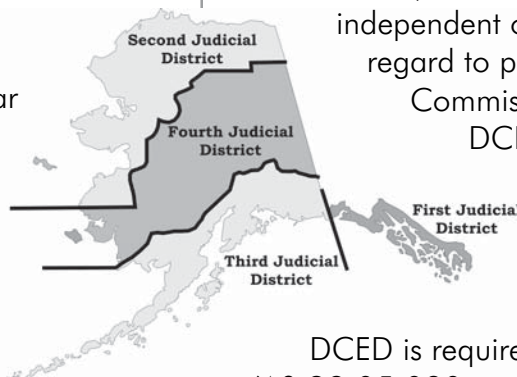
The limitation takes effect upon the filing of a petition and remains in place through the opportunity for judicial review of a Commission action. To further protect due process and equal protection rights, written communications to the Commission must be submitted through its staff.

4. STAFF TO THE COMMISSION

The Alaska Department of Community and Economic Development (DCED) serves as staff to the LBC (AS 44.33.020(4)). It is stressed, however, that the LBC and DCED are independent of one another with regard to policy matters. The Commission is free to differ with DCED in terms of analysis and conclusions regarding petitions that come before the Commission.

DCED is required by law (AS 29.05.080 and 3 AAC 110.530) to evaluate petitions filed with the LBC and to issue reports and recommendations to the Commission concerning such. The DCED staff serving the Local Boundary Commission may be contacted at:

Local Boundary Commission
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: 907-269-4559
Fax: 907-269-4539
E-mail: Dan_Bockhorst@dcled.state.ak.us



⁶ *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d, 92, 98 (Alaska 1974); *Valleys Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232, 234 (Alaska 1993).

F. SCOPE OF REVIEW BY THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

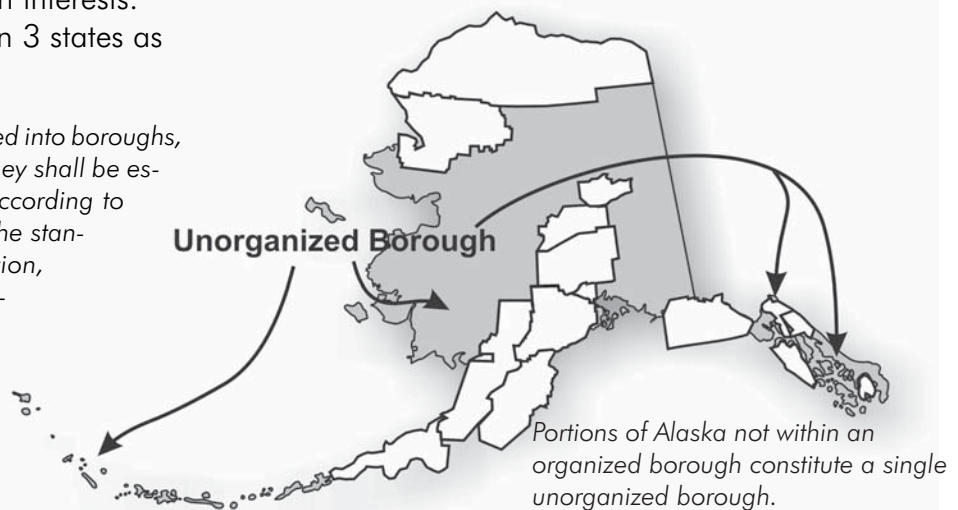
The Constitution of the State of Alaska provides that all of Alaska must be divided into boroughs according to standards relating to population, geography, economy, transportation and other factors. Each borough must have common interests. Specifically, Article X, Section 3 states as follows (emphasis added):

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

There are three principal borough scenarios for Skagway.⁷ One is to include Skagway within the adjoining Haines Borough. Another is to maintain the status quo by keeping Skagway in the unorganized borough. The third is to create a Skagway borough.

⁷ Theoretically, other scenarios exist, but seem far less plausible. For example, Skagway could become part of the City and Borough of Juneau, particularly if that portion of the Haines Borough on the east side of Lynn Canal were added to the City and Borough of Juneau. However, such other scenarios are remote.

The first scenario could result from annexation, merger, or consolidation. However, none of those options is within the scope of the proposal submitted by the Petitioner. Therefore, this report does not address that scenario. However, where appropriate in the examination of the pending Petition, this report reviews social, cultural, and economic interrelationships between Skagway and adjoining areas, particularly the Haines area.



The second scenario describes the status quo. A single unorganized borough encompassing that part of the state not within organized boroughs was created by the legislature in 1961. At the time, there were no organized boroughs. Thus, all of Alaska was originally part of the same unorganized borough. If the pending Petition is denied by the Local Boundary Commission or approved by the Commission but rejected by the voters, Skagway will remain in the unorganized borough pending implementation of some other boundary action.

The last scenario, establishment of a Skagway borough, would result if the Local Boundary Commission and voters in Skagway approve the pending Petition.

G. STANDARDS FOR JUDGING THE MERITS OF THE PETITION

Standards for the dissolution of city governments and incorporation of borough governments are set out in Alaska's constitution, statutes, and administrative code to guide the Commission in judging the merits of such proposals.

Eighteen standards must be met before the Commission may approve the pending Skagway Petition. If the Commission concludes that the standards would be better satisfied through modification of the Petition or satisfaction of prerequisites, the Commission has authority to amend the Petition and to impose conditions (AS 29.05.100). If the Commission concludes that any of the standards are not met, with or without amendments and/or conditions, the Petition must be denied.

The eighteen standards relate to nine broad categories. The categories and standards are summarized below.

1. CITY DISSOLUTION UPON ASSUMPTION OF AREAWIDE BOROUGH POWERS⁸

- ☑ Standard Number One: All of the powers of the City of Skagway must become areawide powers of the proposed Skagway borough.

2. BOROUGH CLASSIFICATION

- ☑ Standard Number Two: The proposed Skagway borough may be a home rule, first class, or second class borough; it may not incorporate as a third class borough.

3. TRANSITION

- ☑ Standard Number Three: The Petition must include an adequate plan for transition from the status quo to the proposed borough government.

4. POLITICAL AND CIVIL RIGHTS

- ☑ Standard Number Four: The proposed city dissolution and borough incorporation cannot have the effect of denying any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

5. RESOURCES

- ☑ Standard Number Five: The economy of the proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.

6. POPULATION

- ☑ Standard Number Six: The population of the proposed borough must be sufficiently large and stable to support a proposed borough government.
- ☑ Standard Number Seven: At least 1,000 permanent residents must live in the proposed borough, unless a specific and persuasive showing is made that a smaller population is adequate to support the proposed borough government.

7. COMMUNITY OF INTERESTS

- ☑ Standard Number Eight: The social, cultural, and economic characteristics and activities of the people of the proposed borough must be interrelated and integrated.

⁸ There are a variety of procedures to dissolve a city government. Different standards apply to the various procedures. The Skagway city dissolution proposal is based on AS 29.06.450(c) which provides that, "A city is dissolved when all its powers become areawide borough powers." Thus, the applicable standard in this case is whether all of the powers of the City of Skagway would become areawide powers of the proposed Skagway borough.

- ☑ Standard Number Nine: There must be at least two communities in the proposed borough, unless there is a specific and persuasive showing that a sufficient level of interrelationship exists with fewer than two communities.
- ☑ Standard Number Ten: The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government.
- ☑ Standard Number Eleven: All communities within the proposed Skagway borough must be connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications, unless a specific and persuasive showing is made that an area lacking such transportation and communication facilities has adequate communications and exchange.

8. BOUNDARIES

- ☑ Standard Number Twelve: The boundaries of the proposed Skagway borough must conform generally to natural geography.
- ☑ Standard Number Thirteen: The boundaries must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level.

- ☑ Standard Number Fourteen: The boundaries may not extend beyond any model borough boundaries, unless a specific and persuasive showing is made that such boundaries are better suited to the public interest in a full balance of the standards for incorporation of a borough.
- ☑ Standard Number Fifteen: The boundaries must conform to existing regional educational attendance area boundaries, unless the commission determines 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.
- ☑ Standard Number Sixteen: Territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level unless a specific and persuasive showing is made to the contrary.
- ☑ Standard Number Seventeen: If the boundaries overlap the boundaries of an existing organized borough, the petition must also comply with all standards and procedures for detachment of the overlapping region from the existing organized borough.

9. BEST INTERESTS OF THE STATE

- ☑ Standard Number Eighteen: Incorporation of the proposed Skagway Borough must be in the best interests of the state.

CHAPTER 2-PROCEEDINGS TO DATE & FUTURE PROCEEDINGS

Chapter 2 summarizes formal activities to date with regard to the pending Petition and information about future proceedings.

A. PETITION ACCEPTED FOR FILING

As allowed by AS 29.05.060(7), voters within the proposed Skagway borough (i.e., the area within the City of Skagway) petitioned the Local Boundary Commission for dissolution of the City of Skagway and incorporation of a first class borough named the Municipality of Skagway. The City of Skagway prepared the Petition.

The Petition was submitted to DCED on January 22, 2001. Sixty-four individuals signed the Petition. Fifty-eight of the signatures were subsequently determined to be valid. On October 23, 2001, DCED accepted the Petition for filing.

B. NOTICE OF FILING OF THE PETITION

Under 3 AAC 110.640, the Chair of the Commission set December 28, 2001 as the deadline for receipt of responsive briefs and comments on the Petition. Notice of Filing of the Petition

was published by the Petitioner as a display advertisement in accordance with 3 AAC 110.450. The notice was published three times in each of three newspapers of general circulation in the territory proposed for incorporation as outlined in Figure 1.

Public notice of the filing of the Petition was also published by DCED by means of the *Alaska Online Public Notice System* from October 24, 2001, through December 29, 2001. Additionally, the notice was published on the LBC Internet web site maintained by DCED. DCED also distributed the notice to 58 potentially interested individuals and organizations on October 25, 2001.

The Petitioner delivered requests for public service announcements of the filing of the Petition to KHNS-FM and KINY-FM, radio stations heard within the territory proposed for incorporation.

Figure 1
PUBLICATION
NOTICE OF FILING OF PETITION

Newspaper	1st Publication	2nd Publication	3rd Publication
<i>Chilkat Valley News</i>	10/25/01	11/01/01	11/08/01
<i>Skagway News</i>	11/09/01	11/23/01	12/07/01
<i>Juneau Empire</i>	11/04/01	11/11/01	12/18/01

Further, the Petitioner posted notice of the filing of the Petition at the Skagway City Hall, Post Office, and Public Library on October 26, 2001.

In addition to publishing and posting the notice, the Petitioner mailed or hand-delivered a copy of the notice to the mayors of the City of Skagway, City of Haines, and Haines Borough on October 26, 2001 as required by 3 AAC 110.450.

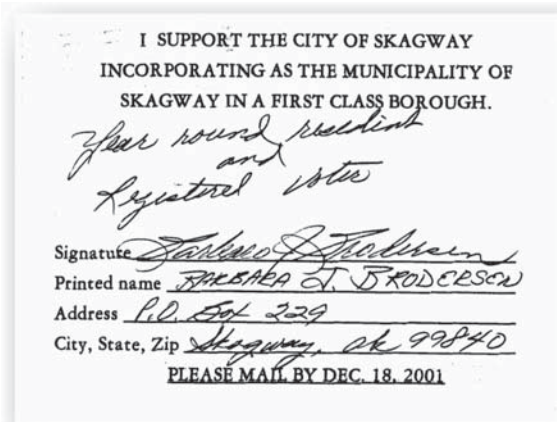
C. RESPONSIVE BRIEFS AND COMMENTS

No formal responsive briefs were filed in opposition to or in support of the Petition. However, forty-three written comments concerning the proposal were received by the December 28, 2001 deadline. With two exceptions, the comments consisted of pre-printed postcards stating, "I SUPPORT THE CITY OF SKAGWAY INCORPORATING AS THE MUNICIPALITY OF SKAGWAY IN A FIRST CLASS BOROUGH." Eight of the individuals who submitted pre-printed postcards added brief handwritten notes as indicated in the listing of correspondents which follows.

Beyond the pre-printed postcards, Barbara Kalen wrote a one-page letter endorsing the Skagway borough proposal. In addition, Tim Bourcy, Mayor of the City of Skagway, wrote a two-page letter elaborating on aspects of the Petition. Attached to Mayor Bourcy's letter was Resolution No. 2001-22R of the Skagway City Council, supporting the formation of the proposed Skagway borough.

The following lists the correspondents who submitted timely comments.

1. Beeks, Eva J.
2. Beeks, Fred M.
3. Bolton, Edward M.⁹
4. Bolton, Sharon¹⁰
5. Bourcy, Tim (Mayor of the City of Skagway)
6. Brodersen, Barbara J.¹¹
7. Brodersen, John¹²



8. Brown, Dawn
9. Burnham, Charlotte S.
10. Caulfield, Stephen D.
11. Cline, Beth
12. Cook, Marcia L.
13. Cooper, Doreen C.
14. Cyr, Tina
15. Dodd, Curt
16. Fehlings, Michele
17. Goertz, Kori
18. Grooms, Chris
19. Grooms, Dorothy
20. Gurcke, Karl
21. Hall, Tom
22. Harris, John F.
23. Hisman, Colette
24. Hisman, Dennis J.
25. Jabal, Susan
26. Jensen, Rebecca L.
27. Kalen, Barbara D. (postcard)
28. Kalen, Barbara D. (letter)
29. McBride, Casey

⁹ Handwritten note added stating, "Year round resident & registered voter."

¹⁰ Handwritten note added stating, "Year round resident & registered voter."

¹¹ Handwritten note added stating, "Year round resident and registered voter."

¹² Handwritten note added stating, "Year round resident and registered voter."

- 30. McCluskey, Reed¹³
- 31. McCluskey, Reed M.¹⁴
- 32. McCluskey, Marlene
- 33. O'Daniel, Janet
- 34. Reckers, Pamela D.
- 35. Ricklefs, Betty J.
- 36. Russo, Ken
- 37. Thibault, Theresa
- 38. Tronrud, Cynthia
- 39. Tronrud, Jan Marie
- 40. Tronrud, John¹⁵
- 41. Warder, John B. Jr.
- 42. Welch, Denise M.¹⁶
- 43. Welch, Michael D.¹⁷

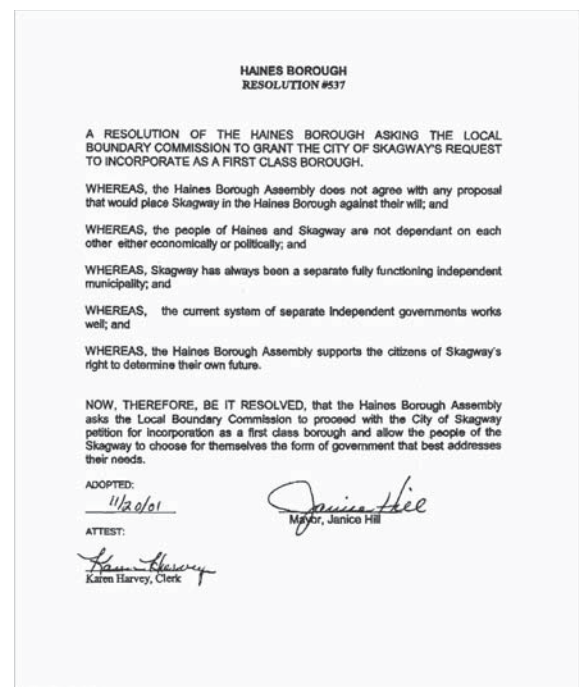
In addition to the comments noted above, the Haines Borough Assembly adopted Resolution Number 537, "A Resolution of the Haines Borough Asking the Local Boundary Commission to Grant the City of Skagway's Request to Incorporate as a First Class Borough." The resolution was adopted on November 20, 2001, by a vote of 4 to 0.

D. REPLY BRIEF

Since no formal responsive briefs were filed and all timely comments supported the Skagway borough proposal, a reply brief from the Petitioner was unnecessary and none was filed.

E. DCED'S PRELIMINARY REPORT

In accordance with 3 AAC 110.530, DCED prepared this Preliminary Report examining the pending Petition. The Preliminary Report was provided to the Petitioner as required by law. Additionally, DCED has distributed the report to other interested individuals and organizations. One copy was provided to each mailing address from which timely written comments on the Petition were received.



Haines Borough Assembly Resolution supporting the Skagway borough proposal.

3 AAC 110.640 provides that at least 28 days must be allowed for comment on the Preliminary Report from the date that the report was mailed to the Petitioner. The

¹³ It is unclear whether the postcards from "Reed McCluskey" and "Reed M. McCluskey" are from the same person. The mailing address is identical on both cards, however, the handwriting and signatures appear to be different on the two cards.

¹⁴ Handwritten note added stating, "Do the right thing and approve the petition."

¹⁵ Handwritten note added stating, "I believe that Skagway wants to be a responsible governing body, (pro-active)."

¹⁶ Handwritten note added stating, "Year round resident & registered voter."

¹⁷ Handwritten note added stating, "Year round resident & registered voter."

deadline for the receipt by LBC staff of written comments on the Preliminary Report in this case has been set by the Chair of the Commission for July 31, 2002 at 5:00 p.m.

Comments may be submitted by mail, hand delivery, fax, or e-mail to:

Local Boundary Commission
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Primary Fax: 907-269-4539
Alternate Fax: 907-269-4563
E-mail: Dan_Bockhorst@dcled.state.ak.us

DCED stresses again that comments on the Preliminary Report must be received by DCED prior to the deadline.

F. DCED'S FINAL REPORT

After DCED has considered timely written comments on its Preliminary Report, it will issue its Final Report on the Skagway borough proposal. The Final Report will be mailed to the Petitioner at least three weeks prior to the Commission's hearing on the proposal as required by law. The Final Report will also be distributed to the correspondents and other interested individuals and organizations in this proceeding.

G. PRE-HEARING REQUIREMENTS

As outlined in the following section (LBC Public Hearing), the Petitioner will be allowed to present sworn testimony during the public hearing on the Petition to be conducted by the Commission in Skagway. Sworn testimony is different from comments by members of the public.

Witnesses providing sworn testimony on behalf of the Petitioner must have expertise in matters relevant to the pending proposal to dissolve the City of Skagway and incorporate a Skagway borough. They may include specialists in relevant subjects, such as public policy, municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or they may be long-standing members of the community that are directly familiar with social, cultural, economic, geographic, and other characteristics of the territory in question.

At least fourteen days before the hearing, the Petitioner must submit to DCED a list of witnesses that it intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the length of time anticipated for the testimony of each witness.



Public testimony at a Local Boundary Commission hearing.

H. LBC PUBLIC HEARING

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

Since there are no respondents in this proceeding, the hearing procedures will be somewhat simplified. The hearing will begin with a summary by DCED staff of its conclusions and recommendations concerning the pending proposal.

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

3 AAC 110.560 limits the Petitioner's opening statement to no more than ten minutes.

After the Petitioner's opening statement, the Commission will receive sworn testimony from any witnesses called by the Petitioner with expertise in matters relevant to the proposal. The LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Commission members may question witnesses providing sworn testimony.

Following the testimony from witnesses called by the Petitioner, the Commission will receive public comment by interested persons.

3 AAC 110.560 provides

that the public comments shall not exceed three minutes for each person. Commission members may question persons providing public comment.

The hearing will conclude with a closing statement by the Petitioner not to exceed 10 minutes.

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



Members

*Chairperson
At-Large*

*Member
First Judicial
District*

*Member
Second Judicial
District*

*Member
Third Judicial
District*

*Member
Fourth Judicial
District*



State of Alaska Local Boundary Commission

Agenda Public Hearing Skagway Borough Proposal

- 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. Recess or Adjourn

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

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

I. LBC DECISIONAL MEETING

The LBC must render a verbal decision on the Petition within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

As noted earlier, the Commission may approve the Petition, with or without amendments and/or conditions, or the Commission may deny the Petition. Within thirty days after the Commission has rendered its decision, it must

adopt a written statement explaining all major considerations leading to its decision. A copy of the statement will be provided to the Petitioner and any others who request a copy.

J. RECONSIDERATION

Within eighteen days after the Commission's written statement of decision is mailed under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision. Within twenty days after a written statement of decision is mailed under 3 AAC 110.570(f), the Commission may, on its own motion, order reconsideration of all or part of that decision.

A request for reconsideration from a person or entity must describe in detail the facts and analyses that support the request for reconsideration.

A person or entity filing a request for reconsideration must provide DCED with a copy of the request for reconsideration and supporting materials in an electronic format. DCED may waive the requirement if the person or entity requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format.

A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the Petitioner by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

If the person or entity filing the request for reconsideration is a group, the request must identify a representative of the group.

The Commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision if the Commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission 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.

The law provides that if the Commission does not act on a request for reconsideration within twenty days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within twenty days after the decision was mailed under 3 AAC 110.570(f), the Commission will allow the Petitioner ten days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The Petitioner shall provide DCED with a copy of the responsive brief in an electronic format, unless DCED waives this requirement because the Petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

Within ninety days after DCED receives timely filed responsive briefs, the Commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a)-(f), will issue a decision on reconsideration. A decision on reconsideration by the Commission is final on the day that the written statement of decision is mailed, postage prepaid, to the Petitioner.

K. ELECTION

If the Commission approves the Petition (with or without amendments and/or conditions), the Director of the Division of Elections for the State of Alaska will be notified in accordance with AS 29.05.110 following the conclusion of the opportunity for reconsideration. The Director of the Division of Elections must then order an election on the incorporation proposition and the initial elected municipal officials within thirty days of the notice.

Nominations for initial municipal officials are made by petition. The nomination petition will be in the form prescribed by the Director of the Division of Elections.

A voter who has been a resident of the area approved for incorporation for thirty days before the date of the election order may vote in an incorporation election.

The election would be conducted thirty to ninety days after the election order. If a majority of those who vote on the proposition vote in favor of incorporation, the borough will be formed upon certification of the election results. If a majority of the voters do not approve the proposition to form the borough, incorporation is rejected.

The Federal Voting Rights Act (43 U.S.C. 1973) applies to municipal incorporations and other municipal boundary changes in Alaska. The Voting Rights Act forbids any change affecting voting rights that has the purpose or

effect of denying or abridging the right to vote based on race. If the incorporation proposal is approved by the LBC, the U.S. Department of Justice or U.S. District Court in Washington D.C. must review the borough incorporation / city dissolution proposal, method of the incorporation election, and the proposed date for the incorporation election. Review by the Justice Department typically takes about sixty-five to seventy days. The State of Alaska is responsible for seeking preclearance from the U.S. Justice Department of any borough incorporation proposal.

L. JUDICIAL APPEAL

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

CHAPTER 3 - APPLICATION OF STANDARDS TO THE SKAGWAY PETITION

Chapter 3 presents DCED's analysis of the evidence in this proceeding with respect to the eighteen standards that must be met in order for the Local Boundary Commission to approve the Petition.

A. STANDARD NUMBER 1: CITY DISSOLUTION UPON ASSUMPTION OF AREAWIDE BOROUGH POWERS

1. THE STANDARD ESTABLISHED IN LAW

AS 29.06.450 provides various options for dissolution of a city government. Specifically, State law provides as follows:

Sec. 29.06.450. Methods of dissolution.

(a) Two petition methods may be used to initiate dissolution of a municipality:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.06.460 - 29.06.510.

(b) The department shall investigate a municipality that it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in art. X, Sec. 12 of the state constitution.

(c) A borough is dissolved when its entire territory is included in a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

The Petition seeks dissolution of the City of Skagway under AS 29.06.450(c). Thus, the applicable standard in this case is whether all of the powers of the City of Skagway would become areawide powers of the proposed Skagway borough.

2. VIEWS OF THE PETITIONER

The Petition (at page 41) states as follows regarding this standard:

AS 29.06.450(c) states that once a city has areawide borough powers, the city may be dissolved. As a first class borough, the Municipality of Skagway would exercise on an areawide basis all of the same powers that the City of Skagway now exercises. Therefore, it is clear that the Skagway (sic) has the ability to function as a borough and provide all necessary services and facilities. Also, as Skagway is a unique geographic area, allowing its incorporation would not unduly impact any of the surrounding areas.

Skagway has demonstrated itself as a self-sufficient body capable of self-government and capable of caring for its residents in the manner contemplated by the Alaska statutes and regulations require. (sic)

3. ANALYSIS BY DCED

The Petition (at page 7) lists the following areawide powers to be exercised by the proposed borough:

1. education;
2. planning, platting, land use regulation;
3. general government;
4. business licenses;
5. taxation;
6. regulation of ground transportation;
7. utilities – water, sewage, solid waste, and cemeteries;
8. harbor and docks;
9. library, museum, some health-related services;
10. police;
11. fire, emergency medical services, search and rescue;
12. health and safety (litter, fireworks, nuisances, other);
13. traffic control;
14. road maintenance;
15. regulation of building and construction;
16. economic development;
17. tourism development and planning;
18. parks and recreation;
19. local emergency response (oil and hazardous materials planning);



Cruise ship at Skagway.

20. capital improvement projects/planning;
21. animal protection; and
22. lease and sale of public lands, use permits, easements.

DCED compared the preceding list of proposed areawide borough powers to information concerning the current powers of the City of Skagway presented in 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). The audit indicates that the City of Skagway provided daycare services in Fiscal Year 2001 which are not among the services listed in the petition. However, City officials advised DCED that the City of Skagway no longer provides that service. (Personal communication with Marjorie Harris, Skagway City Clerk.)

4. CONCLUSION BY DCED

Based on the foregoing analysis, DCED concludes that the proposed areawide powers of the Municipality of Skagway outlined in the Petition comprise all powers currently exercised by the City of Skagway. Thus, the standard for dissolution of a city set out in AS 20.06.450(c) would be met upon the assumption of the powers in question by the Municipality of Skagway. The transition plan

included with the Petition (at page 42) indicates that borough assumption of all existing powers of the City of Skagway will be one of the first orders of business of the new assembly.

B. STANDARD NUMBER 2: BOROUGH CLASSIFICATION

1. THE STANDARD ESTABLISHED IN LAW

AS 29.05.031 allows certain classes of boroughs to form, but prohibits the incorporation of others. Specifically, State law, in relevant part, provides as follows:

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. . . .

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

2. VIEWS OF THE PETITIONER

The Petition (at page 1, et seq.) consistently proposes incorporation of a first class, general law borough.

3. ANALYSIS BY DCED

Application of this standard to the pending Petition is simple and straightforward. Without deviation, the Petition proposes formation of a first class borough.

4. CONCLUSION BY DCED

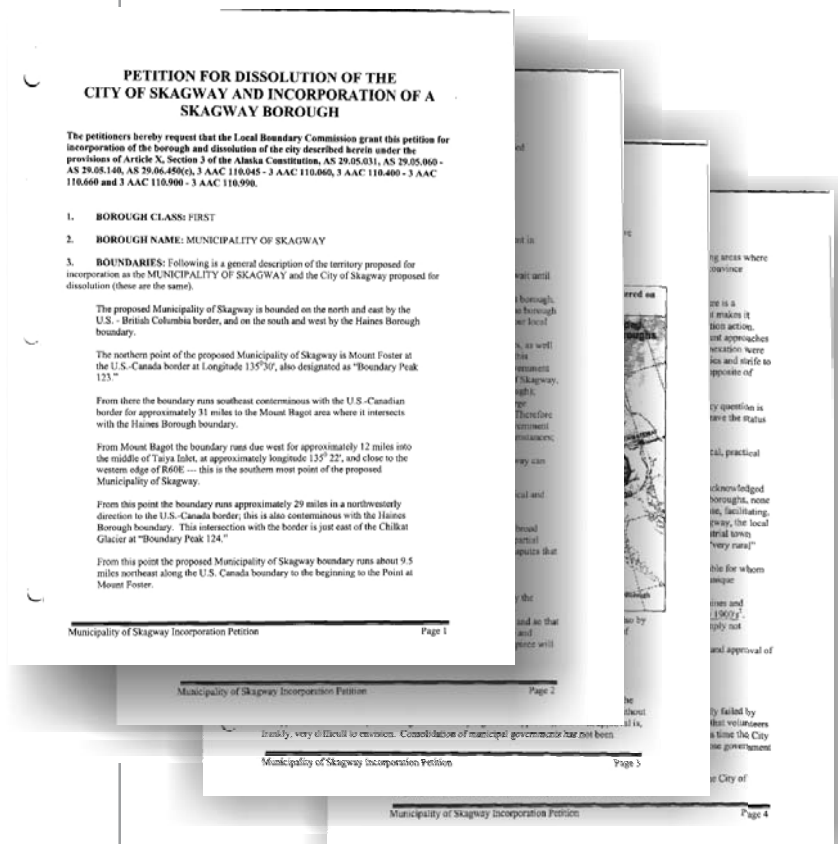
Because the Petition consistently proposes incorporation of a first class borough, the standard in AS 29.05.031 is met.

C. STANDARD NUMBER 3: TRANSITION PLAN

1. THE STANDARD ESTABLISHED IN LAW

3 AAC 110.900 requires the Petitioner to provide a transition plan addressing the proposed change. The standards for the transition plan are written in a broad fashion to pertain to any proposal that comes before the Commission from an existing or prospective city or borough government. Specifically, the law provides as follows:

3 AAC 110.900. TRANSITION. (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough



Skagway Petition.

services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the

EXHIBIT E TRANSITION PLAN

This transition from the City of Skagway and Skagway City School District to the Municipality of Skagway Borough and Borough School District will be very simple. No changes in municipal boundaries, population, or services or powers are proposed.

Transfer of Services and Powers

Skagway's goal is to make the transition from 1st class city to 1st class borough smoothly, quickly and with as few changes as possible.

Powers and services exercised by the City of Skagway continue to be exercised until the new borough assumes the powers and functions. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality. The same is true for the new school district.

The following actions will occur in an orderly manner.

Local Boundary Commission Approves Petition
DCED submits Federal Voting Rights Act preclearance request.

Election
Within 30-90 days of Local Boundary Commission approval, voters are asked to approve the borough incorporation and elect borough assembly members, mayor and school board.

Date of Incorporation
Certification of election results by the State Division of Elections.

First Monday Pass Following Election Certification
The borough Assembly has its first meeting. As one of its first orders of business it adopts and assumes all ordinances, codes, laws, assets and liabilities of the City of Skagway. Dissolution of the City of Skagway formally occurs after this action.

First School Board Meeting
The borough School Board has its first meeting. As one of its first orders of business it adopts and assumes all policies, procedures, contracts, assets and liabilities of the City of Skagway School District. Dissolution of the City of Skagway School District formally occurs after this action.

One-Page Transition Plan Submitted by Petitioner.

commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

2. VIEWS OF THE PETITIONER

The Petition (at page 42) includes a one-page transition plan describing the manner in which the assets, liabilities, powers, duties, rights, and obligations of the City of Skagway would be transferred to the proposed Municipality of Skagway.

3. ANALYSIS BY DCED

The intent of 3 AAC 110.900(a) is to require each petitioner to demonstrate that it has given forethought to the manner in which services will be provided to the territory proposed for change. The plan must also demonstrate the petitioner's good faith to extend services.

3 AAC 110.900(b) requires each petitioner to present a practical plan for the assumption of relevant powers, duties, rights, and functions presently being exercised by other service providers. 3 AAC 110.900(c) requires each petitioner to provide a practical plan for the transfer and integration of relevant assets and liabilities.

The brevity of the transition plan included with the Skagway Petition stems from the expressed nature of the proposal that "no changes in municipal boundaries, population, or services or powers are proposed" (at page 42). The only effects of the proposal would be a change in the name of the local government (from "City of Skagway" to "Municipality of Skagway"), a change of the type of local government (from a first class city in the unorganized borough to a first class borough), and a change in the name of the governing body (from a city council to a borough assembly).

The plan provides that "As one of [the assembly's] first orders of business it adopts and assumes all ordinances, codes, Laws, assets and liabilities of the City of Skagway." Additionally, the plan states, "As one of [the school board's] first orders of business it adopts and assumes all policies, procedures, contracts, assets and liabilities of the City of Skagway School District."

The affidavit of the Petitioner's Representative (at page 49) includes a statement that the transition plan was prepared in consultation with the City of Skagway. Four City officials are listed as having been consulted in that regard. Those are the City Manager, Treasurer, School Superintendent, and School Administrator.

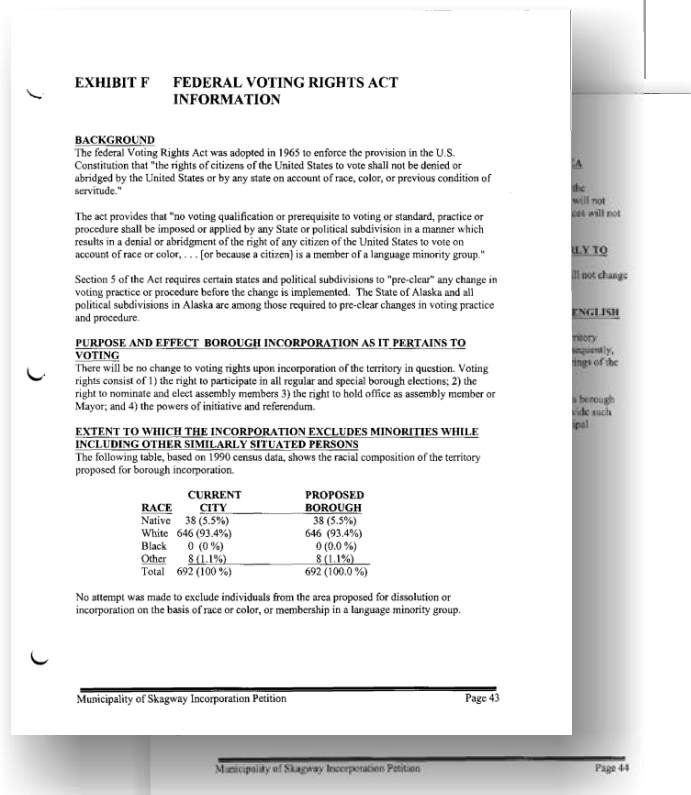
4. CONCLUSION BY DCED

Given that the existing and proposed municipal governments are indistinguishable in terms of powers, duties, obligations, jurisdictional territory, and number of residents served, the one-page transition plan is adequate. As such, DCED concludes that the standard relating to transition planning set forth in 3 AAC 110.900 is satisfied with respect to the pending Petition.

D. STANDARD NUMBER 4: CIVIL AND POLITICAL RIGHTS

1. THE STANDARD ESTABLISHED IN LAW

3 AAC 110.910 states that a petition will not be approved by the Commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, *because of race, color, creed, sex, or national origin*. Specifically, the State law provides as follows:



Federal Voting Rights Act Information from Petition.

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

In addition to the provisions in State law, the federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973, establishes standards relating to the effects that incorporation would have upon civil and political rights of minorities. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications, voting prerequisites, standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. Specifically, the Federal law provides as follows:

Sec. 1973. - Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to

office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

2. VIEWS OF THE PETITIONER

The Petition (at pages 43 – 44) addresses the Skagway borough proposal in the context of the federal Voting Rights Act. The Petition stresses that “There will be no change to voting rights upon incorporation of the territory.”

3. ANALYSIS BY DCED

The federal Voting Rights Act was enacted in 1965. Standards were established to determine which jurisdictions nationwide would be required to preclear changes in voting rights and practices under Section 5 of the Act. If the U.S. Justice Department determined that a state or political subdivision maintained a “test or device”¹⁸ and if the Census Bureau determined that less than 50% of the voting-aged residents of the jurisdiction were registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had low voter registration and turnout. The U.S. Justice Department had also determined that Alaska had maintained a literacy test, which was considered a prohibited test or device. Therefore, at the

¹⁸ “Test or device” was defined as “any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.”

outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Right Act, Alaska immediately filed a lawsuit asserting that the State had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position and Alaska was allowed to withdraw from the preclearance requirements.

The federal Voting Rights Act was amended in 1970, at which time Alaska was once more made subject to the preclearance requirements. However, with the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclear changes affecting voting.

In 1975, the Voting Rights Act was amended a third time. The amendments expanded the definition of "test or device" to apply to a jurisdiction that conducted elections only in English if 5% or more of the population were members of a single language minority. Because Alaska conducted most aspects of its elections in English, and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have since remained subject to the Section 5 Voting Rights Act requirements.

All municipal annexations in Alaska are subject to review under the Voting Rights Act. The boundaries of the City of Skagway were expanded twice since the Voting Rights Act was applied to the State of Alaska and its political subdivisions. The first occurred on March 6,

1978 and the other occurred on March 4, 1980. DCED assumes here that the City of Skagway fulfilled its obligation to preclear both annexations with the Justice Department.

Given that the existing and proposed municipal governments are indistinguishable in terms of powers, duties, obligations, jurisdictional territory, number of residents served, composition of the governing body, apportionment of the governing body, and form of representation, changes to voting rights and practices are, in effect, in name only.

4. CONCLUSION BY DCED

Given the foregoing, DCED concludes that no voting qualifications, prerequisites, standards, practices, or procedures will result from dissolution of the City of Skagway and incorporation of the Municipality of Skagway that would deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. DCED concludes further that the proposed city dissolution and borough incorporation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Thus, the standards set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 are satisfied by the Skagway borough proposal.

E. STANDARD NUMBER 5: RESOURCES

1. THE STANDARD ESTABLISHED IN LAW

AS 29.05.031(a)(3) provides that a proposed borough must have the human and financial resources to support borough government. Specifically, State law provides, in relevant part, as follows:

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: ...

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

Additionally, 3 AAC 110.055 provides as follows:

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

(1) will consider

(A) the reasonably anticipated functions of the proposed borough;

(B) the reasonably anticipated expenses of the proposed borough;

(C) the ability of the proposed borough to generate and collect local revenue, and the reasonably anticipated income of the proposed borough;

(D) the feasibility and plausibility of the anticipated operating and capital budgets through the third full fiscal year of operation;

(E) the economic base of the proposed borough;

(F) property valuations for the proposed borough;

(G) land use for the proposed borough;

(H) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and

(I) personal income of residents of the proposed borough; and

(2) may consider other relevant factors, including

(A) the need for and availability of employable skilled and unskilled persons to serve the proposed borough; and

(B) a reasonably predictable level of commitment and interest of the population in sustaining a borough government.

2. VIEWS OF THE PETITIONER

The Petitioner addresses the resources standard on pages 27 – 34 of the Petition. Additionally, budget information about the City of Skagway and the proposed Skagway borough is provided on pages 11 – 17 of the Petition.

The Petition states that the proposed borough has ample human resources to operate, as evidenced by the fact that the City of Skagway currently provides a broad range of fundamental municipal services. Those services include public schools, municipal planning, public safety, transportation facilities, and utilities.

The Petition indicates that the proposed borough (i.e., the existing City of Skagway) has a substantial property tax base and a substantial sales tax base. It also notes that the City had \$7.5 million in surplus funds in May of 1999.

The Petition addresses the anticipated functions, income, and expenses of the proposed borough. The Petition provides details concerning the economic base of the community. For example, it reports that:¹⁹

Of the top 25 employers in Skagway in 1997 (based on annual average), one-third were oriented to the tourism sector, four

¹⁹ The summary provided in the Petition (page 29) accounts for only 20 of the top 25 employers.

Figure 2**PROJECTED GENERAL FUND EXPENDITURES**
(Skagway Borough Petition - Pages 15-17)

Expenditure	Year One	Year Two	Year Three
Administration and Assembly	\$634,640	\$653,679	\$673,289
Fire Department	\$372,813	\$383,997	\$395,517
Police Department	\$460,436	\$474,249	\$488,476
Health Center	\$208,472	\$214,726	\$221,168
Civic Center	\$23,175	\$23,870	\$24,586
Public Works and Parks	\$155,170	\$159,825	\$164,619
Museum	\$102,768	\$105,851	\$109,027
Library	\$97,433	\$100,356	\$103,367
Economic Development	\$123,600	\$127,308	\$0
Major Equipment Purchases	\$121,437	\$125,080	\$128,833
Total Expenditures	\$2,299,944	\$2,368,941	\$2,308,882

were transportation-related (there is some overlap with tourism), three were public sector (Park Service, City, School District), three were construction-related, one was a grocer, and one was a utility.

The discussion in the Petition regarding resources concludes with information about lands owned by the City of Skagway, land use, and land use planning.

3. ANALYSIS BY DCED

(a) The reasonably anticipated functions of the proposed borough

As noted in DCED's analysis of standard number one (city dissolution upon assumption of areawide borough powers), the Petition provides that the proposed borough will exercise, on an areawide basis, the same twenty-two powers currently exercised by the City of Skagway. To avoid redundancy, the list of proposed powers is not repeated here.

(b) The reasonably anticipated expenses of the proposed borough

The Petition (at pages 15 – 17) outlines projected expenditures and transfers for the General Fund, Sales Tax Fund, and Tourism Fund.

The General Fund supports the administration, council, public safety, health, public works, parks, museum, library, and economic development. Projected funding for economic development is provided through an allocation of the monies received by the City

of Skagway under the federal Southeast Alaska Economic Disaster Fund. Support for economic development in the borough budget is projected to end in the third fiscal year with the intention that another organization in the community (e.g., chamber of commerce) would undertake that function. Figure 2 shows the projected General Fund expenditures listed in the Petition.²⁰

The Sales Tax Fund is used to make contributions to the Skagway City School District. Two separate figures for school contributions are listed in the budget. The first is the 4-mill or 45% of basic need contribution required of all municipal school districts by AS 14.17.410(b)(2). The second is a discretionary contribution allowed by AS 14.17.410(c). In addition to funding the local share of schools, the Sales Tax Fund is used to subsidize property tax rates; pay for bonded indebtedness for the water, sewer, and

²⁰ The projected General Fund expenditures shown in Figure 3-A reflect a minor correction by DCED of the Petitioner's total for the first year expenditures.

Figure 3
PROJECTED SALES TAX FUND EXPENDITURES
 (Skagway Borough Petition)

Expenditure	Year One	Year Two	Year Three
Contractual	\$20,650	\$20,650	\$20,650
School - Required Local Minimum Contribution	\$511,156	\$511,156	\$511,156
School - Discretionary Local Contribution	\$254,852	\$262,497	\$270,372
Transfer to General Fund	\$106,000	\$239,500	\$363,000
Transfer to General Fund (mill rate buy down)	\$220,420	\$227,033	\$233,844
Bond Payment - Sewer/Water	\$53,900	\$53,550	\$52,150
Bond Payment - Incinerator	\$144,182	\$144,182	\$144,182
Lease Payment McCabe Building	\$131,500	\$131,500	\$131,500
Transfer to General Fund for Equipment	\$117,900	\$117,900	\$117,900
Transfer to Tourism Fund	\$30,000	\$20,000	\$31,343
Capital Projects	\$500,000	\$2,000,000	\$2,000,000
Total Expenditures	\$2,090,560	\$3,727,968	\$3,876,097

The Tourism Fund supports the promotion of the tourism industry in Skagway. Figure 4 summarizes projected expenditures in the Tourism Fund.

The projected expenditures provided by the Petitioner do not include total school expenditures, only the local contributions for schools. Moreover, the projections do not include information about the Garbage Fund, Water/ Sewer Fund, or Port Fund. Further, complete information about debt service was also lacking. Figure 5 summarizes the actual expenditures for the City of Skagway School District for the fiscal year ending June 30, 2001. (Sources: *City of Skagway General Purpose*

garbage utilities; fund capital projects; and support tourism. Figure 3 depicts the Petitioner's projected expenditures relating to the Sales Tax Fund.

Financial Statements [June 30, 2001]; Skagway City School District – General Purpose Financial Statements, Additional Information and Compliance Reports [June 30, 2001])

Figure 4
PROJECTED TOURISM FUND EXPENDITURES
 (Skagway Borough Petition)

Expenditure	Year One	Year Two	Year Three
Supplies	\$5,000	\$5,000	\$5,000
Marketing	\$96,475	\$96,475	\$96,475
Projects	\$5,000	\$5,000	\$5,000
Personnel	\$114,897	\$118,343	\$121,894
Repairs & Maintenance	\$2,000	\$2,000	\$2,000
Dues	\$1,650	\$1,650	\$1,650
Travel	\$16,300	\$16,300	\$16,300
Utilities	\$5,000	\$5,000	\$5,000
Total Expenditures	\$246,322	\$249,768	\$253,319

Figure 6
Audited FY 2001 Expenditures of the City of Skagway

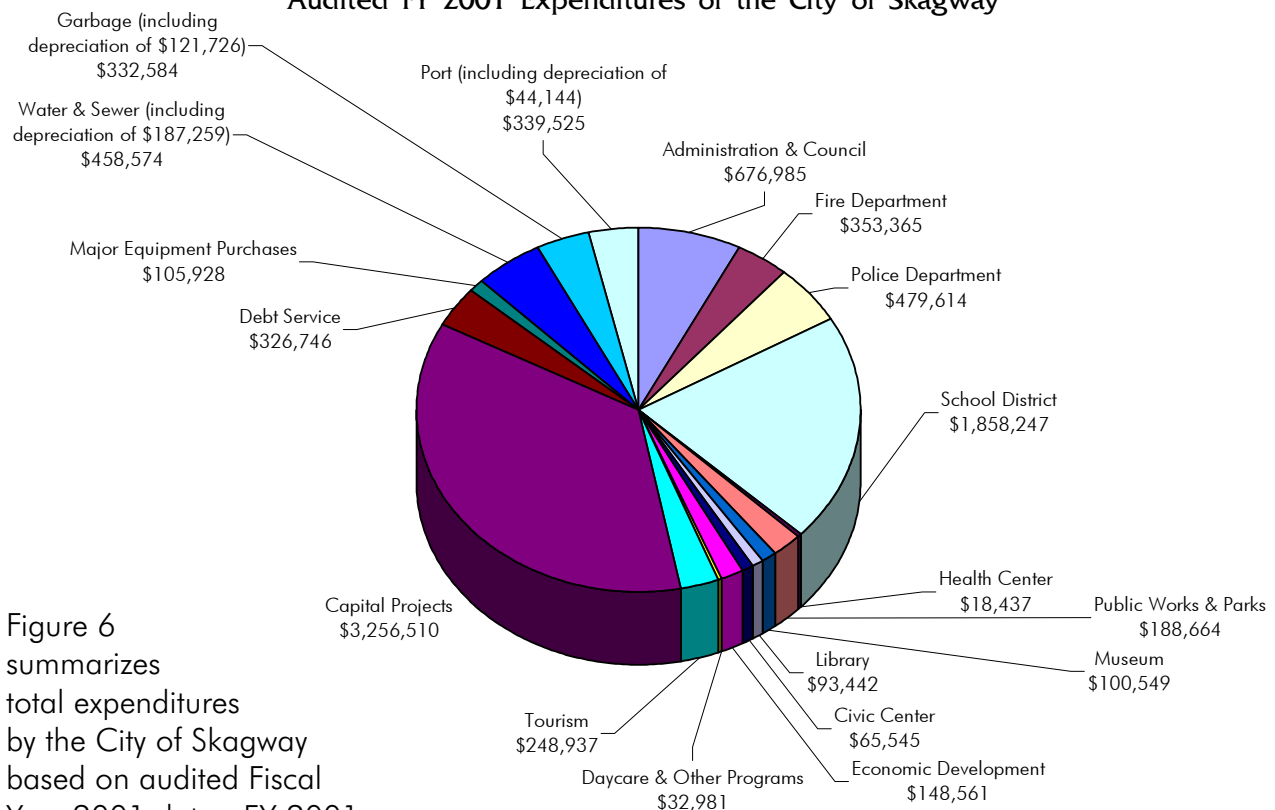


Figure 6 summarizes total expenditures by the City of Skagway based on audited Fiscal Year 2001 data. FY 2001 corresponds to the projected first year listed in Figure 3, Figure 4, and Figure 5.

(c) The ability of the proposed borough to generate and collect local revenue, and the reasonably anticipated income of the proposed borough.

The Petition (at pages 14 – 17) includes projections of general fund, sales tax fund, and tourism fund revenues for the first three years of the proposed borough.²¹

Figure 5 AUDITED FY 2001 EXPENDITURES OF THE SKAGWAY CITY SCHOOL DISTRICT	
Expenditure	Fiscal Year 2001
Instruction	\$879,141
Special Education Instruction	\$115,230
Special Education Support Services - Students	\$9,714
Support Services - Students	\$4,296
Support Services - Instruction	\$9,380
School Administration	\$112,555
District Administration	\$235,989
District Administration – Support Services	\$88,607
Operation And Maintenance of Plant	\$260,054
Student Activities	\$92,813
Student Transportation Services	\$6,083
Community Services	\$23,496
Capital Outlay	\$20,889
Total Expenditures	\$1,858,247

²¹ Year One, Year Two, and Year Three correspond respectively to FY 01, FY 02, and FY 03 in the budget provided with the Petition, except that DCED reported the organizational grants in each of the three years shown in the Preliminary Report (whereas Skagway listed the grants in FY 00, FY 01, and FY 02).

The Petitioner's projections for General Fund revenues are listed in Figure 7. Property taxes account for nearly half of the local sources of General Fund revenue and fund transfers. Projected State and federal funding account for less than ten percent of the General Fund revenues.

Figure 8 shows Sales Tax Fund revenue projections for the first three years of the borough's existence. Sales taxes account, by far, for the single biggest source of local revenue. The Petitioner projects that sales tax revenues will increase by \$250,000 annually over the first three years (that represents a 7.7% increase from the first year to the second year).

Figure 9 shows the Petitioner's projected revenues for the Tourism Fund. The biggest revenue source for the Tourism Fund is the hotel tax.

As was the case for projected expenditures,

projected revenues in the Petition did not include comprehensive figures for the school district, or figures for enterprise funds (port and water, sewer, and garbage utilities).

Figure 7
PROJECTED GENERAL FUND REVENUES
(Skagway Borough Petition)

Revenue	Year One	Year Two	Year Three
LOCAL			
Property Taxes	\$960,681	\$989,501	\$1,019,186
Library	\$4,000	\$4,000	\$4,000
Museum	\$71,400	\$71,400	\$71,400
Police	\$6,250	\$6,250	\$6,250
Ambulance	\$25,000	\$25,000	\$25,000
Licenses and Permits	\$68,200	\$68,200	\$68,200
Public Works	\$1,000	\$1,000	\$1,000
Investment Income	\$89,700	\$89,700	\$89,700
Leases	\$90,475	\$90,475	\$90,475
Miscellaneous and Fines	\$12,550	\$12,550	\$12,550
Land Payments	\$21,535	\$21,535	\$21,535
Transfer from Sales Tax (mill rate buy down)	\$220,420	\$227,033	\$233,844
Transfer from Sales Tax -equipment	\$117,900	\$117,900	\$117,900
Transfer from Sales Tax	\$106,000	\$239,500	\$363,000
Transfer from Land Fund Interest	\$59,000	\$59,000	\$59,000
Total Local	\$1,854,111	\$2,023,044	\$2,183,040
FEDERAL			
Timber Receipts (for school & roads)	\$7,808	\$7,808	\$7,808
Payments in Lieu of Taxes (PILT)	\$11,116	\$11,116	\$11,116
Total Federal	\$18,924	\$18,924	\$18,924
STATE			
State Revenue Sharing	\$22,700	\$22,700	\$22,700
Safe Communities	\$27,820	\$27,820	\$27,820
State - other (health & social services, clinic, etc.)	\$24,000	\$24,000	\$24,000
PILT (fed pass thru)	\$32,679	\$32,679	\$32,679
Organization Grant	\$300,000	\$200,000	\$100,000
Total State	\$407,199	\$307,199	\$207,199
OTHER			
S.E. Tongass Funds-EDC Budget	\$120,000	\$120,000	\$0
Total Revenues and Transfers	\$2,400,234	\$2,469,167	\$2,409,163

Figure 8
PROJECTED SALES TAX FUND REVENUES
(Skagway Borough Petition)

SALES TAX FUND	Year One	Year Two	Year Three
Taxes	\$3,250,000	\$3,500,000	\$4,000,000
Transfers from Sales Tax	\$179,500	\$179,500	\$179,500
Fund Interest, Penalty			
Ballfield Lot Payments	\$47,884	\$47,884	\$47,884
Total Revenues and Transfers	\$3,477,384	\$3,727,384	\$4,227,384

²² For purposes of this review, "school miscellaneous" consists of all "local sources" reported on page 3 of FY 2001 school district audit (\$846,070), less local contribution reported on Exhibit D-2 of FY 2001 audit (\$816,294). The difference between those figures is \$29,776.

Figure 10 provides a comprehensive statement of revenues for the City of Skagway based on its Fiscal Year 2001 audits.²²

(d) The feasibility and plausibility of the anticipated operating and capital budgets through the third full fiscal year of operation.

Certain characteristics of the Petition and circumstances surrounding its development suggest that the expenditures for the three funds listed in the Petition (General Fund, Sales Tax Fund, and Tourism Fund) are particularly reliable. Those include the following:

- The anticipated powers of the proposed borough are identical to the existing powers of the City of Skagway.
- The area proposed for incorporation is identical to the area within the existing boundaries of the City of Skagway.

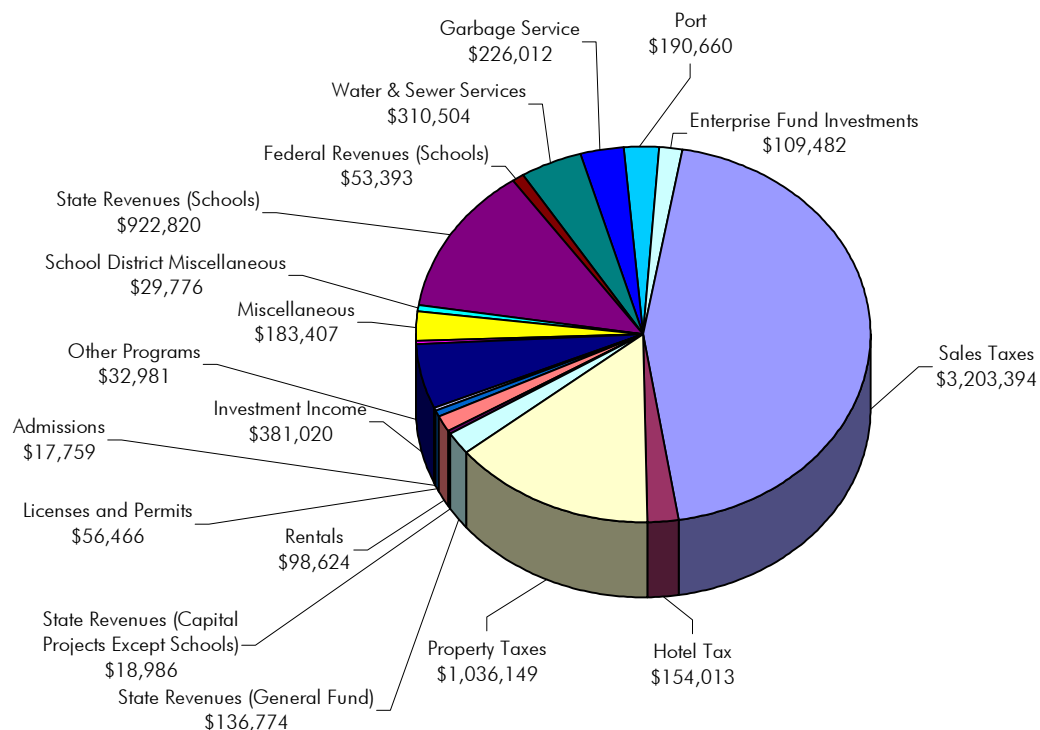
Figure 9
PROJECTED TOURISM FUND REVENUES
(Skagway Borough Petition)

Revenue	Year One	Year Two	Year Three
Hotel taxes	\$165,000	\$165,000	\$165,000
Interest/Penalty	\$500	\$500	\$500
Internet Sub.	\$200	\$200	\$200
Transfer From Sales Tax Fund	\$30,000	\$20,000	\$31,343
Transfer From Tourism Tax Fund Balance	\$50,622	\$64,068	\$56,276
Total Revenues and Transfers	\$246,322	\$249,768	\$253,319

- The budget was prepared by a consultant hired by the City of Skagway who worked in consultation with officials of the City.
- The Skagway City Manager is the Petitioner's Representative.

The 2001 audited expenditures reported in Figure 6 exceeded the FY 2001 audited revenues reported in Figure 10 by \$1,922,701 (26.95%). The deficit in the General Fund,

Figure 10
FY 2001 Audited Revenues





Boardwalks along Broadway in downtown Skagway.

Special Revenue, Capital Projects, and Debt Service funds equaled \$1,592,985 (29.95%). The deficit in the School District expenditures equaled \$35,964 (1.97%). The operating loss in the enterprise funds amounted to \$293,752 (25.99%). However, if depreciation of enterprise fund assets were excluded from consideration, the enterprise funds would have had a surplus of \$67,157. In that case, the overall deficit would have been \$1,855,544.

City officials stressed that the deficit incurred in FY 2001 is not representative of past and anticipated future expenditures. They pointed out that the City had recently undertaken a number of major capital improvement projects (solid waste incinerator, City Hall and museum renovation, street paving, and flood control). While such expenditures resulted in use of reserves, the City typically maintains a surplus of funds amounting to approximately \$7 million. (Personal communication, Bob Ward, City Manager.)

DCED considers the City's explanation of its FY 2001 deficit to be reasonable and plausible. DCED notes that, despite the deficit for the year, the City's cash and cash equivalents, accrued interest, receivables, amounts due from other governments, and investments (less accounts payable) at the end of FY

2001 amounted to \$6,075,914. That figure was comprised of the following components: General Fund \$1,821,944; Special Revenue Funds \$2,022,455; Debt Service \$109,090; Enterprise Funds \$780,532; and Nonexpendable Trust Fund \$1,341,893.

Beyond the discussion concerning the FY 2001 deficit, it is appropriate to note other relevant observations concerning the projected borough budget. The Petitioner projects that the borough will receive \$11,116 annually in direct Federal Payments in Lieu of Taxes (PILT)

and will also receive \$32,679 annually in PILT funds passed through the State. Thus, over the first three years of operation, the Petitioner projects direct and indirect PILT payments totaling \$131,385 from those sources.

The direct PILT payments are no longer made by the federal government. Moreover, DCED projects that the indirect PILT payments to a Skagway borough during the first, second, and third years of operation would be, respectively, \$39,549, \$34,511, and \$17,709. Those figures total \$91,769, or \$39,616 less than the three-year total estimated by the Petitioner.

The Petitioner also projected that a Skagway borough would receive \$7,808 annually in National Forest Receipts. In fact, information available to DCED indicates that the proposed borough boundaries do not encompass any of the Tongass National Forest. Therefore, the prospective borough would receive no funding under that program. Over a three year period, the difference amounts to \$23,424.

It is also noteworthy that cities in the unorganized borough are treated differently than organized boroughs with regard to National Forest Receipts. The City of Skagway received \$231,562 in National Forest Receipts for FY 2002. Because of a 12% drop in school enrollment from FY 2001 to FY 2002, the City of Skagway's entitlement for National Forest Receipts for FY 2003 is projected to drop to \$208,668. Even at the lower figure, the loss of funds will amount to \$626,004 over three years.

(e) The economic base of the proposed borough

The Petition (at page 30) indicates that there were approximately 400 enterprises licensed by the City of Skagway in 1998 to do business in Skagway. The Petition notes that "The top four types of businesses were retail stores (25% of all licenses), services (business, health, personal, child care), transportation (including White Pass and Yukon Route, air and marine, and passenger transport), and construction-related business (construction, contractors, manufacturing, and auto).

At the time this report was prepared, there were 369 businesses licensed by the City of Skagway. However, City officials stressed that more licenses are likely to be granted in the remainder of the year. (Personal communication, Marjorie Harris, City Clerk.)

There are 208 enterprises with mailing addresses in Skagway that had State business licenses on file with the DCED's Division of Occupational Licensing, Business Licensing



Skagway Streetcar Company tour bus.

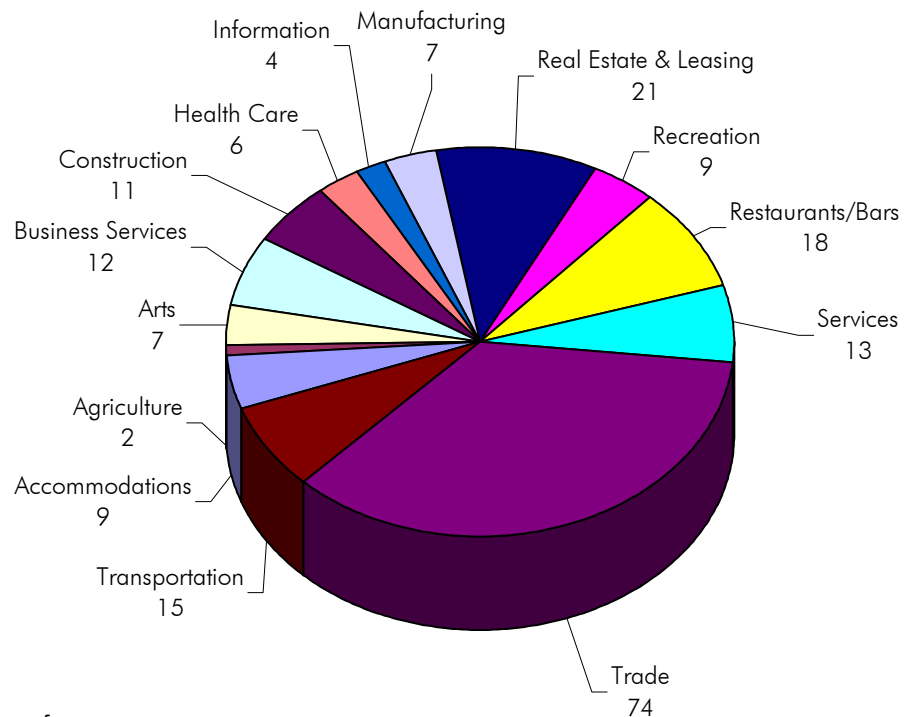
Section at the time that this report was prepared.²³ Figure 11 itemizes those 208 licensed enterprises in Skagway, by type, based on standard industry classifications.²⁴

In an article published by the Alaska State Chamber of Commerce last November, Tina Cyr, White Pass & Yukon route Director of Marketing and Skagway Chamber of Commerce Director, characterized the economic base of Skagway as follows:²⁵

Skagway is headquarters for the Klondike Gold Rush National Historical Park, established in 1976. This park has two main areas of focus: the backcountry and the historic district of Skagway. The backcountry areas include the White Pass, the remains of the once-thriving town of Dyea and the infamous Chilkoot Trail. ...

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. Skagway was visited by 450 cruise ships this summer, bringing over 590,000 cruise passengers to the town. Addi-

Figure 11
State-Licensed Businesses in Skagway by Type



tional travelers arrived via road, air and boat, bringing a record 750,000 visitors to town during the 2001 season.

²³ Source: DCED website < http://www.dced.state.ak.us/cbd/commdb/CF_BLOCK.cfm >.

²⁴ Eleven of the 208 businesses did not list a standard industry classification code. For purposes of this report, DCED assigned those eleven businesses to a classification based on the apparent nature of the business.

²⁵ *the Chamber – the Voice of Alaska Business*, Alaska State Chamber of Commerce, pages 19 - 22 (November 2001).

While the visitor industry is thriving, the city would like to see more year-round business opportunities develop. This is a major function of the Skagway Chamber of Commerce.

The Skagway Chamber of Commerce has 152 members. Most memberships are business-related, but there are also a few citizens that join individually to support the chamber's efforts. ...

Ms. Cyr's assessment of the predominance of the tourism sector in the Skagway economy is supported by the statement in the Petition (at page 30) that approximately \$55.1 million of the \$63.1 million (87.3%) in taxable sales in Skagway during 1998 were directly related to tourism.

Ms. Cyr also noted in the referenced article that Skagway's relatively small size and the seasonal nature of its economy create special challenges for local businesses.

As with any small town, cottage industries are always encouraged. Many artisans and merchants have their retail items online and many of the town's talented artists are featured at www.skagwayalaskacatalog.com. One such business is studying the feasibility of a water bottling plant.

Industries requiring a physical presence in the area are not actively invited to consider Skagway as a new home because of the limitations of property and housing. That is why these are issues that are being addressed.

The extreme population fluctuations from summer to winter challenge those businesses that are trying to sustain year-round operations. The school suffers from reduced funding due to the small number of families staying through the winter.

Skagway's economic base generates substantial sales tax revenues for the local government. The City of Skagway levies a 4% general sales tax and a 4% hotel tax. According to the City's audit, the hotel tax generated \$154,013 in Fiscal Year 2001 while the general sales tax generated \$3,203,394 in the same period.

Together, the hotel tax and sales tax generated revenue equivalent to a 20.19 mill ad valorem tax on all taxable property in the City.

Figure 12, beginning on the next page, compares general sales tax revenues reported by the City of Skagway with those reported by the 84 other city and borough governments in Alaska that levy general sales taxes. When data are compared based on revenues generated per 1% levy on a per capita basis, Skagway tops the list. In fact, Skagway's sales tax generates 52.5% more on a per capita basis for each 1% of tax levied than the next highest ranked municipal government.

The Petition (at page 30) indicates that the local, state, and federal governments accounted for 23% of the jobs in Skagway in 1998.

(f) Property valuations for the proposed borough

The assessed value of taxable property within the City of Skagway as of January 1, 2001 was \$166,260,800. That figure consisted of \$56,237,000 for taxable land and \$110,023,800 for improvements on that land.

Figure 12

Municipal Revenues from General Sales Taxes

(data extrapolated from *Alaska Taxable 2001*)

Municipality	General Sales Tax Revenues	Sales Tax Rate	Revenues per 1% levy	7/1/00 Population	Revenues per 1% levy per capita
City of Skagway	\$3,109,783	4.00%	\$777,446	880	\$883
City of King Cove	\$1,165,613	3.00%	\$388,538	671	\$579
City of Wasilla	\$5,509,279	2.00%	\$2,754,640	5,568	\$495
City of Soldotna	\$4,827,209	3.00%	\$1,609,070	4,157	\$387
City of Unalaska	\$3,625,064	3.00%	\$1,208,355	4,283	\$282
City of North Pole	\$1,219,624	3.00%	\$406,541	1,557	\$261
City of Whittier	\$219,940	3.00%	\$73,313	289	\$254
City of Ketchikan	\$6,943,216	3.50%	\$1,983,776	8,295	\$239
City of Seward	\$2,197,561	3.00%	\$732,520	3,085	\$237
City of Homer	\$3,484,847	3.50%	\$995,671	4,205	\$237
City & Borough of Yakutat	\$640,987	4.00%	\$160,247	744	\$215
City of Haines	\$1,378,549	4.00%	\$344,637	1,808	\$191
City of Saint Paul	\$328,095	3.00%	\$109,365	585	\$187
City & Borough of Juneau	\$28,786,500	5.00%	\$5,757,300	31,262	\$184
City of Palmer	\$2,464,268	3.00%	\$821,423	4,495	\$183
City of Kenai	\$3,809,239	3.00%	\$1,269,746	7,039	\$180
City of Nome	\$2,556,305	4.00%	\$639,076	3,620	\$177
City of Kodiak	\$7,139,290	6.00%	\$1,189,882	6,836	\$174
Ketchikan Gateway Borough	\$4,750,831	2.00%	\$2,375,416	14,003	\$170
City of Cordova	\$2,348,268	6.00%	\$391,378	2,512	\$156
Haines Borough	\$581,700	1.50%	\$387,800	2,516	\$154
City of Bethel	\$4,194,997	5.00%	\$838,999	5,449	\$154
City & Borough of Sitka	\$6,377,699	5.00%	\$1,275,540	8,788	\$145
City of Dillingham	\$1,717,094	5.00%	\$343,419	2,400	\$143
City of False Pass	\$20,299	2.00%	\$10,150	73	\$139
City of Sand Point	\$360,561	3.00%	\$120,187	871	\$138
Kenai Peninsula Borough	\$13,523,826	2.00%	\$6,761,913	49,628	\$136
City of Kotzebue	\$2,438,736	6.00%	\$406,456	3,000	\$135
City of Craig	\$1,310,261	5.00%	\$262,052	2,124	\$123
City of Klawock	\$473,783	5.50%	\$86,142	750	\$115
City of Petersburg	\$2,305,345	6.00%	\$384,224	3,387	\$113
City of Pelican	\$58,207	4.00%	\$14,552	135	\$108
City of Wrangell	\$1,882,866	7.00%	\$268,981	2,569	\$105
City of Seldovia	\$98,416	3.38%	\$29,117	291	\$100

Figure 12 continued on next page

Figure 12 Continued from previous page

Municipality	General Sales Tax Revenues	Sales Tax Rate	Revenues per 1% levy	7/1/00 Population	Revenues per 1% levy per capita
City of Clarks Point	\$30,444	5.00%	\$6,089	76	\$80
City of Hoonah	\$351,500	5.00%	\$70,300	880	\$80
City of Nunapitchuk	\$32,114	2.00%	\$16,057	201	\$80
City of Nenana	\$94,276	3.00%	\$31,425	452	\$70
City of Hydaburg	\$100,469	4.00%	\$25,117	389	\$65
City of Unalakleet	\$244,284	5.00%	\$48,857	757	\$65
City of Noorvik	\$120,385	3.00%	\$40,128	634	\$63
City of Hooper Bay	\$253,700	4.00%	\$63,425	1,066	\$59
City of Galena	\$104,925	3.00%	\$34,975	592	\$59
City of Fort Yukon	\$100,048	3.00%	\$33,349	565	\$59
City of Tenakee Springs	\$6,167	1.00%	\$6,167	105	\$59
City of St. Mary's	\$82,851	3.00%	\$27,617	482	\$57
City of Emmonak	\$135,774	3.00%	\$45,258	804	\$56
City of Kotlik	\$88,064	3.00%	\$29,355	567	\$52
City of Thorne Bay	\$91,367	3.00%	\$30,456	603	\$51
City of St. Michael	\$73,464	4.00%	\$18,366	368	\$50
City of Elim	\$31,506	2.00%	\$15,753	316	\$50
City of Kake	\$166,941	5.00%	\$33,388	702	\$48
City of Marshall	\$63,524	4.00%	\$15,881	340	\$47
City of Aniak	\$53,615	2.00%	\$26,808	594	\$45
City of Koyuk	\$25,439	2.00%	\$12,720	289	\$44
City of Mekoryuk	\$15,995	2.00%	\$7,998	191	\$42
City of Alakanuk	\$112,800	4.00%	\$28,200	677	\$42
City of Larsen Bay	\$14,314	3.00%	\$4,771	120	\$40
City of Togiak	\$65,292	2.00%	\$32,646	824	\$40
City of Chevak	\$89,292	3.00%	\$29,764	769	\$39
City of Kivalina	\$29,411	2.00%	\$14,705	382	\$38
City of Buckland	\$29,746	2.00%	\$14,873	442	\$34
City of Kiana	\$24,502	2.00%	\$12,251	366	\$33
City of Eek	\$19,200	2.00%	\$9,600	289	\$33
City of Quinhagak	\$57,828	3.00%	\$19,276	582	\$33
City of Aleknagik	\$37,042	5.00%	\$7,408	226	\$33
City of Diomede	\$12,970	3.00%	\$4,323	133	\$33
City of Stebbins	\$51,928	3.00%	\$17,309	543	\$32
City of Mountain Village	\$69,383	3.00%	\$23,128	757	\$31
City of Selawik	\$70,368	3.00%	\$23,456	792	\$30
City of Ambler	\$26,110	3.00%	\$8,703	298	\$29
City of Brevig Mission	\$21,659	3.00%	\$7,220	291	\$25
City of Kwethluk	\$94,064	5.00%	\$18,813	762	\$25

Figure 12 continued on next page

Figure 12 Continued from previous page

Municipality	General Sales Tax Revenues	Sales Tax Rate	Revenues per 1% levy	7/1/00 Population	Revenues per 1% levy per capita
City of Toksook Bay	\$23,689	2.00%	\$11,844	527	\$22
City of Scammon Bay	\$22,462	2.00%	\$11,231	501	\$22
City of Shungnak	\$11,335	2.00%	\$5,668	257	\$22
City of Port Alexander	\$7,858	4.00%	\$1,965	90	\$22
City of Pilot Station	\$47,849	4.00%	\$11,962	582	\$21
City of Deering	\$8,894	3.00%	\$2,965	155	\$19
City of Savoonga	\$35,293	3.00%	\$11,764	652	\$18
City of Chefornak	\$13,438	2.00%	\$6,719	408	\$16
City of Nightmute	\$5,726	2.00%	\$2,863	214	\$13
City of Ouzinkie	\$6,276	3.00%	\$2,092	259	\$8
City of Sheldon Point (Nunam Iqua)	\$7,396	2.00%	\$3,698	480	\$8
City of Manokotak	\$3,259	2.00%	\$1,630	405	\$4

Municipal governments have discretion to exempt certain types of properties from local property tax levies (see AS 29.45.050). For example, the City of Skagway elects to exempt all personal property from its local property tax. Other municipalities may institute different types of exemptions.

Given the discretion in terms of the types of property subject to taxation, it is necessary for the State to establish a means to make uniform comparisons of the property tax base of municipal governments. The uniform data are used in determinations relating to funding under the State education foundation program and State revenue sharing program.

The State Assessor determines the “full and true value” of taxable property in all organized boroughs, all home rule and first class cities in the unorganized borough, and

certain of the other more populous cities in Alaska. The most recent determination by the State Assessor of the full and true value of taxable property within the City of Skagway as

Figure 13
2001 FULL AND TRUE VALUE OF ALASKA BOROUGHs

Borough	Value	7/100 Population	Per Capita Value
North Slope Borough	\$10,506,960,850	9,355	\$1,123,139
Bristol Bay Borough	\$204,917,800	1,224	\$167,417
Kenai Peninsula Borough	\$4,528,712,330	49,628	\$91,253
City & Borough of Juneau	\$2,845,582,700	31,262	\$91,024
Haines Borough	\$216,760,200	2,516	\$86,153
Ketchikan Gateway Borough	\$1,171,391,700	14,003	\$83,653
Denali Borough	\$153,077,100	1,974	\$77,547
City & Borough of Sitka	\$678,342,200	8,788	\$77,190
Municipality of Anchorage	\$18,261,699,360	261,446	\$69,849
Kodiak Island Borough	\$977,779,200	14,028	\$69,702
City & Borough of Yakutat	\$47,089,600	744	\$63,292
Fairbanks North Star Borough	\$5,020,369,220	83,814	\$59,899
Matanuska-Susitna Borough	\$3,468,918,730	60,094	\$ 57,725
Northwest Arctic Borough	\$381,186,000	7,019	\$54,308
Aleutians East Borough	\$93,559,600	2,213	\$42,277
Lake & Peninsula Borough	\$70,246,900	1,809	\$38,832
SUMMARY	\$48,626,593,490	549,917	\$88,425

of January 1, 2001 was \$187,917,800. Using July 1, 2000 population estimates that preceded the release of the 2000 census data, the State Assessor reported that the per capita full and true value of taxable property in the City of Skagway as of January 1, 2001 was \$213,543. That figure was higher than the comparable figure for 15 of the 16 organized boroughs in Alaska. Only the North Slope Borough with its exceptional property tax base resulting from taxable oil development had a greater per capita value.

Figure 14
2001 FULL AND TRUE VALUE OF HOME RULE AND FIRST CLASS CITIES IN THE UNORGANIZED BOROUGH

City	Value	7/1/00 Population	Per Capita Value
Valdez	\$1,024,996,450	4,271	\$239,990
Skagway	\$187,917,800	880	\$213,543
Unalaska	\$395,189,700	4,283	\$92,269
Pelican	\$12,022,200	135	\$89,053
Petersburg	\$258,774,000	3,387	\$76,402
Cordova	\$182,432,550	2,512	\$72,624
Dillingham	\$159,311,500	2,400	\$66,380
Wrangell	\$166,538,800	2,569	\$64,826
Nome	\$207,928,100	3,620	\$57,439
Craig	\$103,456,400	2,124	\$48,708
Klawock	\$32,012,000	750	\$42,683
Hoonah	\$37,486,100	880	\$42,598
Nenana	\$17,593,000	452	\$38,923
Galena	\$17,993,500	592	\$30,394
Kake	\$17,815,400	702	\$25,378
Hydaburg	\$8,469,800	389	\$21,773
Tanana	\$5,710,000	300	\$19,033
St. Mary's	\$4,722,200	482	\$9,797

Figure 14 lists the full and true value of taxable property in the eighteen home rule and first class cities in the unorganized borough. The City of Skagway ranked second highest among the eighteen cities. Only the City of Valdez with its substantial oil industry development had a higher per capita value.

(g) Land use for the proposed borough.

Land use is affected by a variety of factors. Among them are land ownership, natural geography, and transportation facilities. Exhibit C-1 in the Petition consists of a map showing land ownership patterns, natural

geographic features and certain transportation facilities in the proposed borough. That map is reproduced at a smaller size as "Map 1" on page 38 of this report.

The State of Alaska (including the Mental Health Land Trust and all State agencies) is the largest landowner within the boundaries of the City of Skagway. The State has holdings there of approximately 248.7 square miles. The federal government is the second largest landholder in Skagway with an estimated 180 square miles of land. The City of Skagway is the third largest landowner with approximately 12.5 square miles of land.

Map 1

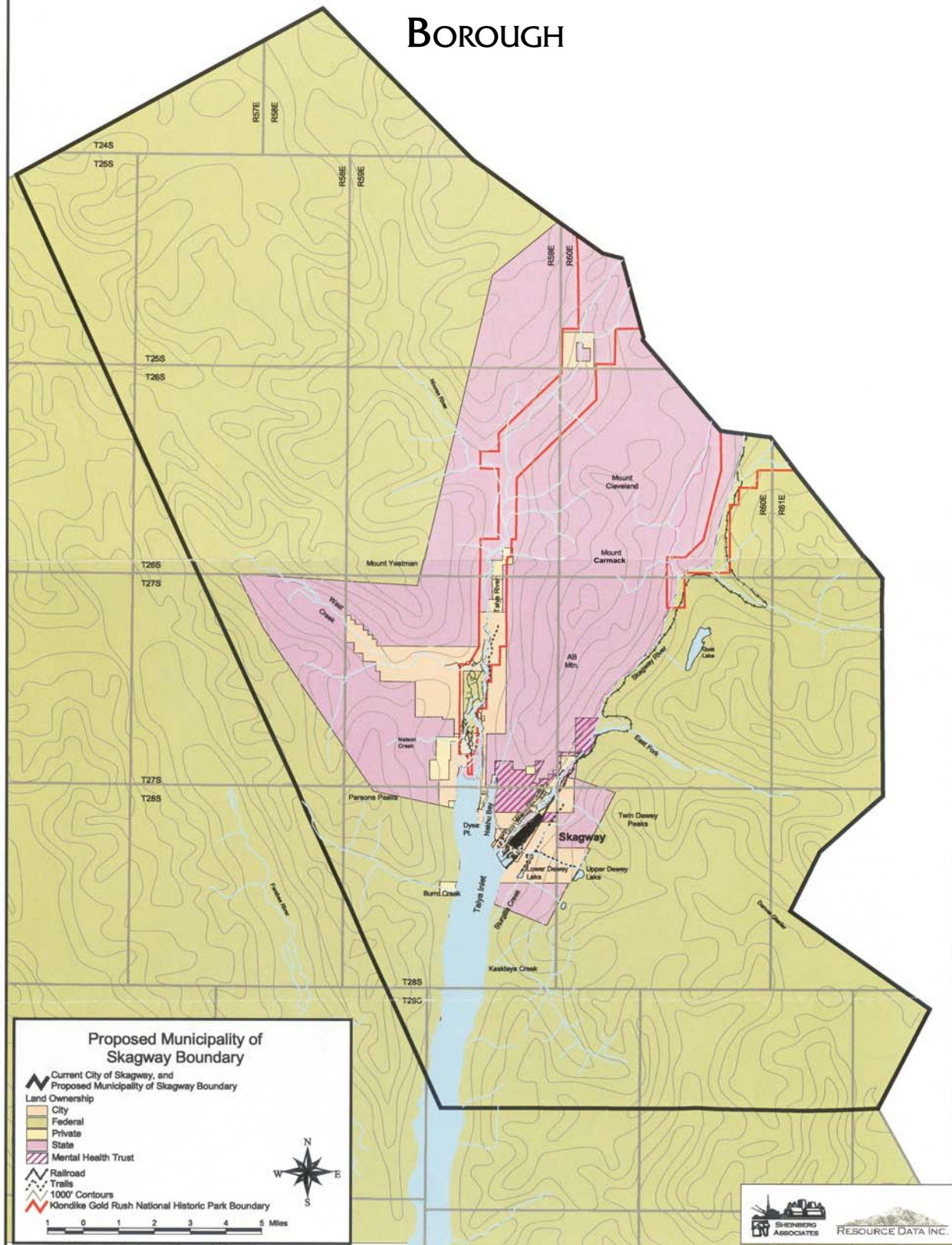


Figure 15

LAND USE STATISTICS BY TAX ZONE AS REFLECTED IN ASSESSED VALUES

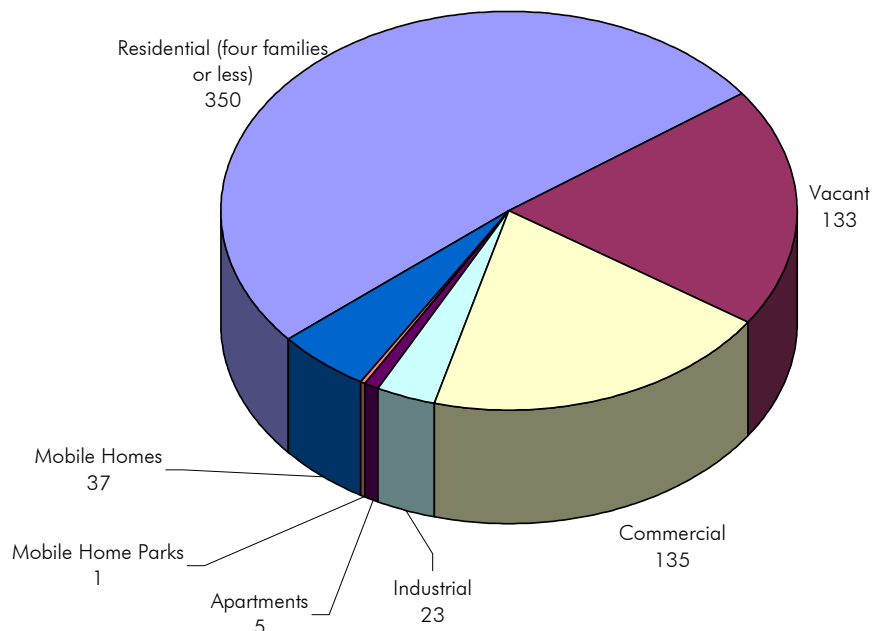
Tax Zone	Residential	Vacant	Commercial	Industrial	Total
1	\$2,133,100	\$3,003,400	\$37,553,600	\$324,100	\$43,014,200
2	\$36,757,900	\$5,480,700	\$9,610,700	\$46,546,000	\$98,395,300
3	\$424,900	\$295,600		\$4,679,900	\$5,400,400
4	\$6,134,300	\$1,066,300	\$472,900	\$566,100	\$8,239,600
5	\$3,764,100	\$425,300		\$7,021,900	\$11,211,300
Total	\$49,214,300	\$10,271,300	\$47,637,200	\$59,138,000	\$166,260,800

The City of Skagway currently uses five differential property tax zones. Zone 1 consists of Skagway's commercial core. Zone 2 is characterized by the Petitioner as the remainder of the core townsite. Zone 3 is described as the area adjoining and north of the core townsite. Zone 4 is comprised of semi-rural and remote lands. Zone 5, vastly larger than the other four zones combined, is characterized as rural and remote lands. The zones are depicted on "Map 2" that appears on page 40 of this report.

Figure 15 lists the assessed value in each of the five differential property tax zones according to broad categories of land use. (Source: 2001 Annual Report on Assessment and Taxation, City of Skagway.)

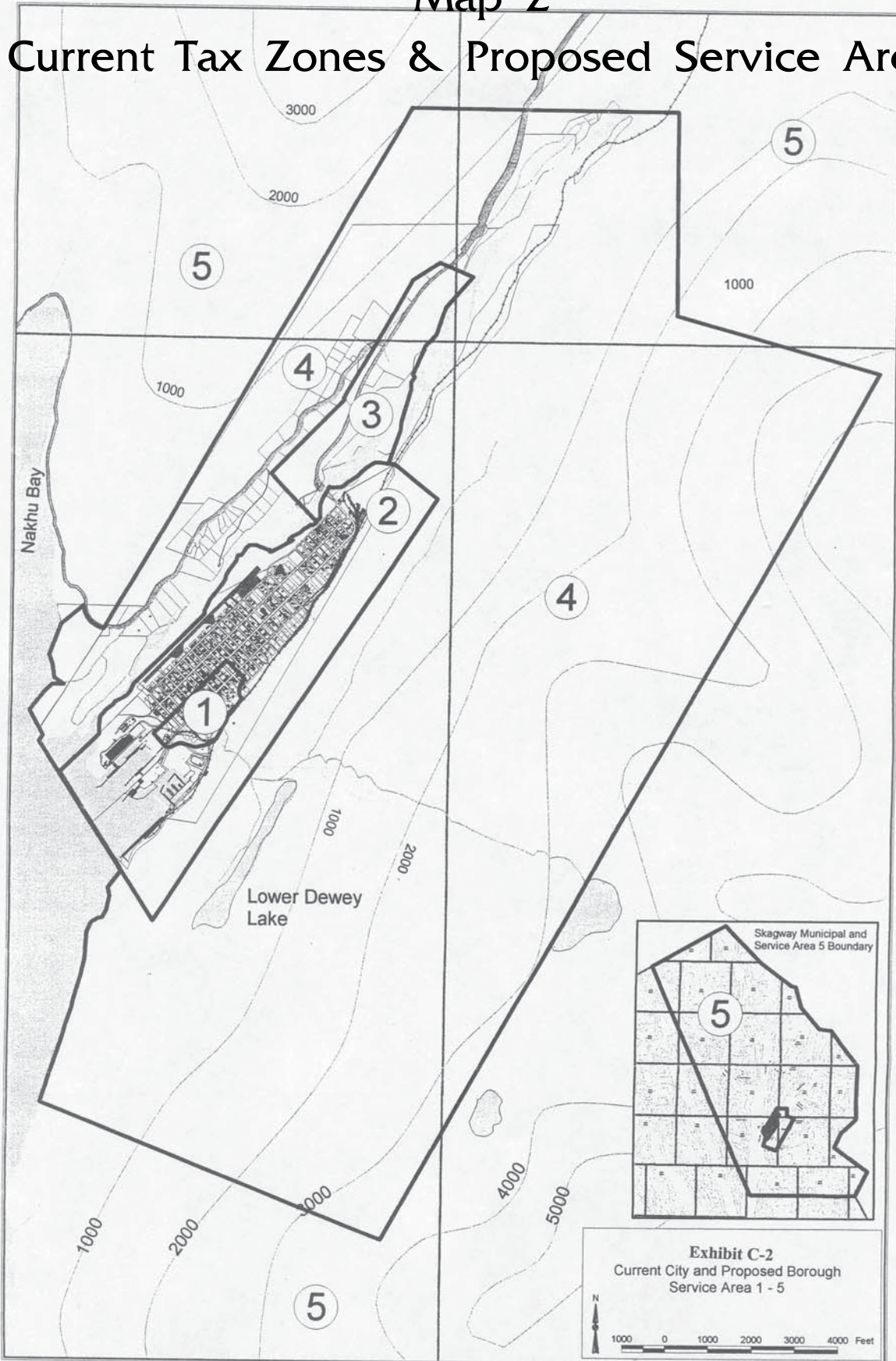
There were 684 parcels of taxable property in the City of Skagway in 2001. Land use associated with those parcels is depicted in Figure 16. (*Id.*)

Figure 16
Land Use by Taxable Parcels



Map 2

Current Tax Zones & Proposed Service Areas

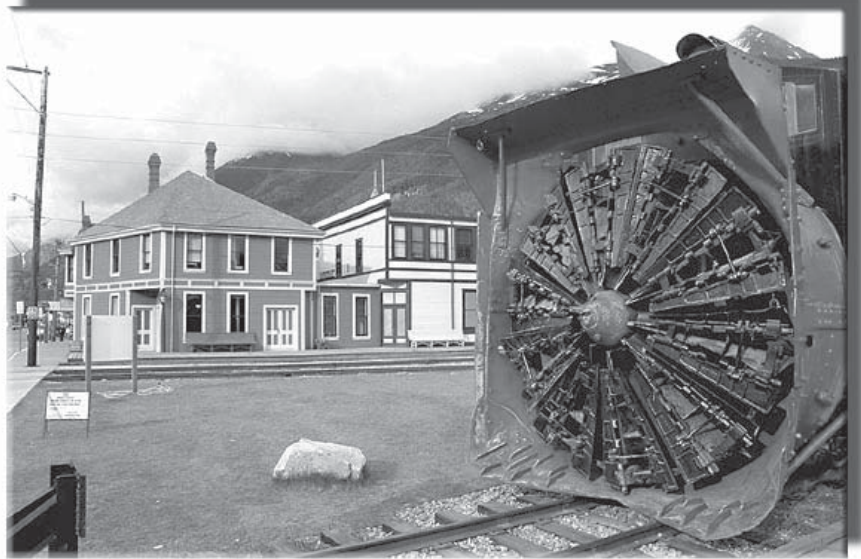


In the previously-referenced article published by the Alaska State Chamber of Commerce, the author noted that there is a significant shortage of land available for development in Skagway.

Land – or lack of it – around Skagway is an ongoing issue for the community. In order to be inviting to newcomers and for the city to grow, land and housing opportunities must be improved. After a new baseball park was completed recently, the city auctioned the 100' by 100' lots from the former ballpark to allow more homes to be built. The city is also working with the Alaska Mental Health Land Trust – which owns a large tract of the land near Skagway – to develop a subdivision for future residents. The housing shortage is an ongoing issue discussed at every level in the community.

The author pointed out in the article that most of Skagway's waterfront is controlled by the Pacific & Arctic Railway & Navigation Company, owner of the White Pass & Yukon Route Railroad.

After the Klondike Gold Rush, [the Pacific & Arctic Railway & Navigation Company] owned the first wharf in the harbor and years later, negotiated with the City of



Railway snowplow and railroad museum. Photo credit: © Henk Binnendik

Skagway to lease the major portion of usable tideland until 2023. The company then proceeded to improve the existing docks and build new ones.

In 2000, they completed a \$3 million improvement to the Ore Dock, originally built in 1969 to handle the large freighters that carried the lead and zinc ores once shipped through Skagway. In 1994, White Pass spent over \$25 million to build the Railway Dock.

The author of the State Chamber of Commerce article pointed out that the port of Skagway is the 18th busiest cruise ship port in the world. She noted that the State ferry system maintains a terminal at the port and the Alaska Marine Lines provides weekly barge service to and from Skagway. She reported further that the boat harbor is due for an upgrade. The author also indicated that the City of Skagway and Canada's Yukon government signed a "memorandum of understanding" in October of last year to focus on joint economic development

opportunities. She noted that the Skagway port is the “closest and most accessible port for the territory, and many Whitehorse residents already use the Skagway boat harbor for their weekend getaways.”

(h) Existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough

The State Chamber of Commerce article concerning Skagway noted:

After environmental clean-up is completed on an 80-acre former tank farm at the north end of the valley, that land will be available for development, which will help. Skagway must also be ready for

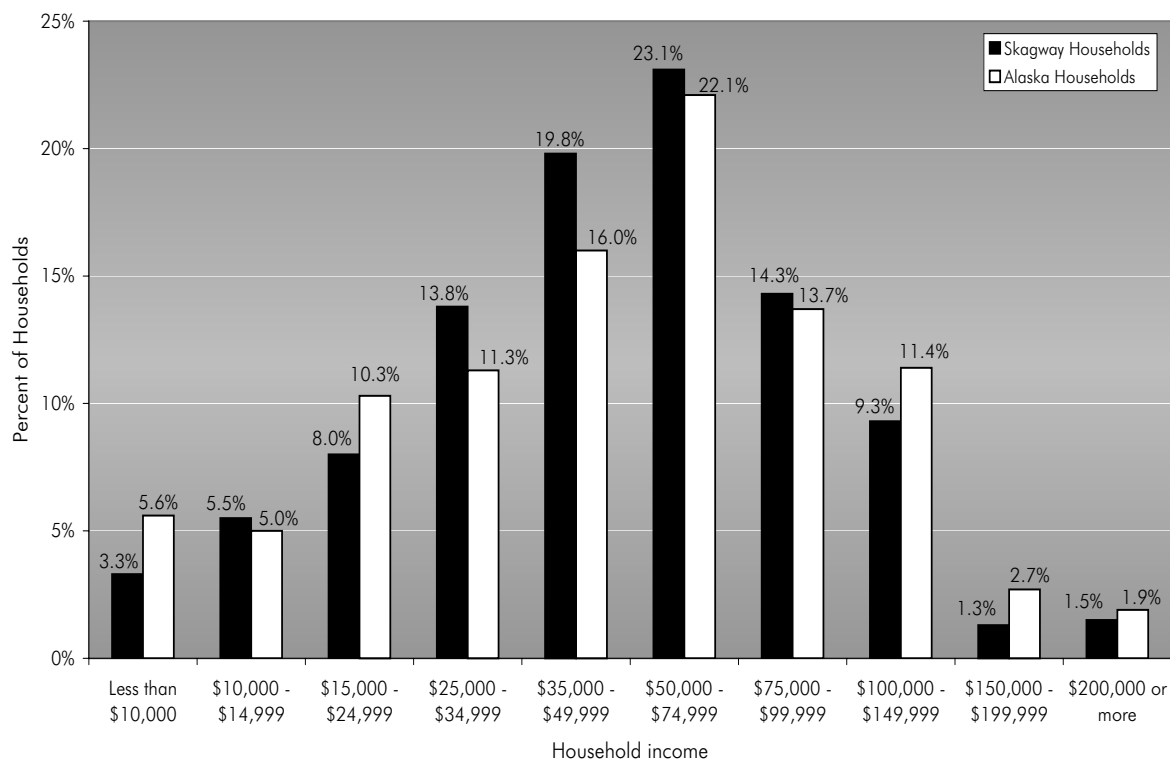
the potential that construction of the proposed gas pipeline would utilize the port and need land for staging areas in the valley.

(i) Personal income of residents of the proposed borough

Household income data from the 2000 census for Skagway are provided in Figure 17. Statewide data for household income are also shown for comparison purposes.

The median household income in Skagway reported in the 2000 census was \$49,375. The comparable figure for the state as a whole was \$51,571 (\$2,196 or 4.4% higher than that of Skagway).

Figure 17
Household income in Skagway
(source: 2000 Census)



The most recent census data reported that 3.7% of the population of Skagway was at the poverty level. The comparable statewide figure was 9.4% — 2.5 times greater than the rate in Skagway.

(j) The need for and availability of employable skilled and unskilled persons to serve the proposed borough

As a first class city in the unorganized borough, the City of Skagway has the same duties as an organized borough. Moreover, all existing powers of the City of Skagway are proposed to be assumed on an areawide basis by the proposed borough. In that the City of Skagway operates successfully within the existing labor pool, there is no reason to conclude that it could not continue to do so if the Skagway borough proposal were approved.

(k) A reasonably predictable level of commitment and interest of the population in sustaining a borough government

The City of Skagway was incorporated on June 28, 1900. At the time, Alaska was organized as the “District of Alaska” – a civil and judicial district. Alaska would not become a territory for twelve more years and a state for forty-seven years after that.

The City of Skagway was the first formally incorporated municipal government in Alaska. The City of Skagway provides a broad range of services and is clearly a relatively sophisticated municipal government.

These circumstances suggest that the residents of Skagway have a strong commitment and interest in reconstituting the current city government structure into the proposed Skagway borough.

4. CONCLUSION BY DCED

The evidence conclusively demonstrates that Skagway is a community with substantial financial resources. Among Alaska’s 162 municipal governments, the City of Skagway ranks as third highest in terms of per capita value of taxable property. The 2001 per capita full and true value of taxable property in the City of Skagway was 2.3 times greater than the comparable figure for Juneau.

Moreover, the City of Skagway ranks far above all other municipal governments in Alaska in terms of its capacity to generate sales tax revenues. In 2001, the City of Skagway generated, on a per capita basis, \$883 in general sales tax revenues for each 1% of tax levied. That figure was 4.8 times the comparable measure for Juneau.

After reviewing the reasonably anticipated functions, expenses, and income of the proposed borough, DCED has determined that the proposed borough budget is feasible and plausible. Based on these considerations and others outlined in the preceding summary, DCED concludes that the Skagway borough proposal clearly meets the resources standard set out in AS 29.05.031(a)(3) and 3 AAC 110.055.

F. STANDARD NUMBER 6: POPULATION SIZE AND STABILITY

1. THE STANDARD ESTABLISHED IN LAW

AS 29.05.031(a)(1) requires the population of the proposed borough to be large and stable enough to support borough government. Specifically, State law provides, in relevant part, as follows (emphasis added by underlining):

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; ...

Additionally, 3 AAC 110.050(a) states as follows regarding this standard:

3 AAC 110.050. POPULATION. (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission may consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

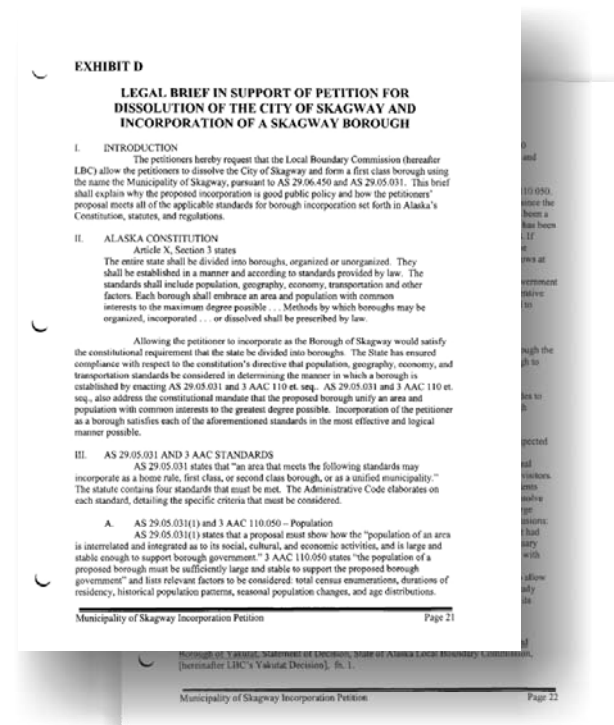
2. VIEWS OF THE PETITIONER

The population size and stability standard is addressed on pages 21 – 22 of the Petition. The Petitioner states in that regard, “Skagway has had a relatively stable population with

incremental growth since the 1920’s.” The Petitioner concludes that the standard is satisfied with respect to the Skagway borough proposal.

3. ANALYSIS BY DCED

There is a subtle but significant distinction between the population standard set out in the Alaska Administrative Code, when narrowly construed, and the standard provided in the Alaska Statutes. The administrative code standard (3 AAC 110.050(a)), narrowly interpreted, directs the inquiry to whether “the population of a proposed borough [is] sufficiently large and stable to support the proposed borough government.” When narrowly applied to the pending Petition, the administrative code standard concerns whether the population of the existing City of Skagway is large and stable enough to support a proposed borough that would be identical to the City of Skagway in terms of territory served and services provided.



Petitioner's Brief Supporting Incorporation of the Skagway Borough.

The population standard set out in the administrative code, however, is properly interpreted and applied in the full context of its statutory basis (AS 29.05.031(a)(1)), the related standards based in that statute, and the standards in the constitution. The statutory standard (AS 29.05.031(a)(1)) clearly permits – indeed calls for – a broader inquiry. The statutory language requires the population to be “large and stable enough to support borough government.” Unlike the administrative code standard, the statutory standard refers to borough government in general. Thus, the statutory standard focuses on the examination of the size and stability of the population of the proposed borough in the context of borough government as envisioned by the founders who conceived that unique form of government.

It is also significant that the statutory standard regarding population size and stability was enacted by the legislature in the same statutory paragraph (AS 29.05.031(a)(1)) that imposes the standard for a socially, culturally, and economically interrelated and integrated population.²⁶ Commonalities relating to social, cultural, economic, and other fundamental characteristics are the cornerstones on which a conceptually proper borough government rests. State law calls for the statutory, regulatory, and constitutional standards to be reviewed in harmony.²⁷

Article X, Section 3 of Alaska’s constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible. As will be addressed in the subsequent examination of standard number eight in this report, the founders intended the common interests clause to be construed in a regional context. The principle set out in Article X, Section 1 promoting minimum numbers of local government units furthers the concept that boroughs were to embrace a large natural region. As noted in Vic Fischer’s *Alaska’s Constitutional Convention*, the Committee on

Local Government at the convention stressed the regional nature of borough government (see Appendix B of this report).

The population size and stability standard in AS 29.05.031(a)(1) does not lend itself well to application in a segregate fashion given the significant linkage between (1) the statutory standard regarding population size and stability, (2) the statutory standard regarding social, cultural and economic integration and interrelation, and (3) the applicable constitutional principles in Article X, Sections 1 and 3. Consequently, judgment as to whether the statutory population size and stability standard is met is necessarily reserved until the social, cultural, and economic interrelationship standard has also been examined.

²⁶ (Emphasis added) 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; . . .

²⁷ AS 29.05.100(a) ties the constitutional, statutory, and regulatory standards together as follows (emphasis added):

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

However, DCED does address relevant aspects of the size and stability of the population in question and makes a judgment in this section of the report concerning the narrowly-applied administrative code standard.

(a) Total Census Enumerations

In his December 17, 2001 letter, Skagway Mayor Tim Bourcy indicated that there were 950 registered voters in Skagway. He stressed that State law requires a registered voter to be a resident of the place at which the person is registered to vote. He also emphasized that the 950 registered voters do not include

residents under the age of eighteen or persons eighteen years of age or older who are not registered to vote.

Census enumerations, not voter registration data, are specifically called for in the standard. The Commission and DCED have, in the past, found voter registrations to be unreliable indicators of population. Rules for determining residence of voters are set out in AS 15.05.020.²⁸

Notwithstanding the unreliable nature of voter registration data as an indicator of population, DCED reviewed a list of registered voters for Skagway obtained from the State Division of

²⁸ Sec. 15.05.020. Rules for determining residence of voter. For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state, or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary construction camps do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which the person comes without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010 .

(7) [Repealed, Sec. 38 ch 116 SLA 1972].

(8) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(9) [Repealed, Sec. 38 ch 116 SLA 1972].

(10) The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. This presumption is negated only by the voter notifying the director in writing of a change of voting residence.

Figure 18
2000 CENSUS POPULATION DATA
FOR EXISTING BOROUGHES

Borough	Population
Municipality of Anchorage	260,283
Fairbanks North Star Borough	82,840
Matanuska-Susitna Borough	59,322
Kenai Peninsula Borough	49,691
City and Borough of Juneau	30,711
Ketchikan Gateway Borough	14,070
Kodiak Island Borough	13,913
City and Borough of Sitka	8,835
North Slope Borough	7,385
Northwest Arctic Borough	7,208
Aleutians East Borough	2,697
Haines Borough	2,392
Denali Borough	1,893
Lake and Peninsula Borough	1,823
Bristol Bay Borough	1,258
City and Borough of Yakutat	808

Elections on January 4, 2002. It listed 919 registered voters in the City of Skagway.

Nationwide, voter registration lists are often characterized as being inflated, particularly since the enactment of the National Voter Registration Act of 1993, which established voter list-purging limitations. The Skagway registration list examined by DCED indicated that nearly 40% of the registered voters had not voted in any election in at least three years.

Specifically, 73 (7.9% of those listed) individuals had been registered to vote in the City of Skagway at least since 1997, but had not voted in a local or state election for five years. Additionally, 129 (14.0%) individuals had been registered to vote at least since 1998, but had not voted in any election in four years. Moreover, 163 (17.7%) people had been registered to vote since 1999, but had not voted in any election in the prior three years.

Turning to census enumerations as called for in the standard, the 2000 census counted 862 residents within the corporate boundaries of the City of Skagway. In comparison, the median population of Alaska's 16 organized boroughs in 2000 was 8,110. That figure was 9.4 times greater than the population of the City of Skagway.

Figure 18 lists the population of each of Alaska's sixteen organized boroughs at the time of the last census.

The population of Skagway at the time of the 2000 census was greater than that of only one organized borough, the City and Borough of Yakutat. The population of Skagway exceeded that of Yakutat by 54 residents (6.7%). To reach the level of the next highest-ranked borough (the Bristol Bay Borough) the population of Skagway would have to grow by 45.9%.

While Skagway's population exceeds that of the Yakutat borough, there was considerable debate over the proposal to incorporate a Yakutat borough in the early 1990s. DCED's predecessor, the Department of Community and Regional Affairs (DCRA), recommended against the creation of a Yakutat borough. It did so, in part, because DCRA concluded that Yakutat lacked a population that was characteristic of a borough. Ultimately, however, the Commission approved the Yakutat borough proposal on a split vote (4-1).

The Petitioner in this proceeding makes extensive reference to the incorporation of the City and Borough of Yakutat. There are at least 34 references to Yakutat in the Skagway borough Petition. Given the significant reference to and interest in the Yakutat borough incorporation, DCED considers it fitting to make the Commission's statement of

decision in that matter widely available to the public in this proceeding. A copy of the Commission's findings and conclusions in the Yakutat proceeding is included as Appendix D in this report.

In addition to Yakutat, each of Alaska's other four least-populous organized boroughs has, at some point, been described by individuals with expertise in the field as lacking the overall characteristics of a borough government. In 1962, Hugh Wade,²⁹ Alaska's Secretary of State, wrote a candid memorandum to Governor William A. Egan (former President of the Alaska Constitutional Convention) expressing significant concern over the approval by the Local Boundary Commission of a petition to incorporate the Bristol Bay Borough. A copy of that memorandum is included with this report as Appendix E.

On several occasions, Vic Fischer has also been highly critical of the Bristol Bay Borough as lacking the general characteristics of a borough. His views regarding such are reflected in his October 11, 1991 four-page letter to the Commission (included in the Skagway Petition as Exhibit J). Mr. Fischer characterized the formation of the Bristol Bay



Memo from Secretary of State Wade criticizing approval of the petition to incorporate the Bristol Bay Borough (see Appendix E).

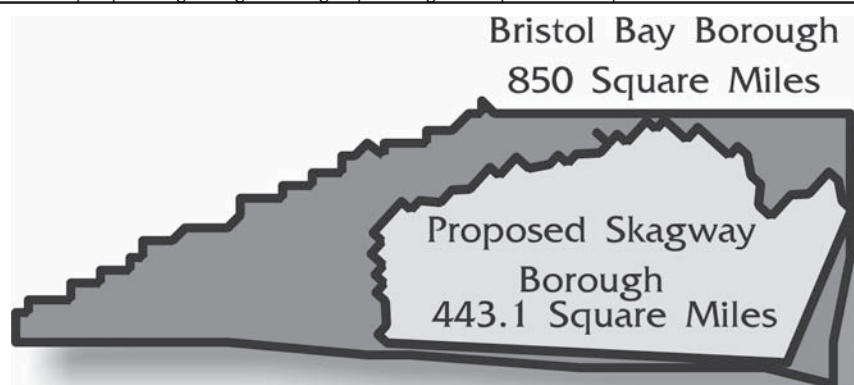
Borough as a "gross error." In the same letter, Mr. Fischer was also critical of the incorporation of the Lake and Peninsula Borough and Denali Borough.

Moreover, Vic Fischer and Thomas Morehouse wrote in 1971 that the Haines Borough did not meet the standards for borough formation.³⁰ Specifically, they indicated that the Haines Borough did not conform well "to any consistent borough model, whether of the

²⁹ Hugh Wade, an attorney, came to Alaska in 1926 with the Federal Bureau of Investigation. He later served with the National Recovery Administration, the Social Security Administration, and Bureau of Indian Affairs. Additionally, he served as Treasurer of the Territory of Alaska for several years. He was Alaska's first Secretary of State (the office is now known as Lieutenant Governor) from 1959 until 1966. When Governor Egan required hospitalization shortly after his inauguration, Secretary of State Wade served as acting Governor.

³⁰ *Borough Government in Alaska*, page 109.

³¹ In 1974, the Haines Borough petitioned for annexation of approximately 420 square miles. The area encompassed the commercial fish processing facility at Excursion Inlet as well as an estimated 442,354 acres of Tongass National Forest lands. The Commission concluded that the proposed annexation would enhance the degree to which the Haines Borough satisfied the standards for borough government. Annexation was approved by the LBC and took effect following review by the Legislature in 1975. In 1976, the Haines Borough petitioned for annexation of the former military petroleum distribution facility at Lutak Inlet. That annexation proposal was approved by the LBC in 1977 and took effect in 1978 following review by the legislature.



The proposed Skagway borough is approximately half the size of the Bristol Bay Borough.

urban or regional type, nor even to the very general legal standards for boroughs set forth in the 1961 borough act.” It is noted, however, that the Haines Borough has expanded its boundaries twice since Mr. Fischer and Mr. Morehouse made that characterization.³¹

With 862 residents, the City of Skagway ranked ninth in population among the eighteen home rule and first class cities in the unorganized borough. The 2000 population of the City of Skagway was virtually equivalent to the median of all home rule and first class cities in Alaska’s unorganized borough (861). Figure 19 shows the 2000 census populations for each of those eighteen cities.

The City of Skagway ranked fourteenth in terms of population among all communities in the unorganized borough at the time of the 2000 census. Several communities in the unorganized borough ranked only slightly below Skagway in terms of population. Figure 20 shows the 2000 census figures for the thirty most-

populous communities in the unorganized borough. The population of the thirtieth-ranked community was 25.4% less than the population of Skagway.

(b) Durations of Residency

Census data relating to housing tenure provide insight into durations of residency. At the time of the 2000 census, 61.1% of

the occupied homes in Skagway were inhabited by their owners, while the remaining 38.9% were occupied by renters. Statewide, the percentage of owner-occupied housing was just slightly higher, at 62.5%. The comparison suggests that durations of residency in Skagway are roughly equal to those in other parts of the state.

**Figure 19
2000 CENSUS POPULATION DATA FOR HOME RULE
AND FIRST CLASS CITIES IN THE UNORGANIZED
BOROUGH**

City	Class of City	Population
City of Unalaska	1st Class City	4,283
City of Valdez	Home Rule City	4,036
City of Nome	1st Class City	3,505
City of Petersburg	Home Rule City	3,224
City of Dillingham	1st Class City	2,466
City of Cordova	Home Rule City	2,454
City of Wrangell	Home Rule City	2,308
City of Craig	1st Class City	1,397
City of Skagway	1st Class City	862
City of Hoonah	1st Class City	860
City of Klawock	1st Class City	854
City of Kake	1st Class City	710
City of Galena	1st Class City	675
City of Saint Mary's	1st Class City	500
City of Nenana	Home Rule City	402
City of Hydaburg	1st Class City	382
City of Tanana	1st Class City	308
City of Pelican	1st Class City	163

Figure 20
THIRTY MOST-POPULOUS COMMUNITIES IN THE
UNORGANIZED BOROUGH

Community	Municipal Status	2000 Population
Bethel	2nd Class City	5,471
Unalaska	1st Class City	4,283
Valdez	Home Rule City	4,036
Nome	1st Class City	3,505
Petersburg	Home Rule City	3,224
Dillingham	1st Class City	2,466
Cordova	Home Rule City	2,454
Wrangell	Home Rule City	2,308
Deltana	Unincorporated	1,570
Craig	1st Class City	1,397
Tok	Unincorporated	1,393
Metlakatla	Indian Reservation	1,375
Hooper Bay	2nd Class City	1,014
Skagway	1st Class City	862
Hoonah	1st Class City	860
Klawock	1st Class City	854
Delta Junction	2nd Class City	840
Togiak	2nd Class City	809
Emmonak	2nd Class City	767
Chevak	2nd Class City	765
Mountain Village	2nd Class City	755
Big Delta	Unincorporated	749
Unalakleet	2nd Class City	747
Kwethluk	2nd Class City	713
Kake	1st Class City	710
Galena	1st Class City	675
Alakanuk	2nd Class City	652
Gambell	2nd Class City	649
Kipnuk	Unincorporated	644
Savoonga	2nd Class City	643

(c) Historical Population Patterns

Figure 21 shows the population patterns in Skagway since 1900. The Petitioner indicates that Skagway's population has grown steadily since 1920. It would be more accurate to say that, overall, the population of Skagway has increased since 1930, with upturns and downturns along the way.

It is noteworthy that student enrollment ("average daily membership") in the Skagway City School District was lower in Fiscal Year 2002 than at any point in at least the prior fourteen years.³² Student enrollment in Skagway declined by just over 12% in Fiscal

Year 2002 compared to the prior year. From Fiscal Year 1988 through Fiscal Year 2001, enrollment in Skagway City schools averaged 138.58 students. In Fiscal Year 2002, enrollment dropped to 120.2 students.

Figure 22 shows the student population in Skagway for the past fifteen years.

(d) Seasonal Population Changes

The rental vacancy rate in Skagway at the time of the 2000 census was 14.8% – nearly twice the statewide figure of 7.8%. Vacant housing units comprised 20.1% of the 502 housing units in Skagway at the time of the census. That figure was one-third higher than the statewide average.

The above data reflect a community that experiences significant seasonal population changes. The Petitioner indicates that the population of Skagway increases to "about

2,500 residents" in the summer (at page 22). That figure is nearly three times the year-round population. Mayor Bourcy noted correctly in his December 17, 2001 letter that the February 2000 Skagway Economic Impact Study (at page 34) estimated that the summer population of Skagway in 1999 was 1,725, twice the year-round population.

³² School district enrollment data for Fiscal Year 1988 to Fiscal Year 2001 are provided on the Department of Education and Early Development (DEED) website at <http://www.eed.state.ak.us/stats/ADM88-01.pdf>. Data for Fiscal Year 2002 were provided separately by DEED.

Figure 21
POPULATION OF THE CITY OF SKAGWAY 1900 - 2000

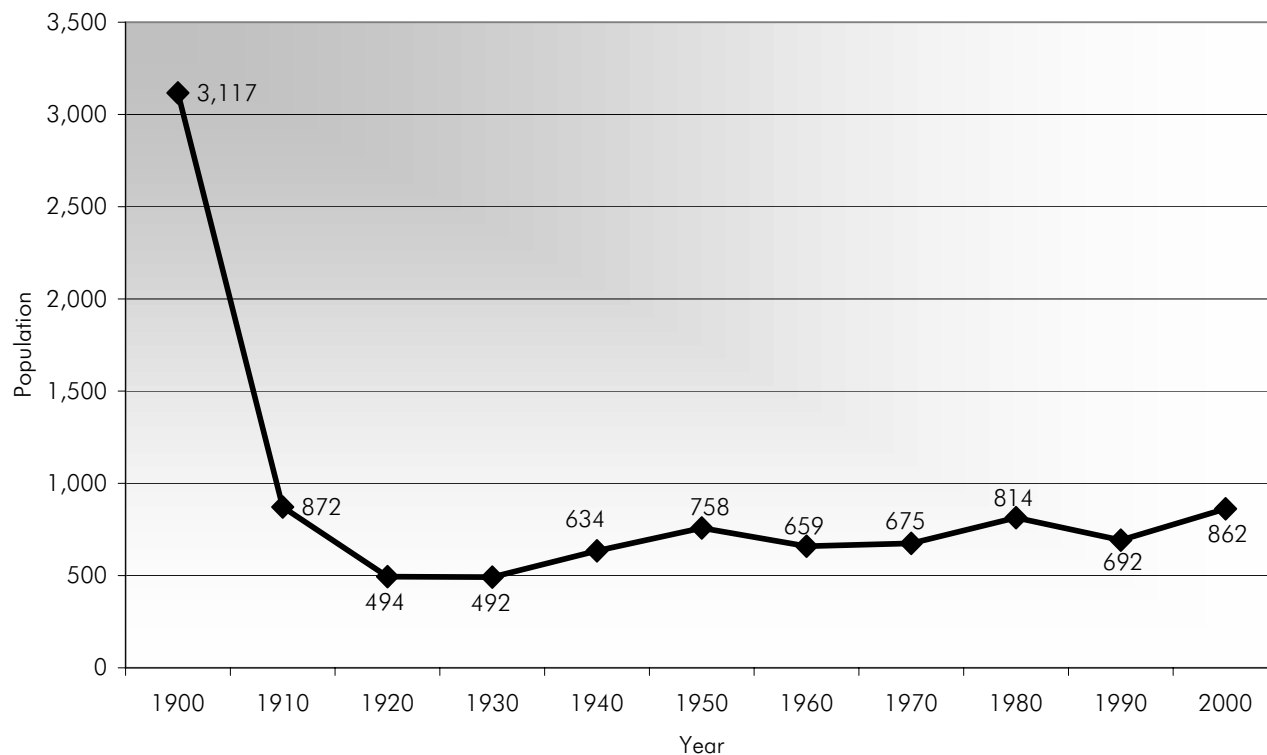


Figure 22
Skagway School Enrollment (Average Daily Membership)
Fiscal Years 1988 - 2002

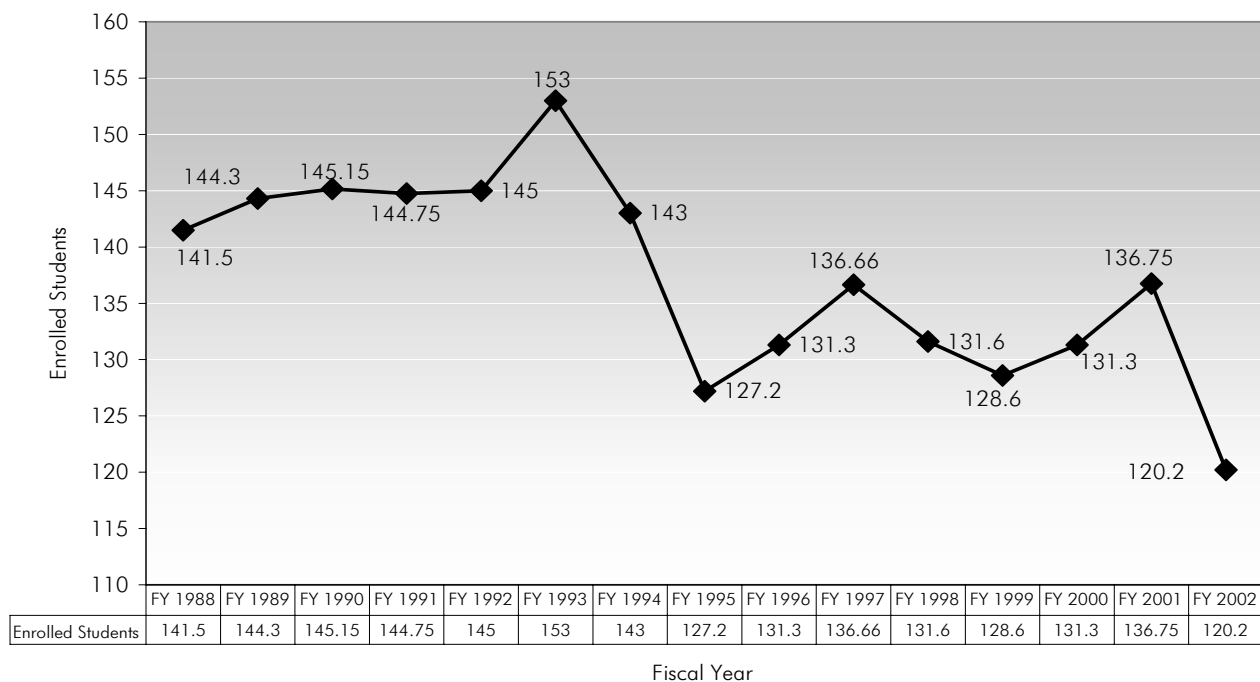
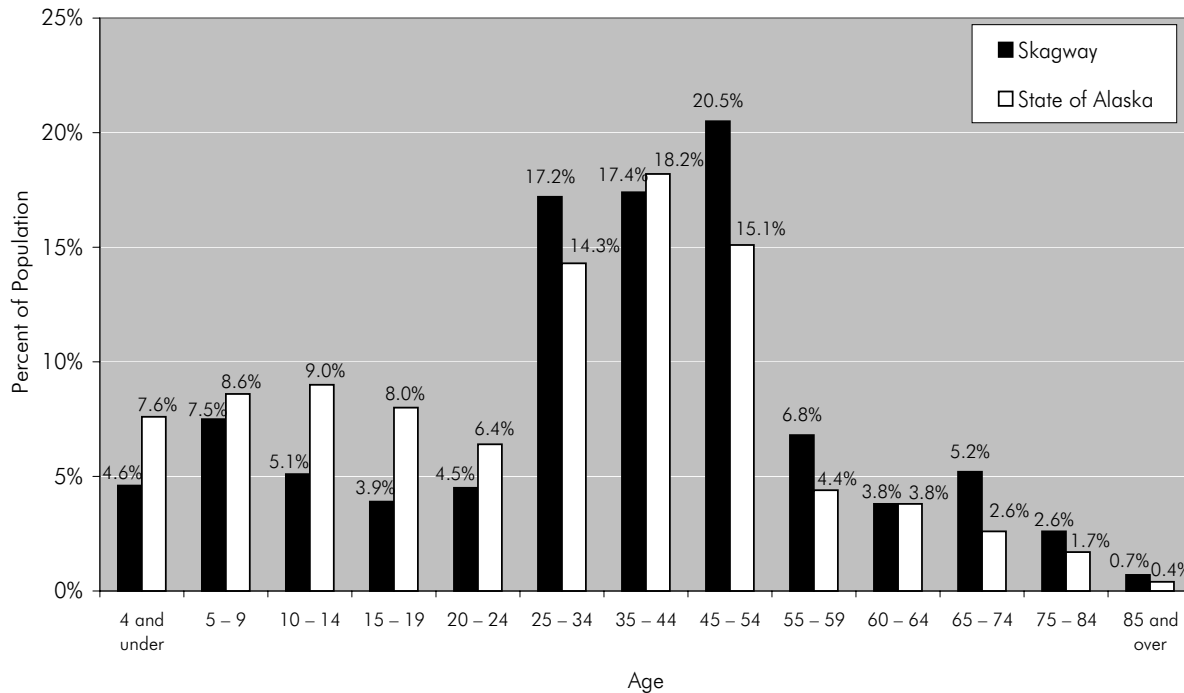


Figure 23
AGE DISTRIBUTION PATTERNS IN SKAGWAY AND ALASKA
 (2000 CENSUS DATA)



(e) Age Distributions

The median age of Skagway residents recorded at the time of the 2000 census was 39.2 years. That is 6.8 years (21%) older than the comparable statewide figure of 32.4 years of age.

In Skagway, only 25.6% of the population was under the age of 25; the statewide figure was more than 1.5 times greater at 39.6%. Figure 23 compares age distribution patterns in Skagway with the state as a whole at the time of the 2000 census.

4. CONCLUSION BY DCED

A narrow application of the administrative code standard concerning population size and stability is particularly straightforward in this case. It is evident from the facts in this matter that the population of Skagway is large and stable enough to support the operations of the Skagway city government. The proposed

Skagway borough would exercise powers identical to those now exercised by the City of Skagway. Furthermore, it would do so within the same jurisdictional area. These circumstances lead to the inescapable conclusion that the benchmark set out in 3 AAC 110.050(a), if narrowly applied, is met.

DCED notes, however, that the narrow application of the administrative code would likely lead to a similar conclusion for any proposal to incorporate a single community borough encompassing a home rule or first class city in the unorganized borough. Virtually every one of the eighteen home rule and first class cities in the unorganized borough has expressed interest in forming a single community borough at some point in the past.

Moreover, an argument could be made that communities in the unorganized borough with a population equal to or greater than the least-populous home rule or first class city in

the unorganized borough (Pelican - population 163) could meet the standard. At the time of the 2000 census, there were 100 communities in the unorganized borough with populations equal to or greater than that of Pelican.

Given the foregoing, DCED concludes that the population size and stability standard in 3 AAC 110.050(a), if narrowly applied, is met.

G. STANDARD NUMBER 7: REBUTTABLE PRESUMPTION CONCERNING MINIMUM OF 1,000 RESIDENTS

1. THE STANDARD ESTABLISHED IN LAW

3 AAC 110.050(b) provides as follows:

3 AAC 110.050. POPULATION. ...

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

2. VIEWS OF THE PETITIONER

The Petitioner addresses the rebuttable presumption set out in 3 AAC 110.050(b) on pages 22 and 23 of the Petition. The Petition states, in part:³³

Although the permanent population is currently less than 1,000, we believe it is large and stable enough to support the proposed borough government because:

(1) the area population has grown slowly and steadily over time;

(2) the Skagway local government has capably been providing services for decades to this core urban and surrounding rural area and will continue to do so as a borough government;

(3) recent Comprehensive Planning projected the future area population and demonstrated that Skagway has the capacity to provide local government services for expected population growth;

(4) the local government provides infrastructure and services for a regular seasonal population of about 2,500 residents and another 1,000-10,000 daily summer visitors.

3. ANALYSIS BY DCED

In his December 17, 2001 letter, Mayor Bourcy characterized the 1,000-person rebuttable presumption set out in 3 AAC 110.050(b) as being “extremely arbitrary in terms of a basis for support of a borough.” Admittedly, the standard may be perceived as arbitrary, but it is a rather modest threshold when it comes to borough government.

Moreover, State law is replete with numerical limitations and standards that one might consider to be arbitrary, but are nevertheless necessary. Certain of these, like the standard at issue, relate to matters that come before the Local Boundary Commission. For example, AS 29.04.040 allows a second class city to petition the LBC for reclassification if it has at least 400 permanent residents. Moreover,

³³ DCED made a minor correction in the numbering of the arguments in the Petition cited above.

AS 29.05.011 allows a community to petition the LBC to incorporate as a home rule or first class city only if it has at least 400 permanent residents.

Four of the current twenty-one first class cities in Alaska once met the population threshold, but are now below it. Yet, those cities continue to operate as first class cities. Since nearly one-fifth of the existing first class cities in Alaska no longer meet the standard, smaller communities might argue that they, too, are capable of operating a home rule or first class city.

The threshold for city reclassification and incorporation set by AS 29.04.040 and AS 29.05.011 is an absolute limit – that is, the law allows no discretion in application of the standard. Such is not the case with the 1,000-person borough incorporation standard set out in 3 AAC 110.050(b).

However, simply because there is discretion in the application of the 1,000 resident standard does not mean that the threshold should be set aside without careful consideration and proper basis. Indeed, the law requires a “specific and persuasive showing” to breach the threshold.

Regarding the modest nature of the 1,000 person threshold, DCED notes that AS 14.12.025 prohibits the creation of any new school district with fewer than 250 students unless a smaller district would serve the best interest of the State and the proposed district.³⁴ Any time a borough is formed, it results in the creation of a new school district. With 120.2 students, the City of Skagway now has less than half the minimum student enrollment ordinarily required to establish a new school district. With its present characteristics, Skagway’s year-round population would have to increase to nearly 1,800 residents to meet the threshold set out in AS 14.12.025.

DCED notes that two regions of Alaska’s unorganized borough encompassed by model borough boundaries defined by the Commission in the early 1990s each have current populations of less than 1,000. Those two areas are the “Aleutians – Military” region and the Pribilof Islands. The Commission has long taken the position that, model borough boundaries – like corporate boundaries of organized boroughs – need to be flexible to reflect significant changes in social, cultural, and economic conditions. The Commission has expressed a presumption that the Aleutian – Military region will be merged with the “Aleutians West” region when model borough boundaries in that part of Alaska are updated. There were significant changes in the Aleutians – Military region after the model boundaries were drawn. Those included the closure of the Adak naval base and the merger of the Adak Regional Educational Attendance Area (REAA) with the Aleutian Region REAA. Moreover, DCED notes that the area within the Pribilof Islands model borough boundaries has experienced a major population decline since the model boundaries were adopted for that region. St. Paul, the largest community in that area, lost 30.3% of its population since 1990. The region as a whole lost 26.8% of its population since 1990.

³⁴ The Commissioner of DEED has the duty and authority to determine whether a smaller district will be permitted to form. DCED provided notice of the filing of the Skagway Petition to the Commissioner of DEED along with 57 other State officials on October 24, 2001. This report, along with an invitation to comment on the Skagway borough proposal, at least in the relatively narrow context of AS 14.12.025, has been forwarded to the Commissioner of the Department of Education and Early Development.

4. CONCLUSION BY DCED

Like the preceding administrative code standard, the 1,000 person threshold established by 3 AAC 110.050(b) – if narrowly interpreted – directs the inquiry to whether “a specific and persuasive showing” exists that “the population [under 1,000] is ... large enough and stable enough to support the proposed borough government” (emphasis added). When applied to the pending Petition, the standard, narrowly construed, concerns whether the less-than-1,000 population of the existing City of Skagway is large and stable enough to support a proposed borough that would be identical to the City of Skagway in terms of territory served and services provided.

As was the case with the proceeding standard, application of 3 AAC 110.050(b) (under its narrow application) is straightforward in this proceeding. As noted previously, it is evident from the facts in this matter that the population of Skagway is large and stable enough to support the operations of the Skagway city government which are identical to those of the proposed borough. Based on the narrow application, DCED concludes that a specific and persuasive showing has been made that Skagway, with its less-than-1,000 residents has a sufficiently large and stable population to support the proposed Municipality of Skagway.

Again, it is noted that the narrow application of the standard would lead to a similar conclusion for any proposal to incorporate a single-community borough encompassing a home rule or first class city and many other communities in the unorganized borough.

Given the foregoing, DCED concludes that the rebuttable presumption standard concerning the less-than-1,000 population size and stability standard in 3 AAC 110.050(b) is met, given a narrow application. However, for reasons outlined in the analysis of the

preceding standard, further examination of the size and stability of the population of the proposed Skagway borough in the context of other relevant standards is warranted.

H. STANDARD NUMBER EIGHT: SOCIAL, CULTURAL, AND ECONOMIC INTERRELATION AND INTEGRATION (COMMON INTERESTS)

1. THE STANDARD ESTABLISHED IN LAW

Provisions establishing the standard for social, cultural, and economic interrelation and integration of boroughs (common interests) are included in Alaska’s constitution, statutes, and administrative code.

The touchstone concerning the common interests characteristic of boroughs is set out in Article X, Section 3 of the Constitution of the State of Alaska. That provision states as follows (emphasis added by underlining):

Section 3. Boroughs. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

In addition, AS 29.05.031(a)(1) requires the population of the proposed borough to be socially, culturally, and economically interrelated and integrated. Specifically, State

law provides, in relevant part, as follows (emphasis added by underlining):

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; . . .

Lastly, 3 AAC 110.045(a) provides as follows with respect to the standard at issue:

3 AAC 110.045. COMMUNITY OF INTERESTS. (a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission may consider relevant factors, including the

- (1) compatibility of urban and rural areas within the proposed borough;
- (2) compatibility of economic lifestyles, and industrial or commercial activities;
- (3) existence throughout the proposed borough of customary and simple transportation and communication patterns; and
- (4) extent and accommodation of spoken language differences throughout the proposed borough.

2. VIEWS OF THE PETITIONER

The Petitioner focuses on two points in its discussion of common interests. The first is a presentation of its view that the area within the proposed Skagway borough is socially, culturally, and economically interrelated and integrated. In that regard, the Petitioner states the following on page 35 of its proposal:

Skagway residents have a rich interwoven connection with the land and history in the area that is proposed for borough incorporation. . . .

Urban and rural areas within the area proposed for borough incorporation are compatible – both the City and the National Park Service have prepared plans that consider land use throughout the entire area.

The second point of focus is the Petitioner's view that Skagway lacks

sufficient common interests with any adjoining area, particularly Haines, to warrant placement of

Skagway in a borough with other communities. In that regard, the Petitioner states at page 4 of its proposal that "Skagway and Haines area

residents do not have deep ties – in fact if anything there is a longstanding economic, social and cultural rivalry between these communities . . ." That view is repeated on page 35 of the Petition. Assertions by the Petitioner regarding the incompatibility of Skagway and Haines in terms of economic, social, and cultural characteristics are the primary focus of its discussion of common interests on pages 35 – 38 of the Petition. At page 38 of its proposal, the Petitioner concludes:

Skagway does not wish to become embroiled in the local government confusion and controversies to the west, nor does it wish to be



Communities are comprised of neighborhoods, households, and residents - each with different interests.

Figure 24
FUNDAMENTAL CHARACTERISTICS OF "NEIGHBORHOODS" OF SKAGWAY

Characteristic	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
Size (acres)	53	706	222	5,738	276,864
Principal Land Use	Concentrated commercial development	Concentrated residential development, ports, & airport	Industrial development	Semi rural and remote	Rural and remote
Year incorporated into City of Skagway	1900	1900	Portion in 1900; remainder in 1978	Small portion in 1900; most in 1978	1980
Need for Full Municipal Services*	100%	82.5%	66%	43%	18%

* Expressed as a percentage of the property tax rate in effect in Zone 1.

combined against its will with Juneau or other southeast communities in a rural Southeast super borough. We believe that any of these actions would be counter to responsible and prudent local governance, as this would effectively be breaking apart a municipal government and school district that have provided and enjoyed stable, responsible, active government for almost 100 years.

However, maintaining the "status quo" is not acceptable either since it does not satisfy the constitutional requirement to form boroughs.

3. ANALYSIS BY DCED

In DCED's view, the common interests standard is the most pivotal in determining whether the boundaries of a particular borough proposal are suitable. The critical nature of the standard makes it especially important to lay the foundation for the context in which the common interests standard is properly applied to borough incorporation proposals.

DCED considers the Petitioner's view that Skagway is comprised of an area with common interests to be credible. Therefore,

DCED accepts the Petitioner's premise that Skagway – as a community – is socially, culturally, and economically integrated and interrelated.

However, communities are typically comprised of different layers of common interests. At the core of those levels is the individual resident. Households comprise the next layer and neighborhoods make up

the third layer.

While Skagway – as a community – is socially, culturally, and economically integrated and interrelated, diversity of interests become increasingly evident through the progression of the three fundamental layers that make up the community.

For purposes of this analysis, the differential tax zones formally established in law by the City of Skagway may be reasonably viewed as neighborhoods – the third layer of the community. Those neighborhoods are based on distinct land use patterns and divergent needs for municipal services.³⁵ Figure 24 summarizes fundamental distinctions among those five different neighborhoods.

³⁵ Skagway is one of only three city governments in Alaska (among the 26 cities that levy property taxes) to utilize differential tax zones. Moreover, Skagway utilizes more tax zones than the other two cities (Wrangell and Cordova) that have established such zones. Compared to Cordova and Wrangell Skagway has, respectively, 1.67 and 2.5 times more tax zones. The greater number of tax zones in Skagway suggests greater diversity within the boundaries of the City of Skagway. Adding to the indications of diversity among the tax zones in Skagway is the fact the property tax rate in the zone with the highest levy is 455% greater than the rate with the lowest levy.

Beyond the data in Figure 24, the following account adds insights into the diversity of interests among neighborhoods in Skagway. It is an excerpt of a letter written to the Local Boundary Commission on November 6, 1979 by Willard F. Elliott. The letter describes a perceived lack of common ties between areas that today comprise Zone 5 of the City of Skagway and the other areas of the community.³⁶

. . . the years 1897 – 99 saw this area become the focal point of perhaps 40,000 gold seekers on their way to the Klondike. Dyea, given the more favorable trail, handled most of the traffic. A town also developed in Skagway, given the more favorable port. In 1899, the newly-built railroad in Skagway purchased the various tramways in the Dyea valley and shut them down, effectively eliminating competition and reducing Dyea to a ghost town almost overnight. But the independent spirit of Dyea, the feeling of separateness from Skagway has not died to this day, as anyone in the area will attest.

Currently, Skagway has about 850 citizens, Long Bay 10 – 12, and Dyea around 40. Dyea and Long Bay residents unanimously feel that their area should not be annexed by Skagway.

. . . . Living in the area that Skagway proposes to annex are about 50 independent people striving to maintain their individuality in the face of growing government pressures. First, the Nat'l

“ . . . the independent spirit of Dyea, the feeling of separateness from Skagway has not died to this day, as anyone in the area will attest.

. . . Skagway is perhaps the most threatening of all. Here is a populace with a distinctly different living situation . . . ”

Willard F. Elliott, November 6, 1979

Park Service stamped its iron fist. Then the State of Alaska began reclassifying lands in the area. Now the City of Skagway wants a piece of the cake, even if it means knocking over the whole table. Throughout all this, these 50 people have attended endless meetings and have written dozens of letters. There now exists a working relationship with the Park Service. The State has been responsive to all interests and has worked out an admirable compromise. But this latest action by Skagway is perhaps the most threatening of all. Here is a populace with a distinctly different living situation, governed perennially by the same apathy-elected City Council members . . .

³⁶ At the time, Mr. Elliott was a Dyea resident who later became City Manager and Mayor of the expanded City of Skagway.

Figure 25
Diversity of Interests Among the Occupied Households in Skagway
(source: 2000 census)

Characteristic	Value or Range
1999 income	Ranged from less than \$10,000 (3.3% of households) to \$200,000 or more (1.5% of households).
Value of owner-occupied homes	Ranged from \$50,000 or less (1.1% of the owner-occupied homes) to \$500,000 or more (0.5% of the owner-occupied homes).
Owners / Renters	Owners occupied 61.1% of households; renters occupied remaining 38.9%.
Plumbing facilities	94.3% had complete plumbing facilities; 5.7% did not.
Family / Non-family occupancy	53.6% households were occupied by families; 36.2% householders were living alone; 10.2% had other non-family living arrangements.
Complete kitchen facilities	94.5% had complete kitchen facilities; 5.5% did not.
Housing tenure (compared to 1995)	41.7% lived in same house in 1995; 29.7% lived in the same census region but in a different house; 28.6% lived in a different census region.
Telephone Service	94.5% had telephone service; 5.5% did not.

Accounts expressing perceived differences on a similar scale among the other zones in Skagway could also be written.

At the next layer (i.e., households) the diversity of interests in Skagway becomes even more evident than it is at the neighborhood level. Figure 25 illustrates a broad range of interests among the 401 occupied households in Skagway at the time of the latest census.

At the core layer of the community (i.e., individual residents) the variety of interests within Skagway becomes even more apparent than is the case at both the neighborhood and household levels. Figure 26 summarizes the diversity of interests among the individual residents of Skagway.

The foregoing review of interests at the community, neighborhood, household, and individual levels, demonstrates the significance of considering evidence in the proper

context. While the Petitioner and DCED agree that Skagway exhibits common interests in the context of a community, it is evident that the community of Skagway is comprised of neighborhoods, households, and residents, each with diverse interests. When considering borough government, the common interests standard must be applied at a broader regional level.

Clearly, boroughs in Alaska were conceived as regional municipal governments – not community-level governments. When the founders prescribed that “each borough shall embrace an area with common interests to the maximum degree possible,” they intended that boroughs would encompass large and natural regions.

Figure 26
Diversity of Interests Among the 862 Residents of Skagway
(source: 2000 census)

Characteristic	Value or Range
Race	3% were multi-racial; the remaining 97% were of different races (White, Native, Asian, Pacific Islander, and other).
Education (25+ years of age)	Ranged from 9.9% of the adult population that did not graduate from high school to 6.9% with a graduate or professional degree.
Poverty status 1999	32 residents were in poverty status.
Place of Birth	68.5% of Skagway residents were born in a state other than Alaska; 23.3% were born in Alaska; 4.4% were U.S. citizens born abroad; and 3.8% were foreign born.
U.S. Citizenship	96.2% born citizens; naturalized citizens 3.1%; non-citizens 0.7%.
Language	Most spoke English well; 10 spoke English “less than very well.”
Ancestry	Just over half (51.9%) were of German, Irish, or English ancestry; the remaining 48.1% were of 25 or more various ancestries (from Arab to Welsh).
Employment (civilian labor force)	85.9% of the civilian labor force was employed; 14.1% was unemployed.
Age	The age of Skagway residents ranged from under five years (4.6%) to 85 years or older (0.7%).
Sex	52.2% male; 47.8% female.

The vision of boroughs as regional entities is clearly reflected in Appendix B of this report. As noted therein, the Committee on Local Government at Alaska's constitutional convention outlined fundamental characteristics of boroughs. They included provisions that boroughs would:

- encompass large geographic areas with common economic, social, and political interests;
- take in large enough areas to prevent too many political subdivisions in Alaska;
- be established at the state level to reflect statewide considerations as well as regional criteria and local interests.

Additional compelling evidence of the intended regional nature of boroughs is provided in the following exchange among constitutional convention delegates concerning the local government article in formal proceedings on January 19, 1956 (emphasis added):³⁷

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

In addition to the common interests clause in Article X, Section 3, another important constitutional benchmark for the establishment of boroughs in a regional context is set out in the first section of the local government article of the constitution. Article X, Section 1 expressly calls for minimizing the number of local governments as follows (emphasis added by underlining):

Section 1. Purpose and Construction.

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

³⁷ *Proceedings of the Alaska Constitutional Convention*, p 2638.

The minimum governments clause of Article X, Section 1 adds substantially to the precept that borough governments must embrace large and natural regions. If boroughs were established at the community level, it would lead to the proliferation of local governments in contravention of Article X, Section 1.

It is also noteworthy that delegates at Alaska's Constitutional Convention stressed the similarities between the constitutional standards for boroughs and the standards for another fundamental regional – State election districts. Those similarities are reflected in the following exchange on the floor of the constitutional convention on January 19, 1956 (emphasis added):³⁸

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socio-economic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election



The application of the common interests standard for boroughs can be done properly only in a regional context.

districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

PRESIDENT EGAN: Mr. Lee.

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

³⁸ Proceedings of the Alaska Constitutional Convention, p 2641.

As is the case for boroughs, social and economic integration on a regional basis is a requisite attribute of State House election districts. As originally adopted, Article VI, Section 6 of Alaska's constitution established the following standards for drawing State House election districts (emphasis added by underlining):³⁹

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term "relatively integrated socio-economic area" with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising "relatively integrated" areas. . . . "Relatively" means that we compare proposed districts to other previously existing and proposed districts as well

as principal alternative districts to determine if socio-economic links are sufficient. "Relatively" does not mean "minimally," and it does not weaken the constitutional requirement of integration.

Judgments concerning borough formation warrant a similar approach to that outlined by the Court above with respect to election districts. To paraphrase the Court, in terms of borough formation, the Local Boundary Commission should compare a proposed borough to other existing and proposed boroughs as well as principal alternative boroughs to determine if socio-economic links are sufficient.

As noted previously, the Petitioner expressed the view at page 38 of the proposal that Skagway does not belong with the Haines Borough, the City and Borough of Juneau, or "a rural Southeast super borough." The only alternative offered by the Petitioner is a borough embracing just Skagway.

The only way to test the Petitioner's assertion that a Skagway-only borough is the lone viable alternative is to examine the specific social, cultural, and economic interrelationships between Skagway and adjacent communities in the proper regional context.⁴⁰ A detailed examination here of regional common interests will also facilitate consideration of other related standards for borough incorporation.

³⁹ Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined, deleted text struck through): "Each shall contain a population as near as practicable at least equal to the quotient obtained by dividing the ~~total civilian~~ population of the state by forty"

⁴⁰ Given the strong similarities between election districts and boroughs, it is worth noting here that the Alaska Supreme Court recently dealt with the desire of a particular community to gain an exclusive election district. In its May 24, 2002 order *In re 2001 Redistricting Cases*, the Alaska Supreme Court stated (page 3):

. . . appellants argue that the Eagle River-Chugiak area is a socio-economically integrated area that should not have been divided, and they object to this community being combined with the other communities in House Districts 16, 18, and 32. While the Eagle River-Chugiak area is socio-economically integrated, its residents have no constitutional right to be placed in a single district. The only relevant related inquiry is whether the districts in which Eagle River-Chugiak was placed are socio-economically integrated.

Given the distinct similarities between regional State election districts and boroughs, DCED begins the specific examination of social, cultural, and economic links between Skagway and adjacent communities with a review of Article XIV, Section 1 of Alaska's constitution. That provision of the constitution established the initial House election districts for the State of Alaska. Those districts are shown in "Map 3." The 24 original House election districts appear to be similar, if not identical, to the 1960 Census Divisions for Alaska.

Vic Fischer characterized the result of the efforts by the Constitutional Convention's Committee on Suffrage, Elections, and Apportionment to define the initial election districts as follows (emphasis added):⁴¹

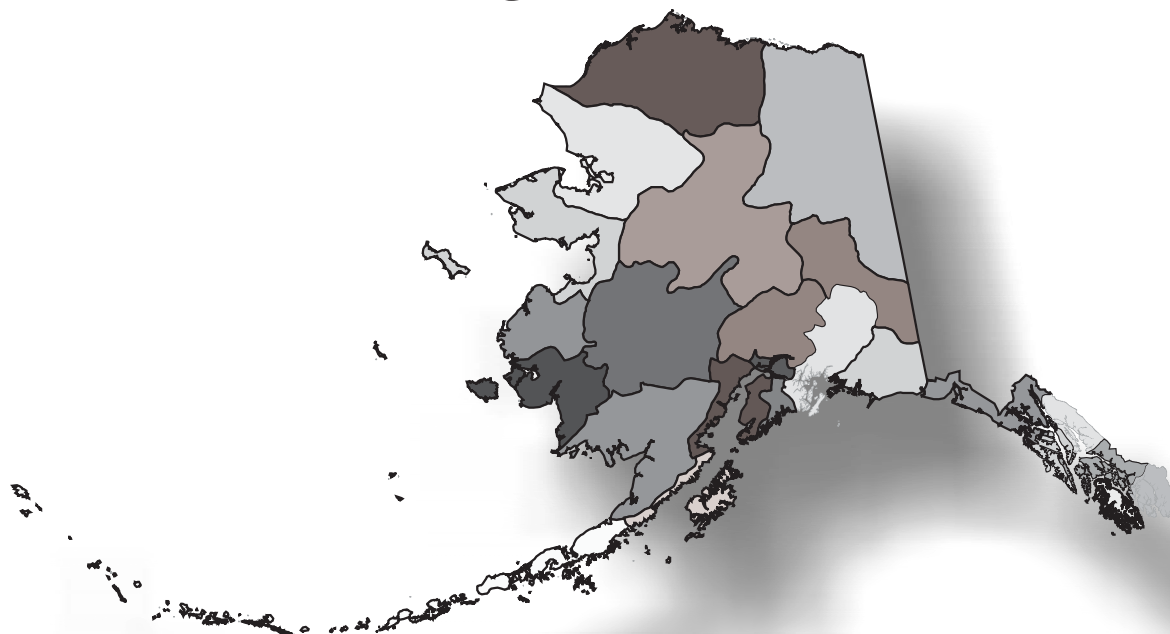
With a view to the full range of geographic, social, economic, and political factors, the committee delineated twenty-four regional units for electing forty

members of the house of representatives. Apportionment according to population resulted in seventeen one-member and five two-member districts, while Anchorage was to elect eight representatives and Fairbanks five.

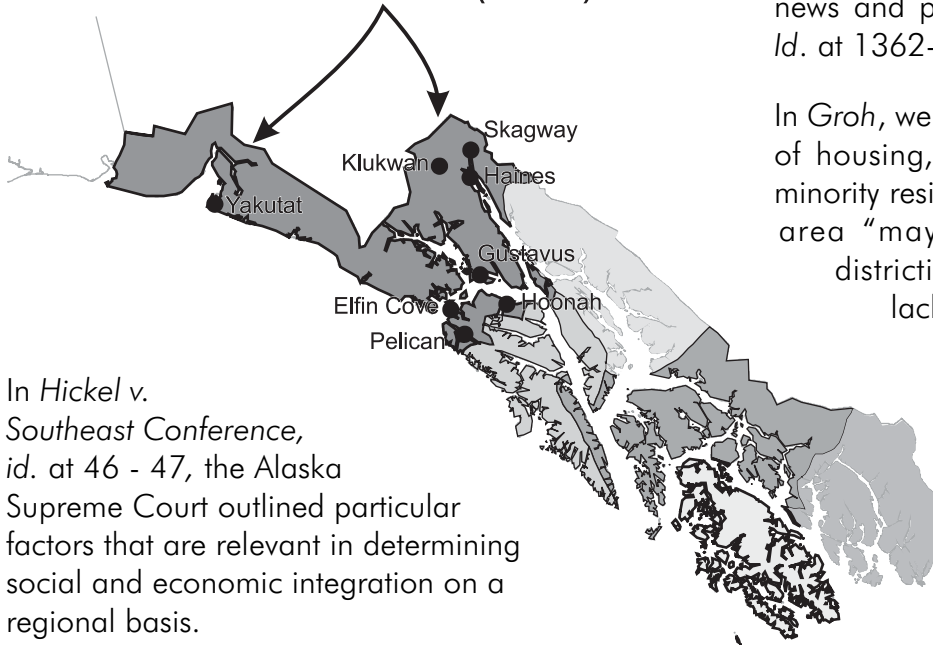
Skagway was part of Election District Number 6 (Lynn Canal – Icy Straits) established under Article XIV, Section 1 of the constitution. That district is depicted in "Map 4." Seven other communities were included in the same district. Those were Klukwan, Haines, Gustavus, Elfin Cove, Hoonah, Pelican, and Yakutat.

⁴¹ Alaska's Constitutional Convention, pages 96-97.

Map 3 24 Original House Districts



Map 4 House District 6 (1964)



In *Hickel v. Southeast Conference*, *id.* at 46 - 47, the Alaska Supreme Court outlined particular factors that are relevant in determining social and economic integration on a regional basis.

. . . . In our previous reapportionment decisions we have identified several specific characteristics of socio-economic integration. In *Kenai Peninsula Borough*, we found that service by the state ferry system, daily local air taxi service, a common major economic activity, shared fishing areas, a common interest in the management of state lands, the predominately Native character of the populace, and historical links evidenced socio-economic integration of Hoonah and Metlakatla with several other southeastern island communities.⁴² 743 P.2d at 1361.

In the same case, we found it persuasive that North Kenai and South Anchorage were geographically proximate, were linked by daily airline flights, shared recreational and commercial fishing areas, and were both

strongly dependent on Anchorage for transportation, entertainment, news and professional services. *Id.* at 1362-63.

In *Groh*, we stated that “patterns of housing, income levels and minority residences” in an urban area “may form a basis for districting, [although] they lack the necessary significance to justify” large population variances. 526 P.2d at 879. We identified transportation ties, namely ferry and daily air service, geographical similarities and

historical economic links as more significant factors. *Id.* (holding that a district in southeast Alaska comprising the mainland communities of Juneau, Haines and Skagway were sufficiently integrated, considering that the rest of Southeast was island oriented).

DCED has undertaken a detailed examination with respect to Skagway of each of the eleven factors that the Supreme Court identified as a basis for social and economic links in a regional context. DCED has done the same with respect to the specific factors set out in

⁴² (footnote original) We did not decide whether these characteristics were specifically necessary to pass muster under article VI, section 6 of the Alaska Constitution. Instead we merely found that a rational state policy existed in effectuating the constitutional mandate of relative socio-economic intervention. *Kenai Peninsula Borough*, 743 P.2d at 1361.

3 AAC 110. 045(a). DCED's analysis of those factors takes up 38 pages. Several maps and figures are included in the analysis. Because of its length, DCED presents the detailed analysis as Appendix F of this report. A summary of the conclusions reached in Appendix F follows:

Service by State Ferry System

- ☑ Mainline State ferry service between Skagway and Haines is direct, frequent, and year-round.
- ☑ Skagway is linked through Haines to more distant mainline ports of Juneau/Auke Bay, Sitka, Petersburg, Wrangell, and Ketchikan.
- ☑ The State feeder-ferry system links Skagway and Haines indirectly with Kake, Angoon, Hoonah, Pelican, and Tenakee via mainline ports at Sitka, and Juneau.
- ☑ From mid-May to mid-September, a private firm operates two 150-passenger fast ferries between Skagway and Haines. The fast ferries make 35-minute crossings between the two communities 6 to 26 times each day depending on demand.

Daily Local Air Taxi Service

- ☑ Two commercial air carriers provide daily scheduled air taxi service between Skagway and Haines.
- ☑ Three carriers provide daily scheduled service from Skagway and Haines to Juneau.

Common Major Economic Activity

- ☑ Skagway, Juneau, and Ketchikan are principal ports of call for the cruise ship industry in southeast Alaska.

- ☑ The cruise industry is also important to Haines. In 2000, the number of cruise passengers in Haines was about 1/3 that of Skagway. In 2001, the figure in Haines dropped by nearly 80% when Royal Caribbean International canceled its calls to Haines. However, the number expected to visit Haines this year is about double that of 2001. Moreover, it was recently reported that Holland America-Westours has added Haines to its itinerary for 2003 with seven stops of the 1,266-passenger / 600-crewmember *Ryndam*. However, even more recently, it was reported that Norwegian Cruise Lines – whose *Norwegian Wind* and *Norwegian Sky* are scheduled to stop 42 times in Haines this season bringing 79,000 passengers – will eliminate stops in Haines next year. The loss could be partially offset if Holland America takes advantage of the new opportunity for docking in Haines and books an additional eight stops there. Additionally, there is hope among Haines officials that a new ship, the *Norwegian Sun*, might stop in Haines in 2003.
- ☑ Skagway and Haines not only share a general interest in tourism, but share an interest in the identical tourists. The proximity of the two communities and the operation of the fast ferries between them allow Haines to serve as an auxiliary cruise ship port for Skagway.
- ☑ Both Skagway and Haines employ tourism development staff, regulate tourism, and otherwise engage in the management of and planning for tourism.
- ☑ Nearly 1/3 of businesses currently licensed by the City of Skagway are based in other communities. More of those are based in Haines than any other community. Juneau and Seattle are tied for second ranking. A few Skagway businesses also operate in Haines.

- ☑ Alaska Power and Telephone provides electrical service to Haines from its hydroelectric facility in Skagway via a submarine electrical cable intertie. Skagway and Haines also receive cable television service from a common private utility.
- ☑ Skagway and Haines have a number of similarities with respect to the nature of employment according to standard classifications for industry, occupation, and workers.

Shared Fishing Areas

- ☑ Skagway and Haines are within the "Haines/Skogway Sport Fish Management Area" encompassing Lynn Canal from Point Sherman north.
- ☑ The Alaska Department of Fish and Game maintains sport and commercial fisheries offices in Haines to serve the Skagway and Haines areas.
- ☑ Commercial fishing is a smaller part of the economy in Skagway compared to Haines. In 2000, four Skagway residents held commercial fishing permits and six were licensed crew (1.2% of the population). In Haines, 128 residents held commercial fishing permits and 136 were licensed crew (11.0% of the population).
- ☑ Fish processing in the Haines Borough is centered at Excursion Inlet in the southern end of the Borough.
- ☑ Skagway and Haines are both within "Haines Management Area for Commercial Salmon and Shellfish" encompassing that portion of Lynn Canal north of Little Island.
- ☑ Skagway and Haines are both in the same halibut management area (Groundfish Statistical Area 355900) encompassing Lynn Canal from the northern portion of Sullivan Island.

Common Interest in Management of State Lands

- ☑ Skagway and Haines were both included in the planning area addressed by the Alaska Department of Natural Resources (DNR) in the *Haines-Skogway Land Use Plan*. DNR adopted that plan in June 1979 for management of 400,000 acres of State land in Skagway and Haines.
- ☑ Skagway, Haines, Gustavus, Elfin Cove, Pelican, Hoonah, Tenakee Springs, Angoon, Sitka, and Port Alexander are included in DNR's draft February 2002 *Northern Southeast Area Plan*. (The planning area extends from the Canadian border north of Haines and Skagway, south to the southern tip of Baranof Island. It also ranges from the west side of Baranof Island along the coast to the City and Borough of Yakutat, and east to the boundary with the City and Borough of Juneau.)
- ☑ The *Northern Southeast Area Plan* is divided into two "regions". Skagway is part of the "Northern Region" along with Haines and Gustavus.
- ☑ The "Northern Region" of the *Northern Southeast Area Plan* is divided into three areas, the "Skagway Area", "Haines Area", and "Gustavus Area". The "Skagway Area" extends into portions of the Haines Borough and the Haines Borough extends into parts of the Skagway area.

Predominately Native Character of the Populace

- ☑ Skagway, with a 5.1% Native population, is not a predominately Native community.
- ☑ 3 of 12 settlements within the "Skagway-Hoonah-Angoon Census Area", have predominately Native populations (Angoon at 86.4%, Hoonah at 69.4%, and Klukwan at 88.5%).

- ☑ There is a greater Native population in the City of Haines (18.5%) and the Haines Borough (15.6%) compared to Skagway (5.1%). The Native population of that portion of the Haines Borough outside the City of Haines is similar to Skagway (6.5%).
- ☑ Many existing boroughs encompass communities with highly diverse racial compositions (e.g., Native populations of settlements in the Kenai Peninsula Borough range from 0% to 95%).

Historical Links

- ☑ The proposed Skagway borough area has significant connections with Haines in terms of Native history. For example, the Chilkoot Trail from Dyea up the Taiya River valley to the headwaters of the Yukon River was once owned and jealously guarded by the Chilkoot Tribe. Members of the Chilkoot Tribe lived at a village between Lutak Inlet and Chilkoot Lake (today, part of the Haines Borough). The Chilkoot Tribe presently remains based in Haines.
- ☑ Skagway (at the foot of the White Pass), Dyea (at the foot of the Chilkoot Pass), and Haines (at the foot of the Dalton Trail) each played an important role in the Klondike gold rush. While the Chilkoot Pass and White Pass were certainly more popular routes, the Dalton Trail was also used extensively by those going to the Klondike. The Dalton Trail, in fact, had been selected by the U.S. government for use in an international relief effort to respond to threats of starvation in Dawson that first emerged in December 1897.
- ☑ Skagway, Dyea, and Haines were all part of territory claimed by both Canada and the U.S. in the 1800s and early part of the 20th Century. To bolster its claim to the disputed territory, the U.S. established military posts in all three communities in

1898. Those posts were consolidated in Haines following the construction of Fort William H. Seward in the early 1900s. The boundary dispute was settled in 1903.

- ☑ Skagway and Haines played a major role in the construction of the Alcan Highway and the Canol Pipeline project in the early years of World War II. Each community had a major military presence and there was substantial interaction between the military units in the two communities.
- ☑ Personal accounts of significant interaction between residents of Skagway and Haines also exist. A number of examples are provided in Appendix F.

Geographic Proximity

- ☑ Skagway and Haines are approximately 13 nautical miles apart.
- ☑ There are no geographic impediments to marine and air transportation between Skagway and Haines.
- ☑ Skagway and Haines are linked by 359-mile road system through Canada.
- ☑ Geographic proximity and transportation ties among communities within many boroughs in Alaska are far more attenuated than they are between Skagway and Haines.

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

- ☑ As noted previously, Skagway and Haines have strong transportation links in terms of direct mainline State ferry service, two privately-operated 150-passenger ferries from mid-May to mid-September, daily scheduled air service, and a road connection.

- ☑ A Haines physician provided medical service to residents of Skagway on a weekly basis from the 1960s through the 1980s. Provision of routine medical service to the estimated 35 – 50 Skagway residents eligible for Indian Health Service benefits will soon shift to the Haines Medical Clinic. A small number of Skagway residents receive dental care in Haines. Both Skagway and Haines rely on Juneau and Whitehorse for major medical needs.
- ☑ Two radio stations (KHNS based in Haines and KINY based in Juneau) serve Skagway. Four newspapers have general circulation in Skagway. Those are the *Juneau Empire* (published M-F and Sunday), the *Eagle Eye News* (published weekly in Haines), the *Chilkat Valley News* (published weekly in Haines), and the *Skagway News* (published twice monthly).
- ☑ A number of State agencies that serve Skagway are based in Haines. These include the Division of Alaska State Troopers, Division of Fish and Wildlife Protection, Department of Environmental Conservation, Division of Motor Vehicles, Division of Public Health, and the Division of Family and Youth Services. Additionally, the City of Haines administers a pass-through grant from the Department of Education and Early Development for childcare services in Skagway, Haines, and Yakutat.
- ☑ Residents of Skagway and Haines have common opportunities in terms of outdoor recreational pursuits such as hiking, boating, fishing, and hunting. Skagway is located in Game Management Unit 1D, which also includes Haines and Klukwan.

Geographical Similarities

- ☑ The “Northern Region” covered by DNR’s *Northern Southeast Area Plan* (Skagway, Haines, and Gustavus areas) is described as “areas having generally similar physical attributes.”
- ☑ The *Northern Southeast Area Plan* identifies three large physiographic “provinces.” Skagway and the significantly inhabited portions of the Haines area lie within the “Boundary Ranges Province.”
- ☑ The *Northern Southeast Area Plan* describes the physical features of the Skagway and Haines area as being similar in character. The topography of Gustavus is described as “altogether different.”

Historical Economic Links

- ☑ As previously noted, historical economic links between Skagway and Haines include a rich Native history, the Klondike gold rush, military activities, medical services, tourism, and common utility providers.

Compatibility of Urban and Rural Areas within the Proposed Borough

- ☑ Petitioner maintains that Skagway and Haines generally lack strong economic, cultural, and social ties required for borough formation as evidenced by long-standing inter-community rivalries. DCED considers it incongruous to claim that two communities generally lack strong ties but have long-standing rivalries. Moreover, rivalries between communities in the same borough are not uncommon.
- ☑ Petitioner views “general attitudes towards municipal government” in Haines as incompatible with those in Skagway. Petitioner makes a point of the 1998 split

vote on the proposal to consolidate local governments in Haines. DCED believes that no community, including Skagway, exhibits uniform voting preferences over a full range of public policy issues. Evidence of controversy and protest over matters involving the City of Skagway is offered in Appendix F. The 1998 Haines consolidation vote is not evidence of incompatibility with Skagway.

- ☑ Petitioner cites 1997 action of Haines Borough Assembly to detach territory from Mud Bay Land Use Service Area as further evidence of incompatibility with Skagway. At the time, DCED characterized the Assembly's action as a legitimate exercise of its areawide public policy making responsibility. Despite strong opposition on the part of Mud Bay residents, the Assembly acted to remove what it perceived were unreasonable and unwarranted obstacles to commercial development in the Borough.
- ☑ DCED finds no philosophical distinction between the 1997 Mud Bay action by the Haines Borough Assembly and a critical action taken by the Skagway City Council two decades earlier. In 1979, the Skagway City Council authorized a proposal to expand the area within the corporate boundaries of the City of Skagway by nearly 40 times. The Skagway City Council acted despite strong objections by the residents of the area proposed for annexation. Moreover, voters in the then-11-square-mile City of Skagway were deeply polarized on whether the City should pursue annexation.

Compatibility of Economic Lifestyles, and Industrial or Commercial Activities

- ☑ As previously noted, Skagway and other communities in Southeast Alaska, including Haines, exhibit shared interests in the tourism industry. Skagway and Haines have a common link in the specific tourists served.
- ☑ Commonalities also exist between Skagway and Haines in terms of utility service providers for electricity and cable television; and with respect to the nature of employment by industry, occupation, and classification of workers.

Existence Throughout the Proposed Borough of Customary and Simple Transportation and Communication Patterns

- ☑ As noted previously, there are substantial transportation and communication links between Skagway, Haines, and Juneau.

Extent and Accommodation of Spoken Language Differences Throughout the Proposed Borough

- ☑ 94.7% of Skagway residents at least five years old spoke only English. The comparable figure in the Haines Borough was 96.1%; the figure for all of Alaska was 85.7%.
- ☑ 1.1% of Skagway residents spoke English "less than very well." The comparable figure for the Haines Borough was 0.25%. The figure for all of Alaska was 5.3%.

4. CONCLUSION BY DCED

The founders drafted Article X, Section 3 of Alaska's constitution to promote boroughs that encompass large and natural regions. That paradigm is reinforced significantly by Article X, Section 1, which expressly encourages minimum numbers of local governments.

In the analysis of the common interests standard, DCED emphasized that social and economic integration is a requisite attribute of State House election districts. DCED also called attention to the fact that the founders viewed the twenty-four original election districts described in Article XIV, Section 1 of the constitution to be appropriate borough models in many cases. Indeed, as previously noted, Delegate Eldor Lee told the convention delegates on behalf of the Committee on Local Government, that "I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts."

The notion that the early State House election districts were suitable borough models is reinforced by the fact that they were used to define prospective boroughs in the 1963 Mandatory Borough Act (which originated as House Bill No. 90). As introduced by Representative John L. Rader, House Bill No. 90 called for the compulsory incorporation of those nine State election districts in Alaska that encompassed independent school districts. Since Haines had an independent school district, the Lynn Canal – Icy Straits Election District (including Skagway as shown on "Map 5") was included among the nine boroughs proposed in the bill.⁴³

Adding to the previously-noted links between the early election districts and boroughs is the fact that election district boundaries were designated in House Bill No. 90 just four years after Alaska's constitution took effect. The short interval between those two seminal events is significant in terms of the suitability of the early election districts for borough boundaries. DCED notes that six of the twenty

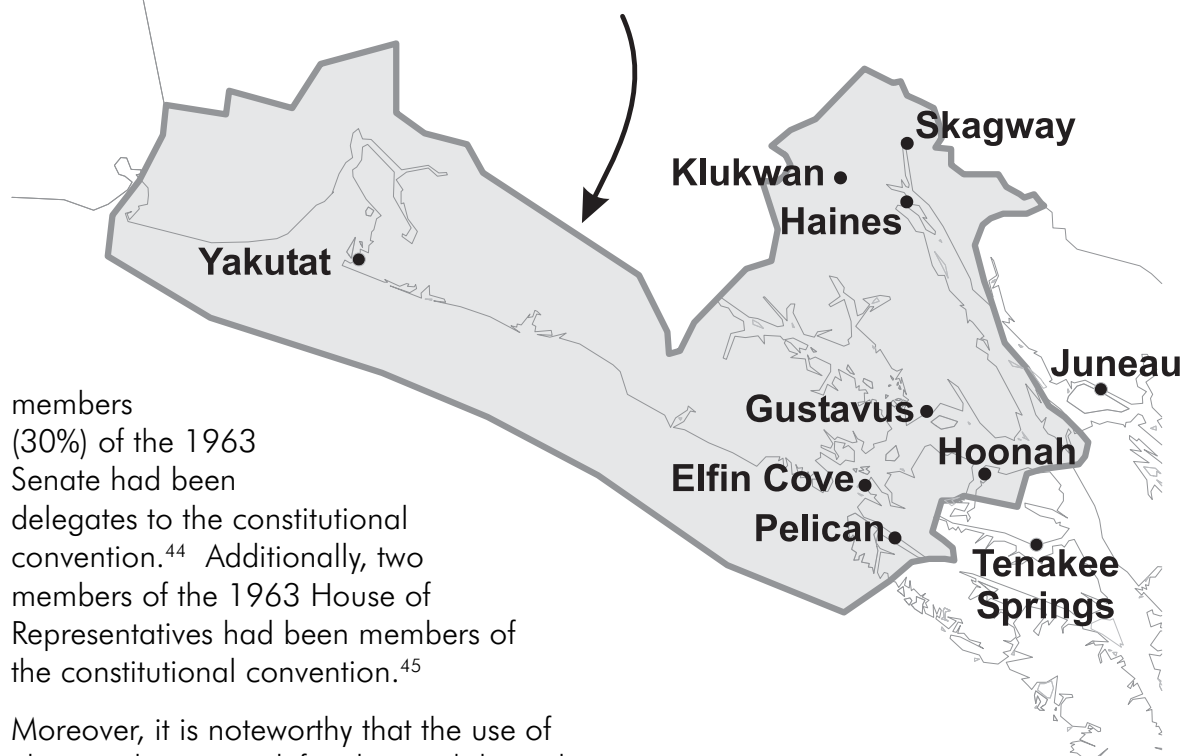
⁴³ House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs prior to January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal – Icy Straits Election District;*
- (3) Ketchikan – Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer – Wasilla – Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks – Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai – Cook Inlet Election District.

*The Lynn Canal – Icy Straits Election District was defined in the December 7, 1961 proclamation of the governor. It was identical to the Lynn Canal – Icy Straits Election District described in Article XIV, Section 1. The 1961 district was described as "That part of the mainland, not included in District No. 4, drained by streams flowing into Lynn Canal, Glacier Bay, Icy Strait, Cross Sound, and their tributaries, and the Pacific Ocean, to and including the area drained into Icy Bay to the west; those parts of Admiralty and Chichagof Island drained by streams flowing into Icy Strait, Cross Sound, and their tributaries; and Yakobi, Lemesurier, and Pleasant Islands, and other smaller adjacent islands."

Map 5

Proposed 1963 Lynn Canal - Icy Straits Mandatory Borough



members
(30%) of the 1963
Senate had been
delegates to the constitutional
convention.⁴⁴ Additionally, two
members of the 1963 House of
Representatives had been members of
the constitutional convention.⁴⁵

Moreover, it is noteworthy that the use of
election districts to define borough boundaries
in the 1963 House Bill No. 90 occurred just
two years after the legislature first adopted
statutory standards for incorporation of
boroughs. That fact becomes even more
significant when it is recognized that 11 of the
20 Senators (55%) and 23 of the 40
Representatives (57.5%) in the 1963
Legislature had held the same elected offices
during the 1961 Legislature.⁴⁶

House Bill No. 90 was ultimately amended
to exclude the Lynn Canal – Icy Straits Election
District. The amendment represented a
significant compromise in terms of the
fundamental public policy objective of
resolving the problem of independent school
districts and was, presumably, accomplished
with great reluctance and then only to achieve

⁴⁴ The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.

⁴⁵ The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.

⁴⁶ The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Baggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor.

passage of the amended bill.⁴⁷ In the end, the Senate approved the amended measure by a one-vote margin. Governor Egan signed House Bill No. 90 into law and the eight regions listed in the Act were compelled to incorporate boroughs by January 1, 1964.

Forty-six years after founders first defined election districts, Skagway continues to be in the same election district with Haines, Klukwan, Gustavus, Hoonah, Elfin Cove, Pelican, and Yakutat. Several factors, however, have resulted in the expansion of the contemporary election district encompassing Skagway to include a number of other communities as shown on "Map 6."

Among those factors is the significantly greater population growth in the southcentral and interior portions of Alaska compared to other parts of the state. Additionally, while social and economic integration remain a fundamental characteristic of election districts, the U.S. Supreme Court and the Alaska Supreme Court have compelled the use of other factors which influence the size and configuration of election districts. In *Hickel v. Southeast Conference*, *id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts.⁴⁸

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socio-economic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

The enactment of legislation such as the Federal Voting Rights Act has also profoundly influenced the configuration of election districts in Alaska. Additionally, as noted, the original election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan created forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

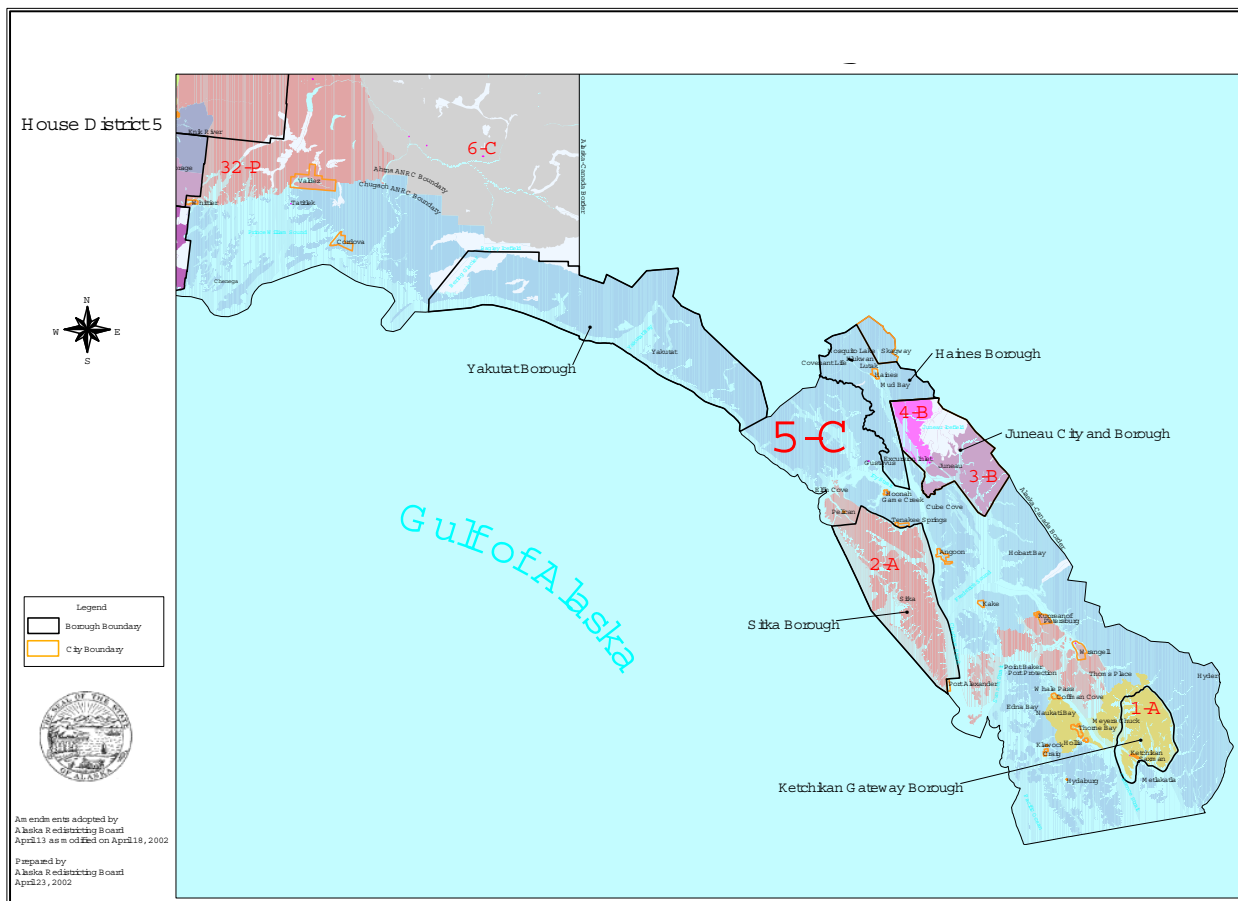
⁴⁷ Independent school districts are not recognized as governmental entities in Alaska's constitution. Article XV, Section 3 of Alaska's constitution called for transition of independent school districts and other extra constitutional forms of government. By removing one of the nine election districts encompassing independent school districts from House Bill No. 90, the legislature lost the opportunity to deal with the matter comprehensively. In fact, the failure to address the Haines Independent School District ultimately resulted in significant difficulties in the funding of education in the Haines area during the mid-1960s. Voters in Haines rejected three borough proposals in the mid-1960s. They continued to operate the Haines Independent School District past a legislative deadline to dissolve the district. State funding was ultimately cut off to the Haines Independent School District. The area struggled with alternative, inefficient forms of local government before voters formed the Haines Borough in 1968.

⁴⁸ The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

Map 6

State House Election District 5

Amended Final Plan April 2002



The impact of the post-1956 changes affecting the configuration of State election districts is reflected in new House District 5, which stretches from Cordova to Prince of Wales Island.⁴⁹

It is DCED's understanding that the area to which the Petitioner refers on page 38 of its proposal as the hypothetical "rural Southeast super borough" encompasses all of southeast Alaska not currently within an organized borough. Most of that area is within new House District 5.⁵⁰

⁴⁹ The communities in House Election District 5 as approved by the Redistricting Board on April 25, 2002 are: Angoon, Chenega, Cordova, Covenant Life, Craig, Cube Cove, Edna Bay, Excursion Inlet, Game Creek, Gustavus, Haines, Hobart Bay, Hoonah, Hydaburg, Hyder, Kake, Kasaan, Klawock, Klukwan, Lutak, Metlakatla, Mosquito Lake, Mud Bay, Naukati Bay, Point Baker, Port Protection, Skagway, Tatitlek, Tenakee Springs, Whale Pass, Whitestone Logging Camp, and Yakutat.

⁵⁰ Portions also lie within that part of House Election District 1 outside the Ketchikan Gateway Borough and that portion of House Election District 2 outside the City and Borough of Sitka.

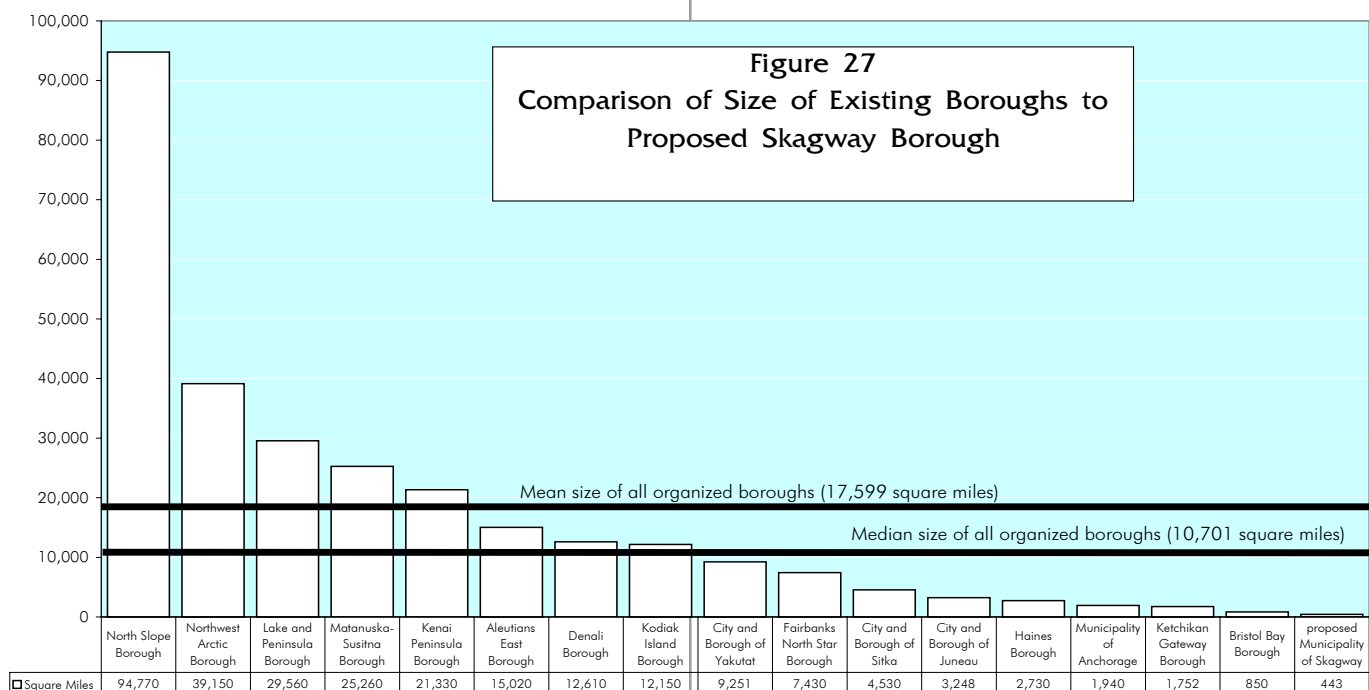
While the Petitioner asserts that it lacks strong ties to adjacent communities, it is evident from the analysis of the common interests standard here and in Appendix F that Skagway has regional interests in common with other communities in Southeast Alaska. Those ties are strongest with the Haines area and become more attenuated as the distance from Skagway grows.

Based on the foregoing, DCED concludes, *in the framework of borough government set up by the founders of the State of Alaska*, that the area within the boundaries of the proposed Skagway borough represents an undersized and contrived territory. It is noteworthy that the area in question is 48% smaller than the Bristol Bay Borough, Alaska's smallest borough. As noted previously, the Bristol Bay Borough has been repeatedly singled out over four decades by a number of local government authorities as lacking the regional characteristics of boroughs.

It is also noted that the proposed Skagway borough comprises an area only 4% of the median size of existing organized boroughs in Alaska, and only 3% of the mean size of all boroughs. Comparisons between the size of the proposed Skagway borough and the sixteen organized boroughs are provided in Figure 27.

Given the determination regarding the size and nature of the Skagway borough proposal, DCED concludes that the proposal fails to meet the standard set out in Article X, Section 3 of the Constitution of the State of Alaska. As previously noted, that provision expressly requires a borough to embrace an area and population with common interests *to the maximum degree possible*. Moreover, approval of the Skagway borough proposal would contravene the express policy in Article X, Section 1 of Alaska's constitution calling for minimum numbers of local governments.

Further, *in the context of borough government*, the proposed Skagway borough does not encompass a population that is interrelated and integrated as to its social, cultural, and economic activities. *In that same context*, neither is the population of the proposed Skagway borough large and stable enough to support *borough government*. Therefore, 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.



I. STANDARD NUMBER NINE: REBUTTABLE PRESUMPTION CONCERNING A MINIMUM OF TWO COMMUNITIES

1. THE STANDARD ESTABLISHED IN LAW

State law establishes a rebuttable presumption that a proposed new borough must include multiple communities. Specifically, 3 AAC 110.045(b) provides as follows:

3 AAC 110.045. COMMUNITY OF INTERESTS.

...

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

2. VIEWS OF THE PETITIONER

The Petitioner offers three arguments concerning satisfaction of the standard at issue. The first is, essentially, that a number of circumstances particular to the Skagway proposal warrant the creation of a single-community borough serving Skagway. The Petitioner's second argument is that other single-community boroughs exist and that the standard is improper anyway. The third argument is that the standard is met, in effect, because Dyea is a *de facto* community.

Regarding the first argument – that circumstances warrant the creation of a single-community Skagway borough – the Petitioner offers the following points on page 40 of its proposal:

Forming a borough from the single community of Skagway is the appropriate action for the Local Boundary Commission to take because:

- Skagway has a unique geography as a discrete area with no unincorporated communities or land around it with which to join;
- the population of the area is interrelated and integrated socially, culturally, and economically;
- there are other single community boroughs working well in Southeast Alaska;
- Skagway has demonstrated the capability to provide borough services throughout our geographic area; and
- Skagway has made a specific and persuasive showing that despite the absence of a second community, the proposed Municipality of Skagway should be allowed to form.

The Petitioner's second argument is that the Commission has approved other single-community borough proposals and should do so in this case. The Petitioner also seems to question the legitimacy of the standard. On page 40 of the proposal the Petitioner states:

The Local Boundary Commission has clearly found that under certain circumstances, single community boroughs are feasible and can work well. The Commission has approved two other one-community boroughs in Southeast Alaska, the City and Borough of Sitka (essentially one community)

and the City and Borough of Yakutat. The Alaska Constitution clearly envisioned that single borough communities might be formed. The legislature in enacting standards for boroughs did not require two communities. Several single community boroughs are now in existence and are effectively delivering borough services. Mr. Vic Fischer, noted local government expert, has suggested that with respect to the "single-city" issue there is no reference, actual or implied or intended, that terms such as "common interest," "interrelated," or "integrated" refer to cities and communities. He found that these terms were meant to refer to population only. The criteria for borough incorporation should be whether the proposal makes sense in the broader scheme of things and not arbitrary or artificial standards, be they regulatory or presumptive. In 1992, the LBC approved the then City of Yakutat's petition for incorporation despite the fact Yakutat supported only one community. The LBC made specific findings with respect to Yakutat's population which supported its decision to approve Yakutat's petition: there was only one community in the proposed area; the City proved its residents were interconnected and integrated with the proposed parts of the borough; Yakutat is a unique, isolated geographic area; and adequate communication existed. The same findings are applicable to the proposed Municipality of Skagway.

Regarding its last argument – that Dyea is a *de facto* community – the Petitioner states the following at page 40 of its proposal:

In fact, at one time, there were two communities within the proposed area of incorporation - Dyea and Skagway. The unincorporated community of Dyea was annexed in 1979, with Skagway providing services to the more remote Dyea area. If it had not been for this earlier annexation, there would now be two communities to join.

The fact that Dyea was annexed prior to this petition should not have a negative bearing now. It would be arbitrary to find that Skagway's "single community" is a sufficient basis to defeat this petition, since, had the annexation not occurred, this would not be an issue.



Former A.M. Gregg Real Estate Office, one of the few visible remnants of Dyea. Photo credit: © Henk Binnendik

3. ANALYSIS BY DCED

The examination of the single-community standard by DCED relies, in some instances, on analysis set out with respect to standards previously addressed in this report. DCED's analy-

sis of the single-community standard begins with the Petitioner's view that Skagway's geography supports a conclusion that a single-community borough is warranted.

Geography

DCED notes in Part J of Appendix F that the geography of Skagway is similar to that of Haines. Because of those geographic similarities, both areas are included in the previously noted Boundary Ranges Province identified in DNR's *Northern Southeast Area Plan*. The evidence does not support the Petitioner's view that Skagway's geographic characteristics contribute to the need for or the merits of a single-community borough.

Discrete Nature of Skagway

DCED concurs with the Petitioner that Skagway is a discrete area. By definition established in laws relating to the Local Boundary Commission, any community is a "discrete and identifiable social unit" (see 3 AAC 110.920(a)(3)). However, being a discrete community has no bearing on the standard at issue. As has been stressed throughout this report, boroughs are regional entities, not community-level entities.

Lack of Adjoining Unorganized Areas

DCED is in agreement with the Petitioner that no *unorganized* areas adjoin Skagway. However, options for extending borough government to Skagway, of course, are not limited to incorporating a new borough. Skagway is, in effect, an enclave within the Haines Borough. Standards relating to borough boundaries do not favor the presence of enclaves (see sections 040(d), 190(b), 200(2), and 270(c) of 3 AAC 110).



Stampeders' outfits lay stacked in Dyea, circa 1897. University of Washington Libraries/Special Coll. Division, Hegg photo, Neg. #58.

Common Interests

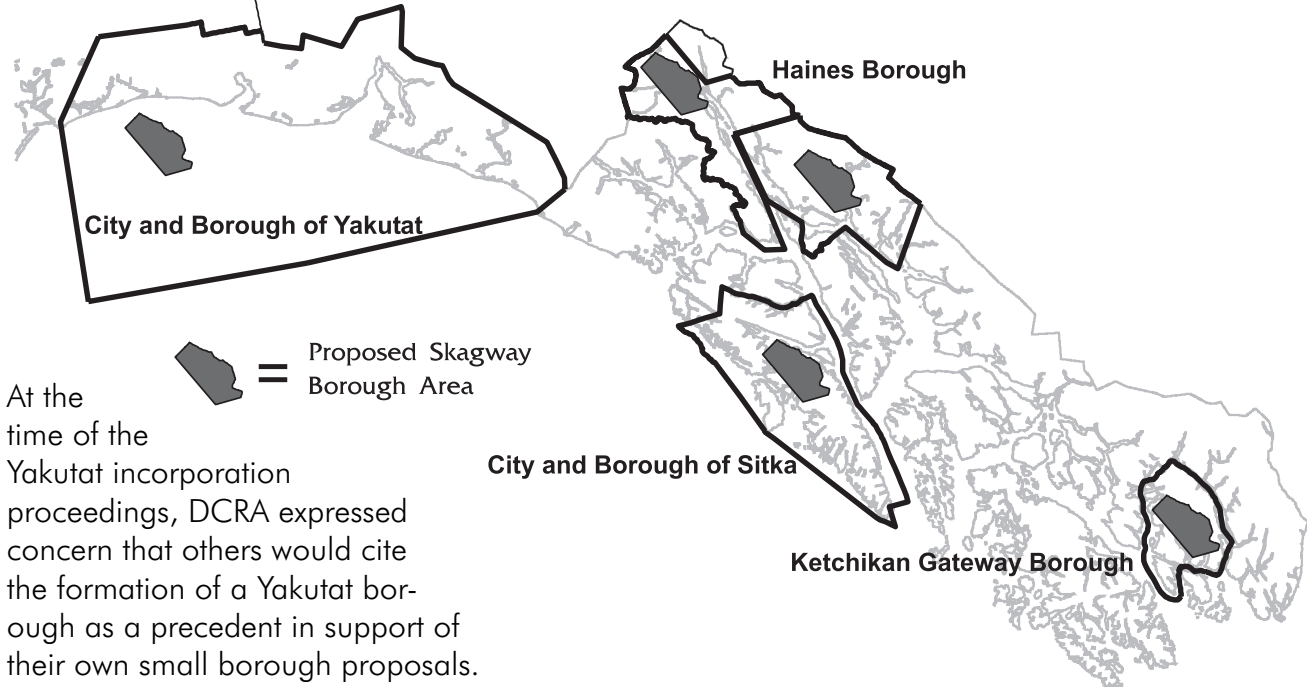
DCED shares the Petitioner's view that the population of Skagway is interrelated and integrated socially, culturally, and economically *in a community context*. However, DCED stressed in the examination of the eighth standard that it is necessary to consider common interests on a regional level when examining the formation of a borough. Moreover, DCED demonstrated in Appendix F that Skagway has strong ties – in a regional context – with adjoining communities.

Existence of Other Single Community Boroughs

DCED acknowledges that the Sitka and Yakutat boroughs each encompass only a single community. As noted in the analysis of the sixth standard, DCED's predecessor, the Department of Community and Regional Affairs (DCRA), recommended against the incorporation of a Yakutat borough because it had concluded that Yakutat lacked the characteristics of a borough.

Map 7

Comparison of Size of Proposed Skagway Borough to Existing Organized Boroughs in Southeast Alaska



Proponents of the Skagway borough now offer similar assurances about their proposal. They state that a decision to approve the Skagway borough need not serve as a precedent for approval of any other single-community borough proposal (Petition at pages 5 and 37). Ironically, while declaring that a Skagway borough would not constitute a precedent for other small boroughs in the future, the Skagway Petitioner refers to Yakutat 34 times in support of its own proposal.

DCED views the Petitioner's comparisons between Yakutat and Skagway to be superficial. To begin with, Yakutat is much more isolated from its neighbors than is the case with Skagway. "Map 7" compares the size of the proposed Skagway borough with the Yakutat borough and the other four existing organized boroughs in southeast Alaska. The nearest community to the

northwest of Yakutat is Cordova, approximately 230 miles as the crow flies. Yakutat's nearest neighbors to the southeast are Klukwan (140 miles), Haines, and Skagway (160 miles each), and Pelican (165 miles). Consequently, the common interests between Yakutat and its distant neighbors are more attenuated vis-à-vis Skagway and its neighbors. For example, Yakutat is not linked to its neighbors by the ferry system; direct air transportation links to Cordova exist, but are more limited than is the case with Skagway; and common major economic activities with neighbors are comparatively limited.

Moreover, the Skagway borough proposal seeks merely to reconstitute a city government as a borough government with no increase in either jurisdictional territory or level of services provided. In contrast, the Yakutat borough now encompasses 9,243 square miles that

were previously outside the jurisdiction of any municipal government. Further, the Yakutat borough is more than 20 times larger than the proposed Skagway borough.

DCED recognizes that the foregoing comparisons between the proposed Skagway borough and the Yakutat borough are cursory. Yet, they serve to demonstrate fundamental distinctions between the two. A similar comparison between Skagway and Sitka could be provided, however, the point has already been made that each borough proposal is distinct and must be considered on its own merits.

The Alaska Supreme Court recognized the diversity of Alaska and the need for broad policy discretion by the Local Boundary Commission when considering borough proposals. In *Mobil Oil v. Local Boundary Commission*, 518 P.2d 92, 98-99 (Alaska 1974) the Court noted:

The [statutory standards] were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as “large enough”, “stable enough”, “conform generally”, “all areas necessary and proper”, “necessary or desirable”, “adequate level” and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adopted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate.

Based on the foregoing, DCED takes the view that merely because other single-community boroughs exist is not a compelling reason to approve any single-community borough proposal. The Commission must judge each proposal on its individual merits.

Skagway’s Capability to Provide “Borough Services”

Based on analysis and conclusions regarding standard number five, DCED concurs with the Petitioner that Skagway enjoys the ability to provide “borough services.” However, that merely means that the City of Skagway has the capability to provide services to the area within its corporate boundaries.

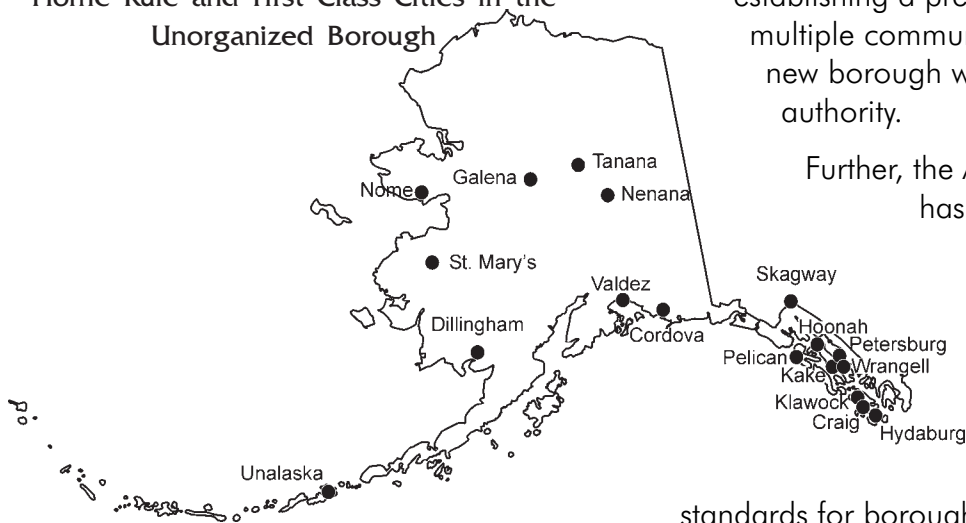
A similar conclusion would presumably be reached in the case of every home rule and first class city in the unorganized borough. DCED noted previously that State law imposes the same duties on all home rule and first class cities in Alaska’s unorganized borough that it does on organized boroughs.⁵¹ Moreover, absent locally imposed limitations, home rule and first class cities in the unorganized borough generally have the same broad discretionary powers as boroughs. There are eighteen home rule and first class cities in the unorganized borough as shown on “Map 8” located on the following page. Officials or residents of virtually every one of them have previously expressed interest in single-community borough formation.

Additionally, there are 27 second class cities and 12 unincorporated communities in the unorganized borough with populations exceeding the statutory threshold for incorporation of or reclassification as a home rule or first class city. Presumably, the same conclusion reached concerning Skagway’s

⁵¹ One exception is that a third class borough is not obligated to provide areawide planning, platting, and land use regulation.

Map 8

Home Rule and First Class Cities in the Unorganized Borough



ability to provide "borough services" would be reached with respect to many, if not all, of those 39 second class cities and unincorporated communities.

The fact that the City of Skagway has the capacity to provide borough-like services is not a persuasive argument for incorporation of a single-community borough.

Single-Community Borough Standard not in Statute

The Petitioner notes correctly that the legislature did not expressly enact a requirement for at least two communities within a proposed borough. The statutory standards for borough incorporation (AS 29.05.031) are modeled after the general principles in Alaska's constitution. DCED demonstrated in the analysis of standard number eight that the constitution calls for boroughs embracing large and natural regions. The statutory standards must be interpreted in a manner that is consistent with the constitutional principles.

Moreover, while the legislature did not directly enact a multiple-community standard for boroughs, it did impose a duty on the Local Boundary Commission to adopt standards for

borough incorporation in regulation (see AS 44.33.812(a)(2)). The standard establishing a presumption in favor of multiple communities within a proposed new borough was adopted under that authority.

Further, the Alaska Supreme Court has rejected previous arguments that the Local Boundary Commission lacks authority to consider a broad range of relevant factors outside the statutory

standards for borough incorporation. In *Petitioners for Incorporation of the City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 727 (Alaska 1995), the Supreme Court held as follows:

Petitioners lastly argue that, even if the LBC's decision were construed as determining that the originally proposed borough boundaries failed to meet the statutory standards for incorporation, the LBC based its decision on non-statutory criteria and therefore erred. In advancing this argument, Petitioners rely primarily on the LBC's consideration of the possible future creation of a Prince William Sound Borough and of interests voiced by Chugach Alaska Corporation, a regional Native corporation based primarily in Prince William Sound whose boundary under the Alaska Native Land Claims Settlement Act is drawn at the 141st Meridian.

Petitioners' arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for in-

corporation and has only limited authority to consider or adopt “the most desirable” borough boundaries. Given the Alaska Constitution’s mandate that boroughs be cohesive “to the maximum degree possible,”⁵² the LBC acted well within the purview of its authority in considering the desirability of future incorporation of neighboring areas such as Prince William Sound and the interests of affected land owners and users such as the Chugach Alaska Corporation.⁵³ We find no merit to Petitioners’ claim of improper reliance on non-statutory criteria.

Lastly, it is noteworthy that after the Yakutat incorporation, the legislature enacted a law that expressly requires borough incorporation standards adopted in regulation by the Commission to be satisfied before a petition may be approved (AS 29.05.100(a)).

⁵² (footnote original) Alaska Const., art. X, § 3.

⁵³ (footnote original) In their reply brief, Petitioners challenge the authority of the LBC to promulgate regulations such as 19 AAC 10.060(a)(1), which expressly authorized the LBC to consider “land use and ownership patterns” in determining compliance with the statutory standards set out in AS 29.05.031(a). See, e.g., *Warner v. State*, 819 P.2d 28, 32 n. 3 (Alaska 1991); *State v. Anderson*, 749 P.2d 1342, 1345 (Alaska 1988). We need not decide the issue, since even in the absence of the challenged regulations, the LBC clearly had authority to consider information and arguments such as those presented by the Chugach Alaska Corporation in addressing the statutory standards articulated in AS 29.05.031(a). In particular, we note that AS 29.05.031(a)(1) gives the LBC power to consider whether “the population of the area [included in the proposed borough] is interrelated and integrated as to its social, cultural, and economic activities.”



Downtown Dyea during the gold rush era. University of Washington Libraries/Special Coll. Division, Hegg #52

Dyea as the Second Community

When considering whether Dyea is a community, it is fitting to begin with the definition of the term. State law formally defines “community” for purposes of matters that come before the Local Boundary Commission as follows:

3 AAC 110.990. DEFINITIONS.

Unless the context indicates otherwise, in this chapter . . .

(5) “community” means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

3 AAC 110.920 provides as follows:

3 AAC 110.920. DETERMINATION OF COMMUNITY. (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

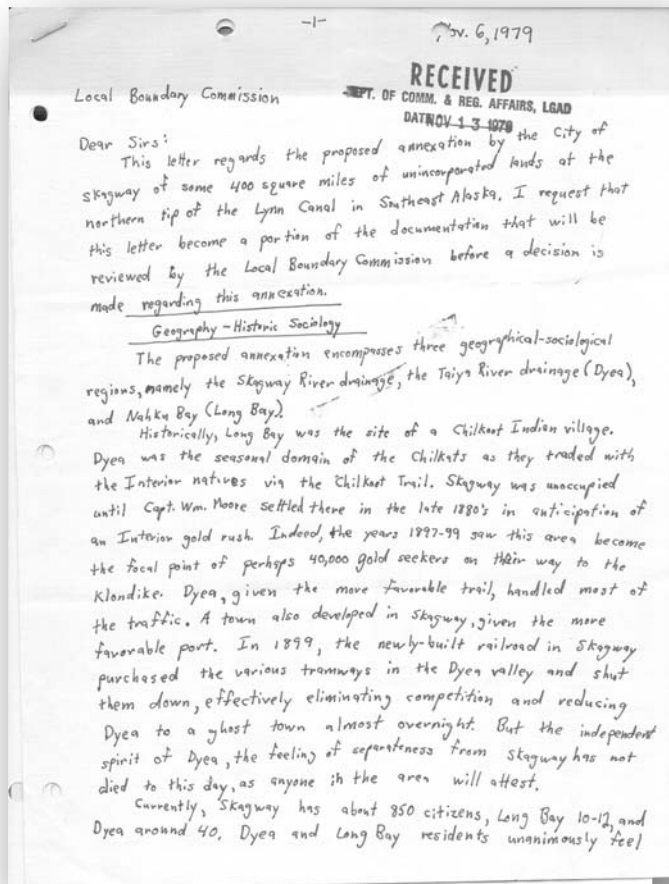
The Petitioner views Dyea as a *de facto* community that lost its lawful status as a community only because it was annexed to the City of Skagway in 1980. DCED does not accept the Petitioner's view on this point.

First, nothing in the law prohibits a city government from encompassing two adjoining communities. Thus, for purposes of this proceeding, the fact that the City of Skagway annexed Dyea twenty-two years ago did not bring about the loss of Dyea's status – legal or otherwise – as a community.

In the summer of 1898, the population of Dyea was between 8,000 – 10,000. It was a bustling community with hotels, restaurants, saloons, freighting companies, and many other businesses. However, the end of the Klondike gold rush and the construction of the White Pass and Yukon Route Railroad brought about the precipitous abandonment of Dyea as a community.

As previously noted, Willard F. Elliott of Dyea wrote to the Local Boundary Commission on November 6, 1979 that, "In 1899, the newly-built railroad in Skagway purchased the various tramways in the Dyea valley and shut them down, effectively eliminating competition and reducing Dyea to a ghost town almost overnight" (emphasis added).

The *Klondike Nugget* published the following account of the decline of Dyea on June 10, 1900.



November 6, 1979 letter from Willard Elliott.

Dyea's Death Knell

The most momentous event in the latter day history of the great port of Dyea has just happened. Strange to say that, notwithstanding the importance of the event, it passed without demonstration or bluster or fuss. Although it concerned the whole of the town and the famous trail that leads out of the town, this event extraordinary took place known but to one or two persons. The great affair was, to express it in a breath, nothing less than the closure of the port of Dyea.

There is no longer a port of Dyea. The erstwhile busy town having lost its teeming population of hurrying gold seekers and temporary traders and dwellers, has lapsed into a deep sleep. Deputy Collector Walker (who bravely stood by and collected his salary) kept open the port as long as there was a prospect of a pound of freight going over the summit, and months and months after any did go over. The thousands of former townsfolk had dwindled to hundreds, and the hundreds to a few tens.

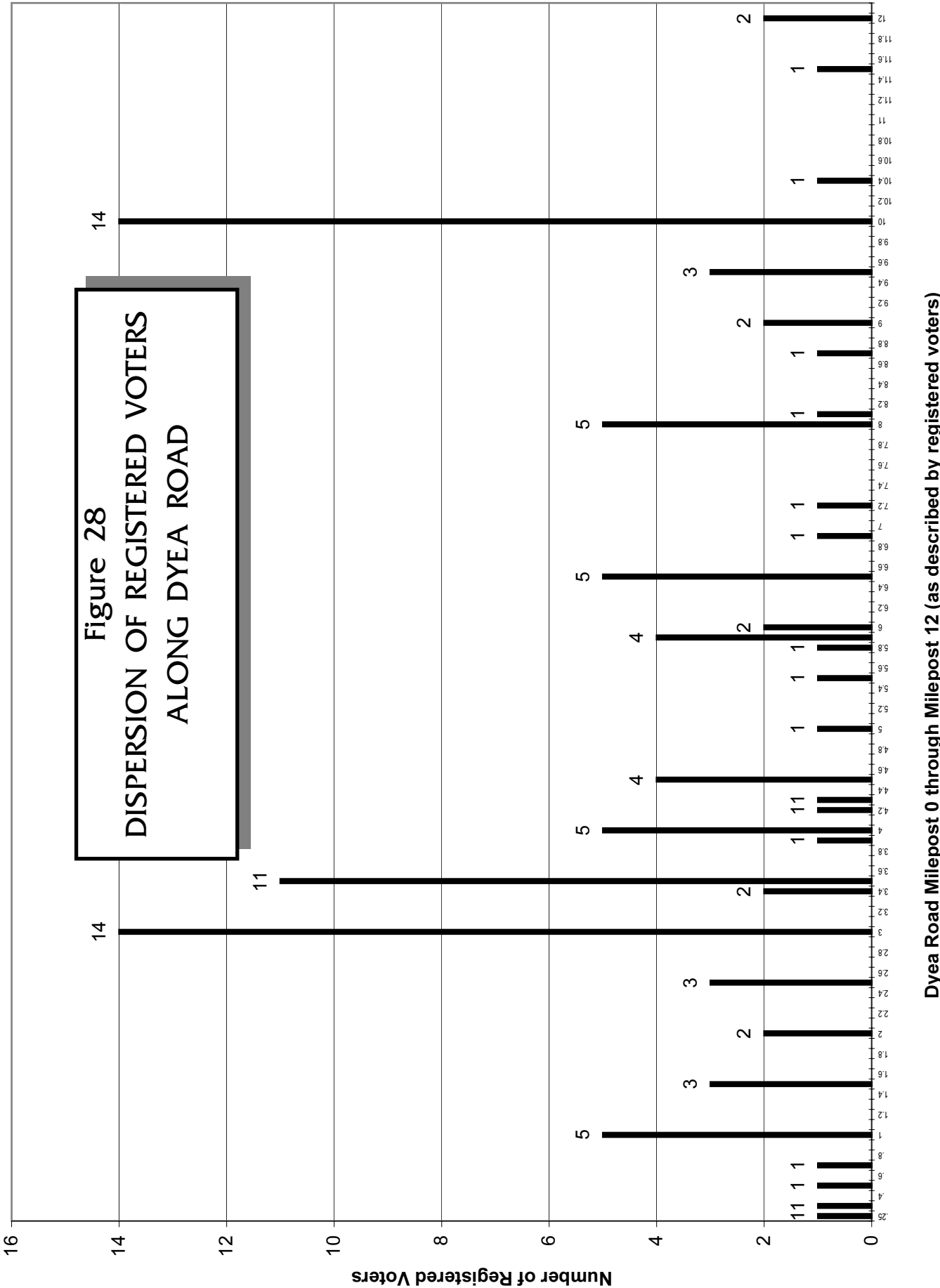
Then some mysterious power moved the spirit of some one to have the port closed.

So now, says the Alaskan, it is closed, and Mr. Walker has come to Skagway to help collect duties where there are duties to be collected and to be in a port which is a port, and a lively one.

Uncle Sam's customs man is not the only one leaving Dyea just now. A large delegation is getting away for Nome, and others are moving out. Still it is maintained by some of the most loyal to the old town that she has at least 100 population remaining.

One of the patriarchs who came over yesterday to be in the metropolitan atmosphere for a short time, stated that since the great hegira many houses which were left partly furnished have been rifled, and depredations of all kinds imaginable have been committed. Not content with taking contents of houses, some of the thieves took the very doors or windows designed to be a barricade to them, and others even carried away houses.

Campbell, the mail carrier of the Skagway-Dyea route, has left for Dawson, and Peter Bertona, better known as Spanish Pete, has been given the contract for the summer, and will continue to give a daily service between the two cities.



Dyea lost its status as a community approximately 80 years before it was annexed to the City of Skagway. It cannot be reasonably claimed today that Dyea comprises a discrete and identifiable social unit characteristic of a community.

DCED found 274 contemporary Internet websites that refer to Dyea as a “ghost town.”⁵⁴ Among those are websites maintained by the Skagway Chamber of Commerce, the National Park Service, and the U.S. Forest Service.

DCED recognizes that a number of registered voters live along “Dyea Road” linking Skagway to the former town of Dyea. DCED counted 102 individuals listed on the previously-noted January 4, 2002 voter registration roll for the City of Skagway who reside along Dyea Road. There are double-digit concentrations of registered voters at milepost 3 (14 registered voters), milepost 3.5 (11 registered voters) and milepost 10 (14 registered voters). The concentration of voters at mileposts 3 and 3.5 are much closer to Skagway than to the former town of Dyea. Figure 28 on the preceeding page shows the dispersion of the 102 registered voters living along Dyea Road.

In the context of the tenth borough incorporation standard – communications and exchange – even the Petitioner seems to characterize residential development in the Dyea area as being relatively remote and scattered. At page 38 of the proposal, the

Petitioner states that, “All developed areas within the proposed Municipality of Skagway are connected by road, *including the dispersed residential dwellings in the Dyea vicinity*” (emphasis added).

. . . By the Summer of 1899 the stampede was all but over. The newly built White Pass and Yukon Route railway reached Lake Bennett, supplanting the Chilkoot Trail from Dyea. Dyea became a ghost town. Its post office closed in 1902 and by 1903, its population consisted of one settler. . .

Skagway Chamber of Commerce Website,
Skagway, Alaska Community Profile,
<http://www.skagwaychamber.org/community.html>

The Commission’s regulations (3 AAC 110.920(b)(2)) provide that “absent a specific and persuasive showing to the contrary, the Commission will presume that a population does not constitute a community if the population is adjacent to a community and is dependent upon that community for its existence.” Circumstances indicate that residents of the Dyea area depend heavily upon facilities in the core area of Skagway for many of their everyday needs. Those include schools, banking, commerce (groceries, hardware, auto repair, fuel, etc.), employment, entertainment, and other services and facilities characteristic of a community.

There is one prominent privately-owned commercial facility in the Dyea area today. That is the newly constructed Chilkoot Trail Outpost at milepost 8.5 of Dyea Road. The Chilkoot Trail Outpost is a bed and breakfast facility consisting of eight cabins, two of which

⁵⁴ <<http://www.google.com/search?hl=en&lr=&q=dyea+ghost+town&btnG=Google+Search>> searched June 6, 2002.



Dyea Campground at the Gold Rush National Historic Park located near the entrance to the Chilkoot Trail Unit of the park.

are duplex style (thus providing a total of ten units).⁵⁵ A National Park Service campground and ranger station is nearby. A limited number of commercial operations such as horseback rides, bicycle rides, day-trail hikes, and river rafting operate in the Dyea area during the summer. Most are based in Skagway.

4. CONCLUSION BY DCED

Based on the foregoing, DCED does not concur with the Petitioner's arguments relating to the single-community standard. In a regional context, DCED finds that Skagway has no unique geographic, social, cultural, or economic characteristics that would warrant a single-community borough.

⁵⁵ The logs to construct the Chilkoot Trail Outpost came from the Chilkat Valley in the Haines Borough.

The argument that the City of Skagway provides "borough services" to its residents could be advanced by upwards of 57 communities in the unorganized borough.

The Petitioner's contention that the Skagway borough proposal should be approved because there are other single-community boroughs is unpersuasive. It is incongruous for the Petitioner to rely heavily on the incorporation of other single-community boroughs like Yakutat as a precedent, while assuring the Commission that approval of a Skagway borough need not serve as a precedent.

The Alaska Supreme Court

noted long ago that "the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate."

Concerning the legitimacy of the single-community standard, it is correct that the legislature did not enact such a specific standard. However, it did mandate that the Commission adopt borough incorporation standards in regulation. Moreover, the Supreme Court has held that the Commission may consider relevant factors not expressly included in the statutory standards. Further, after the Commission adopted the single-community standard, the legislature enacted a new law expressly providing that a borough incorporation proposal could be granted only if it satisfies standards adopted in regulation by the Commission.

Lastly, DCED rejects the assertion that Dyea is a *de facto* community. For these reasons, DCED concludes that the Skagway borough proposal does not satisfy the multiple-community standard set out in 3 AAC 110.045(b).

J. STANDARD NUMBER TEN: COMMUNICATIONS AND EXCHANGE

1. THE STANDARD ESTABLISHED IN LAW

As a condition for borough incorporation, a region must have communication and transportation facilities that are sufficient to allow an integrated borough government. Specifically, AS 29.05.031(a)(4) states:

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:

....

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

In addition, the Commission has adopted regulations concerning requirements for communication and exchange within a proposed borough. Specifically 3 AAC 110.045(c) provides as follows:

3 AAC 110.045. COMMUNITY OF INTERESTS.

....

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

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) electronic media for use by the public.

2. VIEWS OF THE PETITIONER

The Petitioner addresses this standard at pages 38 – 40 of its proposal. With respect to communication, the Petitioner provides details about the radio, newspaper, and television media serving Skagway. Information about such was addressed previously in this report and is not repeated here. The Petitioner also notes that:

Teleconference capabilities are well established and teleconferences during the legislative session are regular events. Local internet access is available from PTI Alaska. Telephone service connects the developed and some of the rural area, and the emergency '911' service covers the urban and some rural areas. A repeater was recently installed to expand '911' system coverage. Some emergency response and communications are also provided within the Klondike Gold Rush National Historic Park area by the National Park Service.



Portion of the Klondike Highway connecting Skagway to Canada. Photo credit: Pat Reece/www.yukoninfo.com.

With respect to transportation facilities, the Petitioner indicates that:

- The paved Klondike Highway (Alaska portion of which is maintained year-round by the State) connects Skagway to Canada.
- The Dyea Road (maintained by the State) connects the Skagway and Taiya River valleys.
- Scheduled and charter air service connect Skagway with Juneau, Haines, and Whitehorse. The Skagway Airport is owned, operated, and maintained by the State.
- The Skagway airport is one of the ten busiest airports in Alaska (measured by enplanements).
- The Port of Skagway serves as a year-round transshipment and transportation hub between Alaska and Canada. The port includes three major docks owned by the White Pass and Yukon Route Railroad (WP&YRR). It also includes the Alaska Marine Highway ferry terminal and barge landing area (City-owned under State lease), and a small-boat harbor (owned by the State) which accommodates 145 boats up to 40-feet in length.
- Alaska Marine Lines provides weekly barge service to and through Skagway from Seattle.
- The WP&YRR provides tourist rail excursions between Skagway and Fraser, British Columbia. From Fraser, tourists may take a bus to Whitehorse and southcentral/interior Alaska.

3. ANALYSIS BY DCED

The Petitioner addresses the standard at issue in a community context. With the three exceptions noted below, the information in the Petition concerning transportation and communication facilities appears to be generally complete, accurate, and up-to-date.

The first point is a minor matter. At the time the Petition was filed, PTI provided Internet access in Skagway through the Alaska Power and Telephone Company. PTI has since discontinued that service; Alaska Power and Telephone now provides Internet service directly in Skagway. Alaska Power and Telephone currently has slightly more than 400 Internet subscribers in Skagway. Wtbear.com, an Internet provider based in Haines, had offered Internet service in Skagway but has since discontinued the offer. However, wtbear.com does plan to offer broadband (fast) wireless Internet service in Skagway in the future.



Klondike Highway connecting Skagway to Canada. Photo credit: Pat Reece/www.yukoninfo.com.

The second point deals with emplanements. When the Petition was prepared, then-current available data may indeed have indicated that Skagway was among the 10 busiest airports in Alaska. However, Skagway ranked 15th in 1999. In 2000, (the most recent year for which records are available) Skagway ranked 17th with 23,002 emplanements. In comparison, Haines ranked as the 31st busiest airport in 1999 and advanced to the 29th busiest in 2000 with 10,655 emplanements. (U.S. Airport Emplanement Activity Summary for Calendar Year 2000 and Calendar Year 1999, Federal Aviation Administration)

The last point deals with maintenance of transportation facilities by the State of Alaska. Maintenance of State highways, roadways, and airports in Alaska, including those in Skagway, is becoming increasingly difficult as a result of continuing budget cuts. In the 1980s, the Alaska Department of Transportation and Public Facilities (DOT&PF) employed a substantially larger maintenance crew in Skagway than it does currently (perhaps twice as many or more). The current budget provides for a winter maintenance crew of five. However, because of budget cuts for Fiscal Year 2003, DOT&PF plans to cut the winter maintenance crew in Skagway by two (one year-round position and one winter seasonal position). That represents a 40% reduction in the existing winter crew size and a reduction of perhaps as much as 70% or more compared to the 1980s. (Personal communication Greg Patz, Transportation Maintenance Chief, Southeast Region, DOT&PF)

Again, the Petition addressed the standard only in the context of the proposed Skagway borough. DCED addressed transportation and communications on a regional scale in Parts A, B, and I of Appendix F.

4. CONCLUSION BY DCED

Transportation and communications facilities and services are well developed on a community level. They allow communication and exchange among the residents of the City of Skagway.

If the standard set out in 3 AAC 110.045(c) were narrowly applied, it could be reasonably concluded that the Skagway borough proposal meets the standard. However, the related statutory standard set out in AS 29.05.031(a)(4) clearly calls for the application of the standard in a broader context. Consequently, DCED concludes that the communications and exchange standard is not met when applied in the regional context called for by AS 29.05.031(a)(4).

K. STANDARD NUMBER ELEVEN: ADEQUACY OF ELECTRONIC MEDIA AND LAND, AIR, AND MARINE TRANSPORTATION LINKS

1. THE STANDARD ESTABLISHED IN LAW

Regulations adopted by the Commission establish a rebuttable presumption that specific characteristics regarding transportation and communication must exist in order for the Commission to conclude that a proposed borough has sufficient communications and exchange patterns. Specifically, the law provides as follows:

3 AAC 110.045. COMMUNITY OF INTERESTS.

....

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are connected to the seat of the

proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

2. VIEWS OF THE PETITIONER

The Petitioner addresses the standard in a community context. As noted with respect to the ninth standard, the Petitioner has identified two communities in the proposed Skagway borough – Skagway and Dyea. Both are connected by road.

3. ANALYSIS BY DCED

Details about road, aviation, and marine transportation links – both within the proposed Skagway borough and the adjoining communities – were provided with respect to standards eight and ten. No additional analysis is necessary here.

4. CONCLUSION BY DCED

The proposed Skagway borough has a well-developed public roadway system that allows communication and exchange within the community of Skagway. It also has extensive marine and aviation services and facilities and electronic media that permit communication and exchange with adjoining communities.

Because the Skagway borough proposal is unjustifiably small in terms of its geographic scope, DCED concludes that the standard set out in 3 AAC 110.045(d) is not met.

L. STANDARD NUMBER TWELVE: BOUNDARIES' CONFORMANCE WITH NATURAL GEOGRAPHY

1. THE STANDARD ESTABLISHED IN LAW

As a condition for borough incorporation, the boundaries of a proposed borough must conform generally to natural geography. Specifically, AS 29.05.031(a)(2) provides as follows (emphasis added by underlining):

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:

....

(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.

Additionally, 3 AAC 110.060(a) provides as follows (emphasis added by underlining):

3 AAC 110.060. BOUNDARIES. (a)

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

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

2. VIEWS OF THE PETITIONER

The Petitioner expressed the following views concerning conformance of the boundaries with natural geography on pages 23 and 24 of its proposal.

The boundaries of the proposed Municipality of Skagway generally conform to natural geography and include all areas necessary for full development of municipal services. The proposed boundaries generally follow the ridge line that divides the Ferebee watershed from the Taiya Inlet watershed, include the Taiya River and Skagway River watersheds (until the latter crosses over into Canada), and generally follow the divide between the Kasidaya Creek and Katzechin River watersheds, up to Mount Bagot. From Mount Bagot north, the boundary follows the edge of the icefield that is the border with British Columbia, Canada.

Allowing Skagway to incorporate as a borough makes sense given Skagway's unique geographic area. Geographically, the City is

an isolated area and is the largest city in the State. Of all the incorporated cities in Alaska, only seven have boundaries that encompass more than 100 square miles. Skagway's is by far the largest at 466 square miles, with Valdez next at 274 square miles.⁵⁶ Skagway is not much smaller than the Bristol Bay Borough (850 square miles, of which 400 are water).⁵⁷

3. ANALYSIS BY DCED

The Petitioner is correct that the straight-line western boundary of the proposed Skagway borough generally follows the ridgeline dividing the Ferebee River drainage on the west and the Taiya River drainage on the east. Moreover, the straight-line southern boundary of the proposed Skagway borough generally follows the divide between the Kasidaya Creek watershed on the north and Katzechin River watershed on the south as the Petitioner indicates. The proposed eastern and northern boundaries are coterminous with the international boundary between Alaska and Canada.⁵⁸

⁵⁶ (footnote original) The City of Yakutat encompassed only 8 square miles prior to its incorporation.

⁵⁷ (footnote original) While some view the creation of Alaska's first borough, Bristol Bay, as a "mistake," those that hold this view do not necessarily do so because it is so small but because it is integrated economically, culturally and socially with surrounding areas and an "artificial" area of concentrated wealth was created within the region. Incorporation of the proposed Municipality of Skagway would not create the same problems. It is not carving-out an area, but essentially incorporating only what is "left over."

⁵⁸ The Petitioner indicates that the area within the proposed Skagway borough (existing City of Skagway) encompasses 466 square miles. The U.S. Census Bureau reported in 1990 and 2000 that the City of Skagway encompassed 452.4 square miles of land and 11.9 square miles of water (total of 464.3 square miles). However, the Certificate of Boundaries for the City of Skagway on file with DCED indicates that the City of Skagway encompasses 443.1 square miles. DCED's cartographer examined the boundaries of the City of Skagway and calculated the area within the City to be 443.35 square miles. The estimate by the cartographer is only slightly higher than the figure stated in the formal Certificate of Boundaries. For purposes of this report, DCED is using the figure stated in the Certificate of Boundaries (443.1 square miles).

However, the proper application of the natural geography standard involves more than a simple determination whether the boundaries of a proposed borough merely follow, in some general fashion, any identifiable natural geographical features.

A narrow interpretation of the geography standard would serve little purpose since there are a vast number of natural geographical features that one could draw from in defining boundaries. For example, the 11-square mile area encompassed by the 1978 boundaries of the City of Skagway can be reasonably characterized as conforming to natural geography. That area generally encompassed the Snyder Creek, Dewey Creek, and Reid Creek drainages on the east. On the west, the 1978 boundary extended from Yakutania Point north, generally following the divide that drains into Nahku Bay (also known as Long Bay or Fortune Bay) on the west and the Skagway River on the east. While the 1978 boundaries conformed generally to natural geography, they would hardly constitute suitable borough boundaries.

The appropriate interpretation of the standard is whether the Skagway borough proposal conforms generally to natural geography *on the scale intended for a borough government*. The broader interpretation reflects earlier discussions in this report (Chapter 1, that portion of Chapter 3 dealing with standard number eight, and Appendix B) that the constitutional convention delegates intended boroughs to encompass large geographic areas.

DCED's view that the geography standard set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a) warrants a broad application is buttressed when considered in the context of the closely related standards. Consider, for example, that:

- ➡ 3 AAC 110.060(b) requires consideration of model borough boundaries; and

- ➡ 3 AAC 110.060(c) requires boundaries to conform to existing regional educational attendance area boundaries (absent a determination that a different area is better suited to the public interest in a full balance of the standards for incorporation of a borough).

The Petitioner also emphasizes the fact that the City of Skagway is (geographically) the largest city in Alaska. After the 1980 annexation to the City of Skagway, the Local Boundary Commission adopted regulations designed to make the distinction between a city government and a borough government more clear. In that regard, current laws prohibit the annexation of large unpopulated areas absent a compelling need.⁵⁹ The fact that the City of Skagway has the largest jurisdictional area of any city government bears no relevance to the merits of the proposed Skagway borough.

The Petitioner also attempts to draw distinctions between the proposed Skagway borough and the Bristol Bay Borough. For example, the Petitioner emphasizes the fact that the Bristol Bay Borough was the first borough in the Bristol Bay region (i.e., before the Lake and Peninsula Borough, which now surrounds the Bristol Bay Borough on three sides). By being the first, the Petitioner reasons that the Bristol Bay Borough carved out a portion of a socially, culturally, and economically integrated area. In contrast, the

⁵⁹ 3 AAC 110.130. BOUNDARIES. . . . (c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

(d) The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135.

Petitioner stresses that the Skagway borough merely proposes to incorporate the residual portion of unorganized borough territory at the northern end of Lynn Canal.

DCED does not concur with the argument that the sequence of incorporation in relation to surrounding areas has any relevance to the borough incorporation standards. The Petitioner's reasoning suggests that if the Lake and Peninsula Borough had incorporated first and left out the area now encompassed by the Bristol Bay Borough (King Salmon, Naknek, and South Naknek), the subsequent incorporation of a borough encompassing those three residual communities would be immune from any criticism that it lacks regional characteristics.

4. CONCLUSION BY DCED

In a narrow sense, the proposed Skagway borough conforms generally to natural geography. However, DCED considers such an extremely narrow application of the standard to be indefensible. Borough governments are intended to encompass large geographic regions. For reasons cited previously, DCED does not view the proposed Skagway borough as consistent with such intent.

Moreover, the fact that the City of Skagway is the largest city (geographically) in Alaska or that the proposed Skagway borough encompasses all of the contiguous unorganized area in that particular vicinity has no bearing on the merits of the proposal. As was noted with respect to the analysis of standard number nine, there are alternative ways of extending borough government to Skagway other than incorporation. If Skagway is ultimately included within the bounds of an organized borough, that borough must conform to the constitutional, statutory, and regulatory standards regarding boroughs.

Based on the foregoing, DCED concludes that the geography standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) – when applied in the proper regional context – is not satisfied by the Skagway borough proposal.

M. STANDARD NUMBER THIRTEEN: INCLUSION OF ALL LAND AND WATER NECESSARY TO PROVIDE ESSENTIAL SERVICES ON AN EFFICIENT, COST-EFFECTIVE LEVEL

1. THE STANDARD ESTABLISHED IN LAW

State law requires that each proposed borough must include all land and water necessary to provide full development of municipal services.

Specifically, State law provides as follows (emphasis added by underlining):

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:

. . . .

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

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

(1) land use and ownership patterns;

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

2. VIEWS OF THE PETITIONER

The Petitioner addresses this particular standard on page 24 of the Petition.

When the Local Boundary Commission approved annexation of over 300 square miles to the City of Skagway in 1979, it noted that:

19 AAC 05.010(a)(4) The territory for annexation is in need of Skagway City general fund services, is presently benefitted (sic – error in 1979 decisional statement) thereby, and the City of Skagway is capable and willing to provide general fund services; *the City is the only local government entity in existence in the area capable of supplying needed services and jurisdiction to residents of the territory* (emphasis added [by Petitioner]).

The same is true today. The area described above includes all land and water necessary to provide full development of essential borough services on an efficient, cost-effective level. The proposed municipal boundary includes: land for dense urban and rural low-density housing; the community's drinking water source and hydroelectric power source, land for a landfill, incinerator and ashfill area; areas for industrial and commercial development; access to town by ice-free port, rail, road and air; abun-

dant areas for developed and undeveloped recreation; and fire and first responder capabilities for urban and rural emergencies. In fact, the City of Skagway already provides these stable borough-like services.⁶⁰ While this may also be true for other first class cities in the unorganized borough, Skagway is different from other cities in that it is delivering these services to a large, borough-like, urban and rural geographic area (466 square miles) and to a large seasonal resident population and visitor population.

While Skagway currently provides the local government needs of its residents in its current status as a City, that fact should not defeat this petition. Despite the fact that this proposal does not extend local government service to any unincorporated territory or to any citizens presently outside an organized municipality, the proposal promotes a more efficient and sustainable self-government. In the case of the April 16, 1999,

⁶⁰ (footnote original) The City of Skagway currently provides the following areawide services: education, planning, platting and land use regulation; general government business licenses; taxation; regulation of ground transportation, public utilities (water, sewage, solid waste, and cemeteries); harbor and docks; library; museum; police, fire and emergency medical services; health and safety services regarding litter, fireworks, nuisances, etc.; traffic control; roads; building and construction; economic development; tourism development and planning; parks and recreation; local emergency response (oil and Hazmat planning); capital improvement projects and planning; animal protection; and lease and sale of public lands, use permits and easements.

decisional statement on the Ketchikan Gateway Borough annexation proposal, the LBC ruled that it is erroneous to equate the extension of borough government jurisdiction with the automatic satisfaction of the constitutional principle promoting local self-government. We submit that one cannot conversely argue that the lack of extension of borough government jurisdiction automatically negates satisfaction of the constitutional principle promoting local self-government. As always, the facts and case currently before the LBC deserves independent consideration of Skagway's site specific circumstances. Approval of the Skagway petition will ensure that local self-government in Northern Lynn Canal continues. As discussed in Section D(2) and B(4), consolidation of the City of Haines, Haines Borough, community of Klukwan and City of Skagway as the Model Borough Boundary suggests, is difficult to envision due to the longstanding economic, social, and cultural rivalries of these communities and towns and their very different approaches and beliefs about the role and powers of local government. Granting the Skagway petition will help guarantee that efficient and effective local government, as practiced for over 100 years, can continue ad infinitum.

3. ANALYSIS BY DCED

As noted, the Petitioner expresses the view that one cannot argue "that the lack of extension of borough government jurisdiction automatically negates satisfaction of the constitutional principle promoting local self-government." Even though DCED never advanced that argument, it happens to concur with the Petitioner on that point. In other words, by not extending borough government one does not reverse achievement of local-self government. Nevertheless, implementation of the Skagway borough proposal would do nothing to advance local-self government. It would merely reconstitute the existing city government as a borough government with no increase in jurisdictional territory or responsibilities.

As noted, the Petitioner also places significance on the 1979 decision by the Commission regarding annexation to the City of Skagway. Specifically, the Petitioner notes that the Commission's 1979 decisional statement indicated that "the City [of Skagway] is the only local government entity in existence in the area capable of supplying needed services and jurisdiction to residents of the territory."

DCED does not share the Petitioner's view concerning the significance of the 1979 statement. In fact, DCED considers the 1979 determination by the Commission to be off the point in terms of the current proceedings for four fundamental reasons. First, the Commission made the 1979 determination in the context of city annexation – not borough incorporation or borough annexation. Second, the determination was made concerning only a tiny portion of the territory proposed for annexation. Third, the record in the 1979 proceeding indicates that no examination – cursory or otherwise – was made of the capabilities of any existing

borough to serve the area. Fourth, even if the Commission had carefully considered alternatives such as annexation to an existing borough in 1979, circumstances can certainly change over an interval of twenty-three years.

1979 Determination was Made in Context of City Annexation

The Commission made the determination at issue with respect to former 19 AAC 05.010(a)(4) – a standard for annexation of territory to a city government.⁶¹ It would be improper to extend the Commission’s conclusion concerning a city annexation standard to a borough incorporation or annexation proposal. The contemporary equivalent of 19 AAC 05.010(a)(4) is found at 3 AAC 110.090(b), which reads as follows:

Territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

That standard has to be met for any annexation to any city, whether the city is inside or outside an organized borough. Recently, the Commission approved the annexation of 4.58 square miles to the City of Homer. In doing so, the Commission concluded with respect to 3 AAC 110.090(b) as follows:⁶²

The legal ability of the Kenai Peninsula Borough to provide services to the territory proposed for annexation is circumscribed by the provisions of Article X, § 5 of the Constitution of the State of Alaska and AS 29.35.450(b). . .

The City of Homer enjoys superior fiscal capacity, capital facilities, and staff resources to serve the territory petitioned for annexation as compared to other existing municipal governments. In sum, the record demonstrates that no other existing city government or organized borough can provide essential city-type services to the area petitioned for annexation more efficiently or more effectively than the City of Homer.

It would be erroneous to interpret the Commission’s conclusions in the Homer proceeding regarding 3 AAC 110.090(b) as evidence that Homer does not belong in the Kenai Peninsula Borough or that the City of Homer would meet the standards for borough incorporation.

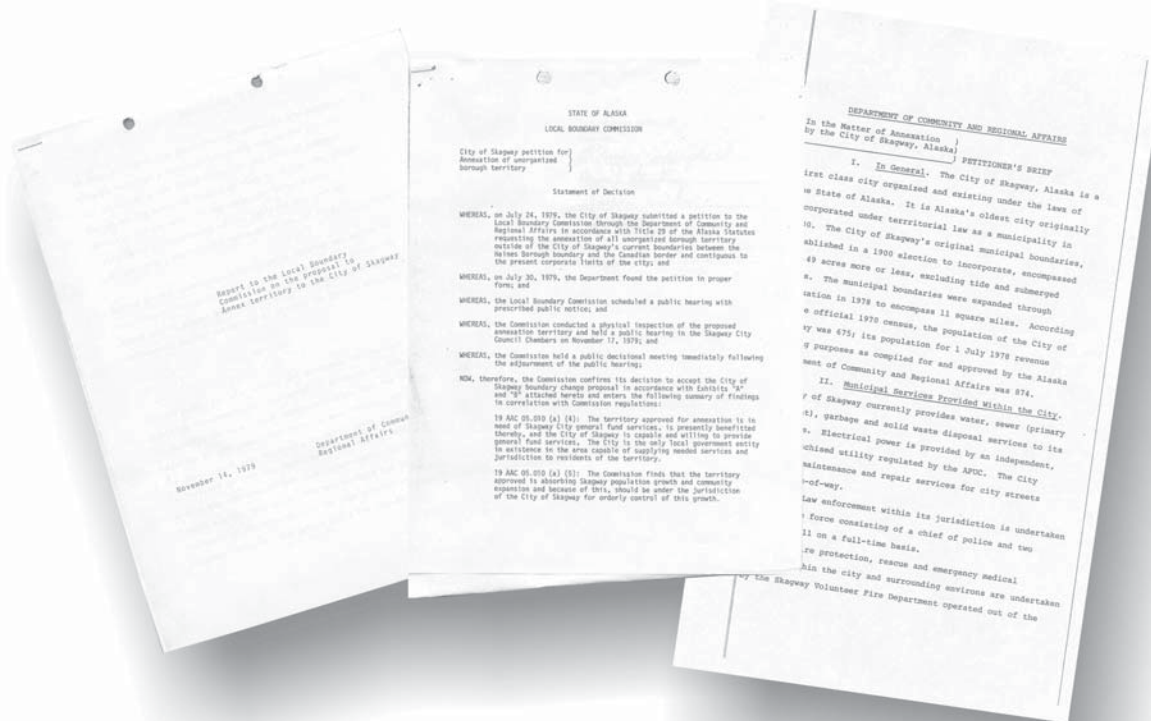
1979 Determination Applied Only to a Tiny Portion of Territory Proposed for Annexation

When the Commission concluded that the City of Skagway could best serve the “residents of the territory”, it was referring only to a tiny portion of the 432.1 square miles approved for annexation. The 1979 petition noted with respect to the inhabited portion of the territory proposed for annexation that:⁶³

⁶¹ 19 AAC 05.010. Annexable Territory. (a) Territory which is contiguous to a city may be annexed to that city if one or more of the following standards are met: . . . (4) the territory is presently in need of a municipal service or services which the city can provide more efficiently than another municipality; . . .

⁶² Local Boundary Commission, *Statement of Decision in the Matter of the March 20, 2000 Petition by the City of Homer for Annexation of Approximately 25.64 Square Miles*, page 29 (December 26, 2001).

⁶³ *Petition in the Matter of Annexation by the City of Skagway, Alaska*, page 12, July 24, 1979.



Key portions of 1979 record in Skagway annexation, included in this report as Appendix G.

A total of 51 persons reside outside the City limits and within the area proposed for annexation. There are approximately 175 acres of privately owned land in the area, primarily along the Dyea Road and in Dyea Valley.

The 175 acres in question comprised a mere six one-hundredths of one percent (0.06%) of the total area proposed for annexation.

No Examination Was Made in 1979 of the Capabilities of Any Existing Borough to Serve the Area

DCED carefully examined the record in the 1979 Skagway annexation proceeding. The petitioner (City of Skagway) touched on the issue of borough government only in a general fashion. The City made the following points in that regard:⁶⁴

- The Skagway City Council opted to seek a large city annexation rather than borough incorporation because a borough was viewed as “overlapping, expensive, and largely unnecessary.”
- There was no process in law to form a unified municipality in one step.
- The Council acknowledged “a legislative trend toward classification of all lands in the State and toward elimination of the unclassified borough.”
- Annexation of 432.1 square miles “might be considered large for a city, but it is a mere paucity by present borough standards prevailing in the state.”
- Little useful purpose could be seen in organizing another separate local government.

⁶⁴ *Id.*, page 11.

DCED's records provide no evidence that the petitioner ever contemplated the possibility of being included in an existing borough during the 1979 annexation proceeding. In fact, while acknowledging legislative pressure to form boroughs (the apparent driving motivation in the current proceeding) the City of Skagway opted to seek an expansion of its jurisdictional territory by nearly 40 fold. The annexation was of an unprecedented scale. It resulted in an increase in the municipal land entitlement to the City of Skagway to 7,977 acres.⁶⁵

Like the petitioner in the 1979 proceeding, the Department of Community and Regional Affairs also did not address the suitability of including Skagway within another existing borough. The matter is given no attention in the agency's report to the Commission regarding the 1979 Skagway annexation proposal. Moreover, the Commission never addressed the matter in its two-page December 19, 1979 decisional statement concerning the City of Skagway annexation proposal.

Appendix G to this report includes relevant excerpts of the 1979 annexation record, including: (1) a three-page excerpt from the 1979 annexation petition setting forth the City of Skagway's full rationale for the size of its annexation proposal (including the discussion of boroughs summarized above), (2) DCRA's two-page report to the Commission on the matter, and (3) the Commission's decisional statement.

Circumstances Change in Twenty-Three Years

For the three reasons discussed leading up to this point, DCED does not accept the Petitioner's view that the Commission determined in 1979 that no existing organized borough was capable of serving Skagway.

However, for the sake of discussion, even if the Commission had made such a determination, circumstances can certainly change in twenty-three years. Consider, for example, that although the corporate boundaries of the City of Skagway remained unchanged for the first seven decades of its existence, those boundaries underwent dramatic changes over a relatively short period in the 1970s. Moreover, representations of local policy views concerning municipal government made to the Local Boundary Commission during the 1979 proceedings have changed dramatically.

The City of Skagway was incorporated on June 28, 1900. Its boundaries originally encompassed 931.49 acres (1.45 square miles). The original boundaries of the City of Skagway remained static for more than seven decades.

In November 1976, the City of Skagway petitioned for annexation of 166.17 square miles. After conducting a hearing on the matter in Skagway on June 22, 1977, the Local Boundary Commission significantly amended the petition, granting annexation of only approximately 9.54 square miles.

By amending the petition, the Commission, in effect, rejected the annexation of 156.63 square miles (94.3% of the City's 1976 proposal). The Commission had concluded that proposed annexation to the City of Skagway overreached the City's jurisdictional requirements.

As appellee in *Mobil Oil v. Local Boundary Commission*, *id.*, the Commission was, no doubt, well aware of the distinction that the Alaska Supreme Court drew in that case between city governments and borough governments just two years before the Skagway annexation petition was filed. The

⁶⁵ Before annexation, the City anticipated that it would be entitled to only 500 acres.

Court held in *Mobil Oil* that boroughs are not restricted to the form and function of cities.⁶⁶ Moreover, the Court noted that, unlike cities, boroughs are meant to provide local government for regions as well as localities and to encompass lands with no present municipal use. Specifically, the Court stated as follows (at 100 – emphasis added):

. . . we reach the contention that inclusion of the plaintiff's property at Prudhoe Bay within the North Slope Borough is a denial of substantive due process. In support of this proposition, the property owners offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit.⁶⁷ We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has been called a 'limitation of community'⁶⁸ which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .⁶⁹

The limitation has been found implicit in words like 'city' or 'town' in statutes and constitutions⁷⁰ or inferred from a general public policy of encouraging mining or agriculture.⁷¹ In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban

⁶⁶ The Court referred to cities as municipalities. The petition to incorporate the North Slope Borough, which was the subject of the case, was filed in 1971. At that time, statutory standards and procedures for borough incorporation and other permanent State laws concerning boroughs were codified within Title 7 of the Alaska Statutes (Boroughs). State laws relating to cities were codified within Title 29 of the Alaska Statutes (Municipal Corporations). Hence the Supreme Court referred to cities as "municipalities." Title 7 and Title 29 were repealed and enacted as new Title 29 (Municipal Government) in 1972.

⁶⁷ (footnote original) The property owners rely principally upon *United States v. City of Bellevue, Nebraska*, 474 F.2d 473 (8th Cir. 1973); *State ex rel. Attorney General v. City of Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 120 So. 335 (1929); *City of Aurora v. Bryant*, 240 Ind. 492, 165 N.E.2d 141 (1960); *State v. Village of Leetonia*, 210 Minn. 404, 298 N.W. 717 (1941); *Portland General Electric Co. v. City of Estacada*, 194 Or. 145, 241 P.2d 1129 (1952).

⁶⁸ (footnote original) 1 C. Antieau, *Municipal Corporation Law* § 1.04 (1973).

⁶⁹ (footnote original) *State ex rel. Davis v. Town of Lake Placid*, 109 Fla. 419, 147 So. 468, 471 (1933).

⁷⁰ (footnote original) E. g., *Town of Satellite Beach v. State*, 122 So.2d 39 (Fla.App.1960); *State v. Town of Boynton Beach*, 129 Fla. 528, 177 So. 327 (1937); *State ex rel. Davis v. City of Largo*, 110 Fla. 21, 149 So. 420 (1933); *State ex rel. Attorney General v. City of Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 120 So. 335 (1929); *Chesapeake and O. Ry. v. City of Silver Grove*, 249 S.W.2d 520 (Ky. 1952); *Portland General Electric Co. v. City of Estacada*, 194 Or. 145, 241 P.2d 1129 (1952).

⁷¹ (footnote original) E. g., *State ex rel. Bibb v. City of Reno*, 64 Nev. 127, 178 P.2d 366 (1947).

⁷² (footnote original) E. g., *City of Sugar Creek v. Standard Oil Co.*, 163 F.2d 320 (8th Cir. 1947); *Waldrop v. Kansas City Southern Ry. Co.*, 131 Ark. 453, 199 S.W. 369 (1917); *City of Aurora v. Bryant*, 240 Ind. 492, 165 N.E.2d 141 (1960); *State v. Village of Leetonia*, 210 Minn. 404, 298 N.W. 717 (1941).

municipal uses.⁷² The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.⁷³ For these reasons, the municipal cases relied upon by the property owners are poor guides to resolving whether organization of an Alaskan borough violates substantive due process.

The initial annexation took effect on March 6, 1978. Undeterred by the dramatic reduction of its initial proposal for expansion, the City of Skagway petitioned for annexation of 432.1 square miles on July 27, 1979, less than seventeen months after the first annexation took effect. The 1979 proposal was 2.75 times the size of the original 1976 proposal.

All but a tiny fraction (99.94%) of the territory proposed for annexation in 1979 was publicly-owned. Most of it is rugged and remote with small pockets of residential development closer to the core of Skagway. Only 51 individuals inhabited the territory.

Notwithstanding such characteristics, the Commission approved the petition after holding a hearing on the matter in Skagway on November 17, 1979. While there was no express limitation on the inclusion of large

unpopulated areas within a city at the time (as there is now in 3 AAC 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).

It is difficult to account for the approval of the 1979 petition. Perhaps the City's representation to the Commission twenty-three years ago that it had rejected the option of borough formation in favor of a large city annexation persuaded the Commission to grant a city annexation of unprecedented scale. However, the policy views of the Skagway city government have turned dramatically during the intervening twenty-three years. Today, the City of Skagway endorses the option of a Skagway-only borough.

Policy views and circumstances can change over time and they have done so dramatically in this case. DCED is evaluating the Skagway borough proposal based on current facts.

Consideration of Other Factors

3 AAC 110.060 provides that the Commission may consider any relevant factor in judging whether the standard at issue has been met. Specifically listed are land use and ownership patterns; ethnicity and cultures; population density patterns; existing and reasonably anticipated transportation patterns and facilities; natural geographical features and environmental factors; and extraterritorial powers of boroughs. With the exception of extraterritorial powers of boroughs, all of the listed factors have been addressed previously in this report.

⁷³ (footnote original) See note 14, *supra*.

Concerning extraterritorial powers, there is no evidence that the adjoining Haines Borough exercises any extraterritorial powers within the territory proposed for incorporation. The same is true for the more distant City and Borough of Juneau and all other boroughs.

4. CONCLUSION BY DCED

The conclusion reached here is similar to the one reached with respect to the preceding standard (number twelve). In a narrow sense – which is not fitting for borough government – it can be argued that the proposed Skagway borough includes all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. However, as has been stressed repeatedly throughout this report, borough governments are intended to encompass large natural regions.

In the contemporary proceedings, the Petitioner characterizes the territory proposed for borough incorporation as “a large, borough-like, urban and rural geographic area”⁷⁴ that meets all of the standards for borough government. However, DCED takes the view that the City of Skagway characterized the identical area more accurately on July 27, 1979, when it portrayed the area as “a mere paucity by present borough standards prevailing in the state.”

Based on the foregoing, DCED concludes that the standard in AS 29.05.031(a)(2) and 3 AAC 110.060(a) requiring the inclusion of all necessary areas – when applied in the proper regional context – is not satisfied with respect to the Skagway borough proposal.

⁷⁴ Petition, page 24.

N. STANDARD NUMBER FOURTEEN: RELATION OF PROPOSED BOROUGH BOUNDARIES TO THE MODEL BOROUGH BOUNDARIES

1. THE STANDARD ESTABLISHED IN LAW

The Local Boundary Commission must consider “model borough boundaries” in the course of any borough incorporation proposal. Specifically, State law provides as follows:

3 AAC 110.060. BOUNDARIES.

....

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

The term “model borough boundaries” is defined in 3 AAC 110.990(9) as follows:

3 AAC 110.990. DEFINITIONS.

Unless the context indicates otherwise, in this chapter . . .

(9) “model borough boundaries” means those boundaries set out in the commission’s publication *Model Borough Boundaries*, revised as of June 1997 and adopted by reference.

2. VIEWS OF THE PETITIONER

The Petitioner recognizes that the boundaries of the proposed Skagway borough do not conform to the model borough boundaries for the Lynn Canal area. At page 25 of the proposal, the Petitioner takes the view that local opposition to the more expansive model borough boundaries would block their implementation, except through a legislative mandate:

The Model Borough Boundary (MBB) for this region would require the long-established City of Skagway to either annex into the Haines Borough or consolidate with the long-established Haines Borough, City of Haines, and community of Klukwan. Unless mandatory borough formation was again enacted, a consolidation of Klukwan, Haines Borough, City of Haines, and City of Skagway would require approval by a majority of the voters in these communities. Such a consolidation of municipal governments has not been approved by voters in recent memory. Even those that have proposed consolidating areas where residents have strong cultural and social ties have failed, for example, the attempted consolidation of the Haines Borough and City of Haines. Historically, it has been difficult to convince residents of long-standing, independent communities to consolidate.

At page 26 of the proposal, the Petitioner expresses the opinion that implementation of the model borough boundaries in the area is unlikely to reduce the number of local governments serving Haines, Skagway, and Klukwan. Moreover, the Petitioner asserts that the cost of providing government services to the area would increase and that local governments would serve no greater population if the model borough boundaries were implemented. The Petitioner, however, recognizes that counter arguments can be made (emphasis original):

We expect LBC staff to counter these points with discussion about the feasibility of annexation or consolidation actions. Since meaningful arguments can be

raised both for and against these local government actions, we urge Local Boundary Commissioners to consider not only how borough government can conceptually be achieved, but also to consider how borough government can realistically be achieved and be successful in Northern Lynn Canal. This is what has motivated us to submit this petition.

Should Skagway be forced to consolidate or be annexed to Haines and Haines Borough to enjoy the benefits and advantages of being a borough under Alaska law? We believe that to deny the Skagway area the ability to form a borough when it meets other relevant criteria is arbitrary.

The Petitioner expresses the view that the model boundaries for the area encompassing Skagway do not serve the best interests of the state. At page 27 of the proposal, the Petitioner indicates as follows:

If annexation or consolidation were forced to achieve the Model Borough Boundary, it is difficult to imagine anything other than the introduction of inefficiencies and strife to municipal government rule in this area-which is the opposite of the State's best interests and the exact situation the statutory and regulatory requirements are designed to avoid.

Lastly, the Petitioner stresses that governmental boundaries have been established in the area for multiple purposes, but that none of the various sets of boundaries is universally used.

. . . there is no universally-used or customary boundary for this area. Neither the area's Model Borough Boundary nor the boundary of the proposed Municipality of Skagway, City of Haines, or Haines Borough match the U.S. census sub-area, the U.S. judicial district, or the State senate or house district boundaries. There is no Rural Education Attendance Area (REAA) boundary in the region.

3. ANALYSIS BY DCED

The standard at issue concerns the relationship between the boundaries of a proposed borough and its respective model.⁷⁵ "Map 9" on the following page shows the model borough boundaries for the Lynn Canal area. Those boundaries encompass all of the Haines Borough, Klukwan (an enclave within the Haines Borough), and Skagway (in practical terms, an enclave within the Haines Borough).

The model borough boundaries for the Lynn Canal region encompass an estimated 3,175 square miles.⁷⁶ That figure is modest in comparison to most existing boroughs in Alaska.

Specifically, the area within the Lynn Canal model borough boundaries is less than 30% of the median size of all organized boroughs in Alaska and less than 20% of the mean size of all organized boroughs in Alaska.

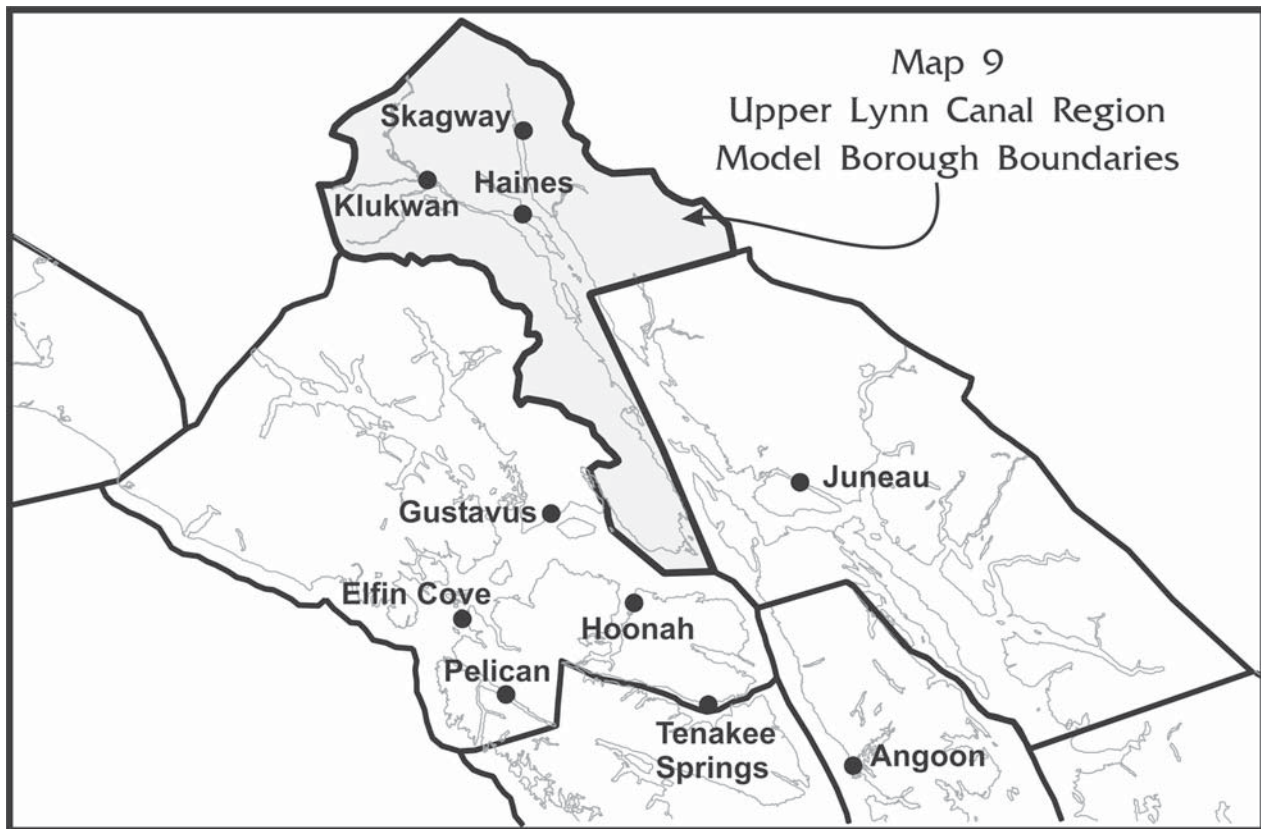
The Lynn Canal model borough boundaries encompass an area that is smaller than that encompassed by three-quarters of the existing organized boroughs in Alaska. Only the Municipality of Anchorage, Ketchikan Gateway Borough, and Bristol Bay Borough encompass smaller areas.⁷⁷

If comparisons were made between the Lynn Canal model borough and other boroughs in terms of their model borough boundaries, the contrast would be even greater. As noted previously, the average size of the sixteen existing organized boroughs in Alaska is 17,599 square miles. However, if all of

⁷⁵ The Petitioner makes a number of statements concerning implementation of the model borough boundaries in the Lynn Canal area, certain of which are incorrect. In the interests of promoting a better understanding of the issues, DCED identifies the errors here. At page 25, the Petitioner asserts that, absent voter approval, the model borough boundaries could be achieved only by a legislative mandate. In fact, boundaries may be changed by means other than those involving voter approval or legislative mandate – as occurred with the expansion of the City of Skagway in 1976-1978 and 1979-1980. At page 26, the Petitioner incorrectly implies that Klukwan currently has some municipal structure. In fact, Klukwan is an unincorporated community in the unorganized borough. Also at page 26, the Petitioner indicates that achievement of the model borough boundaries would "not extend local government to any citizens or territory." It would with respect to Klukwan.

⁷⁶ The Haines Borough encompasses 2,730 square miles; the City of Skagway encompasses 443.1 square miles and Klukwan, which is an enclave within the Haines Borough, encompasses an estimated 1.9 square miles < http://www.dced.state.ak.us/cbd/commdb/CF_CIS.cfm>. The total of those three areas is 3,175.

⁷⁷ Excluding the Haines Borough which, of course, is encompassed by the model borough boundaries in question.



Alaska were divided into organized boroughs using the model borough boundaries, the average size would increase slightly to 18,754 square miles (a 6.6% overall increase).

Five of the sixteen existing boroughs would expand if model borough boundaries were implemented. The Ketchikan Gateway Borough (one of the three existing boroughs smaller than the Lynn Canal model) would grow from its current 1,752 square miles to approximately 7,297 square miles. The model boundaries of the Ketchikan Gateway Borough encompass an area 2.3 times larger than that encompassed by the Lynn Canal model borough boundaries.

In 1998, the Ketchikan Gateway Borough petitioned the Local Boundary Commission to annex all but 21.4 square miles of the territory within its model borough boundaries. The exclusion of the 21.4 square miles would have rendered Hyder an enclave consisting of 17.9 square miles inhabited by 151 residents. Additionally, Meyers Chuck would have

become a near-enclave of 3.5 square miles in which 28 individuals lived. The Commission viewed the two exclusions as problematic and invited the Borough to amend its petition to include those areas. After the Borough declined to do so, the Commission denied its petition. In doing so, the Commission noted as follows:⁷⁸

The effect and significance of the failure of a borough proposal to conform to its model boundaries must be judged in the unique circumstances presented by each petition. . . .

⁷⁸ *Statement of Decision in the Matter of the February 28, 1998 Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, Local Boundary Commission, page 7 (April 16, 1999).

The Commission believes that some deference is owed to the model borough boundaries beyond that called for in a narrow interpretation of 19 AAC 10.190(c).⁷⁹

. . . the Borough's model boundaries also reflect the application of all borough boundary standards and relevant constitutional principles to the pertinent facts in the Borough's circumstances. In the record, there is insufficient justification for deviation from those model boundaries here.

Skagway borough proponents raise the specter that implementation of the model borough boundaries for the Lynn Canal region would result in more expensive and less efficient government. Specifically, the proponents state at pages 26 – 27 of the Petition:

Even with delegation of certain powers from the Borough to the cities, there would be increased costs of collecting taxes, providing services at a distance, and conducting borough assembly business at a distance. While there would be one less school district in the state, the cost savings would be minimal given that Skagway already has a combined principal/superintendent position so there would not be any salary reductions (often the major cost

savings). At the same time, costs would increase, for example, travel budgets for the administration.

. . . .

If annexation or consolidation were forced to achieve the Model Borough Boundary, it is difficult to imagine anything other than the introduction of inefficiencies and strife to municipal government rule in this area-which is the opposite of the State's best interests and the exact situation the statutory and regulatory requirements are designed to avoid.

Those views seem to conflict with public policy measures enacted by the legislature dealing with the size and financial efficiency of school districts. For example, in 1998, the Alaska legislature enacted new laws concerning the funding of education. Among the new laws was a requirement that each school district must spend at least 70% of its operating funds on instruction (AS 14.17.520).

The requirement concerning spending for instruction was phased in over a three-year period. In 1999, each district had to spend at least 60% of its operating funds on instruction. In 2000, the requirement increased to 65%. Beginning in 2001, each district had to spend at least 70% on instruction.

The State Board of Education is permitted to grant waivers if it determines the "the district's failure to meet the expenditure requirements of this section was due to circumstances beyond the control of the district" (AS 14.17.520(d)).

Three school districts operate within the Lynn Canal model borough boundaries. Those are the Haines Borough School District, the Skagway City School District, and the Chatham Regional Education Attendance Area (Chatham REAA).⁸⁰

⁷⁹ Since renumbered as 3 AAC 119.190(c).

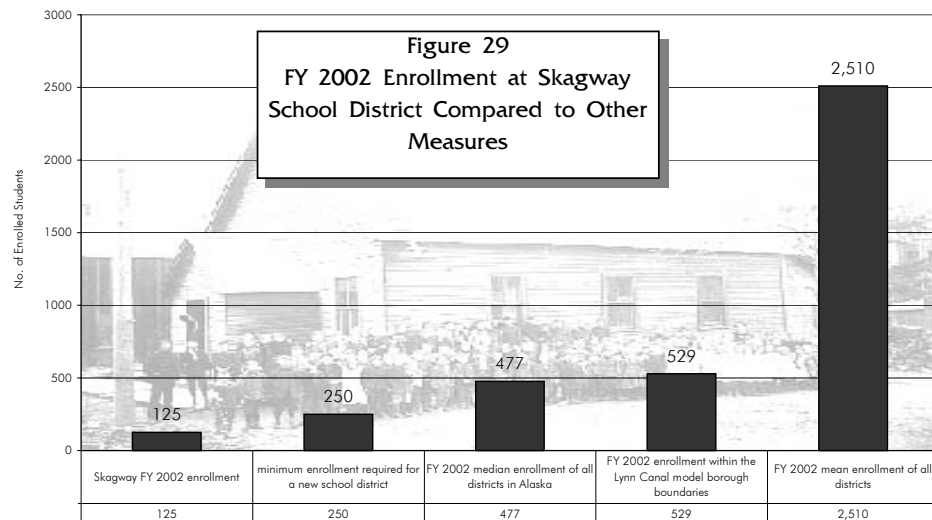
⁸⁰ The Chatham REAA serves Klukwan, Angoon, Cube Cove, Gustavus, and Tenakee Springs. Of those communities, only Klukwan is within the Lynn Canal model borough boundaries.

The Skagway City School District has sought and received waivers from the State Board of Education concerning the required minimum expenditure for instruction every year since the requirement was instituted (FY 1999, FY 2000, FY 2001, and FY 2002).

Moreover, the Chatham REAA has sought and received waivers in three of the four years in question (FY 2000, FY 2001, and FY 2002). In contrast, the Haines Borough has satisfied the requirement for minimum instruction expenditure each year since the requirement was instituted. (FY 2002 *Budget Waivers – Summary*, Department of Education & Early Development)

The audit of the City of Skagway School District for FY 2001 indicates that more than 25% of the Skagway School District's operating costs were for school administration, district administration, and district administration-support services.⁸¹

In FY 2002, the City of Skagway School District ranked as the fifth smallest school district among the 53 districts in Alaska (measured in terms of enrollment).⁸² Skagway's FY 2002 enrollment was just under five percent of the mean size of all school districts in Alaska. Moreover, the FY 2002 Skagway City School District enrollment was only slightly more than one-quarter of the size of the median district. Further, the FY 2002 enrollment of the Skagway School District is exactly one-half of the minimum required for the creation of new school districts under AS 14.12.025.



Implementation of the Lynn Canal model borough boundaries would consolidate two school districts (Haines and Skagway) and make for improved boundaries in the third (Chatham REAA). The FY 2002 enrollment within the Lynn Canal model borough boundaries was 529. That figure exceeded the FY 2002 enrollment in more than half (55%) of the school districts in Alaska. Further, it is 2.1 times larger than the minimum enrollment required for a new school district under AS 14.12.025.

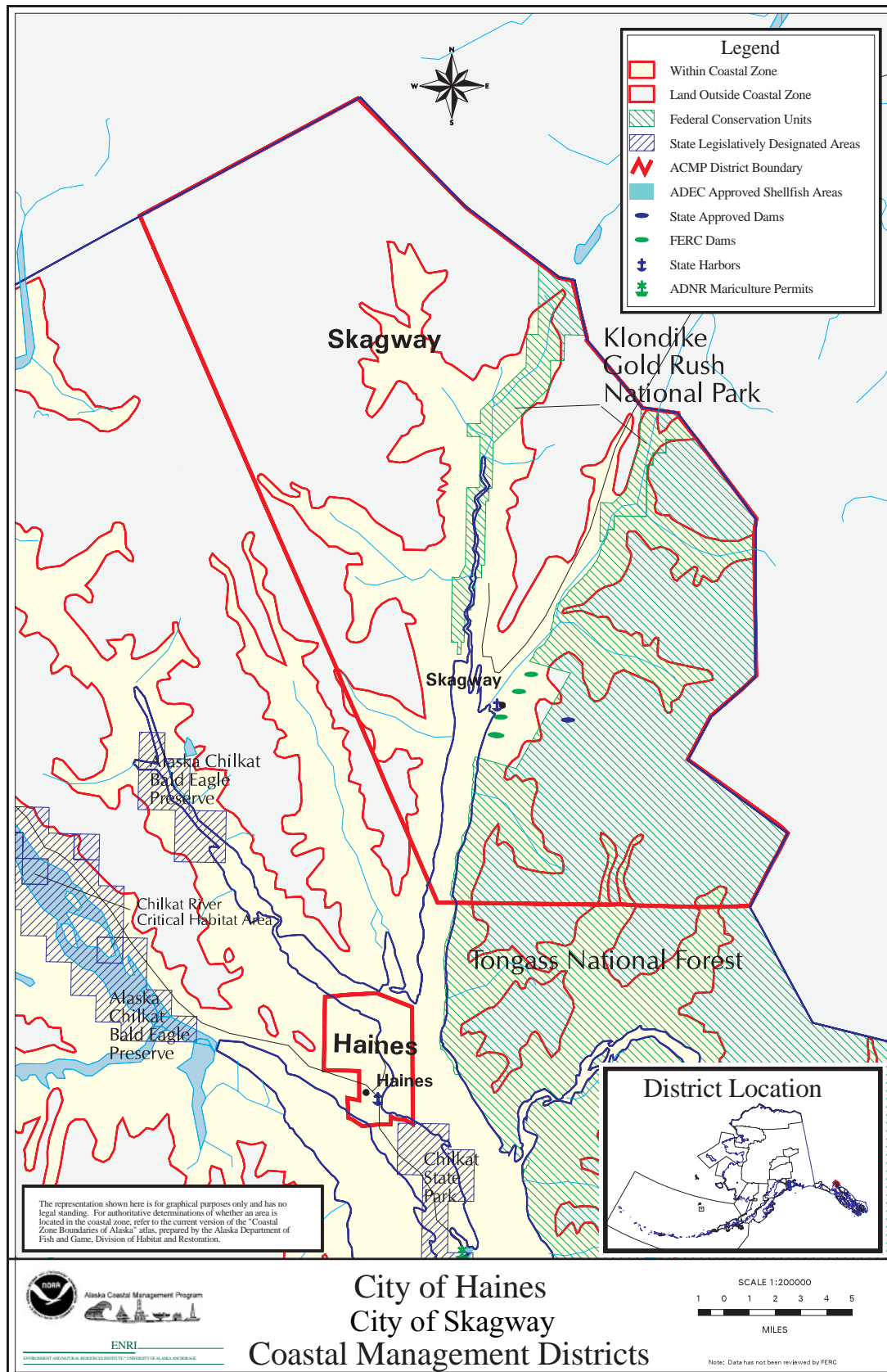
Figure 29 compares the FY 2002 enrollment at the City of Skagway School District to various other relevant measures noted.

As noted, implementation of the model borough boundaries in the Lynn Canal area would provide for improvements in the boundaries of the Chatham REAA. The

⁸¹ In FY 2001, school administration was considered part of instruction expenditures for purposes of the 70% instruction expenditure requirement. In FY 2002, School Administration – Support was broken out and was not counted as instruction expenditures.

⁸² The four smaller districts were the City of Pelican (18 students), Aleutians Region REAA (61 students), City of Tanana (69 students), and City of Hydaburg (101 students).

Map 10



Chatham REAA is headquartered in Angoon, approximately 150 miles from Klukwan and is accessible by air. In comparison, Haines is only about 21 miles from Klukwan and is accessible by road.

Because of the atypical jurisdictional boundaries involved, two school facilities were constructed to serve the northern part of the Haines Borough/Klukwan area. One is at Klukwan (operated by the Chatham REAA) and the other is a few miles north at Mosquito Lake (operated by the Haines Borough).

The Klukwan school serves grades KG – 8, while the Mosquito Lake School serves grades KG – 6. Some Mosquito Lake area students attend grades 7 – 8 at Klukwan or Haines. Mosquito Lake area and Klukwan area students in grades 9 – 12 typically attend school in Haines. Some Klukwan area students also attend school at Mt. Edgecumbe in Sitka.

On October 1, 2001, there were 10 students at the Mosquito Lake School and 25 at Klukwan. Both the Klukwan and Mosquito Lake schools are operating at well below capacity.

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.

Other opportunities for more efficient and effective service delivery may exist in terms of the assessment and collection of taxes, planning, platting, land use regulation, and other fundamental services if the Lynn Canal model borough boundaries were implemented.

For example, under the existing governmental structure, three different entities are responsible for setting coastal management policy in the area encompassed by the Lynn Canal model borough boundaries. The City of Haines operates a coastal management

district encompassing an estimated 20.9 square miles. The City of Skagway operates a coastal management district comprising an estimated 154 square miles. No other local districts exist within the Lynn Canal model borough boundaries. As such, State standards for coastal management apply to that portion of the coastal zone within the Lynn Canal model borough boundaries but outside the City of Haines and the City of Skagway. Coastal management districts in the Skagway-Haines area are shown on “Map 10” on the previous page.

Similarly, a number of different entities are responsible for platting within the area in question. The City of Skagway and the City of Haines assume that responsibility within their respective corporate boundaries. The Haines Borough acts as the platting authority within the Mud Bay Land Use Service Area and the Lutak Land Use Service Area. The State of Alaska serves as the platting authority with the remainder of the Haines Borough and in Klukwan.

There are also different entities responsible for the assessment and collection of taxes. Achievement of the model borough boundaries would consolidate that responsibility under one unit.

The Alaska Supreme Court addressed the vision of the constitutional convention delegates with respect to regional consistency and standardization in terms of government policy and responsibility for fundamental government services that would be achieved under a borough government. In *City of Homer v. Gangl*, 650 P.2d 396, 400 (Alaska 1982) the Alaska Supreme Court stated as follows:

The desire for uniformity can best be understood by a brief historical analysis of the evolution of local government in Alaska and

its constitutional framework.⁸³ The Alaska Constitution clearly states its philosophy on local government:

“The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.”

Alaska Const. Art. X, § 1. In an attempt to simplify local government and prevent the overlapping of governmental functions, the framers of the constitution (and, in particular, the Committee on Local Government) considered establishing a single unit of local government with the abolition of cities altogether.⁸⁴ Although the committee felt that a completely unified local government structure had very definite advantages, it was also considered a concept whose time had not yet come. Section 2 of Article X presents the

compromise solution: “All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.” However, these two units of government were not to be disparate and competing, but were intended to cooperate and collaborate.⁸⁵ Along with the joint service of city council member on the legislative bodies of both the city and borough, other provisions were included with the intent of encouraging integration between cities and boroughs.⁸⁶

4. CONCLUSION BY DCED

The Skagway borough proposal seeks to carve out a small fraction (less than one-seventh) of the territory within one of Alaska’s most modest-sized model boroughs. The Lynn Canal model borough boundaries encompass an area roughly one-sixth of the average of all model boroughs in Alaska.

⁸³ (footnote original) See generally R. Cease and J Saroff, *The Metropolitan Experiment in Alaska, A Study of Borough Government* (1968); and V. Fischer, *Alaska’s Constitutional Convention* (1975).

⁸⁴ (footnote original) See V. Fischer, *Alaska’s Constitutional Convention* at 121 (1975).

⁸⁵ (footnote original) A member of the Committee on Local Government offered the following explanation to the convention delegates:

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

4 Proceedings of the Alaska Constitutional Convention 2625 (January 1956).

⁸⁶ (footnote original) See, e.g., Article X, § 13, which provides for agreements for cooperative or joint administration of any functions or powers among local government, and for the voluntary transfer of functions from a city to a borough.

Reconstituting a city government with a small population as a borough is neither consistent with constitutional policies nor fundamental public policies set by the legislature as outlined in the foregoing analysis. For those reasons – coupled with prior analysis of other borough incorporation standards, particularly standard number eight – DCED concludes that the Skagway borough proposal fails to overcome the threshold set out in the standard at issue. That is, the Skagway borough proposal has not made the requisite specific and persuasive showing that the model borough boundaries for the Lynn Canal area are inappropriate.

Consequently, DCED concludes that the Skagway borough proposal does not comply with the model borough boundaries standard set out in 3 AAC 110.060(b) when that standard is applied in an appropriately broad context.

O. STANDARD NUMBER FIFTEEN: RELATION OF PROPOSED BOROUGH BOUNDARIES TO REAA BOUNDARIES

1. THE STANDARD ESTABLISHED IN LAW

State law requires the Local Boundary Commission to consider regional educational attendance area boundaries when determining the suitability of any borough incorporation proposal. Specifically, the law provides as follows:

3 AAC 110.060. BOUNDARIES.

....

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of educa-

tion 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.

2. VIEWS OF THE PETITIONER

The Petitioner states at page 27 of the Skagway borough proposal:

There is no Rural (sic) Education Attendance Area (REAA) boundary in the region.

3. ANALYSIS BY DCED

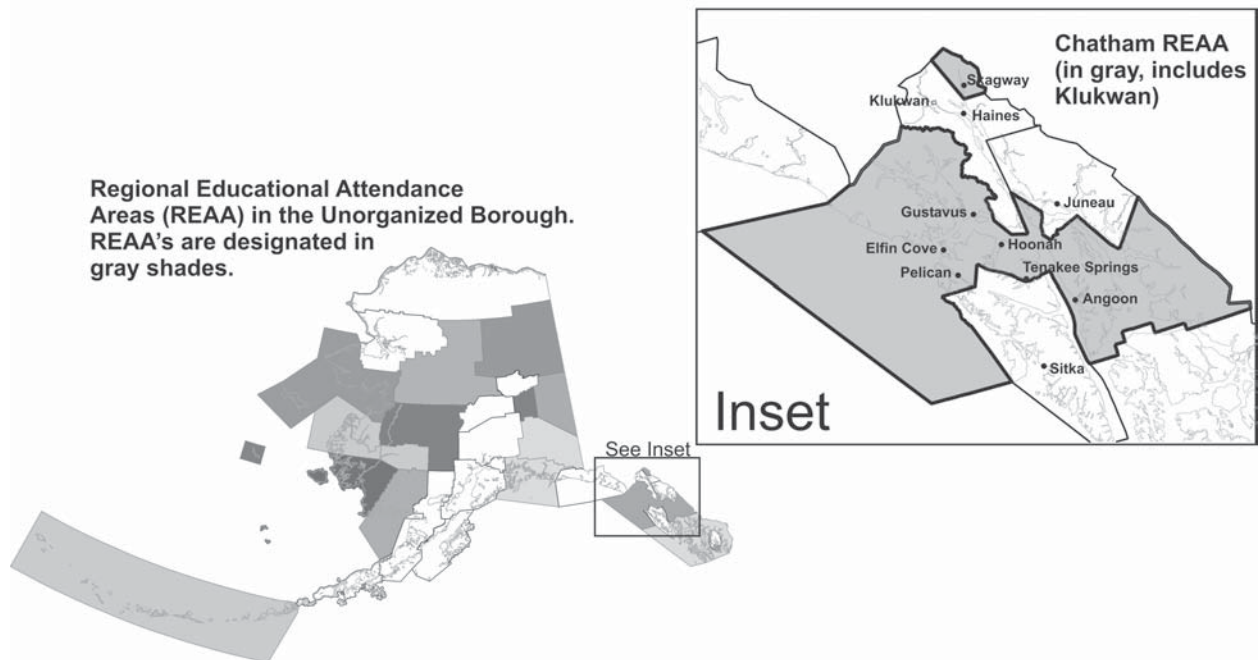
The Petitioner describes REAAs as rural educational attendance areas. In fact, REAAs are regional educational attendance areas.

The requirement that the Commission consider REAA boundaries concerning borough proposals is yet another indicator of the regional nature of boroughs. The standards established in law governing the creation of REAAs reflect regional characteristics. Many of those standards are similar to the statutory standards for borough formation. Specifically, AS 14.08.031(a) and (b) provide as follows:

Sec. 14.08.031. Regional educational attendance areas. (a) The Department of Community and Economic Development in consultation with the Department of Education and Early Development and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.

(b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational attendance area. As far as practicable, each regional educational attendance area shall contain

Map 11 Regional Educational Attendance Areas



an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the regional educational attendance areas, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication 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.

The unorganized borough is divided into nineteen REAAs. “Map 11” depicts the boundaries of the nineteen existing REAAs.

The Petitioner is incorrect in its assertion that the proposed Skagway borough is not within any REAA. As reflected in the foregoing, State law (AS 14.08.031(a)) requires division of the *entire* unorganized borough into regional educational attendance areas. Since Skagway

is within the unorganized borough, it is necessarily within a regional educational attendance area – in this case, the Chatham REAA.

The misunderstanding apparently stems from the fact that the authority of REAAs to provide education services within the corporate boundaries of home rule and first class cities is superseded by AS 14.12.010 and AS 29.35.260(b). Thus, while all of the City of Skagway is within the Chatham REAA, the duty and authority of the Chatham REAA to provide educational services within the City of Skagway is superseded by other laws. Those laws require educational services to be provided within the City of Skagway by the Skagway city government.

“Map 11” depicts the boundaries of the Chatham REAA. DCED considers the boundaries of the Chatham REAA to be contrived as far as Skagway and Klukwan are concerned. As noted, by law, since both Skagway and Klukwan are in the unorganized

borough, they must be within some REAA. The REAA standards set out in AS 14.08.031 are best met if Skagway and Klukwan are included in the same REAA as Angoon, Cube Cove, Gustavus, Tenakee Springs.⁸⁷ However, based on the prior analysis – particularly that provided with respect to standard number eight – DCED believes that, in the context of borough boundaries, both Skagway and Klukwan have much more in common with the Haines Borough than the Chatham REAA. Neither Skagway nor Klukwan is contiguous to other portions of the Chatham REAA. As previously noted, Klukwan is an enclave within the Haines Borough. Skagway is as well, for practical purposes.

4. CONCLUSION BY DCED

In addition to the analysis above, the examination of the previous standards (particularly standards eight and fourteen) is also relevant here. Based on that analysis, DCED concludes 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. The Lynn Canal model borough boundaries are superior to both.

Consequently, DCED takes the position that the Skagway borough proposal does not meet the standard set out in 3 AAC 110.060(c).⁸⁸

P. STANDARD NUMBER SIXTEEN: CONTIGUITY OF TERRITORY PROPOSED FOR INCORPORATION

1. THE STANDARD ESTABLISHED IN LAW

State law presumes that territory proposed for incorporation of a borough will be contiguous and that it will not contain enclaves. Specifically, the law provides as follows:

3 AAC 110.060. BOUNDARIES.

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

2. VIEWS OF THE PETITIONER

The Petitioner did not specifically address this standard separately.

3. ANALYSIS BY DCED

In a narrow context, the 443.1 square miles proposed for incorporation are contiguous and do not contain enclaves. However, in a regional context, the territory proposed for incorporation is, for practical purposes, an enclave within the Haines Borough.

⁸⁷ Links with the next closest REAA (Southeast Islands REAA) are more attenuated for both Skagway and Klukwan. The Southeast Island REAA operates schools at Coffman Cove, Hollis, Hyder, Kasaan, Naukati, Port Alexander, Port Protection, and Thorne Bay.

⁸⁸ DCED provided notice of the filing of the Skagway Petition to the Commissioner of the Alaska Department of Education and Early Development (DEED) on October 24, 2001. This report, along with an invitation to comment on the Skagway borough proposal, at least in the context of this standard, has been forwarded to the DEED Commissioner.

4. CONCLUSION BY DCED

The standard set out in 3 AAC 110.060(d) is satisfied in a narrow context. However, in a broader sense, 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.

Q. STANDARD NUMBER SEVENTEEN: EXTENT OF ANY OVERLAPPING BOUNDARIES

1. THE STANDARD ESTABLISHED IN LAW

State law provides that if a proposal to incorporate a borough includes territory already within the boundaries of another existing organized borough, the proposal must address standards for detachment of the overlapping territory from the existing organized borough. Specifically, State law provides as follows:

3 AAC 110.060. BOUNDARIES.

....

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

2. VIEWS OF THE PETITIONER

The Petitioner does not specifically address this standard.

3. ANALYSIS BY DCED

The Petition to incorporate the Skagway borough does not propose to include territory currently within any existing organized borough.

4. CONCLUSION BY DCED

The facts relating to the standard at issue are simple and straightforward. The territory proposed for incorporation as the Municipality of Skagway overlaps no area currently within the boundaries of another existing organized borough. Consequently, DCED concludes that the standard set out in 3 AAC 110.060(e) is satisfied.

R. STANDARD NUMBER EIGHTEEN: BEST INTEREST OF THE STATE

1. THE STANDARD ESTABLISHED IN LAW

State statutes permit the Local Boundary Commission to approve a borough incorporation proposal only if the Commission concludes that it will serve the best interests of the state. Specifically, the statutes provide as follows (emphasis added by underlining):

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

The Commission has adopted regulations to define the "best interests of the state." Those regulations provide as follows:

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

(1) promotes maximum local self-government;

(2) promotes a minimum number of local government units;

(3) will relieve the state government of the responsibility of providing local services; and

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

2. VIEWS OF THE PETITIONER

The Petitioner maintains that the best interests of the state are served by approval of the Skagway borough incorporation proposal, while alternatives do not serve that interest. The Petition states as follows on page 26:

. . . where the model boundaries do not forward the best interest of the state or if the model boundaries would not necessarily have the best effect on the areas surrounding the proposed borough, the LBC has the authority to adopt modified boundaries. Skagway's circumstances present such a situation for the LBC.

Moreover, on page 27 of the Skagway borough proposal, the Petitioner states the following:

If annexation or consolidation were forced to achieve the Model Borough Boundary, it is difficult to imagine anything other than the introduction of inefficiencies and strife to municipal government rule in this area-which is the opposite of the State's best interests and the exact situation the statutory and regulatory requirements are designed to avoid.

3. ANALYSIS BY DCED

The best interests standard focuses, in large part, on constitutional principles of local government in Alaska. DCED's analysis begins with the cornerstone of those principles – maximum local self-government.

Promotion of maximum local self-government

Article X, Section 1 of the Constitution of the State of Alaska provides as follows (emphasis added by underlining):

Section 1. Purpose and Construction.

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

The Alaska Supreme Court views the maximum local self-government clause as a constitutional policy that promotes the creation of borough governments. In *Mobil Oil v. Local Boundary Commission*, *id.*, (at 101) the Court noted regarding boroughs that "Our constitution encourages their creation. Alaska const. art. X, § 1."

The maximum local self-government clause promotes boroughs because they typically extend municipal government to areas that lack municipal structure. However, such is clearly not the case with the Skagway borough proposal. As noted previously, the Skagway borough proposal would merely reconstitute the City of Skagway as a borough government. The jurisdictional boundaries, number of people served, and even the levels of service provided currently by the City of Skagway would remain unchanged. For that reason, DCED rejects the view that Article X, Section 1 of Alaska's constitution encourages the formation of the proposed Skagway borough.

In *Mobil Oil*, the Court recognized that borough incorporation proposals are subject to review by the Local Boundary Commission and that the proposals must meet standards in law. 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)

Promotion of minimum number of local government units

Article X, Section 1 of the Constitution of the State of Alaska provides as follows (emphasis added by underlining):

Section 1. Purpose and Construction.

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

DCED addressed the minimum number of governments clause in the context of the Skagway borough proposal in its analysis of standards six and eight. The analysis is not repeated here. However, it is noted that DCED explicitly concluded with respect to standard number eight that, "approval of the Skagway borough proposal would contravene the express policy in Article X, Section 1 of Alaska's constitution calling for minimum numbers of local governments."

DCED also noted in its analysis regarding standard number fourteen 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.

Relief to State Government of Responsibility of Providing Local Services

When boroughs are formed, the State is relieved of direct responsibility for certain fundamental services such as education in unorganized areas, platting, and coastal management. However, in this case, granting the Skagway Petition would bring about no transfer of responsibilities for local service delivery from the State of Alaska to the borough.

Potential for Exposure of the State Government to Unusual and Substantial Risks as the Prospective Successor to the Borough in the Event of the Borough's Dissolution

There is no evidence in this proceeding that suggests the State of Alaska would be exposed to “unusual and substantial risks as the prospective successor to the borough in the event of the borough’s dissolution.”

Precedent

In strict terms, decisions of the Commission do not become precedents that legally bind subsequent actions of the Commission. However, in practical terms, decisions of the Commission have great influence on its future decisions. Petitioners, respondents, DCED, the Commission itself, and courts frequently refer to past decisions of the Commission.

For example, the Petitioner in the current proceeding repeatedly refers to the Commission’s 1992 decision to approve the incorporation of the City and Borough of Yakutat. While doing so, the Petitioner assures the Commission on pages 5 and 37 of its proposal that approval of the Skagway borough need not serve as a precedent for other borough proposals. Other prospective petitioners have also referred to the Yakutat decision in the past.⁸⁹

It is DCED’s view that approval of the Skagway borough proposal would severely erode the conceptual characteristics of a borough. Doing so would obscure or even eliminate the distinction between city governments and borough governments.

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. If the Skagway borough proposal is determined to

meet the standards for borough government, it is likely to cause instability in terms of jurisdictional boundaries of existing borough governments.

Impact on State Resources

In addition to the foregoing concerns, DCED notes that creation of a Skagway borough – and any future boroughs that would not otherwise have been created but for the “Skagway precedent” – will have impacts on State resources. Three different impacts are addressed. Those relate to organization grants, municipal land grants, and transition funding for education.

Organization Grants. Under AS 29.05.190, each new borough is entitled to organization grants from the State in the amount \$600,000. The funds are intended “For the purpose of defraying the cost of transition to borough government and to provide for interim governmental operations.” Given the nature of the Skagway borough proposal, transition costs would be minimal – virtually naught.

⁸⁹ Most recently, DCED staff met informally with the city managers of Valdez, Cordova, and Whittier on June 14, 2002 to discuss borough formation. The Valdez City Manager indicated that the City of Valdez is seriously contemplating a proposal to form a single-community borough. It was indicated by some at the meeting that it might be in the best interests of Cordova and Whittier to follow suit. The model borough boundaries for that region encompass Valdez, Cordova, Whittier, Chenega, and Tatitlek in a single borough. During the June 14, 2002 meeting, the decision to approve the creation of the City and Borough of Yakutat was repeatedly raised. The meeting participants indicated further that they are monitoring the Skagway borough incorporation proceedings.

Municipal Land Grants. Under AS 29.65.030, a newly-formed municipality is also entitled to a municipal land grant amounting to ten percent of the vacant, unappropriated, and unreserved State land “within the boundaries of the municipality”. Specifically, the law provides as follows:

Sec. 29.65.030. Determination of entitlement for newly incorporated municipalities. (a) The general grant land entitlement of a municipality incorporated after July 1, 1978, that does not qualify for an entitlement under AS 29.65.010⁹⁰ or 29.65.020⁹¹ is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date.

The seemingly unambiguous provisions of AS 29.65.030 suggest to DCED that a Skagway borough would be entitled to a municipal land grant. DCED notes that it would constitute a newly-formed municipality that that did not

qualify for an entitlement under AS 29.65.010 or 29.65.020. However, officials of the Alaska Department of Natural Resources (the agency that administers the grant program) take the view that a Skagway borough would not qualify for any land grant.

DNR officials note that the Skagway Petitioner proposes to pursue a course similar to that followed in Yakutat in 1992, namely, concurrent borough incorporation and city dissolution. They note that when the Yakutat borough formed, DNR took the position that its entitlement to 138 acres under AS 29.65.030 should be adjusted to credit a previous grant of 104.87 acres to the former City of Yakutat. DNR’s position was backed by a legal opinion from Assistant Attorney General Nancy J. Nolan (December 14, 1993, file # 661-94-0104).

⁹⁰ Sec. 29.65.010. Determination of entitlement of boroughs and unified municipalities. (a) The general grant land entitlement of each of the municipalities in this subsection is the amount set out opposite each:

- (1) Municipality of Anchorage - 44,893 acres;
- (2) City and Borough of Juneau - 19,584 acres;
- (3) City and Borough of Sitka - 10,500 acres;
- (4) Bristol Bay Borough - 2,898 acres;
- (5) Fairbanks North Star Borough - 112,000 acres;
- (6) Haines Borough - 2,800 acres;
- (7) Kenai Peninsula Borough - 155,780 acres;
- (8) Ketchikan Gateway Borough - 11,593 acres;
- (9) Kodiak Island Borough - 56,500 acres;
- (10) Lake and Peninsula Borough - 125,000 acres;
- (11) Matanuska-Susitna Borough - 355,210 acres;
- (12) North Slope Borough - 89,850 acres;
- (13) City and Borough of Yakutat - 21,500 acres.

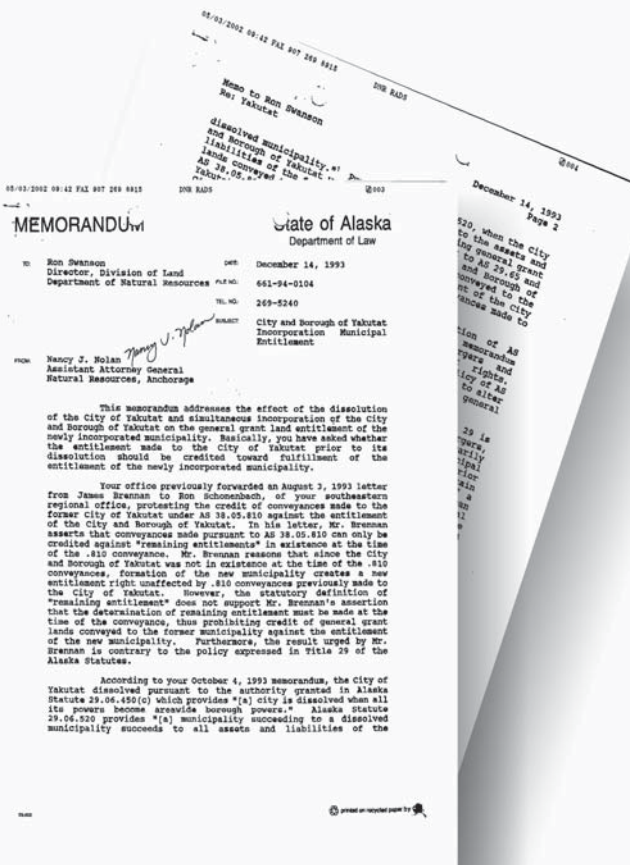
⁹¹ Sec. 29.65.020. Determination of entitlement for cities. (a) The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of former AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land in the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and January 1, 1988. Within six months after January 1, 1988, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

DNR officials acknowledge that Yakutat disputed DNR's interpretation of AS 29.65.030. Ultimately, DNR agreed to grant the full entitlement to the Yakutat borough. However, DNR officials stress that they did so only to get Yakutat to agree to settle an unrelated dispute.

Since the boundaries of the City of Skagway are identical to the boundaries of the proposed Skagway borough, DNR officials take the position that a Skagway borough would be entitled to no grant of land. (Personal communication, Dick Mylius, DNR Natural Resource Manager)

Transition Funding for Education

When a newly-formed borough assumes responsibility for education, State law provides a transitional period during which the borough's mandatory local contributions for school support may be less than the "4-mill / 45% of basic need" required by AS 14.17.410(b)(2).⁹² During the first year, no local contribution is required. A 2-mill contribution is required during the second year and a 3-mill contribution is required during



December 14, 1993 Opinion from Assistant Attorney General Nancy J. Nolan

the following year. In the fourth year, the transition ends and the borough is required to make a local contribution in the amount of 4-mills or 45% of basic need.

The required local contribution of each city or borough school district is deducted from the amount of State education funding provided to the respective school district. The contribution currently required of the City of Skagway would be identical to the contribution required of a Skagway borough. Thus, if the Skagway borough took advantage of the transitional funding, it would have adverse financial impacts on the State. In effect, the State would lose the equivalent of at least 7-mills of the full and true value of taxable property in the Skagway borough during the period of transition.

⁹² The required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Community and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under AS 14.17.410(b)(1).

However, Department of Education officials interpret the law such that if Skagway wishes to take advantage of the transition measures, the borough would not be allowed to make any voluntary contributions in support of education as permitted by AS 14.17.410(c).

Consequently, the Petitioner indicates on page 12 of its proposal that “the Municipality of Skagway would not request or take this transition relief from the State.”

Of course, the interpretation of the law by the Department of Education is subject to challenge. DCED notes that the limitation that the Department of Education reads into the law is a matter of interpretation. Moreover, DCED notes that the apparent commitment by the Petitioner to “not request or take this transition relief” is not binding on a future Skagway borough assembly.

4. CONCLUSION BY DCED

Based on the foregoing, DCED concludes that incorporation of a Skagway borough does not serve the best interests of the State. 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 principles of local self-government as addressed in *City of Homer v. Gangl*.

Moreover, formation of a Skagway borough would, for reasons cited in the analysis, contravene the constitutional principle of minimum numbers of local governments.

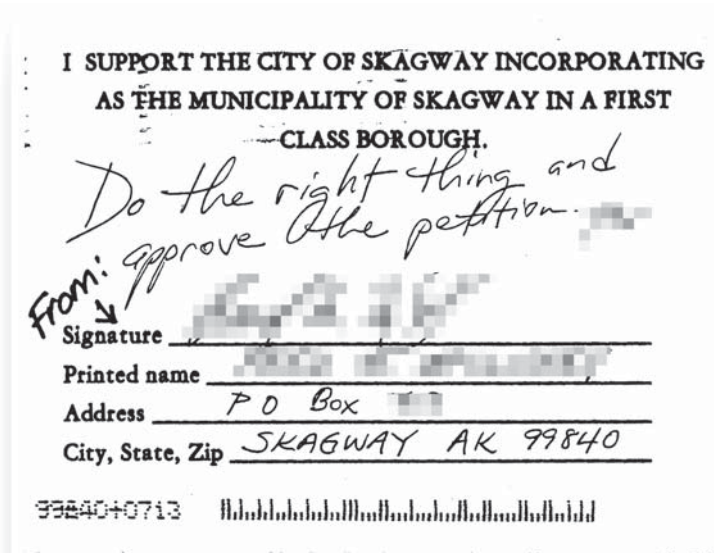
In DCED’s view, approval of a Skagway borough would set a precedent with far-reaching adverse consequences. Lastly, approval of the Skagway borough would have adverse impacts on State resources with no corresponding relief to State government in terms of responsibility of providing local services, as is typically the case with other boroughs.

As such, DCED concludes that the Skagway borough does not meet the constraint set out in AS 29.05.100(a) that a borough proposal must serve the State’s best interest to be approved by the Local Boundary Commission.

CHAPTER 4 - CONCLUSION & RECOMMENDATION

"Do the right thing . . ." was the message added to one of the preprinted postcards sent to the Commission in support of the Skagway borough proposal. The message specified further that the "right thing" meant, "approve the petition."

From the parochial perspective of Skagway residents, approval of the Skagway borough proposal may indeed be the "right thing." DCED understands that proponents of the



⁹³ Article XII, Section 5 of the State constitution provides that:

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as to the best of my ability." The legislature may prescribe further oaths or affirmations.

Moreover, AS 39.05.040 provides that:

The principal executive officer of each department and the member of each board within the state government shall take, sign, and file the oath of office required by the constitution before entering upon the duties of office.

Skagway borough wish to maintain the status quo and that approval of the Skagway borough proposal would effectively do so.

However, the Commission is constrained in every case that it must judge petitions in accordance with standards established in law. The Commission is not free to accede to parochial views and wishes, unless they correspond with the applicable standards.

Every member of the Commission has taken an oath to uphold the Constitution of the State of Alaska.⁹³ The constitution establishes the framework for borough government. Specifically:

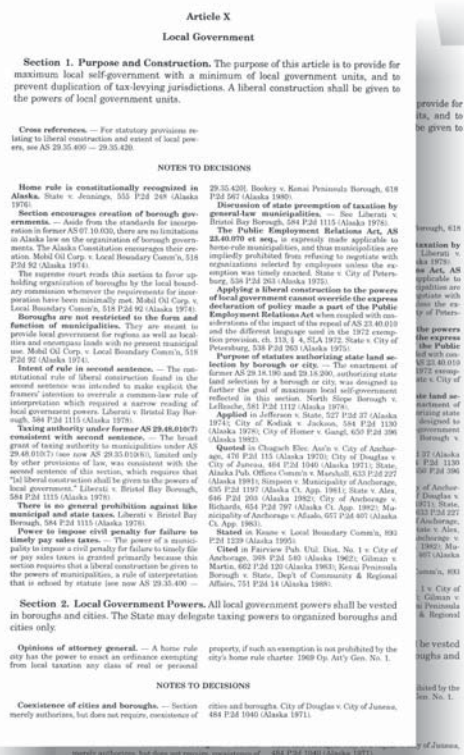
- ✓ Article X, Section 1 encourages the creation of boroughs *that meet standards established in law.*

- ✓ Article X, Section 1 establishes the express policy of minimizing the number of local governments. That policy discourages single-community boroughs unless, in rare instances, a large and natural region encompasses only a single community and otherwise meets all borough standards.
- ✓ Article X, Section 2 of the constitution provides for two distinctly different types of local governments – cities and boroughs. The Alaska Supreme Court noted fundamental distinctions between the two in *Mobil Oil v. Local Boundary Commission, id.* Cities are community-level municipal governments while boroughs are regional-level municipal governments.
- ✓ Article X, Section 3 promotes each borough to embrace a natural expanse within which residents have common interests in a regional context.

- ✓ Article X, Section 3 places a duty on the Alaska legislature to adopt standards for incorporation of boroughs. The legislature has fulfilled its duty by enacting laws codified as AS 29.05.031, AS 29.05.100, and AS 44.33.812. The latter requires the Local Boundary Commission to develop additional standards for borough incorporation in regulation. The Commission has fulfilled its duty to do so by adopting provisions in 3 AAC 110.045 - 3 AAC 110.065.
- ✓ Article X, Section 12 provides for the creation of the Local Boundary Commission – one of only five State boards with origins in the constitution. The Alaska Supreme Court indicated in *Fairview Public Utility District No. 1 v. City of Anchorage, id.*, that the founders clearly had in mind that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.” In the same case, the Court also noted that the Commission was created so that “area-wide or state-wide needs can be taken into account” and “arguments for and against boundary change can be analyzed objectively.”

It is also appropriate to note here that Article X, Section 14 of the constitution calls for the creation of a state agency to advise and assist local governments, review their activities, collect and publish local government information, and perform other duties prescribed by law. DCED is that agency.

One of DCED’s “other duties prescribed by law” is to serve as staff to the Local Boundary Commission (AS 44.33.020(4)). The law requires that DCED analyze petitions that come before the Local Boundary Commission. Further, DCED must make recommendations to the Commission for action on those petitions.



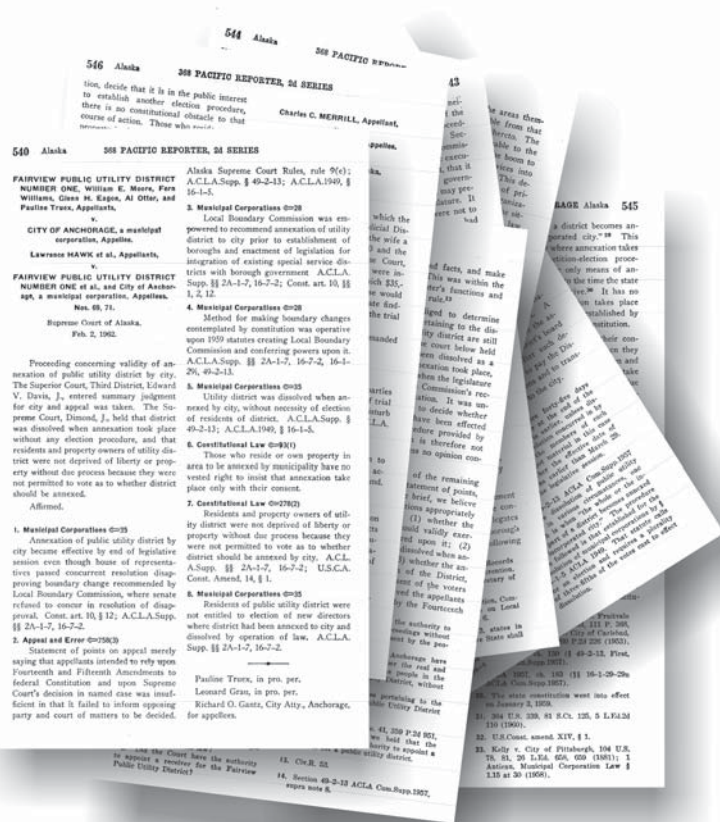
DCED staff takes the same oath as the Local Boundary Commission to uphold Alaska's constitution.⁹⁴ Good faith and common sense dictate that DCED base its analysis of petitions on the same standards that the Commission must apply to the particular petition.

On occasion, DCED and the Commission may differ in terms of their respective judgment concerning application of standards. Indeed, Commission members occasionally differ among themselves in the application of the standards.

DCED has put forth its best-faith effort to analyze the Skagway borough proposal carefully and objectively in terms of the same eighteen standards that the Commission must use to judge the merits of the proposal. The following summarizes the conclusions reached by DCED in Chapter 3 concerning those eighteen standards.

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. Thus, the standard for city dissolution in AS 29.06.450(c) would be satisfied upon such assumption of powers.



Fairview Public Utility District No. 1 v. City of Anchorage.

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.

⁹⁴ Sec. 39.05.045. Oaths for other employees. A public officer or employee of the state, before entering upon the duties of office, shall take and sign the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as to the best of my ability."

STANDARD NUMBER THREE - TRANSITION PLAN

The Petitioner's one-page transition plan is terse. However, 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 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 mere 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 (see Figure 30 on page 127) – into a borough. 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 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).⁹⁵

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.

⁹⁵ DCED provided notice of the filing of the Skagway Petition to the Commissioner of the Alaska Department of Education and Early Development (DEED) on October 24, 2001. This report, along with an invitation to comment on the Skagway borough proposal, at least in the context of this standard, has been forwarded to the DEED Commissioner.

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).

Figure 30
School District Enrollment as of October 1, 2001

District	PE-12	District	PE-12
Anchorage borough	49,767	Cordova city	467
Fairbanks North Star Borough	15,385	Wrangell city	464
Matanuska-Susitna Borough	13,410	Yupit REAA	447
Kenai Peninsula Borough	9,971	Kuspuk REAA	435
Juneau borough	5,608	Haines Borough	379
Galena city	3,698	Unalaska city	374
Lower Kuskokwim REAA	3,696	Aleutians East Borough	324
Kodiak Island Borough	2,825	Kashunamiut REAA	321
Ketchikan Gateway Borough	2,437	Yukon Flats REAA	321
Northwest Arctic Borough	2,223	Annette Island REAA	313
North Slope Borough	2,165	Denali Borough	290
Lower Yukon REAA	1,962	Bristol Bay Borough	255
Nenana city	1,899	Southeast Island REAA	245
Bering Strait REAA	1,744	Chatham REAA	224
Sitka borough	1,646	Hoonah city	217
Delta/Greely REAA	1,018	Chugach REAA	212
Valdez city	883	Klawock city	177
Southwest Region REAA	762	Kake city	173
Nome city	746	Yakutat borough	167
Copper River REAA	730	Saint Mary's city	153
Craig city	700	Pribilof REAA	140
Petersburg city	658	Skagway city	125
Iditarod Area REAA	575	Hydaburg city	101
Dillingham city	555	Tanana city	69
Alaska Gateway REAA	500	Aleutian Region REAA	61
Yukon/Koyukuk REAA	498	Pelican city	18
Lake & Peninsula Borough	477		

Department of Education & Early Development

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 recommend that the Commission deny the Petition.

DCED's stance concerning the Skagway borough proposal is consistent with the position that it (and its predecessor, DCRA) has taken since Skagway first expressed interest in borough government in the context of the current proposal. For example, on March 31, 1998, LBC staff traveled to Skagway to meet with local officials and the public during a work session to discuss a prospective Skagway borough proposal. The

work session lasted nearly two hours. During that time, LBC staff candidly expressed views fully consistent with those expressed in this report. There were many contacts between LBC staff and Skagway officials regarding borough government prior to and following the March 31, 1998 work session. In every case, DCED has been candid with Skagway officials and has been consistent in terms of the views expressed in this report.

APPENDIX A

GLOSSARY

Unless the context in which the terms and acronyms listed below are used in this report suggests otherwise, they are defined as follows:

“Annexation” means the expansion of the boundaries of an existing city or borough government.

“Areawide” means throughout a borough, both inside and outside all cities in the borough. (AS 29.71.800)

“Assembly” means the governing body of a borough. (AS 29.71.800)

“Borough” means a general law (first class, second class, or third class) borough, a home rule borough, or a unified municipality. (3 AAC 110.990(1)) A borough is a regional unit of municipal government (see *Alaska’s Constitutional Convention*, pages 116 – 123, Victor Fischer, 1975; *Borough Government in Alaska*, pages 37 – 41, Thomas A. Morehouse and Victor Fischer, 1971; *Mobil Oil v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974); *Proceedings of the Alaska Constitutional Convention*, pages 2638 and 2641, Alaska State Legislature, Legislative Counsel, 1963.) Boroughs exist in some other states and in other countries; however, they are unlike boroughs in Alaska.

“City” means a general law first or second class city or a home rule city. (AS 29.71.800) In this particular case, it may refer to the City of Skagway, a first class city incorporated on June 28, 1900.

“Coastal resource service area” means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180. (3 AAC 110.990(2))

“Commission” means the Local Boundary Commission. (3 AAC 110.990(3))

“Community” means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920. (3 AAC 110.990(5))

“Consolidation” means dissolution of two or more municipalities and their incorporation as a new municipality. (AS 29.71.800)

“Contiguous” means, with respect to territories and properties, adjacent, adjoining, and touching each other. (3 AAC 110.990(6))

“Correspondents” refers to the 43 individuals or organizations that submitted timely written comments to the Local Boundary Commission concerning the Skagway borough incorporation proposal.

“Council” means the governing body of a city. (AS 29.71.800)

“DCED” means the Department of Community and Economic Development.

“Department” means the Department of Community and Economic Development. (AS 29.71.800; 3 AAC 110.990(7))

“General law municipality” means a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first class borough, second class borough, third class borough, first class city, or second class city organized under the laws of the State of Alaska. (AS 29.04.020)

“LBC” refers to the Alaska Local Boundary Commission.

“Mandatory power” means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; “mandatory power” includes one or more of the following:

- (A) assessing, levying, and collecting taxes;
- (B) providing education, public safety, public health, and sanitation services;
- (C) planning, platting and land use regulation;
- (D) conducting elections; and
- (E) other acts, duties, or obligations required by law to meet the local governmental needs of the community. (3 AAC 110.990(8))

“Merger” means dissolution of a municipality and its absorption by another municipality. (AS 29.71.800)

“Model borough boundaries” means those boundaries set out in the Commission’s publication *Model Borough Boundaries*, revised as of June 1997 and adopted by reference. (3 AAC 110.990(9))

“Municipality” means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality. (AS 29.71.800)

“Nonareawide” means throughout the area of a borough outside all cities in the borough. (AS 29.71.800)

“Permanent resident” means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission. (3 AAC 110.990(10))

“Petition” means the January 2001 *Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough*.

“Political subdivision” means a borough or city organized and operated under state law. (3 AAC 110.990(11))

“Property owner” means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; “property owner” does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land. (3 AAC 110.990(12))

“REAA” means a regional educational attendance area.

“Regional educational attendance area” means an educational service area established and organized under AS 14.08 and AS 29.03.020. (3 AAC 110.990(13))

“Petitioner” refers collectively to the 58 qualified voters who signed the Petition.

“Petitioner’s Representative” refers to Robert Ward, Skagway City Manager, designated representative of the Petitioner for matters relating to the pending borough incorporation and city dissolution proceedings.

“Reply Brief” means a reply brief filed by a petitioner under 3 AAC 110.490. No reply brief was filed in the Skagway borough incorporation proceeding.

“Responsive Brief” means a brief filed in support of or in opposition to a petition under 3 AAC 110.480. No responsive briefs were filed in the Skagway borough incorporation proceeding.

“Service area” means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided; borough service areas are not local governments. A service area lacks legislative and executive powers; nonetheless, a borough service area is a local government units in the context of the minimum of local government units clause found in Article X, § 1 of Alaska’s Constitution.

“State” refers to the State of Alaska government.

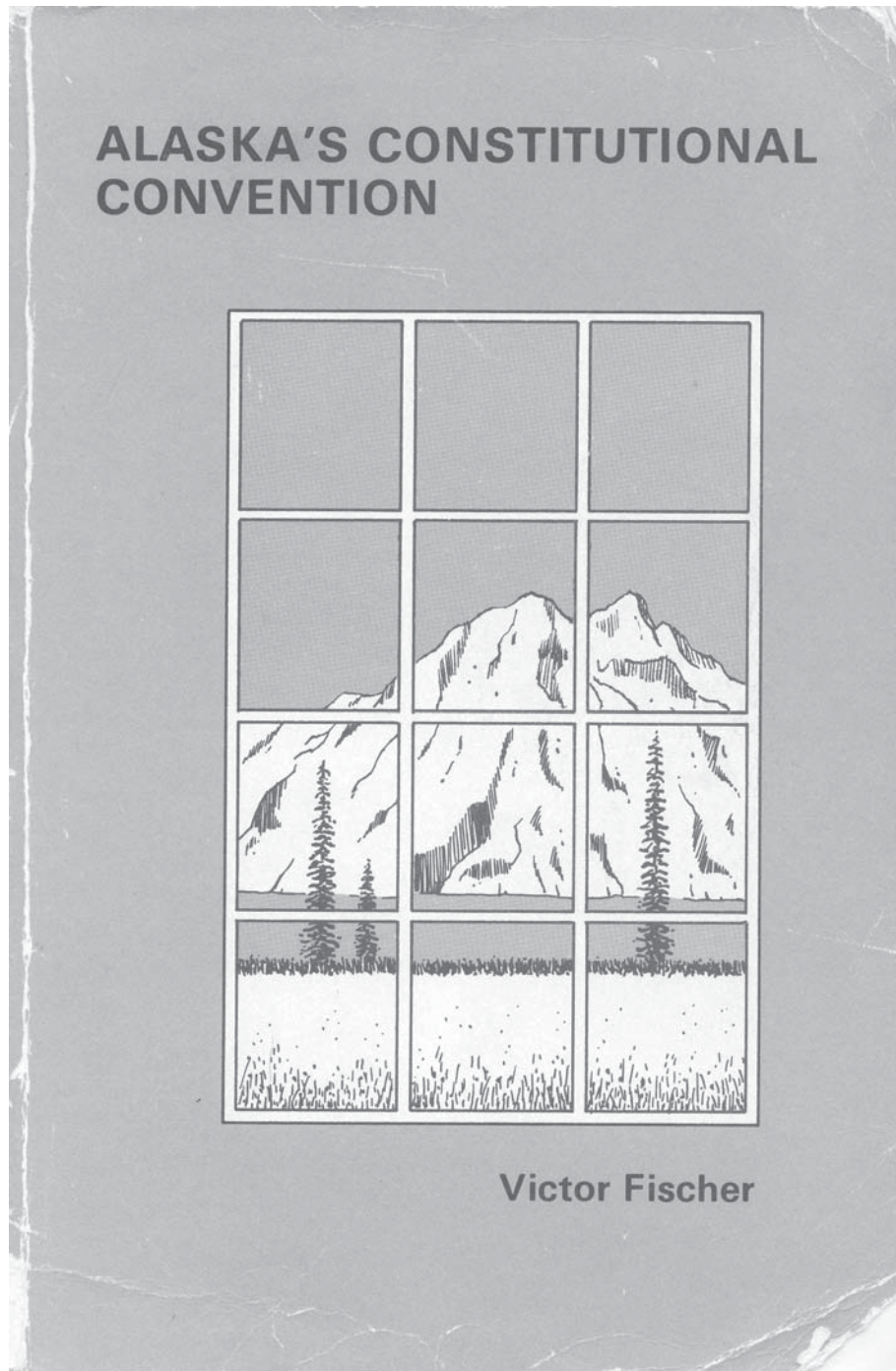
“Territory” refers to the estimated 433.1 square miles within the current boundaries of the City of Skagway (which is identical to the territory proposed for incorporation).

“Unorganized borough” means areas of the state that are not within the boundaries of an organized borough. (AS 29.03.010)

“Witnesses with expertise in matters relevant to the proposed change” means individuals who are (A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or (B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region. (3 AAC 110.990(14))

APPENDIX B

EXCERPT OF LOCAL GOVERNMENT MATERIAL FROM ALASKA'S CONSTITUTIONAL CONVENTION BY VICTOR FISCHER



Local Government⁸⁶

In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.

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

A New Local Government System

Study of the PAS staff paper⁸⁷ and a review of local govern-

⁸⁵See Chapter 3, pg. 42.

⁸⁶For more information on this topic, see the author's chapter "The Constitution Framework" in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, pp. 33-65.

⁸⁷Public Administration Service, *Constitutional Studies*, Chapter VIII.

STRUCTURE OF GOVERNMENT

117

ment experiences throughout the United States, Canada, Scandinavia, Latin America, and other parts of the world convinced committee members that they could look outside Alaska primarily for the purpose of evaluating basic principles and determining what *not* to do. They quickly saw that modern times and Alaska's unique geographic characteristics demanded a totally new and different system from any existing elsewhere. Delegates did not want to saddle Alaska with the conventional jumble of local government jurisdictions, particularly the proliferating special districts and archaic counties. Only an infinitesimal part of Alaska's 586,400 square miles was organized (about thirty cities and fifteen special districts); the bulk of the territory had no local government whatsoever. Thus, delegates faced a situation which invited, almost demanded, innovation. Accordingly, the convention's local government committee, aided by several consultants, proceeded to design a local government system adapted to Alaska and the times.⁸⁸

Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated the general purpose was to provide a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established—boroughs and cities. This framework was designed to accommodate today's needs and tomorrow's growth and development.⁸⁹ The committee then set forth the principles underlying the proposed local government system:

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

⁸⁸Principal consultants were Weldon Cooper and John Bebout. Primary references included the PAS staff study and George W. Rogers' *A Handbook on Alaska Regionalism*, Office of the Governor, Juneau, Alaska, November 21, 1955 (mimeo). The seven members brought to the committee a variety of backgrounds and experiences: large-city and small-town mayors, city councilmen, municipal utility board membership, secretary of League of Alaska Cities; they included businessmen, a civil engineer, a professional city planner, a commercial fisherman, a bush pilot, and a minister. Significantly, there were no attorneys and no member represented the special interests of education.

⁸⁹*Proceedings*, Appendix V, p. 47.

2. **One basic local government system.** The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.
3. **Prevention of overlapping taxing authorities.** The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.
4. **Flexibility.** The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.
5. **State interest.** The proposed article recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters, and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of noncharter governments, to withhold authority from home rule boroughs and cities, and to exercise advisory and review functions.⁹⁰

The Borough Concept

As the committee was evolving these principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis. They also agreed "that any form of local government for Alaska that would be similar to counties would need a broader scope, should have authority to perform all services and should provide a maximum amount of local self-government."⁹¹ The result was the borough concept—an areawide unit that while different from the traditional form of the county, was in effect a modernized county

⁹⁰*Ibid.*, pp. 47-48.

⁹¹*Ibid.*

STRUCTURE OF GOVERNMENT

119

adapted to Alaska's needs.⁹² As seen by delegates, the inadequacies of conventional counties were limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) governmental authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

To overcome such deficiencies, the initial principles set forth by the committee for consideration in the formation of the new area-wide government units included these guidelines:

- Provision should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially, not all need be organized.
- Units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdiction and overlapping, independent districts.
- The state should have power to create, consolidate, subdivide, abolish, and otherwise change local units.
- Creation of units should be compulsory, with provision for local initiative.
- Boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interests, and must remain flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions.
- Units should cover large geographic areas with common economic, social, and political interests.

⁹²Almost unending controversy surrounded the selection of the name "borough." While there were strong proponents for the word "county" (as well as canton, division, province, and others), the majority believed that the term had such a definite and negative connotation that its use had to be avoided to preclude rigid thinking and restrictive legal interpretation. It was believed that a different name would be more readily interpreted in the context of the Alaska Constitution. Black's Law Dictionary defines "borough" as "a place organized for local government purposes." See *Minutes*, 18th, 29th Meetings; Report of Local Government Committee, January 18, 1956 "Commentary on Local Government Article," *Proceedings*, Appendix V, pp. 58-59; *Proceedings*, pp. 2618-19, 2777-87, 3599-3608, 3621-25, 3627.

- Local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied by the legislature.⁹³

When the local government article came before the convention, the delegates did not question the need for an areawide unit. Similarly, they accepted without argument most of the basic concepts evolved by the committee, even though many ideas were quite tentative and subject to further evolution upon statehood.

Most of the floor discussion on local government involved questions and explanations; there were few proposals for substantive amendments. Thus, the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The committee had previously decided that, although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where "it should take on the burden of its own government."⁹⁴ Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum,⁹⁵ and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.⁹⁶

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were to be instrumentalities of the state. The legislature was to have the same authority within these boroughs as the governing bodies (assemblies) of organized boroughs. By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the needs of different regions.

Service areas were authorized to be established by organized boroughs (and by the legislature in unorganized boroughs) as another

⁹³All Minutes, *Proceedings*, Appendix V, pp. 48-50.

⁹⁴*Proceedings*, pp. 2673-74.

⁹⁵*Ibid.*, pp. 2674-76.

⁹⁶*Ibid.*, pp. 2650-51.

STRUCTURE OF GOVERNMENT

121

method of meeting requirements for different services. Initially, service areas were conceived as a means of providing services within a limited part of the borough in which taxes, assessments, and charges could be levied to cover the cost of such services. The approach was subsequently expanded to include areawide services that might be administered by special instrumentalities such as health or school districts. In all cases, however, service areas were to be creatures of boroughs and function under borough fiscal control.

In evolving the borough concept, delegates were quite aware that they were only delineating the general structure of local government. While they reviewed various ways in which their ideas might be applied, they realized it was not possible, nor was it desirable, to delineate a detailed system. Instead, they attempted to anticipate future needs and provide the broad principles and processes for dealing with them. In particular, the convention was concerned with borough-city interaction, with organization for schools, and with the exercise of continuing state responsibility. The latter was deemed particularly important to assure the appropriate growth of local government from the base provided in the constitution.

Borough-City Relations

The relationship between boroughs and cities, whether existing or in the future, was of special concern to the convention. Initially, the Local Government Committee, in an attempt to avoid any overlapping or duplicative structures of government, had considered doing away with cities altogether. But in exploring this and other similar options, the delegates realized that the city was the only existing unit of general local government in Alaska and that its outright abolition could create administrative and political problems. They therefore abandoned any ideas of major restructuring and decided instead that the status of cities should continue to exist and not be changed directly by the constitution.

The delegates stipulated, however, that the city should be an integral part of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough, joint performance of functions, and voluntary transfer of functions from city to borough. The objective throughout was to assure that wherever functions overlap they should be integrated. It was the committee's belief that maximum cooperation would result from coordination between the city council and the borough assembly.

Although joint council-assembly service was seen by the committee as a means of fostering understanding and cooperation, some delegates repeatedly expressed concern about the extent to which cities might dominate the borough through direct representation on the assembly. Some also believed that this approach, instead of minimizing conflict, would lead directly to it. However, delegates generally accepted the basic objectives of borough-city coordination and nonduplication of functions, and lacking more acceptable alternatives, the convention supported the committee's approach.

Borough-School Relations

Education and local government relationships were also given extensive discussion. As at the state level, the Local Government Committee saw education as a function of general government and made no special provision for school districts in the local organizational structure. In the major urban areas, education was the responsibility of independent school districts. These districts were subject to budgetary control by cities within their boundaries, and the Local Government Committee proposal was predicated on passing future fiscal control to the areawide borough. As in the case of the executive article, however, an intense effort was made before the committee and on the floor to endow education with administrative and fiscal autonomy.

An amendment was proposed by Maurice Johnson of Fairbanks to grant school districts, and not just cities and boroughs, independent authority to exercise the powers of local government and of taxation. The arguments for the proposed change were, essentially, (1) that educational needs and the taxes necessary to meet these needs can be determined best by those responsible for education, and that (2) education was so much more important than other local functions that fiscal allocations for this purpose should not be subject to borough approval. The amendment was rejected by a forty-three to nine vote. The majority feared independent access by school boards to the local tax base; they believed that separate status for education would, in delegate George Sundborg's words, tend to make:

... the school districts within our cities and boroughs ... independent of the people of Alaska as they consider the other responsibilities and functions of government.⁹⁷

While the convention did not approve fiscal independence for

⁹⁷*Ibid.*, pp. 2696-2708.

STRUCTURE OF GOVERNMENT

123

schools, it did recognize that there could be separate administration of the education function through service areas coterminous with or located within organized or unorganized boroughs. Moreover, school boards and district organizations could exist within the overall borough structure. Convention discussion made it clear, however, that no matter how the school functions were organized, only the borough assembly could authorize the levying of local taxes for education purposes.⁹⁸

The convention similarly went along with the Local Government Committee in denying school boards representation on the borough governing body. The rationale was again—no special treatment for the school function:

... if a specific service like education is to be represented, then health should be represented, if we have a health service area; if we have a fire protection district, they should be represented; and what we [the committee] wanted to avoid in this was the specific seating of people with just one interest on the borough assembly.⁹⁹

While convention deliberations show that the delegates generally viewed education as a borough function, they also considered it a concurrent state responsibility as set out in Article VII, of the constitution which stipulates that the state must provide for a system of public education throughout the state.

State-Local Relations

In general, the constitutional convention saw the role of the state as critical in making the local governmental system work. Several factors strongly argued for a continuing state responsibility for local affairs, such as:

- The lack of any general government beyond the city.
- A tradition of territorial government responsibility for services beyond incorporated communities.
- The varying levels of local government capability and of the requirements for local services throughout Alaska.
- The realization that further detailed study and planning was necessary to establish a new governmental system.

Therefore, in addition to dealing with local government organi-

⁹⁸*Ibid.*, pp. 2620, 2630, 2633, and 2707.

⁹⁹*Ibid.*, p. 2623.

zation, Article X includes the following provisions for state authority and responsibility:

- Responsibility is vested in the legislature for establishing procedures and standards under which boroughs will be created and classified.
- The legislature is established as the governing body for unorganized boroughs and has responsibility for provision of services in such boroughs.
- A state-level local boundary commission is given responsibility for changes in local government boundaries, subject to disapproval by the legislature.
- An executive agency is established in state government to deal with local affairs.
- Authorization is granted for joint exercise of powers by local governments and the state.

While there was general convention agreement about the importance of the state role in local affairs, there was considerable floor debate about the proposal to create a “local government agency”—the only administrative body specifically provided for in the executive branch. Delegates questioned this not because it was considered undesirable, but because they had generally subscribed to the principle that, unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution. As Delegate John Hellenthal stated:

Unless there is some very, very compelling reason given for including such an agency as proposed in Section 14 in the constitution (the local government agency), I think we're violating the principles and policies we've already adopted here.¹⁰⁰

However, in view of the general belief that success of the local government plan depended upon existence of an effective agency at the state level, the delegates provided for a mandatory agency in the constitution.

Home Rule

Convention delegates did not believe a strong state role to be inconsistent with a commitment to maximum local self-government. They envisioned a self-government concept which would apply not

¹⁰⁰*Ibid.*, p. 2670.

STRUCTURE OF GOVERNMENT

125

only to home-rule cities and boroughs with their own charters, but would also extend to local units operating under the general local government laws of the state. The concept was also applied to unorganized boroughs, where it could take the form of local participation in state policy making and in providing state services. Thus, home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local government adaptation in a state with great variations in geographic, economic, social, and political conditions.

Believing that local governments should have freedom to perform what functions they desired and to design their own administrative organization, the committee rejected the home rule approaches of other states that enumerated specific powers or which made a vague grant of local government powers. It, therefore, also rejected suggestions of the National Municipal League's Model State Constitution, which included a general grant of home rule authority, a list of major powers, and a statement to the effect that the enumeration of powers should not be deemed to restrict the general grant.¹⁰¹ Instead, it chose to devise its own home rule clause: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter."¹⁰² The intent of this provision was expressed by the Local Government Committee:

The grant of powers is to be based upon "legislative powers" rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering "local affairs" or "local government." Such terms have also given rise to continuous judicial interpretation, causing great uncertainty in what the actual powers of local government are. The grant of "legislative" power would be subject to restrictions contained in the constitution, to powers specifically withheld by the legislature, and to powers withheld by the people in the adoption of their local charters.¹⁰³

"Legislative powers," as used here, meant that a home rule government might exercise the same powers available to the state

¹⁰¹National Municipal League, *Model State Constitution*, 1955, Section 804.

¹⁰²Constitution, Article X Section 11. This approach is similar to the type of home rule that evolved in Texas after many years of judicial interpretation and abandonment of the doctrine that the Texas home rule amendment granted only "local government powers." See John P. Keith, *City and County Home Rule in Texas*, Institute of Public Affairs, University of Texas, 1951. Keith's study was used by the committee in developing the Alaska approach. For a recent review of home rule in Alaska, including its constitutional background and intent, see Gerald R. Sharp, "Home Rule in Alaska: A Clash Between the Constitution and the Court," *UCLA-Alaska Law Review*, Vol. 3, No. 1, Fall 1973.

¹⁰³*Minutes*, 24th Meeting.

legislature.¹⁰⁴ However, the committee recognized that home rule could not be absolute. Delegates believed that the legislature should have the authority to deny local exercise of specific powers when necessary in behalf of an overriding state interest or to resolve conflicts of authority between home rule cities and home rule boroughs.

Convention action was directed in large part toward further liberalization of home rule coverage; no delegate objected to the proposed home rule approach. By floor action, delegates permitted the legislature to extend home rule powers to other than first class cities and boroughs.¹⁰⁵ The only restrictive amendment would have eliminated the self-executing charter drafting provision and would instead have made home rule implementation subject to future legislative action. This, however, was turned down by the delegates.¹⁰⁶

To assure that home rule and other innovative approaches would not be undermined, the Local Government Committee made a special point of specifying in a preamble to the proposed article that "A liberal construction shall be given to the powers of local government units."¹⁰⁷ Fearing that traditional legislative and judicial doctrines might be applied to Alaska's new local system, the committee considered the preamble necessary to give both the legislature and the courts some policy guidance in implementing the article. The committee hoped that the liberal construction clause would help assure that the new system did not become encumbered by restrictive judicial interpretation; it was seen as a step toward achieving the general purposes and intent of the article.¹⁰⁸

When the local government article came before the convention, an amendment was introduced to strike the liberal construction clause.¹⁰⁹ A number of delegates who were also lawyers supported elimination of the provision with the argument that:

1. The article itself was plain and concise and would not present difficult interpretation, either by the legislature or by the courts.
2. Under *McCulloch vs. Maryland*, the U.S. Supreme Court had said that any delegation of power must be construed in the manner most beneficial to the people, and that this construction would be

¹⁰⁴Thus, the Local Government Committee deemed it possible that resources development could be a function of Alaska local governments, even though such a power would not come under the traditional concept of what is "local" or be included in the usual enumeration of local powers.

¹⁰⁵*Proceedings*, pp. 2736-2744

¹⁰⁶*Ibid.*, pp. 2733-36.

¹⁰⁷*Constitution*, Article X, Section 1.

¹⁰⁸*Minutes*, 23rd and 26th Meetings.

¹⁰⁹*Proceedings*, pp. 2690-96.

STRUCTURE OF GOVERNMENT

127

obligatory upon the court in interpreting the article.

3. In any case, articles of the constitution should be construed strictly in accordance with the constitution rather than given liberal interpretation.

The committee's reasons for including the liberal construction clause were:

1. Under the so-called "Dillon' Rule," powers of local government were to be strictly interpreted, and explicit provision was required to ensure sufficient scope and flexibility under the article and to provide the legislature and local governments with sufficient powers to carry out the intent of the article.
2. Even though home rule boroughs and cities might be generally secure in the exercise of their powers under the constitution, nonhome rule units would require the protection of this clause.
3. The vagueness of the local government article on how the new system was to be implemented made it essential that the legislature and the courts construe the article liberally in order to obtain strong home rule government.

In the end, convention delegates were almost evenly split on this issue, with the liberal construction provision being retained by only one vote, twenty-six to twenty-five. The basic principle of maximum local self-government was not challenged at any time.

APPENDIX C

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.



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.

(Vacant Seat) The seat from the First Judicial District is currently vacant.

(Vacant Seat) The seat from the Second Judicial District is currently vacant.

APPENDIX D

LBC DECISIONAL STATEMENT - YAKUTAT BOROUGH INCORPORATION

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

STATEMENT OF DECISION

IN THE MATTER OF THE PETITION)
TO DISSOLVE THE CITY OF)
YAKUTAT AND INCORPORATE THE)
CITY AND BOROUGH OF YAKUTAT)

SUMMARY OF ACTION

The Petition

On October 2, 1990, the Department of Community and Regional Affairs (DCRA) received a petition seeking the incorporation of the City and Borough of Yakutat (and the dissolution of the present first class city). After review, DCRA rejected the petition because of a number of deficiencies, including a flawed boundary description, errors with property valuations and projected revenues, and the improper form of the petition itself. On December 7, 1990, the petitioners gave their draft revised petition to DCRA for review. The actual petition to dissolve the existing first-class City of Yakutat and incorporate the City & Borough of Yakutat was formally presented to DCRA on December 26, 1990, with supplementary signatures submitted on January 11, 1991. DCRA found the form and content of this petition to be in substantial compliance with the applicable laws.

Notice of the Yakutat petition was published in Anchorage and Juneau newspapers in January and February of 1991. Notice was also mailed directly to 150 individuals and organizations which might have an interest in the matter. In addition, the notice was posted in several places in the area proposed for incorporation.

At the time the Yakutat petitioners presented their incorporation petition, the Local Boundary Commission's regulations, which went into effect in 1982, provided that two or more communities and at least 1000 people were required for an area to qualify for borough incorporation.¹ The petitioners challenged the LBC regulations on several grounds, including arguments that they had been improperly adopted and that the Commission has no authority to adopt regulations on borough incorporation standards. In a February 15, 1991 opinion, the Department of Law confirmed the validity of the LBC's regulations.

During the first half of 1991, the LBC worked on a substantial revision of all their regulations. The revised regulations, adopted on June 29, 1991, changed the absolute requirement for at least two communities and 1000 people in a proposed borough to presumptions in favor of those

¹ Although the petition had not yet been formally investigated, DCRA staff believed, on the basis of generally available information, that Yakutat probably could not meet the two community or 1000 people standards. At the decisional meeting held on March 17, 1992, the LBC specifically found that the area proposed for incorporation as the City and Borough of Yakutat did not have two communities or 1000 permanent residents.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 2

factors. Each presumption could be overcome with a specific and persuasive showing that the statutory standards were met despite the absence of two communities and/or 1000 permanent residents. Petitioners requested that the Yakutat proposal be considered under the new regulations, which became effective on November 12, 1991.

Following its investigation and analysis of the petition, DCRA distributed its draft report on the petition on August 30, 1991. DCRA sent the full report to 70+ groups and individuals, and mailed the sixteen-page summary to an additional 120+ parties. DCRA recommended that the Yakutat petition be rejected. At the request of petitioners and other interested parties, DCRA extended the public comment period on the report to October 11, 1991.

On October 4, 1991, the Department held the required informational meeting in Yakutat. At the request of Mayor Powell, DCRA staff members were available to meet informally with officials and the general public from 1:00 to 5:00 in the afternoon, with the formal meeting starting at 7:00 p.m. DCRA staff met with the Mayor, City Manager, City Planner, two City Council members and school officials. Approximately 10 area residents, in addition to the Mayor and City Planner, attended the evening meeting.

DCRA's final report was delayed while the LBC and Department waited for a legal opinion from the Attorney General's Office on petitioners' renewed attack on the LBC regulations. It was further delayed so that Bob Walsh, the new Director of the Municipal and Regional Assistance Division of DCRA, could visit Yakutat and the petitioners as promised by Deputy Commissioner Marty Rutherford, who had since left the Department.

On December 24, 1992, DCRA distributed more than 80 copies of its final report, as well as an additional 55 copies of the summary. The Department's report recommended that the LBC reject the petition. In a section dealing with model borough boundaries for the territory stretching from Prince William Sound to the Cross Sound/Icy Straits area, the Department recommended that Yakutat be included with Hoonah and the Cross Sound/Icy Straits communities.² This recommendation changed DCRA's earlier recommendation that Yakutat be included within the same model borough boundaries as the Prince William Sound area.

Throughout the investigation period, petitioners and the City of Yakutat continued to provide additional information on the petition, as well as formally responding to DCRA's draft and final reports.

²In 1989, as a long-term planning tool, the LBC and its DCRA staff began studying the unorganized borough in order to propose model boundaries. Model boundaries adopted by the Commission serve as guidelines for evaluating petitions for borough incorporation or annexation, but they are not intended to force or promote the incorporation of any area. The model boundaries are adopted only after public hearings and extensive opportunities for public comment. The entire area from Prince William Sound through Yakutat to Cross Sound/Icy Straits was part of the unorganized borough during the time of the investigation and consideration of the Yakutat petition. The LBC generally prefers to adopt model boundaries for an area before considering borough incorporation or annexation petitions.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 3

Public Comment

Prior to the hearings on the petition, the Department and the Commission received substantial public comment on the Yakutat borough proposal and the related proposals on model boundaries for the area. The public comment included:

- Written comments on DCRA's 1990 draft reports on model boundaries
- Public hearings in November, 1990 on the proposed model boundaries
- Written and oral comments provided to the Commission during the process of revising the regulations
- Written comments on the Notice of Petition
- Written comments on DCRA's draft report on the petition
- Written comments on DCRA's final report on the petition

The written comments were included with DCRA's reports. Because of the number and length of the comments, most were included in a separate volume labeled Appendix A to the DCRA Report to the Alaska Local Boundary Commission. DCRA's report also summarized the testimony from the 1990 hearings.

The LBC held hearings on the Yakutat petition and the proposed model boundaries in Prince William Sound and in Cross Sound/Icy Straits communities on January 17, 1992. Vice-Chair Shelley Dugan in Cordova, Commissioner Lamar Cotten in Valdez and Commissioner Myrtle Johnson in Whittier participated via teleconference for one set of hearings.³ Chairman Charles Bettisworth in Juneau and Commissioner Darroll Hargraves in Hoonah were linked by teleconference with staff members in Gustavus and Pelican for the second set of hearings. The Yakutat petitioners participated in the teleconference for both sets of hearings.

On January 18 and 19, 1992, the entire Commission was present in Yakutat and conducted 11 hours of public hearings on the petition and model boundaries. Petitioners submitted numerous documents, exhibits and maps to the Commission during the hearing. The community of Tatitlek also made a brief comment by teleconference at the Yakutat hearing.

The Commission kept the record open for two weeks following the hearings, until February 3, 1992, and received approximately 30 more letters and briefs. Because petitioners and others continued to provide materials directly to Commission members following the close of the record, the Commission decided on February 26 to briefly reopen the record to give everyone one last opportunity to comment. Written comments were accepted until 4:00 p.m. on March 13, 1992. Notice of the reopening of the record was published in Anchorage and Juneau newspapers, as well as mailed directly to more than 160 groups and individuals. Approximately 30 more documents were added to the record by the March 13 deadline.

³The community of Chenega also participated in the teleconference.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 4

Decisional Meetings

The Commission met on February 5, 1992 in Anchorage to begin its decisional process on the Yakutat petition and model boundaries. At the request of the Department, the LBC was assisted in its deliberations by contract counsel Jerry Wertzbaugher³ of Condon, Partnow & Sharrock. During more than 5 hours of discussion and reviewing the record, the Commission began its consideration of the standards and factors for borough incorporation, and discussed the factors relevant to the Yakutat petition in terms of the record. The Commission scheduled the continuation of the meeting for February 26 in Anchorage.

The LBC met but did not deliberate at the February 26 meeting. Because of potential problems resulting from the petitioners and the University of Alaska having submitted materials directly to the LBC Commissioners following the close of the record, the Commission decided to postpone all deliberations until March 17, 1992, several days after the new close of record.⁴

Also at the February 26 meeting, Chairman Bettisworth and Commissioner Johnson both raised the possibility of conflicts of interest which might bar them from participating in the decision.⁵ The potential conflicts were referred to legal counsel.

The Commission met again on March 17, 1992 in Anchorage. The Attorney General had advised both Chairman Bettisworth and Commissioner Johnson that they did not have a conflict of interest under the state's Ethics Act. Because the ethics provisions of the LBC's Bylaws are somewhat different from the state act, the Commission voted on whether to exempt the two Commissioners, as allowed in Article IX of the bylaws, so that they could participate. The vote was 3 to 1 (Chairman Bettisworth not voting) to allow the Chairman to participate and 4 to 0 (Commissioner Johnson not voting) to allow Commissioner Johnson to participate.

During several hours of deliberations, the LBC separately considered each statutory standard on borough incorporation and the factors set out in the LBC's regulations. The Commission eventually voted 4-1 (Commissioner Dugan opposing) to approve the petition to dissolve the City of Yakutat and incorporate the City and Borough of Yakutat, with

⁴At the end of the meeting, the LBC also discussed allegations made by petitioners of unethical or biased actions on the part of the DCRA Commissioner and staff. The Commissioners found no basis for these allegations and unanimously expressed confidence in staff. Because petitioners and others had not remained for this part of the meeting, the LBC again expressed their support for the staff at the March 17 meeting.

⁵Chairman Bettisworth cited the fact that his company has substantial contracts with the University of Alaska. The University was on the record as opposing the proposed boundaries, and during the period between February 5 and February 26, the University strongly voiced its opposition. Mrs. Johnson feared her daughter's job with the North Pacific Rim might give Mrs. Johnson a conflict.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 5

boundaries extending from the 141st meridian in the west to Cape Fairweather in the east.⁶

Before the LBC voted on the motion to approve the petition, the Commissioners amended the motion to include specific findings that Yakutat had neither two communities nor 1000 people, but that because of its geographically unique circumstances, Yakutat had successfully made a persuasive showing that its population was interrelated and integrated, and large and stable enough to support borough government. The basis of the decision to approve the petition and the manner of voting is set out below in the section on Findings and Conclusions.

DESCRIPTION OF YAKUTAT

The first class City of Yakutat is situated by Monti Bay, in the southeastern part of Yakutat Bay. Monti Bay is the only sheltered deep water port in the Gulf of Alaska. The City occupies approximately 8 square miles of land and water. There are roads in the immediate environs of the City, but none leading to the rest of the proposed borough. The 1990 federal census indicated the city proper has a total population of 534, approximately 54% Native, 42% white and 4% other races. Yakutat's Native Alaskan residents are generally considered to be the northernmost group of the Tlingit Indians, but other Native settlers included Eyak Indians and Chugach Eskimo, as well as Ahtna from Chitina.⁷ There was substantial intermarriage and mixing of all of these groups.

From the information provided by petitioners and Yakutat officials, it appears that, except for the logging camp at Icy Bay and perhaps another 10 to 15 people scattered in small groups, all of the permanent residents of the proposed borough live within five miles of the current Yakutat city limits, and are connected to the city by road. State and federal figures indicate the total area served by the City's school district includes slightly over 700 people. This area includes people who live outside the city limits and are therefore in the Chatham REAA. The State pays the Yakutat school district a subsidy to teach non-city students in the Yakutat schools.

The number of students attending the Yakutat schools in the 91/92 school year is approximately 131, including 8 from outside the city limits. Although for the past few years there had been a small Chugach REAA school⁸ operated at Icy Bay, petitioners advised at the February 5

⁶The first vote on the motion was 3 to 2 against the petition, with Commissioners Dugan, Hargraves and Johnson in the majority. Commissioners Hargraves' and Johnson's "no" votes were based upon their opposition to the amendment to establish the western boundary at the 141st meridian, and they asked to change their vote on the main motion, creating a 4 to 1 majority in favor of approval.

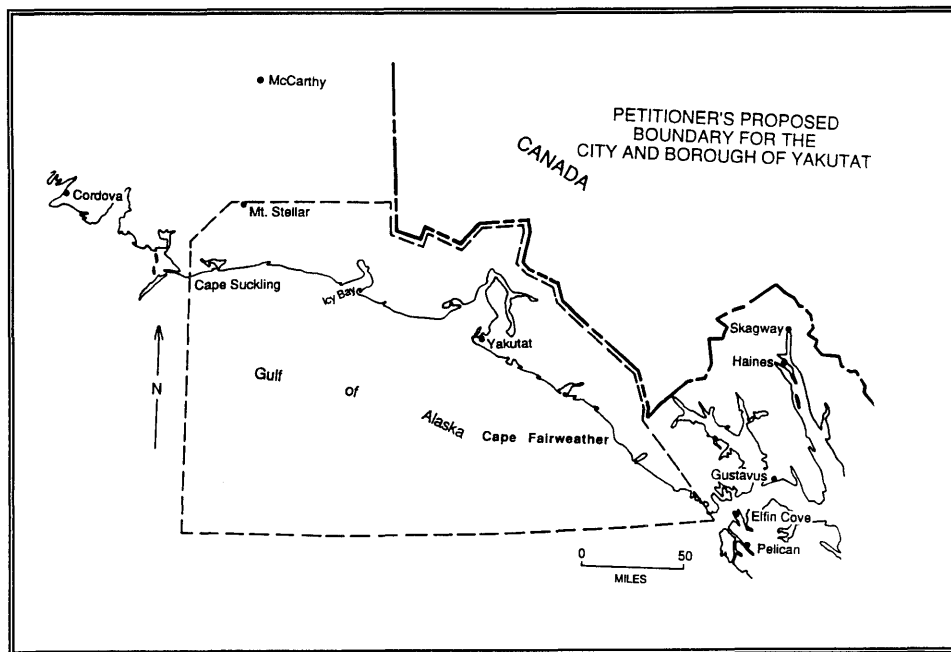
⁷Information from Chugach Alaska Corporation, in response to the model boundaries studies, advised that there were also Aleut in the area, and that the Chugach Eskimos and the Aleuts were often mistakenly considered to be part of the same group.

⁸For the last year and a half of its operation, the school generally had 3 students.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 6

decisional meeting that the school had been at least temporarily closed down.

Yakutat residents engage in a substantial amount of subsistence fishing, and to a lesser degree, hunting. Commercial fishing is the major industry. There are ongoing logging operations in the proposed borough area, although petitioners question in their brief whether timber harvesting represents "a long-term economy" in the region. The major source of full-time employment is government/school district. "Other sources of employment and income include mining, tourism (including guiding, outfitting and lodges connected with sport fishing and hunting), and the airport. The area from Dry Bay to Cape Suckling is also being considered by the federal Minerals Management Service as part of a proposed Gulf of Alaska OCS lease sale.⁹



The assessed valuation of real property within the city limits for 1990 was \$10,959,269. The State Assessor estimated that the total assessed value of taxable real property in the proposed borough was \$17,110,589 as of January 1, 1990. The Assessor also estimated that the total full value of real property throughout petitioners' proposed boundaries was approximately \$20,500,000 as of January 1, 1990.¹⁰

Petitioners propose that the borough would extend, to the areas connected by road to the City, all of the services currently provided by the

⁹Yakutat has been the focus of oil exploration off and on since the early 1900's, with lease sales from the 1950's through the 1980's, but significant amounts of oil have not yet been found.

¹⁰The State Assessor estimated that the full value of all real and personal property within the proposed borough boundaries was \$29,499,500 as of January 1, 1990.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 7

City. The City owns the water & sewer and electric utilities, as well as a small boat harbor and seaplane float. The services it provides include police, fire, planning, taxation, health, parks and recreation, road maintenance, solid waste, a cold storage dock, and education.

To the rest of the area within the proposed boundaries, the petitioners indicate the borough would provide education, tax assessment and land use regulation, as well as emergency medical services. In a proposed amendment to the petition made shortly before the January 18 hearing, petitioners also stated that, with cooperation from the state troopers, the borough would provide police service throughout the borough. However, since that time, petitioners have advised that the troopers intend to withdraw the trooper stationed in Yakutat. It is unclear what effect this will have on petitioners' proposed extension of police service beyond the roaded area.

THE LAW APPLICABLE TO BOROUGH INCORPORATION

The Alaska Constitution, state statutes and the LBC's regulations all contain provisions on the standards to be applied by the LBC in evaluating petitions for borough incorporation.

Alaska Constitution:

The purpose of [the Local Government] article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. . . .

Article X, Section 1

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. . . .

Article X, Section 3

AS 29.05.031:

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

(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 conform generally to natural geography and include all areas necessary for full development of municipal services;

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

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 8

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

LBC Regulations - Borough Incorporation Standards

19 AAC 10.045. COMMUNITY OF INTERESTS.

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

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

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

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

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

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

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) public electronic media.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

19 AAC 10.050. POPULATION.

(a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission will, in its discretion, consider relevant factors, including:

(1) total census enumerations;

(2) durations of residency;

(3) historical population patterns;

(4) seasonal population changes; and

(5) age distributions.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 9

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

19 AAC 10.055. RESOURCES.

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) the reasonably anticipated functions of the proposed borough;
- (2) the reasonably anticipated expenses of the proposed borough;
- (3) the reasonably anticipated income of the proposed borough and its ability to collect revenue;
- (4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation;
- (5) the economic base of the proposed borough;
- (6) property valuations;
- (7) land use;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents;
- (10) the need for and availability of employable skilled and unskilled people; and
- (11) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

19 AAC 10.060. BOUNDARIES.

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

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

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education, 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.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 10

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

FINDINGS AND CONCLUSIONS

In analyzing the Yakutat petition, the Commission considered the arguments and evidence as they related to six general standards on borough incorporation and the dissolution of the City of Yakutat.¹¹ Petitioners must meet each of the standards for the petition to be approved. The evidence considered by the LBC included the petitioners' briefs and exhibits, the reports by the Department of Community and Regional Affairs, the written comments submitted by the public and interested parties, and the testimony at the hearings conducted by the Commission on this matter.

Guided by the advice from the Department of Law and the LBC's contract counsel, and based upon the evidence before the Commission, the Commission makes the following findings and conclusions:

CONCLUSION #1: ALTHOUGH THERE IS ONLY ONE COMMUNITY WITHIN THE PROPOSED YAKUTAT BOROUGH, DUE TO FACTORS WHICH INCLUDE YAKUTAT'S UNIQUE GEOGRAPHIC CIRCUMSTANCES, THE POPULATION OF THE AREA IS INTERRELATED AND INTEGRATED AS TO ITS SOCIAL, CULTURAL, AND ECONOMIC ACTIVITIES.

To determine whether the population of a proposed borough is interrelated and integrated as to its social, cultural and economic activities, the LBC looks at factors such as the compatibility of urban and rural areas, compatibility of economic lifestyles, compatibility of industrial and commercial activities, and transportation and communication patterns. Although there is a presumption that, without two communities, an area cannot meet the standard for interrelation, that presumption may be overcome by a specific and persuasive showing to the contrary. In the present case, the LBC finds that the Yakutat petitioners have overcome the presumption, and have shown that the population of the proposed borough is integrated and interrelated. The Commission's conclusion was based upon the following findings:

¹¹ Although AS 29.05.031(a) contains only four subsections, the LBC considered the two requirements of (a) (1) as separate standards, one on the interrelation and integration of the population and one on the size and stability of the population. Therefore, the LBC considered five standards on incorporation; the sixth standard considered was on city dissolution.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 11

- ◇ There is only one community - the Yakutat community - in the proposed borough. Neither the Icy Bay logging camp nor the area around the Yakutat airport, nor any other settlement or group qualifies as a community for the purposes of the borough incorporation provisions.
- ◇ Through their written submissions and oral testimony, petitioners persuasively showed the integration of the population's activities, and their interconnection with the unpopulated parts of the borough. The interconnection includes activities such as current and historical subsistence hunting and fishing, commercial fishing, and the efforts of the city to protect the habitat and resources in outlying areas through litigation.
- ◇ The Yakutat community is unique in the state of Alaska in terms of a single community's relationship to an isolated geographic area. Given its distance from any other established community, it would be difficult in the foreseeable future to join Yakutat with any other communities to form a multiple-community borough.
- ◇ Although communications and transportation may be limited and sometimes difficult in the large unpopulated area, adequate communication is possible through radio and marine radio, and transportation to usable parts of the proposed borough is possible through commercial and private flights, and by boat.

CONCLUSION #2: ALTHOUGH THE POPULATION IS RELATIVELY SMALL, IT IS LARGE AND STABLE ENOUGH TO SUPPORT BOROUGH GOVERNMENT.

To determine whether the population is large and stable enough to support borough government, the LBC looks at factors such as total population, duration of residency, and historical and seasonal population patterns. There is a presumption that there should be at least 1000 permanent residents for the population to be large enough to support borough government. However, this presumption may be overcome with a specific and persuasive showing to the contrary. In the present case, the majority of the LBC believes that the presumption has been overcome, and that Yakutat's population is large enough and stable enough to support borough government. This conclusion is based upon the following findings:

- ◇ Yakutat's total population (permanent residents) is between 720 and 780 people.
- ◇ Yakutat has grown at a slow but steady rate, and could meet the 1000 population minimum in another decade.
- ◇ Yakutat has already shown its ability to operate as a regional government, with a regional rather than city perspective, in such areas as emergency services, coastal zone management and

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 12

planning. Yakutat has also shown it can successfully carry out the education function of a borough.

- ◇ Yakutat is, to a unique degree, self-contained geographically, anthropologically, culturally and economically, with limited ties to any other community.
- ◇ Because of the lack of strong transportation links with other communities to the east and the west, it would be difficult to operate an efficient government in a region which included Yakutat with other established communities.
- ◇ Because of the small population and thin layer of leadership, the Yakutat community might, in the future, encounter problems in operating a multiple-service regional government. However, the successful operation of the City of Yakutat gives evidence that the borough could, at the least, carry out mandatory borough powers in the small roaded area of the borough.

CONCLUSION #3: THE MOST APPROPRIATE BOUNDARIES FOR THE CITY AND BOROUGH OF YAKUTAT EXTEND FROM THE 141ST MERIDIAN IN THE WEST TO THE SOUTHERN BOUNDARY LAST PROPOSED BY PETITIONERS, A LINE DRAWN FROM THE TOP OF MOUNT FAIRWEATHER TO CAPE FAIRWEATHER.

The statutory standard requires that boundaries of a proposed borough conform generally to natural geography and include all areas necessary for full development of municipal services. The LBC regulation looks at the development of borough services on an efficient, cost-effective level, and includes factors such as land use and ownership patterns, ethnicity and cultures, population density, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, and extraterritorial powers of boroughs. The Commission also considers the model boundaries, if any have been adopted, and existing REAA boundaries. 19 AAC 10.060.

The boundaries initially proposed by petitioners started at Cape Suckling, near the 144th meridian, and extended south and east to Cape Spencer. The seaward boundary line extended south approximately 75 miles from Cape Spencer and then turned at a 90° angle and went in a straight line east to Cape Spencer. In much of the eastern half of the proposed borough, the northern boundary followed the international border between the U.S. and Canada. (See map on page 6.)

The Commission carefully considered the arguments and evidence submitted for and against placing the western boundary at Cape Suckling or at the 141st meridian. The LBC found it was not a black and white issue with a clear-cut answer. As the Commission's legal counsel advised, the LBC may look at not only what the petitioners want, but also at the effect the proposal would have on other areas and on the state as a whole. Balancing the opposing evidence and policy arguments, the Commission exercised its discretion and determined that the 141st meridian would be the most appropriate western boundary for the Yakutat borough. The LBC

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 13

accepted the northern and seaward boundaries (east of the 141st meridian) proposed by Yakutat, as well as the Cape Fairweather boundary requested by petitioners shortly before the January 18 hearing. The LBC's conclusion on the boundaries was based upon the following findings:

- ◇ In response to strong protests from many Southeastern communities, the petitioners twice proposed alterations to the southern boundary. The final southern boundary requested by petitioners was formed by a line drawn from the top of Mount Fairweather to Cape Fairweather.
- ◇ Petitioners' proposed western boundary¹² was strongly opposed by a number of groups, including the Mental Health Trust, Chugach Alaska Corporation, Chugach REAA, the City of Cordova, Eyak Corporation, the Tatitlek Village IRA Council, the City of Whittier and approximately 100 individual Whittier residents who signed a petition opposing both the proposed boundaries and the borough itself, Ben A. Thomas Inc., Wasser & Winters Company, and Two Moon Bay Logging Camp School.¹³ All of the opposition to the western boundary centered on allowing the proposed Yakutat borough to extend west of the 141st meridian.
- ◇ The area west of the 141st meridian is not necessary for Yakutat to be able to fully develop municipal services throughout the borough.
- ◇ The 141st has long served as a dividing line for a number of jurisdictions, including Regional Educational Attendance Areas (REAA's), judicial districts,¹⁴ election districts, recording districts and census districts. The meridian also serves as the boundary between Alaska Native Claim Settlement Act regions.
- ◇ Sealaska Corporation, the Regional Native Corporation east of the line, strongly supports Yakutat's proposed boundary. Chugach Alaska Corporation, the Regional Native Corporation west of the line, strongly opposes it. The line between those two corporations' regions was established by the federal government at the 141st meridian.
- ◇ There are no known residents in the area west of the 141st meridian, other than the small number of people connected with the Icy Bay logging camp.

¹²Petitioners requested a northwestern boundary slightly altered from the proposal in the petition. Although their second proposed western boundary would begin at Cape Suckling, after going due north for two miles, the boundary line would veer northeast to exclude the Controller Bay drainages.

¹³The University of Alaska strongly opposed the boundary until after the February 26 decisional meeting; at that point the University and Yakutat were able to reach some agreements involving their on-going litigation and disputes over logging and regulation. During the reopening of the record, the University withdrew its opposition to Yakutat's proposed western boundary.

¹⁴The four judicial district boundaries are used as the basis for selecting 4 of the 5 LBC Commissioners. The Chair is chosen to serve at large.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 14

- ◇ Land ownership by Yakutat residents in the area west of the 141st meridian is minimal compared to the size of the area.
- ◇ There is no single, clear cut line which most "conforms generally to natural geography." (This is evidenced in the southern boundary by the three different locations suggested by petitioners during the petition process.) Although petitioners presented evidence of regional similarities, including weather, along the coast from Cape Suckling to Cape Fairweather, other sources place the dividing line between regions at or near the 141st meridian. For example, Alaska Natives and the Land, a study influential in the drafting of the ANCSA legislation, includes the area west of the Malaspina Glacier, near the 141st meridian in the Gulf of Alaska Region and the area from the glacier east, including Yakutat, in the Southeast Region.
- ◇ The Emergency Air Service contract for the Icy Bay logging camp is held by a Yakutat air company; however, major landowners in the disputed territory believe that activity in the area, and the development of its resources, will look to Prince William Sound rather than Yakutat.
- ◇ The transportation links to the area west of the 141st meridian, limited to boat and unscheduled flights, are somewhat more attenuated than in the other parts of the borough.
- ◇ The petitioners established use of the western area by Yakutat residents; however, it is used to a much lesser extent than the area to the east of the 141st. For example, information in the petition indicated only 2% to 26% of households used various areas west of the 141st for subsistence purposes.
- ◇ Mayor Powell testified that up to 33% of the commercially caught fish from within the petitioners' proposed boundaries come from the area west of the 141st. However, he and other Yakutat witnesses also testified that more than 95% of those fish are transported to Yakutat for processing.
- ◇ Neither petitioners' subsistence nor commercial usage rights will be altered by the setting of a municipal boundary.
- ◇ A Yakutat borough with the boundaries approved by the LBC will be able to exert influence over the area west of the 141st meridian. Petitioners' objective of protecting fishing habitat can be met through coastal plans and the Yakataga Area Plan.
- ◇ The Yakutat borough, with the boundaries approved by the LBC, will have enviable financial resources. The exclusion of the area west of the 141st meridian will not significantly affect the borough's future revenues from National Forest Receipts. As compared to the City of Yakutat, the borough will receive substantially increased National Forest Receipts, at least in the short term, as well as have a substantially increased tax base,

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 15

without needing to provide many additional services to many additional people.

- ◇ It would not be in the best interests of the state for the LBC to approve the extremely large territory requested by petitioners (approximately 7000 square miles within their last proposed boundaries), for a borough containing only 720 to 780 permanent residents, virtually all concentrated in one very small area.
- ◇ Because of the very small population, and concomitant thin leadership, the community's ability to handle regional government for the entire area over the long run is subject to question.
- ◇ The LBC did not consider model borough boundaries in reaching its decision on the Yakutat borough petition as model boundaries for the area have not yet been adopted. However, the LBC did consider the impact of the Yakutat proposal on the adjacent regions.
- ◇ The LBC advised the Department of Education of the Yakutat petition because the proposed boundaries did not conform to REAA boundaries and because the borough school district would have fewer than 250 students. The Commissioner of Education found the formation of the new district to be in the best interests of the state (a determination required under AS 14.17.139 for the formation of new school districts with fewer than 250 students).

CONCLUSION #4: ALTHOUGH YAKUTAT'S POPULATION IS SMALL, THE BOROUGH AREA, AS AMENDED BY THE COMMISSION, INCLUDES THE HUMAN AND FINANCIAL RESOURCES TO PROVIDE MUNICIPAL SERVICES.

To determine whether a proposed borough has sufficient human and financial resources to provide essential services on an efficient, cost-effective level, the Commission looks at factors such as the expected functions of the proposed borough, the expected expenses and income, the feasibility of the proposed budget, the area's economic base and property valuations, land use, anticipated development, personal income, the availability of employable people and commitment of the residents to sustaining a municipal corporation.

The Commission concludes that petitioners have established that Yakutat has the human and financial resources to provide borough services. This conclusion was based upon the following findings:

- ◇ Education is one of the predominant powers and services of any Alaska borough. The City of Yakutat has demonstrated that it is capable of running a good, though small, school district which already includes virtually all of the students within the proposed borough area.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 16

- ◇ According to petitioners' figures, 80% of the assessed valuation outside of the current city boundaries is within the roaded area which would be taxed at a 12 mill rate. The remainder of the borough would be taxed at a 9 mill rate. With the other reasonably projected revenues, the tax base and tax rate should be sufficient to continue funding an effective school system.
- ◇ Petitioners estimate that if Yakutat had been a borough during the last ten years, its share of National Forest receipts would have averaged at least \$250,000 per year. These funds are earmarked for schools or roads.
- ◇ Based upon reasonably projected expenses and revenues, the borough would have surplus revenues of several hundred thousand dollars during the first few years of borough operations.
- ◇ The projected borough budget appears realistic and reasonable, particularly in light of the community's long-term successful operation of a first class city carrying out many of the functions of a borough.
- ◇ Although the per capita expenses of the borough are relatively high, the borough appears to have sufficient revenues and resources to carry out at least essential borough services.
- ◇ Petitioners could not provide statistics on unemployment or personal incomes of the residents, and many personal incomes vary greatly from year to year because of annual variations in the commercial fishery. However, there are only about 12 Yakutat families receiving either AFDC or general assistance.
- ◇ The City of Yakutat already carries out many of the functions of a borough government. Whether it remains a city or becomes a borough, Yakutat will have the same group of people handling the challenges of municipal government.
- ◇ As a borough, Yakutat would have substantially more revenue and resources per capita than several organized boroughs. These resources should be sufficient to compensate for disadvantages caused by the small size and thin leadership of the population.

CONCLUSION #5: THE LAND, WATER AND AIR TRANSPORTATION FACILITIES ARE SUFFICIENT TO ALLOW THE COMMUNICATION AND EXCHANGE NECESSARY FOR THE DEVELOPMENT OF INTEGRATED BOROUGH GOVERNMENT.

To determine whether the borough would have the land, water and air transportation facilities to allow for the communication and exchange necessary for the development of integrated borough government, the Commission looks at factors such as transportation facilities, communications media, teleconferencing facilities, transportation costs and schedules, and geographical or climatic impediments. The Commission

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 17

concludes that the Yakutat borough would have the necessary transportation facilities to allow the communication necessary to develop integrated government. This conclusion was based upon the following findings:

- ◇ Because virtually all of the borough population lives in the roaded area within five miles of the current city limits, transportation and communications among the population is well-developed.
- ◇ The Yakutat airport, scheduled flights and charter airlines, along with the residents' boats, would allow the population both to travel easily out of the borough and to reach other parts of the borough where economic activities take place.
- ◇ The marine radio system appears to be sufficient to enable communications in the more remote parts of the borough.

CONCLUSION #6: UPON THE INCORPORATION OF THE BOROUGH, THE POWERS OF THE CITY WOULD BECOME AREA WIDE BOROUGH POWERS, THUS MEETING THE STANDARD FOR THE DISSOLUTION OF THE CITY OF YAKUTAT.

AS 29.06.450(c) provides that a city is dissolved when all its powers become areawide borough powers. The LBC's regulations provide that the Commission, in its discretion, will approve a petition for city dissolution if the borough has consented to assume the city powers and the Commission finds the dissolution is in the best interests of the state.

To determine whether the dissolution would be in the best interests of the state, the LBC looks at factors such as the ability of an organization other than the state to take over city services and facilities; potential health or safety dangers to the community or nearby residents if the city were to dissolve; the potential effect of dissolution on harmonious relations; the extent of support and opposition to dissolution; potential impacts on other cities; fiscal impact on the state; whether dissolution would diminish or promote local self-government and whether it meets the constitutional and statutory principles that guide LBC action.

The Commission concludes that, upon a majority vote by residents in favor of borough incorporation, the city would meet the standards for dissolution and dissolution would be in the best interests of the state. The Commission's conclusion was based upon the following findings:

- ◇ The borough's incorporation and the city's dissolution would be linked on the ballot, so that either both actions, or neither, would take effect following the election.
- ◇ Petitioners have demonstrated that only one level of local government is necessary or advisable for the small population.
- ◇ The best interest factors of the regulations were not drafted with this particular situation in mind, and may not all be applicable to this petition. However, if the borough incorporation proposal is

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 18

approved by the voters, city dissolution would be in the best interests of the state, as the burden and cost of providing services to the population would not fall upon the state, there is no evidence that dissolution would create disharmony among the residents or between the residents and other groups, the dissolution would have little or no impact on other cities, and dissolution would promote local self-government as it would allow one layer of local government to provide services to all of the Yakutat area residents, many of whom are currently disenfranchised.

STATEMENT OF COMMISSION MINORITY
ON THE YAKUTAT PETITION

Commissioner Dugan found that the Yakutat petition did not meet all of the standards for borough incorporation, and in particular found that its population was not large enough to support borough government. Her conclusion was based upon the following:

The LBC's Perspective

Petitioners will always come to the LBC with parochial views - as they should, because they are representing only their own local area. The Local Boundary Commission, however, cannot take the same viewpoint. The Commissioners must keep in mind that they represent the state on an areawide basis. Much as Commission members might empathize with local residents, they must look at issues which are bigger than what might be best solely for Yakutat or any other petitioning community. The LBC must look at what is in the state's best interests, and it is not in the state's best interests to start promoting the formation of boroughs with less than a reasonable number of people.

Borough Government

The Commission must determine what it perceives a borough to be. Yakutat has certainly shown it can function as a city government, and if there were no difference between a city and borough, then perhaps borough status would be appropriate. However, study of government in Alaska indicates that cities and boroughs were not intended to be completely interchangeable.

Sources such as legislative and constitutional history, the PAS studies,¹⁵ Metropolitan Experiment in Alaska, and Vic Fischer's work

¹⁵Public Administration Service - PAS - was hired by the Alaska Statehood Committee to prepare analyses on several topics, including local government, for use at the 1955-56 Alaska Constitutional Convention. PAS also prepared a report on "Local Government under the Alaska Constitution" which was distributed in January, 1959. Many of the suggestions in the report were carried out by the new Alaska legislature.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 19

indicate that although the constitutional convention delegates and early legislatures deliberately left terms broad and general enough to allow local government in Alaska to evolve, they also had some basic concepts in mind:

- ◊ Boundaries should be established at the state level to reflect state-wide considerations as well as regional criteria and local interests.
- ◊ Boroughs should cover relatively large areas with common economic, social and political interests.
- ◊ Boroughs should be large enough to prevent too many subdivisions in Alaska, in order to avoid the problems of many older states which had many small units and too much overlap of power.
- ◊ Boroughs should generally include more than one community and should be able to provide services efficiently and effectively.
- ◊ Borough government should not be established until a region was truly ready for borough incorporation.
- ◊ It would be better to exercise constraint in the creation of boroughs than to be faced with the difficult task of later abolishing or consolidating incorporated boroughs which were unneeded or too small for efficient operation.
- ◊ Boroughs should not be prematurely formed when the expansion of an existing city or the incorporation of a new city could meet the local government needs of the area.
- ◊ The LBC was mandated by the Alaska Constitution so that vested local interests and prejudices would not control the drawing of boundaries.
- ◊ The creation of local government units should be limited, not to a specific total number, but by the principle that only the minimum number of governments necessary to provide effective and efficient local self-government should be approved for incorporation.

The LBC minority believes there is a difference between a city and a borough. Allowing a small-population city to become a single-community borough prevents the sharing of resources by other communities and inappropriately fixes boundaries which may be very difficult to change later. Allowing cities to transform themselves into single-community boroughs also increases costs to the state, through the various minimum entitlements that "new boroughs" (as opposed to expanding cities) receive, including start-up grants of \$600,000 and 10 % of the state VUU land¹⁶ within its boundaries. Borough boundaries which extend beyond the area the city might reasonably annex also give the single community increased revenue sharing and shared fish-taxes.¹⁷ In Yakutat's case, it will also receive a greatly increased share of the National Forest receipts, money which would otherwise go to the state-funded REAA's and to other city school districts.

¹⁶Vacant, unappropriated, unreserved land.

¹⁷The increase in revenue sharing results from the increased tax base and the expected increase in locally generated revenues.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 20

The minority also believes that the Commission's presumption in favor of a minimum of 1000 permanent residents to qualify for borough incorporation should not be lightly overturned. The LBC has had to define the factors it considers in borough incorporation, through its regulations and its deliberations, because the constitutional and statutory standards are broad and give only general guidance in analyzing specific petitions. Applying the LBC's definitions and interpretations of the language of the standards, along with the historical sources cited above, it is apparent that Yakutat's 700+ people are not enough to support borough, rather than city government. Yakutat's population is less than 75% of the presumed minimum, and it is all highly concentrated in a tiny portion of the approved borough boundaries. As members of the majority noted, the leadership layer of such a small population is thin, and there is a serious possibility that the small population will have difficulties providing effective and efficient borough services throughout the borough. The minority concludes that Yakutat does not have the population to function as a true borough government.

Yakutat's Interests Can Be Protected without Immediate Incorporation

If, as petitioners argue, Yakutat does not appear to fit with communities to the northwest or the southeast, that does not automatically lead to the conclusion that it should therefore immediately be approved for borough incorporation. If, as the minority believes, Yakutat lacks the population to incorporate as a borough and effectively and efficiently provide services throughout the proposed territory, there is another alternative to consider. The LBC can adopt model boundaries which would allow Yakutat to incorporate without other communities in the future, if it later meets borough incorporation standards.

To say, as members of the majority have, that letting this small-population, single-community area incorporate now would do no harm ignores the precedent the LBC will be setting. It also ignores the difficult deliberative and quasi-judicial bodies have in rejecting petitions once a precedent is set, particularly petitions on such an emotional and political issue as local government.

Although Yakutat may have some claim to a unique geographical situation, geography is only one of several borough standards, and Yakutat's situation is only one type of geographical difference. Other small communities will now have every reason to expect that a small, concentrated population will be no impediment to borough incorporation as long as some "unique" quality can be argued, whether it be location, transportation difficulties, cultural differences or any other distinguishing factor.¹⁸ The majority's decision also sends the signal that failure to meet the borough incorporation standards at the time of the petition may be overlooked as long as the LBC thinks the community might meet the standards in the future - or if the LBC just plain doesn't know how to align the city in the present.

¹⁸Even if the Commission has the political courage to reject other small-community borough petitions, this signal to go ahead and file such petitions is going to increase the LBC's and staff's workload and expenses. Since each petition must be investigated, more legitimate petitions will be delayed by the increased number of petitions filed.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 21

LBC Consistency

The majority's decision is inconsistent with several current and past LBC actions and decisions:

◇ The majority decision to approve the Yakutat petition is strongly at odds with the LBC's determination that DCRA should investigate and report on the possibility of combining the Bristol Bay Borough - a borough with a 30 year history and twice the population of Yakutat - with the Lake & Peninsula Borough and possibly the Dillingham area.

◇ At least one member of the majority, during the LBC's decisional meetings, argued that should the small population encounter a lack of financial or human resources to provide extensive borough government, Yakutat could just eliminate most services, and provide the remaining services to the roaded area. That claim underlines one of the arguments made by the Department in its recommendation against the petition. If the "borough" limits its services to the roaded area, how is this "borough" incorporation different from a city which expanded through annexation? If the "borough" is likely to provide only the "services" of regulation and taxation to a large territory, while using that territory's tax base to provide services to a small number of people in a tiny area, is that not the same as allowing a huge land grab that really should be called a city annexation?

◇ In 1988, the Fairbanks North Star Borough petitioned for the annexation of approximately 216 square miles of land, including Pump Station 7 of the Alaska pipeline. The majority of the LBC approved the petition, finding annexation represented sound public policy and would increase the FNSB's relatively weak tax base. At the time of the petition, the value of the FNSB's taxable property, measured as value per student, was almost 15% less than the average borough value in the state, even excluding the North Slope Borough's disproportionately high value; the annexation would have raised FNSB's value per student to 12% below the borough average. The annexation was expected to increase FNSB revenues by \$1,350,000 (a \$2,000,000 increase in revenues offset by a \$650,000 decrease in state contributions under the education foundation formula), which represented a per capita net revenue increase of only \$17.85.

In addition to the FNSB's justified need to increase its tax base, the LBC found the FNSB had social, cultural and economic ties to the areas sought for annexation. Although the area was uninhabited, the majority of the 36 employees at the industrial facility were residents of the FNSB, as were the miners with claims in the area, and the borough expected to provide services to the annexed territory. This 1988 petition was considered by the LBC before it began studying model boundaries, but the Commission found the annexation would help perfect the FNSB boundaries under at least two incorporation standards.

In the minority statement on the 1988 Fairbanks decision, the LBC was strongly criticized for having voted in favor of the FNSB annexation, calling it a "money grab" without precedent, allowing increased revenues without the borough offering increased services. Because the legislature

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 22

rejected the LBC's recommendation on the petition in 1989, the FNSB presented a second petition later that year. This time a 3 to 2 majority rejected the annexation petition, although the territory all lies within the model boundaries which had been adopted by the time of the second decision.

Even with the territory sought to be annexed to the FNSB, the total area of the borough would have been smaller than the area originally requested by the Yakutat petitioners. FNSB's population, however, is more than 100 times that of the proposed Yakutat borough. On a per capita basis, the expected increase in revenues if the Yakutat borough is incorporated completely dwarfs the projected increase in revenues from the alleged "money grab" in the rejected Fairbanks annexation. Incorporation would vastly increase - by hundreds of thousands of dollars - Yakutat's share of the National Forest receipts and state shared fish tax, as well as almost doubling its assessed property value and greatly increasing the amount of sales and fish sales tax - all for a population of 720 people. Yet, except for the roaded area within five miles of the current city limits, virtually all of the territory which will be added to Yakutat through this incorporation is uninhabited and will be provided no services - except planning, regulation and taxation. In addition, the increase of Forest receipts to Yakutat is matched by an equal decrease in Forest receipts to the REAA's and city school districts in the rest of the Tongass National Forest area; the state will presumably have to find other revenue sources to make up the loss of money for the REAA's, or cause the budgets to be substantially reduced.

In analyzing the Yakutat borough proposal, a member of the majority stated there is no similarity between Yakutat and the FNSB petitions, in part because one is an incorporation and the other an annexation. Whether a borough reaches its size through initial incorporation or through annexation is not a valid distinguishing factor. The end result of any approved borough petition should be the same - a borough which meets the incorporation standards and either follows or is expanding towards its model boundaries. By ignoring the similarity between the two situations, and reaching contradictory results, the Commission is sending a very confused signal to future petitioners, giving them no clear guideline for understanding what the LBC considers acceptable. It may, however, send the message that an expensive, political, high-pressure presentation (unlike the less organized FNSB presentation) is more important and more likely to be persuasive than the substance of a petition.

Conclusion

The Yakutat petitioners put on a strong, comprehensive argument and demonstrated strong community support for a borough. The minority believes, however, that they did not demonstrate that Yakutat meets the standards for borough incorporation. By approving the petition, the LBC has set a precedent which will have a negative impact on the State of Alaska and is not good public policy.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 23

ORDER

Based upon the foregoing findings and conclusions, the Local Boundary Commission hereby orders that:

1. The boundaries of the proposed City and Borough of Yakutat are amended to exclude all territory west of the 141st meridian and all territory south of a line drawn from Cape Fairweather to the top of Mount Fairweather. The description of the territory approved for borough incorporation is set out below and shown on the map following the description:

Beginning at the peak of Mount Fairweather at the International Boundary of the United States and Canada, in T35S, R47E, Copper River Meridian, the TRUE POINT OF BEGINNING;

thence southwesterly in a straight line to Cape Fairweather, at North 58° 48' 30" Latitude, West 137° 56' 45" Longitude, in T36S, R45E, Copper River Meridian;

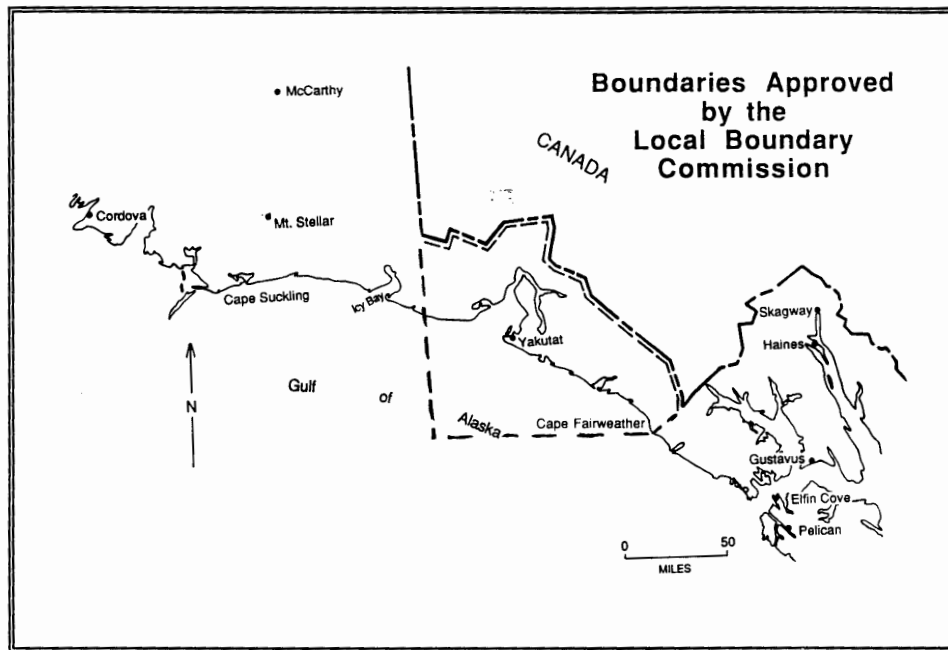
thence due west along a straight line to the point of intersection in the Gulf of Alaska with the 141st meridian;

thence north along the 141st meridian to the point of intersection with the International Boundary of the United States and Canada, on the northern boundary of T19S, Copper River Meridian;

thence following, in a generally southeasterly direction, the International Boundary of the United States and Canada, to the TRUE POINT OF BEGINNING.

With respect to the portion of the City and Borough of Yakutat which extends into the Gulf of Alaska, notwithstanding the foregoing description, the seaward boundaries extend only to the limits of the State of Alaska's jurisdiction under AS 44.03.010.

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 24



2. The petition as amended is approved.

3. The issues of the incorporation of the borough, the adoption of the proposed charter and the dissolution of the City of Yakutat are all contingent upon one another. The Division of Elections shall be asked to ensure that the wording of the ballot proposition links the three issues so that a "yes" vote approves the incorporation of a borough, the dissolution of the City and adoption of the charter, and a "no" vote disapproves all three actions.

3. To avoid any confusion caused by the name "City and Borough of Yakutat," all written documents issued by the Commission or its DCRA staff shall make it clear that the proposed municipality would be a borough and not a unified municipality.

APPROVED IN WRITING THIS 15TH DAY OF April, 1992

LOCAL BOUNDARY COMMISSION:

By: Charles Bettisworth, Chair

Attest:

Dan Bockhorst, Staff

STATEMENT OF DECISION RE: YAKUTAT
BOROUGH INCORPORATION PETITION
PAGE 25

RECONSIDERATION AND JUDICIAL APPEAL

Any individual may request that the Commission reconsider the decision outlined above within twenty days of the date of this order, under 19 AAC 10.870. A copy of the regulations governing reconsideration is available from the Commission's staff at the Department of Community and Regional Affairs, 333 West 4th Avenue, Suite 220, Anchorage, Alaska 99501; 269-4500.

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedure, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days from the date this order is mailed or delivered.

APPENDIX E

1962 MEMO FROM SECRETARY OF STATE TO GOVERNOR REGARDING BRISTOL BAY BOROUGH

MEMORANDUM

State of Alaska

TO: ☐ Governor William A. Egan

DATE : July 9, 1962

FROM: Hugh J. Wade, Secretary of State SUBJECT: Incorporation of Bristol Bay
borough

This is a matter which I had intended to call to your attention before I left on my trip with the Task Force. The attached notice, copy of which may have been made available to you, reached me while I was away. I have been following the proceedings in connection with the hearings on this proposed borough and have discussed from time to time the proposed action with the Local Affairs Agency. The proposed borough just doesn't make sense to me. In fact, its defects were so obvious to me that I felt that the Boundary Commission would never approve it. I was mistaken, and apparently after hearings in Dillingham, Naknek, and King Salmon the Boundary Commission followed the recommendation of the Local Affairs Agency and reduced the area of the borough even smaller than it was originally proposed, and now we are confronted with holding an election in the area embraced within the proposed boundaries for this borough and undoubtedly it will be favorably voted upon.

My objection to the proposed borough, of course, is that it takes the principal tax resources in the area and makes that tax resource available only to a limited number of people--less than 600 I believe--to the exclusion of all other people in the Bay area. They even excluded from the area the Village of Levelock which is only a few miles north of the boundary line. Carl Nunn of Dillingham, when he was in Juneau a few months ago, was protesting the proposed borough and then when the hearing was held in Dillingham he apparently appeared on behalf of the Chamber of Commerce and objected to the establishment of the borough, but I notice from the findings of fact report of the Local Affairs Agency that his testimony was disregarded and the protest of that community passed over very lightly. When I was in Dillingham with the Task Force, Mr. Nunn again questioned me about the proposed borough, and when I asked him if he had received a copy of the Local Affairs Agency's report and recommendation to the Boundary Commission, he said he had not. In fact he expressed great surprise to learn that the report had already been made to approve the borough. Just yesterday I asked Mr. Pegues if it were true that the attached report was not sent to Dillingham, and he confirmed the fact, but stated that he would mail them a copy right away.

-2-

I know the Local Affairs Agency is very anxious to establish a borough and I, too, am anxious to get a start in establishing them throughout the State, but I just can't help but feel that this will get us off to a poor start. It is bound to be met with great resistance in the Bristol Bay area, and in my opinion it is fundamentally wrong to allow this relatively small area to grab this rich tax resource and set up a borough government which will be financed entirely by the tax revenue from the raw fish packed by the canneries at Naknek. Local people will not be required to contribute in any way to a local government, and when the other areas in Bristol Bay start looking for some sort of a tax base to establish local government, they are going to find that this relatively small area has taken all of the rich tax resource for the benefit of a relatively few people.

I am required under Chapter 146 of SLA 1961 to order an election to be held in the area of the proposed borough, and according to this law I have 30 days to call the election and it must be held within 90 days after the date I issue the order of election. The notice was received in my office on June 18, and it would appear, therefore, that the election would have to be held sometime before the 18th of October. It is my understanding that the Local Affairs Agency is urging that the election be held early in September. Personally, I am disposed to take the full time allowed me under the law for fixing the date of the election, because I think that the people in that area should be given all time possible to take whatever action they may now take at this late date to enjoin creation of this borough.

It is difficult for me to conceive of a borough established in the Bristol Bay area that did not include the community of Dillingham and the other villages in that area that are now excluded from this proposed borough.

HJW/w

APPENDIX F

REVIEW OF SPECIFIC FACTORS IDENTIFIED BY THE ALASKA SUPREME COURT AND SET OUT IN 3 AAC 110.045(a) AS EVIDENCE OF COMMON INTEREST ON A REGIONAL SCALE

PART A. SERVICE BY STATE FERRY SYSTEM

Skagway is on the southeast Alaska mainline route of the State ferry system. The mainline route links Skagway directly to Haines. Other Alaska communities on the mainline route are Juneau/Auke Bay, Sitka, Petersburg, Wrangell, and Ketchikan. Figure F-1 lists the ports, running times, and distances between Alaska ports on the mainline route.

As shown in Figure F-1, the Skagway – Haines run is, by far, the shortest distance between any two ports on the southeast Alaska mainline route. In fact, the Skagway – Haines run is the shortest between any two ports in the entire Alaska Marine Highway System.¹

Figure F-2 on the following page shows the mainline ferry schedule between Skagway and Haines for the period of May 15 – 26, 2002.

Skagway is linked indirectly through inter-port ferry routes commonly known as “feeder” routes to other communities in southeast Alaska. In the summer, the M/V LeConte links Kake, Angoon, Hoonah, Pelican, and Tenakee with the mainline ports at Sitka, and Juneau. The M/V Aurora links the mainline port of Ketchikan with Hollis and Metlakatla.

**Figure F-1
ALASKA MARINE HIGHWAY
SOUTHEAST ALASKA MAINLINE ROUTE**

From	To	Running Time	Nautical Miles
Skagway	Haines	1 hour	13
Haines	Juneau/Auke Bay	4 hours, 30 min.	68
Juneau/Auke Bay	Sitka	8 hours, 45 min.	132
Sitka	Petersburg	10 hours	156
Juneau	Petersburg	8 hours	123
Petersburg	Wrangell	3 hours	41
Wrangell	Ketchikan	6 hours	89

In addition to State ferry service, Skagway and Haines are directly linked by two 150-passenger high-speed jet catamarans owned by Klukwan, Incorporated. The fast ferries operate between Haines and Skagway from mid-May to mid-September. They make the crossing between Skagway and Haines in just 35 minutes. Although the current schedule provides for six daily crossings, the fast ferries can make the crossing up to 26 times per day if demand warrants.²

¹ See <http://www.dot.state.ak.us/>. The next closest pair of ports is Ketchikan and Metlakatla, which are 16 nautical miles apart and have a running time of 1 hour and 15 minutes.

² <<http://www.chilkatcruises.com/>>

Figure F-2
ALASKA MARINE HIGHWAY SCHEDULE
HAINES TO SKAGWAY, MAY 15-26, 2002

Vessel	From Port	Departure	To Port	Arrival	Cost
M/V Taku	Haines	9:30 PM Thu, May 16, 2002	Skagway	10:30 PM Thu, May 16, 2002	\$20 + Vehicle
M/V Taku	Haines	1:30 PM Fri, May 17, 2002	Skagway	2:30 PM Fri, May 17, 2002	\$20 + Vehicle
M/V Taku	Haines	1:00 PM Sat, May 18, 2002	Skagway	2:00 PM Sat, May 18, 2002	\$20 + Vehicle
M/V Taku	Haines	1:00 PM Sun, May 19, 2002	Skagway	2:00 PM Sun, May 19, 2002	\$20 + Vehicle
M/V Matanuska	Haines	3:15 PM Mon, May 20, 2002	Skagway	4:15 PM Mon, May 20, 2002	\$20 + Vehicle
M/V Kennicott	Haines	4:15 PM Wed, May 22, 2002	Skagway	5:15 PM Wed, May 22, 2002	\$20 + Vehicle
M/V Taku	Haines	12:45 PM Thu, May 23, 2002	Skagway	1:45 PM Thu, May 23, 2002	\$20 + Vehicle
M/V Taku	Haines	10:45 AM Fri, May 24, 2002	Skagway	11:45 AM Fri, May 24, 2002	\$20 + Vehicle
M/V Taku	Haines	12:45 PM Sat, May 25, 2002	Skagway	1:45 PM Sat, May 25, 2002	\$20 + Vehicle
M/V Kennicott	Haines	6:30 PM Sat, May 25, 2002	Skagway	7:30 PM Sat, May 25, 2002	\$20 + Vehicle
M/V Taku	Haines	12:45 PM Sun, May 26, 2002	Skagway	1:45 PM Sun, May 26, 2002	\$20 + Vehicle
Vessel	From Port	Departure	To Port	Arrival	Cost
M/V Taku	Skagway	12:30 AM Fri, May 17, 2002	Haines	1:30 AM Fri, May 17, 2002	\$20 + Vehicle
M/V Taku	Skagway	4:30 PM Fri, May 17, 2002	Haines	5:30 PM Fri, May 17, 2002	\$20 + Vehicle
M/V Taku	Skagway	4:30 PM Sat, May 18, 2002	Haines	5:30 PM Sat, May 18, 2002	\$20 + Vehicle
M/V Taku	Skagway	4:30 PM Sun, May 19, 2002	Haines	5:30 PM Sun, May 19, 2002	\$20 + Vehicle
M/V Matanuska	Skagway	7:15 PM Mon, May 20, 2002	Haines	8:15 PM Mon, May 20, 2002	\$20 + Vehicle
M/V Kennicott	Skagway	8:45 PM Wed, May 22, 2002	Haines	9:45 PM Wed, May 22, 2002	\$20 + Vehicle
M/V Taku	Skagway	4:15 PM Thu, May 23, 2002	Haines	5:15 PM Thu, May 23, 2002	\$20 + Vehicle
M/V Taku	Skagway	2:45 PM Fri, May 24, 2002	Haines	3:45 PM Fri, May 24, 2002	\$20 + Vehicle
M/V Taku	Skagway	2:45 PM Sat, May 25, 2002	Haines	3:45 PM Sat, May 25, 2002	\$20 + Vehicle
M/V Kennicott	Skagway	11:15 PM Sat, May 25, 2002	Haines	12:15 AM Sun, May 26, 2002	\$20 + Vehicle
M/V Taku	Skagway	4:15 PM Sun, May 26, 2002	Haines	5:15 PM Sun, May 26, 2002	\$20 + Vehicle

Source: <http://www.dot.state.ak.us/amhs/schedres/scheds/search/search.html>

Figure F-3 DAILY AIR SERVICE HAINES TO SKAGWAY

Departure	Airline	Cost	Arrival
8:20 AM	LAB Flying Services # 401	\$42.00	8:35 AM
8:20 AM	LAB Flying Services # 402	\$42.00	8:35 AM
8:20 AM	Skagway Air # 1891	\$45.00	8:30 AM
9:50 AM	Skagway Air # 1893	\$45.00	10:00 AM
11:05 AM	LAB Flying Services # 405	\$42.00	11:20 AM
11:20 AM	Skagway Air # 1895	\$45.00	11:30 AM
12:45 PM	LAB Flying Services # 407	\$42.00	1:00 PM
2:45 PM	LAB Flying Services # 409	\$42.00	3:00 PM
2:50 PM	Skagway Air # 1897	\$45.00	3:00 PM
4:20 PM	Skagway Air # 1899	\$45.00	4:30 PM
6:45 PM	LAB Flying Services # 512	\$42.00	7:00 PM
7:20 PM	Skagway Air # 1901	\$45.00	7:30 PM

Source: <http://www.travelocity.com> – one way travel on May 15, 2002 and <http://www.skagwayair.com/sgyflight.html>

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. At page 36 of the Skagway borough proposal, the Petitioner states:

The few economic and transportation links between Skagway and the Haines area are not enough to create cohesiveness. These links include the Haines-Skogway summer water taxi service. . . .

In summary, State ferry links between Skagway and Haines are direct, frequent, and year-round. Marine transportation links between the two communities are augmented during the summer with extensive private ferry service.

PART B. DAILY LOCAL AIR TAXI SERVICE

Two carriers provide daily scheduled air taxi service between Skagway and Haines. Those are Skagway Air and LAB Flying Service, Inc. Both carriers plus one other (Wings of Alaska) also provide scheduled service from Skagway to Juneau.³

Figure F-3 lists the current schedule and rates for daily air service between Skagway and Haines.

³ Wings of Alaska also provides scheduled service between Juneau and Haines, but does not provide direct service between Haines and Skagway.

PART C. COMMON MAJOR ECONOMIC ACTIVITY

The Petition (at page 36) identifies perceived economic differences between Skagway and Haines as follows:

The areas have economic differences too. The 1990 census data show that Skagway's economy is based on transportation, tourism, and federal and local government employment. This was reflected in a 1990 survey of the top three industry employers: transportation, retail trade and public administration. In contrast, the Haines Borough's top three industry employers were retail trade, durable manufacturing, and the fishing/forestry sectors. In the City of Haines, top industries were similarly retail trade, durable manufacturing, and construction. While tourism and related retail trade is a growing sector in the Haines area, it is hotly contested by its residents at times, as is the case in many other communities. By contrast, Skagway has consistently welcomed development of what is now the predominant sector of its economy (it is one of the "big three" cruise ships stops along with Juneau and Ketchi-

kan). Skagway has long supported a staff position to promote development of its tourism industry, is actively managing tourism impacts through regulation of shuttles and of commercial operations in the Dyea area, and is reserving/designating popular recreation spots for this use in its Comprehensive Plan. It would probably be more correct to characterize these communities as being in economic competition with one another rather than complementing one another.

As noted in the discussion contained in the main body of the report concerning the economic base of the proposed Skagway borough, tourism is the predominant economic activity in Skagway. Again, the Skagway Chamber of Commerce Director wrote, "tourism is basically the *only* economy in [Skagway] besides other small commerce and businesses."

However, tourism is also an important segment of the economy in the adjacent community of Haines. While Skagway reportedly received more than 590,000 cruise ship passengers in 2001, Haines received 187,388 passengers the year before. However, Royal Caribbean International dropped Haines from its itinerary in 2001. The loss of Royal Caribbean International saw the number of cruise passengers visiting Haines in 2001 drop to 40,150.⁴ The number of cruise passengers expected to visit Haines this year is 90,000 – more than double the figure in 2001.⁵ The following newspaper account in December of last year reflects the planned 2002 cruise ship dockings in Haines:⁶

Two of Norwegian Cruise Lines' biggest ships will anchor Haines' 2002 cruise ship schedule, doubling large-ship visits next season.

⁴ *Chilkat Valley News*, December 20, 2001.

⁵ *Chilkat Valley News*, February 14, 2002.

⁶ *Chilkat Valley News*, December 20, 2001. On February 14, the Chilkat Valley News published a report that one of the smaller ships, the 52-passenger *Spirit of Alaska* would not be operating this year. Reservations on the *Spirit of Alaska* were to be transferred to its larger sister ship the *Spirit of Endeavor*.

The first of 22 dockings of NCL's 2,000-passenger *Norwegian Sky* marks the beginning of the visitor season May 1. Weekly Wednesday evening stops continue through Sept. 25.

The Sky's sister ship, the 1,754-passenger *Norwegian Wind*, makes the first of 20 stops Thursday, May 2. *Norwegian Wind* visits continue through Sept. 12.

The NCI ships are the only large liners currently planning to stop here next summer. But just the addition of the second big ship will have a big impact, said Haines tourism director Michelle Glass. "Just by adding the Sky, we're going to double what we had last year." Cruise ship passenger numbers tanked last year—from 187,388 in 2000 to 40,150 in 2001—when Royal Caribbean International dropped Haines from its itinerary.

The remainder of Haines' summer cruise ship schedule is filled with ships under 200 passengers. Alaska Sightseeing-CruiseWest "Spirit" ships account for most of that traffic.

Glass said the seven planned visits of the 114-passenger *Spirit of Oceanus* should prove whether Haines could serve as an auxiliary port for Skagway. "They're going to be here all day, and they're a higher-buck tour than



The cruise ship Volendam at the Skagway dock.

the other smaller ships. They'll be shuttling passengers back and fourth to Skagway to ride the train."

The 99-passenger *Spirit of '98* is booked for 16 stops starting May 2. The 84-passenger *Spirit of Columbia* is set for 13 late-afternoon stops starting May 13. The 52-passenger *Spirit of Alaska* makes seven afternoon stops starting May 17, and the 78-passenger *Spirit of Columbia* visits twice.

The *Yorktown Clipper* is scheduled for 7 visits starting June 12.

It was reported by the *Chilkat Valley News* on May 30, 2002 that Holland-America would add Haines to the itinerary for the 1,266-passenger, 600-crewmember *Ryndam* next year. The ship is planned for seven stops in Haines beginning in 2003.

However, on June 20, 2002, the *Chilkat Valley News* reported that Norwegian Cruise Lines – whose *Norwegian Wind* and *Norwegian Sky* are scheduled to stop 42 times in Haines this season, bringing 79,000 passengers – eliminated Haines from the schedule for both ships for the 2003 season.

⁷ *Chilkat Valley News*, January 31, 2002.

On June 22, 2002, the *Eagle Eye News* reported that the pullout by the *Norwegian Wind* and *Norwegian Sky* would open the Port Chilkoot Dock in Haines for use by other lines. In particular, it was reported that Holland America might increase its seven planned stops in Haines during 2003 to fifteen. The *Eagle Eye News* also quoted Haines Economic Development Director Robert Venables as stating that the *Norwegian Sun* might add Haines to its schedule in 2003.

According to Mr. Venables, the fact that the *Wind* and *Sky* lack federal permits to enter Glacier Bay – which induces the ships to cruise to more distant alternative ice fields – may have been a significant factor in the decision to drop Haines from the 2003 schedule.

He stressed, however, that the *Sun* has a permit to cruise Glacier Bay. (Personal communication, Robert Venables)

The Petitioner emphasized, as evidence of the importance of the tourism industry to the community, that the City of Skagway hires an employee to promote tourism. While tourism in Haines exists on a smaller scale than it does in Skagway, DCED notes that the City of Haines also employs a tourism director.

Figure F-4 NON-SKAGWAY-BASED BUSINESSES OPERATING IN SKAGWAY

(based on list of 2002 business licenses issued by City of Skagway)

Community	Number of Firms Licensed in Skagway	Community	Number of Firms Licensed in Skagway
Haines AK	14	Macon GA	1
Juneau AK	11	Milton MA	1
Seattle WA	11	Minneapolis MN	1
St. Louis MO	8	New York NY	1
Anchorage AK	5	Newark OH	1
Petersburg AK	3	Newton IA	1
Cincinnati OH	3	North Canton OH	1
Warner Springs CA	2	Oak Harbor WA	1
Whitehorse YT	2	Oklahoma City OK	1
Eagle River AK	1	Olean NY	1
Ketchikan AK	1	Park Ridge IL	1
Sitka AK	1	Pleasanton CA	1
Wrangell AK	1	Rosemont IL	1
Austin TX	1	Round Rock TX	1
Bow WA	1	San Francisco CA	1
Burlington WA	1	Snohomish WA	1
Concord CA	1	St. George UT	1
Dayton OH	1	St. Thomas VI	1
Des Moines IA	1	Stamford, CT	1
East Wenatchee WA	1	Tulsa OK	1
El Segundo CA	1	Tuscaloosa AL	1
Forest Grove OR	1	Vallejo CA	1
Grantham NH	1	Vancouver WA	1
Houston TX	1	Voohrees NJ	1
Irvine CA	1	Westlake Village CA	1
Libertyville IL	1	Albany NY	1
Lincoln CA	1		

As part of an ongoing Haines economic development planning effort, a tourism symposium was held in Haines on January 28 of this year. Links between the tourism industry in Haines and Skagway were a primary topic at the symposium as reflected in the following newspaper account:⁷

Participants in Monday's local tourism symposium learned valuable details about Haines' role in the Alaska visitor industry.

The gathering, sponsored by the City of Haines and the Haines Convention and Visitors' Bureau, focused on the future of Haines as a destination for cruise and independent tourists.

Former city tourism director Susan Bell, now a consultant with the Juneau-based research company McDowell Group, presented newly gathered statistics that show Haines as popular among cruise and independent travelers. . . .

Bell said key issues for Haines' future as a destination are transportation constraints, with limited Alaska Marine Highway access, and relatively high cost for air access compared to Sitka or Juneau. Limited RV capacity and a lack of a market identity are also limiting factors, she said. . . .

Bells said Haines' proximity to Skagway should be considered a plus. Skagway is expecting to have another year of growth in cruise numbers, which should translate into increased business here, she said. "Lynn Canal is perceived as one destination. People equate glaciers with wilderness and lump the train and the Klondike Gold Rush together."

The link could pay off in upcoming years if Haines accepts a role as an auxiliary port for Skagway, Chilkat Cruises president Bill Fletcher told the group.

Fletcher's company is planning 13 daily round-trips this summer to bring visitors to Haines from ships docked in Skagway. He called the concept of linking the two towns one of Haines' best bets for the future.

"One of the bright spots for us is Haines' accessibility to Skagway. We're looking at bringing up to 20,000 visitors that are not on tours to Haines. It's a silver lining that that needs to be promoted."

Haines' desirability as an exclusive port-of-call and a cheaper alternative to docking in Skagway are major selling points, Fletcher said. A cruise line could save as much as \$10,000 a day in docking fees, and the time it takes to cruise to Skagway, by tying up at the Port Chilkoot Dock instead.

"There's savings there. They could get two ports for the price of one, and market Haines as an exclusive port. Access to Skagway is currently the only way you'll get a ship to come here."

Tourism is clearly a major economic activity in both Skagway and Haines. The preceding account provides evidence that Skagway and Haines not only have common interests with respect to tourism in general, but also have common interests with respect to the very same tourists.

Of the 369 previously noted businesses licensed by the City of Skagway in 2002, 103 (27.9%) were based in communities other than Skagway. Of those 103 businesses, Haines had the most. Juneau and Seattle were tied for the second place ranking. Figure F-4 lists the number of non-Skogway-based firms licensed to conduct business in Skagway during 2002.

Figure F-5
PERCENTAGE OF EMPLOYED CIVILIANS
16 YEARS OF AGE AND OLDER IN SKAGWAY AND
THE HAINES BOROUGH BY INDUSTRY
 (Source: 2000 Census)

Industry	City of Skagway	Haines Borough	Relative Difference
Agriculture, forestry, fishing and hunting, and mining	0.4%	5.7%	Haines is 5.3 percentage points and 14.2 times greater
Construction	14.5%	13.2%	Skagway is 1.3 percentage points and 1.1 times greater
Manufacturing	0.0%	2.8%	Haines is 2.8 percentage points greater
Wholesale trade	1.1%	1.1%	Both are identical
Retail trade	14.3%	11.4%	Skagway is 2.9 percentage points and 1.25 times greater
Transportation and warehousing, and utilities	24.0%	7.2%	Skagway is 16.8 percentage points and 3.3 times greater
Information	1.3%	3.0%	Haines is 1.7 percentage points and 2.3 times greater
Finance, insurance, real estate, and rental and leasing	2.9%	3.1%	Haines is 0.2 percentage points and 1.1 times greater
Professional, scientific, management, administrative, and waste management services	5.5%	5.7%	Haines is 0.2 percentage points greater (virtually equal)
Educational, health and social services	10.9%	17.2%	Haines is 6.3 percentage points and 1.6 times greater
Arts, entertainment, recreation, accommodation and food services	15.6%	14.6%	Skagway is 1 percentage point and 1.1 times greater
Other services (except public administration)	2.7%	7.5%	Haines is 4.8 percentage points and 2.8 times greater
Public administration	6.7%	7.4%	Haines is 0.7 percentage points and 1.1 times greater

Neither the City of Haines nor the Haines Borough issues business licenses. However, the Haines Borough, which is responsible for collection of its own sales taxes as well as those levied by the City of Haines, indicates that three Skagway-based businesses are registered for sales tax purposes with the Haines Borough.⁸ One of those three businesses is also a member of the Haines Chamber of Commerce. Two other businesses based in Skagway but not registered with the Haines Borough are also members of the Haines Chamber of Commerce.⁹ In addition, according to the Commercial Fisheries Entry Commission, a Skagway-based sport fishing charter business operates two vessels primarily in the Haines area.

⁸ List of businesses provided May 21, 2002.

⁹ <<http://haineschamber.org/biz.html>>

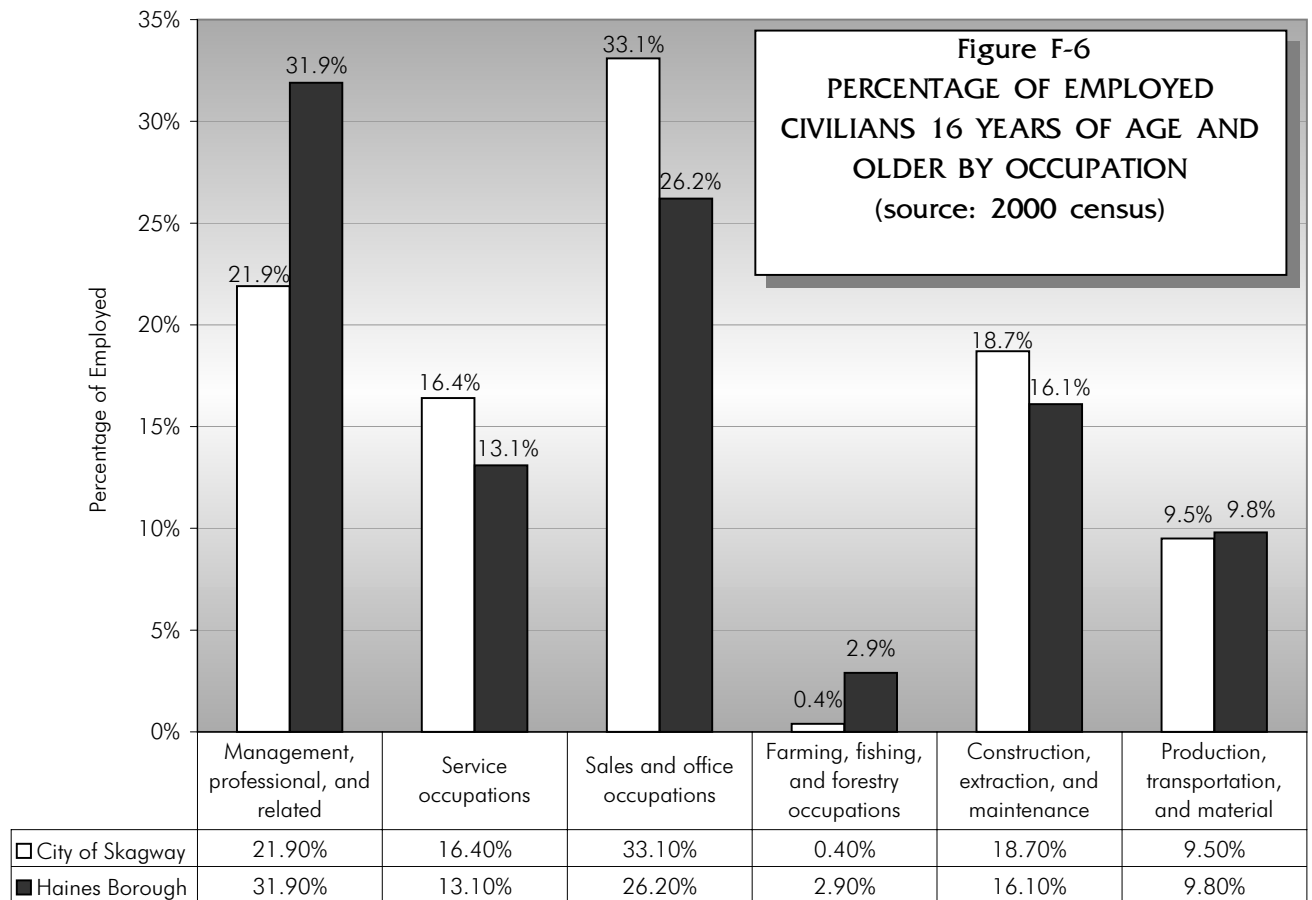
Another important economic link between the two areas is the Haines-Skogway submarine electrical cable intertie. In December 1997, Alaska Power and Telephone began generating power at its Goat Lake hydroelectric facility to serve both Skagway and Haines. Haines is served through a 15-mile intertie. The Petitioner (at page 36) acknowledges that the intertie is a significant bond, but asserts that it is no basis for concluding that sufficient ties exist to warrant placing Haines and Skagway in a common regional government:

The new electrical intertie is an important link but power is not historically a reason to consider one area a part of another. In the Lower 48, electrical power generated in western Washington serves Idaho but this does not make Washington and Idaho a homogenous area.

In addition to a common provider for electricity, Skagway and Haines receive cable television service from the same private utility.

Figure F-5 offers insights into similarities of employment in Skagway and Haines according to standard industry classifications.

Figure F-5 indicates that there are commonalities between Skagway and the Haines Borough in ten of the thirteen standard industry classifications. There were only three industries in which the number of workers in the two areas differed by more than five percentage points.



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. The disparity is largely due to the extensive operations of the White Pass & Yukon Route Railroad and other tourism-related transportation operations in Skagway. The fact that electricity for Haines is generated in Skagway may also contribute to the disparity.

The second greatest disparity was in the educational, health, and social services industries. The percentage of employment in those industries within the Haines Borough was 6.3 basis points higher than it was within the City of Skagway. The disparity may reflect the fact that a number of health and social service agencies serving Skagway are located in

Haines. Details about such are provided in Part I of this Appendix ("Dependence on a Community for Transportation, Entertainment, News and Professional Services").

The last significant disparity was in the agriculture, forestry, fishing, hunting, and mining industries. The percentage employment in those industries within the Haines Borough was 5.3 basis points higher than it was within the City of Skagway. The disparity is likely due to the greater commercial fishing and fish processing activities in Haines as compared to Skagway. Details about such are provided in Part D of this Appendix ("Shared Fishing Areas").

Figure F-6 compares the percentage of employed civilians 16 years of age and older in the City of Skagway and the Haines Borough according to standard occupational classifications.

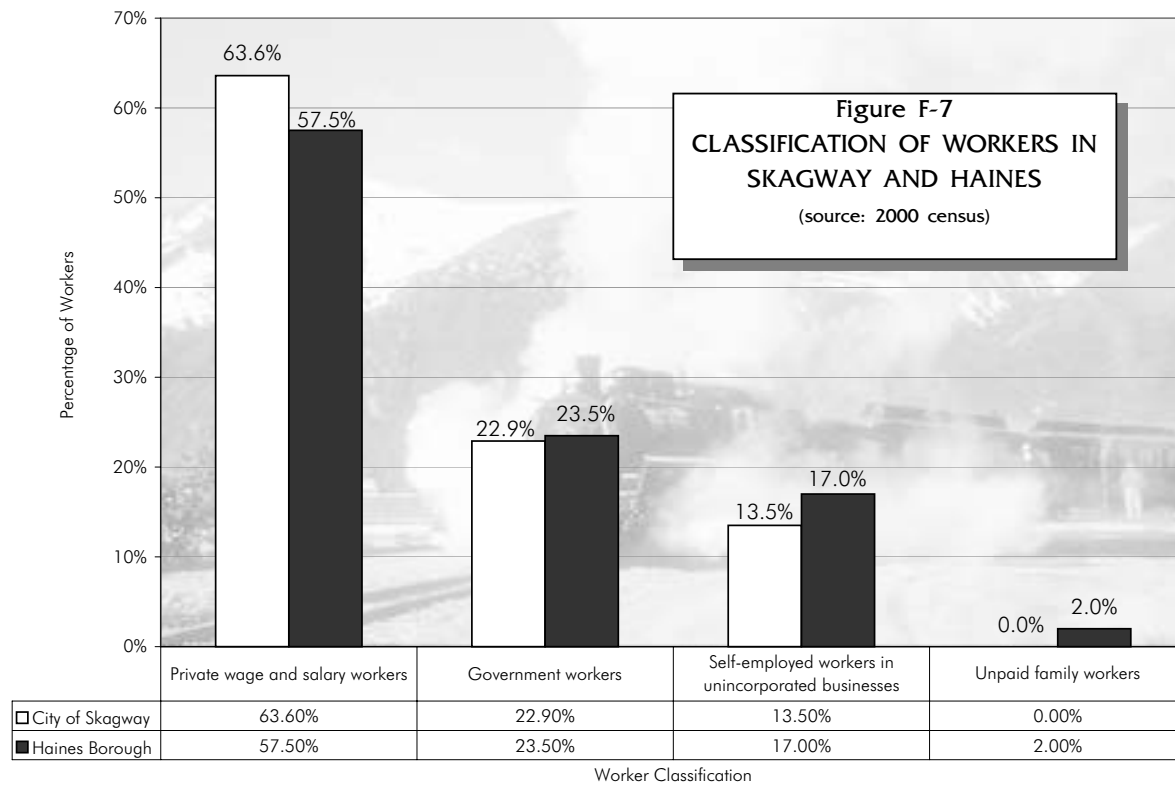


Figure F-6 indicates that there are commonalities between Skagway and the Haines Borough in four of the six standard occupational classifications. There were only two occupational classifications in which the number of workers in the two areas differed by more than five percentage points.

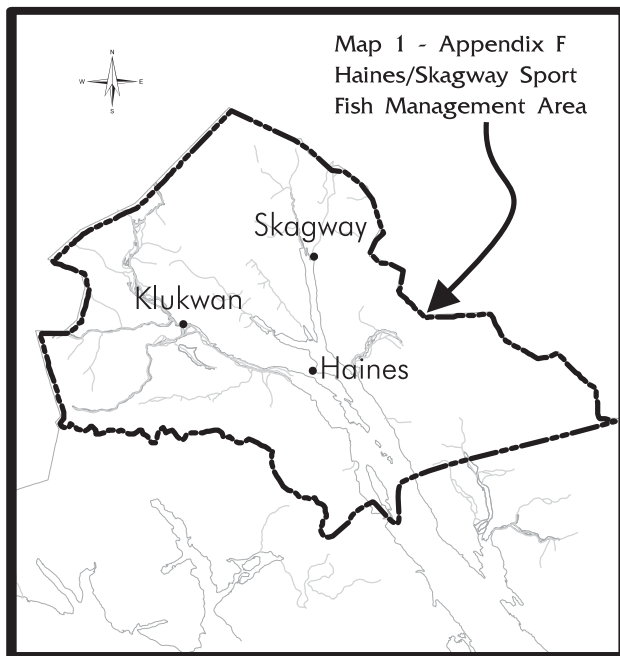
The greatest disparity was in the management, professional, and related occupations. The percentage employment in those occupations within the Haines Borough was 10.0 basis points higher than it was within the City of Skagway.

The other disparity was in the sales and office occupations. The percentage of employment in those occupations within the City of Skagway was 6.9 basis points higher than it was within the Haines Borough.

Figure F-7 compares employed civilians 16+ years of age in the City of Skagway and the Haines Borough according to standard classifications.

The percentage of government workers in the City of Skagway and the Haines Borough is virtually identical – 22.9% for Skagway vs. 23.5% for Haines. The number of private wage and salary workers in the City of Skagway at the time of the last census was 6.1 percentage points greater than it was in the Haines Borough. The number of self-employed workers (in their own unincorporated businesses) was 3.5 percentage points higher in the Haines Borough as compared to the City of Skagway. Lastly, Skagway had no unpaid family workers, while 2 percent of the workers in the Haines Borough were so classified.

In sum, significant economic links between Skagway and Haines clearly exist. These include shared interests in the tourism industry – both generally and in the particular tourists served. Additionally, there are commonalities in terms of utility service providers for electricity



and cable television. Skagway and Haines also have similarities with respect to the nature of employment by industry, occupation, and classification of workers.

PART D. SHARED FISHING AREAS

The courts have considered both recreational and commercial fishing activities in judging social and economic interrelationships. Each is examined below, starting with recreational fishing activities.

Skagway and Haines are within the same Alaska Department of Fish and Game (ADF&G) management area for sport fish. As is shown on Map 1 - Appendix F, the "Haines/Skogway Sport Fish Management Area" includes all marine waters of Lynn Canal from Point Sherman north, and all freshwater drainages entering those marine waters.¹⁰

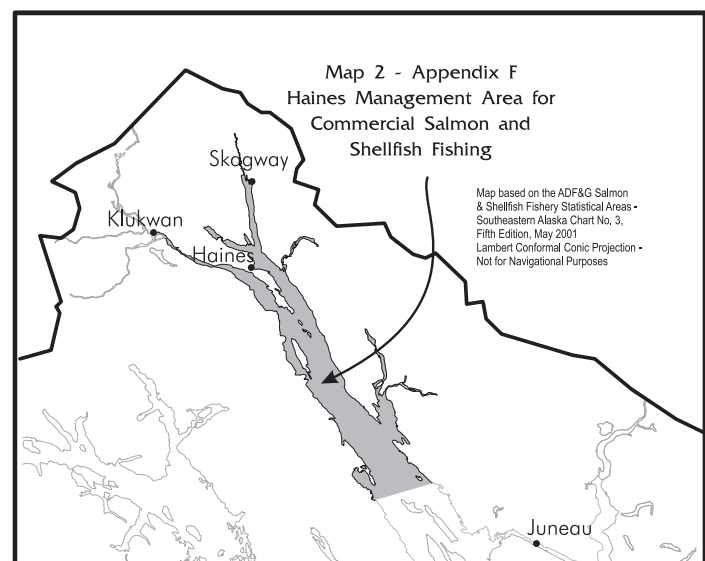
¹⁰ <<http://www.state.ak.us/adfg/sportf/region1/hns.htm>>

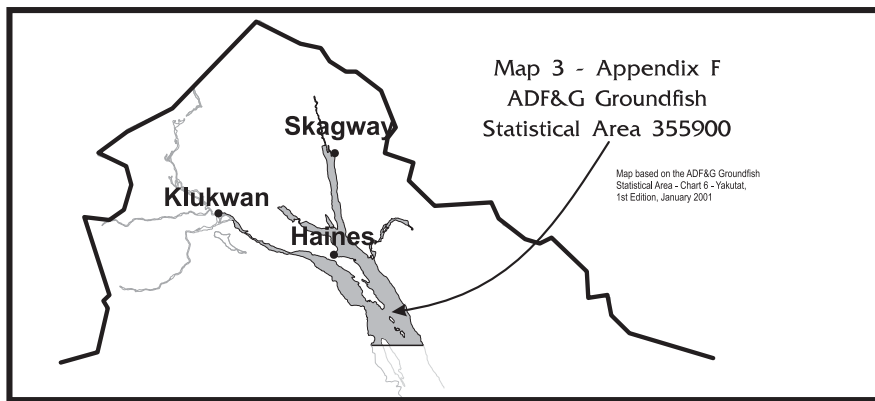
The major sport fisheries in the Haines-Skogway area are in saltwater for chinook salmon and Pacific halibut and in freshwater for cutthroat trout, Dolly Varden, coho, sockeye, and pink salmon.

According to ADF&G, two major drainages support substantial sport fisheries in the Haines area. Those are the Chilkoot River drainage and the Chilkat River drainage. The Chilkoot River and Chilkoot Lake are easily accessible by road from Haines. According to the Alaska Department of Fish and Game, they comprise one of the largest freshwater sport fisheries in southeast Alaska. The Chilkoot River drainage supports large runs of sockeye salmon and Dolly Varden. It also provides a smaller run of coho salmon.

The Chilkat River is also accessible by road from Haines and provides excellent angling opportunities for chum salmon, coho salmon and Dolly Varden. Chilkat Lake is only accessible by boat or plane and provides fishing for sockeye salmon, coho salmon, Dolly Varden and cutthroat trout.

ADF&G reports that most of the sport fishing in the Skogway area occurs in saltwater. The saltwater sport fishery consists primarily of hatchery chinook salmon returning to the area. However, freshwater fishing occurs in the Taiya River for Dolly Varden during the spring and fall. Pullen Creek is also fished





Currently, eight vessels licensed by the State of Alaska for sport charter fishing list Haines as their primary port. Two of the eight vessels (25%) are owned by a business based in Skagway. Eleven vessels licensed for sport charters claim Skagway as their primary port.¹¹

recreationally for pink salmon and Dolly Varden. There are also several higher elevation lakes around Skagway that have been stocked with brook trout (Upper and Lower Dewey Lakes, and Devil's Punchbowl), rainbow trout (Lost Lake), and grayling (Goat Lake).

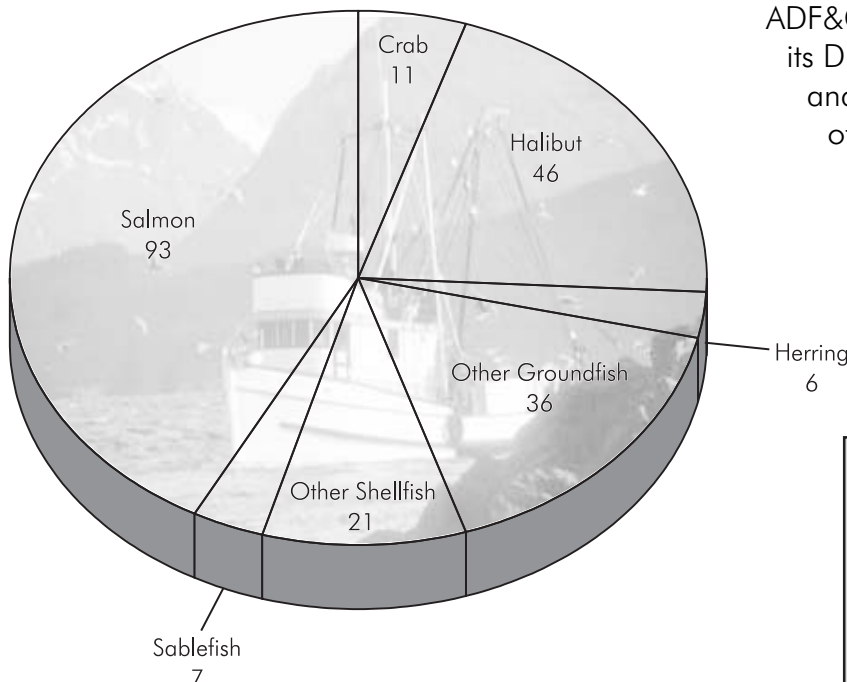
In terms of commercial fishing, Skagway and Haines are in the same management area for salmon, as well as crab and shrimp. The "Haines Management Area for Commercial Salmon and Shellfish Fishing" extends throughout Lynn Canal from the area above Little Island.¹² That area is depicted on Map 2 - Appendix F.

Skagway and Haines are also in the same management area for halibut (ADF&F Groundfish Statistical Area 355900). As shown on Map 3 - Appendix F, that management area encompasses all of Lynn Canal north of 59 degrees North Latitude, which bisects the northern end of Sullivan Island.

ADF&G maintains offices in Haines for its Division of Commercial Fisheries and its Division of Sport Fish. Those offices serve both the Haines and Skagway areas.

Figure F-8
Number of Commercial Fishing Permits
Issued by Fisheries Group in Haines
2001 Preliminary Data

(source: Commercial Fisheries Entry Commission)

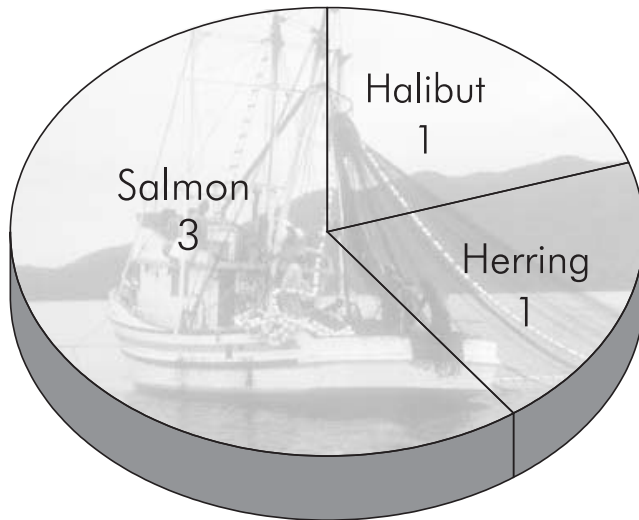


¹¹ Commercial Fisheries Entry Commission 2002 Sport Charter Listing by Port of Operation.

¹² <<http://www.cf.adfg.state.ak.us/region1/Chart3.pdf>>

Figure F-9
Number of Commercial Fishing
Permits Issued by Fisheries Group in
Skagway 2001 Preliminary Data

(source: Commercial Fisheries Entry Commission)



In 2000 (the latest year for which data are available) four residents of Skagway held commercial fishing permits. In addition, six Skagway residents were licensed as crewmembers.

Commercial fishing is a more significant activity in the Haines Borough, where 128 residents held commercial fishing permits and 136 individuals were licensed as crewmembers in 2000.¹³

Preliminary 2001 data indicate that 127 permit holders in Haines held 220 permits

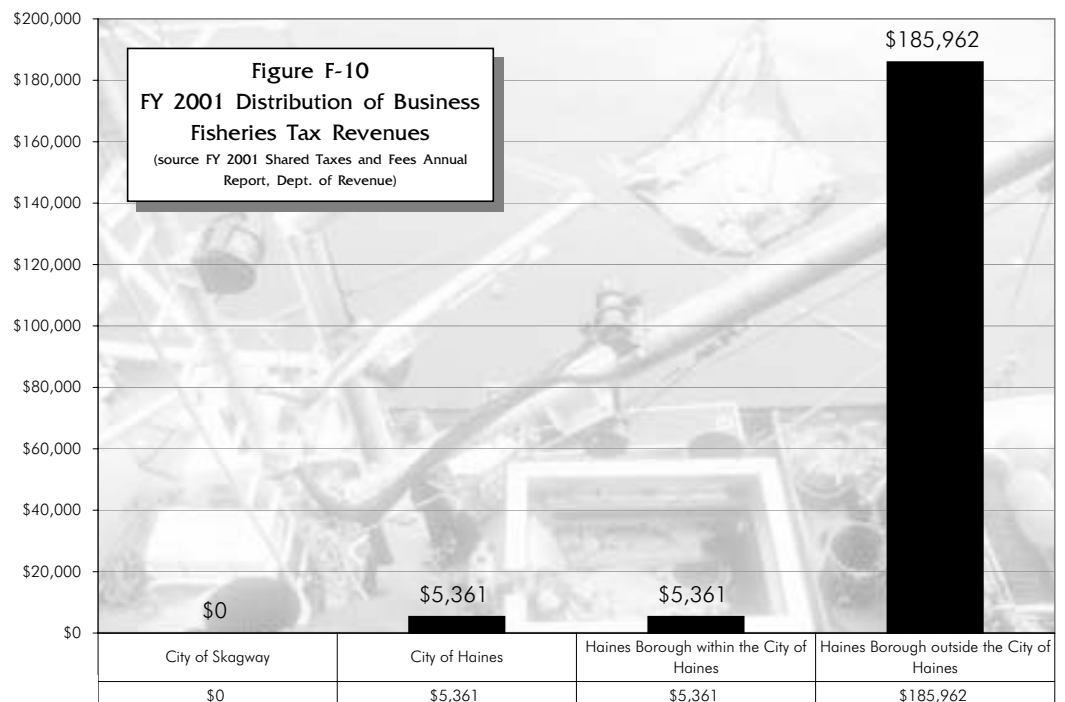
for seven different fisheries as shown in Figure F-8. However, only 123 of the 220 permits (55.9%) were actually fished during 2001.

Preliminary 2001 data indicate that there were three permit holders in Skagway who held five permits. Figure F-9 shows the permits by fisheries group by permit holders living in Skagway. Three of the five permits (60%) were fished in 2001.

Fish processing in the Haines Borough is centered at Excursion Inlet in the southern portion of the Borough. This is reflected in the distribution of fisheries business taxes by the Alaska Department of Revenue.

Under AS 43.75.130, the Department of Revenue shares fisheries business taxes with municipalities based on where the commercially-caught fish are processed. Figure F-10 reflects the FY 2001 distribution of fisheries business taxes to the City of Skagway, City of Haines, and the Haines Borough.

¹³ Commercial Fisheries Entry Commission Permit Holder and Crew Member Counts by Census Area and City.



There was no reported processing of commercially-caught fish in Skagway during the period covered by the Fiscal Year 2001 distribution of fisheries business tax proceeds by the Department of Revenue. There was some processing within the City of Haines; however, the value of commercially caught fish processed in the Haines Borough outside the City of Haines was more than 17 times greater than it was within the City of Haines.¹⁴ Again, most of that processing occurred at Excursion Inlet.

While Skagway received no funding under the fisheries tax sharing program administered by the Department of Revenue, it does benefit from the distribution of other fisheries tax revenues by DCED. DCED distributes the fisheries taxes in a regional context in accordance with AS 29.60.450.

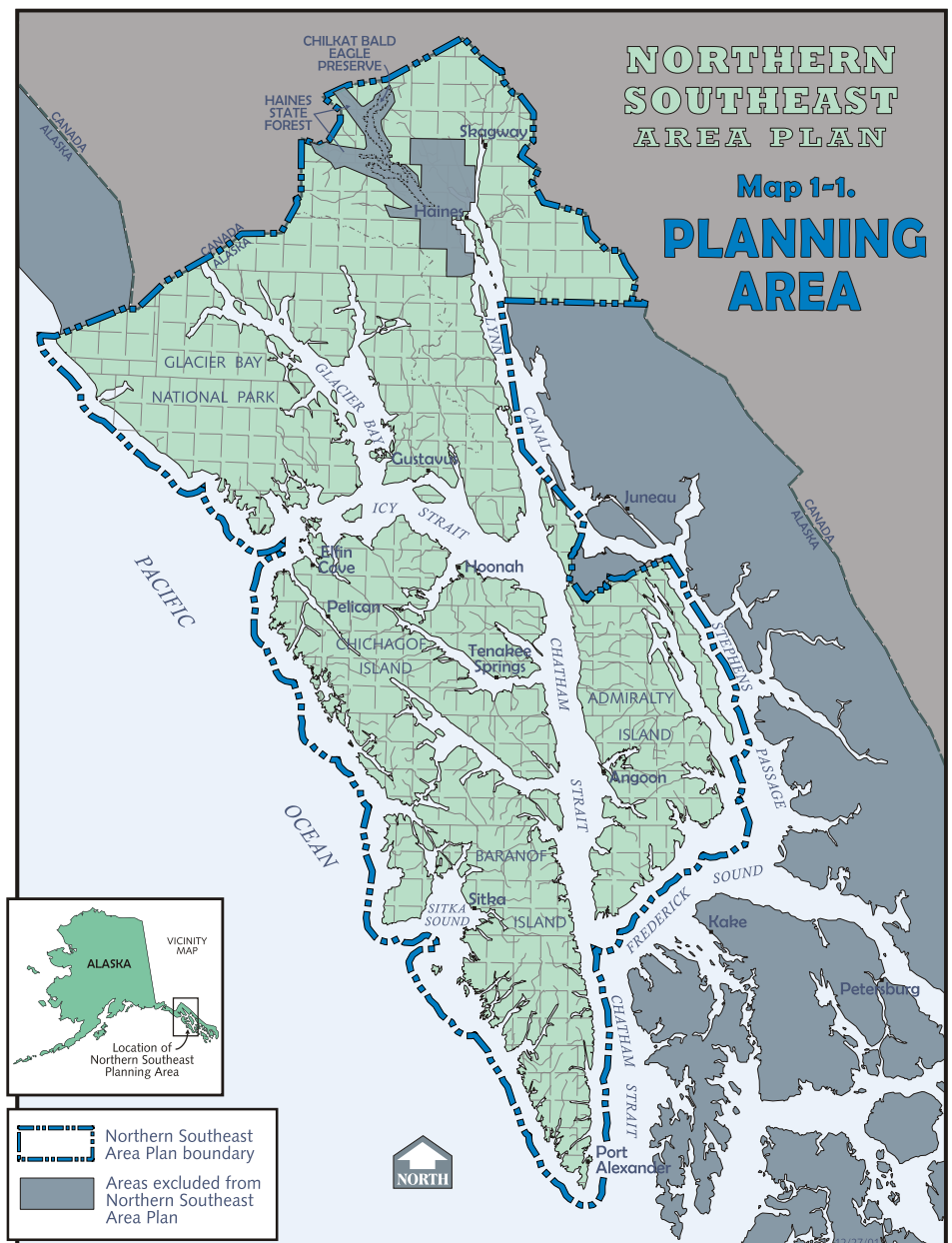
For Fiscal Year 2002, the distribution of fisheries taxes by DCED to the City of Skagway was \$2,163.86. The distribution to the City of Haines was \$2,519.07 and the payment to the Haines Borough was \$2,790.07.

In sum, 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. The relative difference in the importance of the industry to the two communities is also reflected in the discussion of

common major economic activity in Part C of this Appendix. As noted there, the percentage of employment in the agriculture, forestry, fishing and hunting, and mining industries in Haines was 5.3 percentage points higher than it was within the City of Skagway.

$$^{14} (191,323 - 5,361) / (5,361 + 5,361) = 17.34.$$

Map 4 - Appendix F



PART E. COMMON INTEREST IN MANAGEMENT OF STATE LANDS

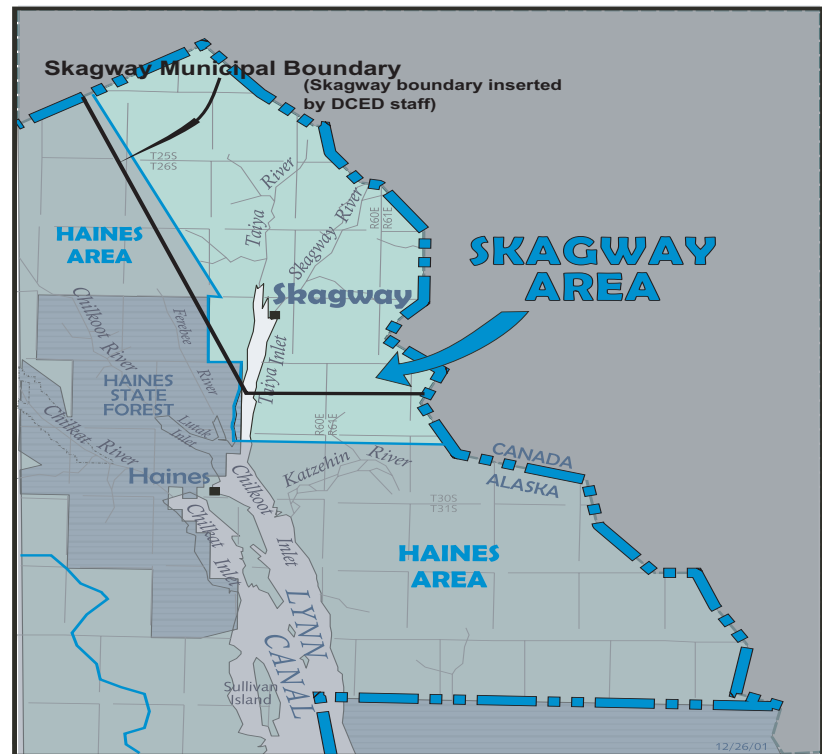
In June 1979, the Alaska Department of Natural Resources adopted the *Haines-Skogway Land Use Plan*. The document provided a plan for the management of 400,000 acres of State land in the Skagway and Haines area.

In February of this year, the Department of Natural Resources published a draft of a new plan for the management of State lands in the area encompassing Skagway, Haines and other communities in the northern portion of southeast Alaska. The new plan, titled the *Northern Southeast Area Plan*, covers the area from the Canadian border north of Haines and Skagway, south to the southern tip of Baranof Island, west to the west side of Baranof Island, and northward along the coast to the City and Borough of Yakutat, and east to the boundary with the City and Borough of Juneau. Included are Admiralty Island, Baranof Island, and Chichagof Island. Also included are the communities and state lands surrounding Skagway, Haines, Excursion Inlet, and Gustavus. The Glacier Bay National Park is also included in the planning area. (*Northern Southeast Area Plan*, Chapter 1, page 2) Map 4 depicts the planning area.

Map 5 - Appendix F

NORTHERN SOUTHEAST AREA PLAN

Map 3-5. Northern Region: SKAGWAY AREA



The area covered by the *Northern Southeast Area Plan* is divided into two major planning regions. One is the "Northern Region" and the other is the "Southern Region." The Northern Region encompasses Skagway, Haines, Lynn Canal (excluding the portion within the City and Borough of Juneau) and Excursion Inlet. The areas within the Haines State Forest and the Chilkat Bald Eagle Preserve are not included within the Northern Region. The exclusion of those areas is not due to a lack of commonalities with the area designated as the Northern Region. Instead,

the Haines State Forest and the Chilkat Bald Eagle Preserve are covered in specific plans for each of those areas, reflecting the statutory requirements affecting each.

The Northern Region is divided into three smaller parts – the “Gustavus Area,” the “Haines Area”, and the “Skagway Area.” A map of the Skagway Area and portions of the adjoining Haines area is provided as Map 5. (*Northern Southeast Area Plan*, Chapter 3, page 12)

For purposes of this review, DCED added the boundary of the City of Skagway (proposed Skagway borough) to the map. As is evident from Map 5, the “Skagway Area” encompasses portions of the Haines Borough while the “Haines Area” encompasses portions of the proposed Skagway borough.

It is evident from the foregoing that common interests in the management of State lands in the Skagway and Haines area span four decades and continue today.

PART F. PREDOMINATELY NATIVE CHARACTER OF THE POPULACE

The Petitioner stresses differences between Skagway and Haines in terms of racial composition of the population as one of several factors that allegedly contribute to a lack of social, cultural, and economic integration and interrelationship between the two communities. At page 35 of the Petition, the following characterization of the two areas is offered by the Skagway borough proponents:

Figure F-13
City of Skagway Racial Composition
Total 2000 Census Population: 862

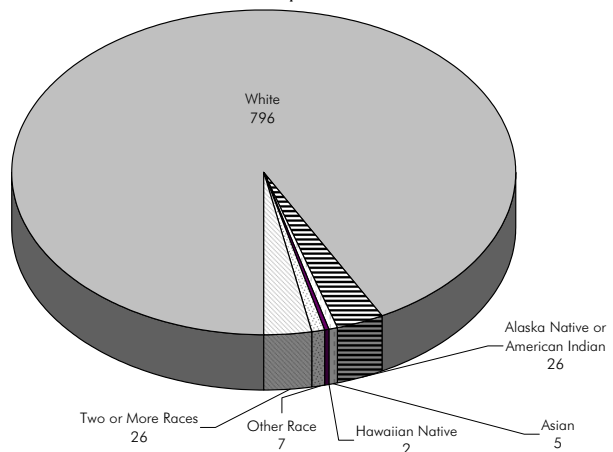


Figure F-11
Haines Borough Outside the City of Haines Racial Composition
Total 2000 Census Population: 581

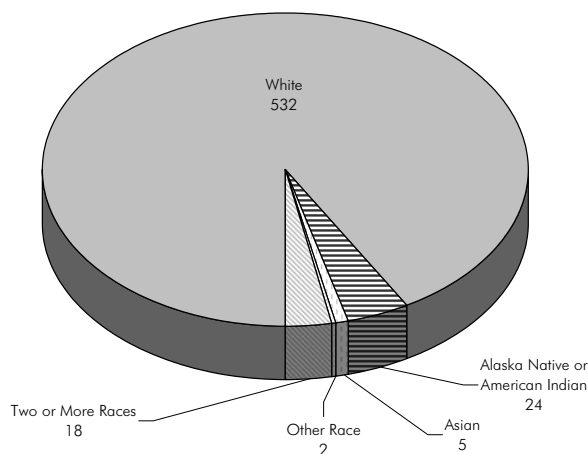
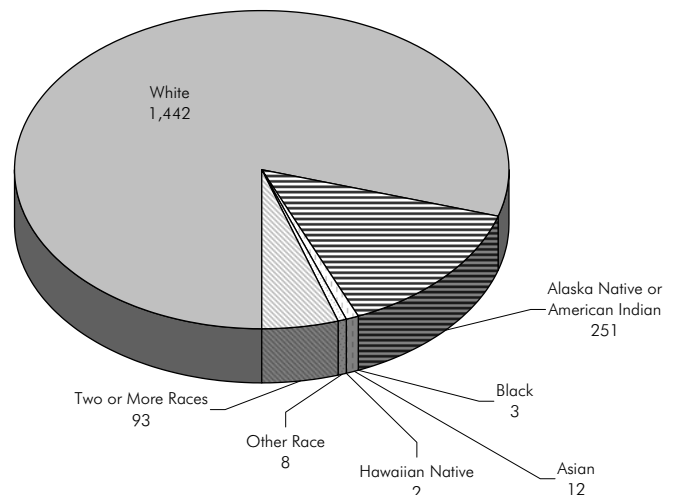
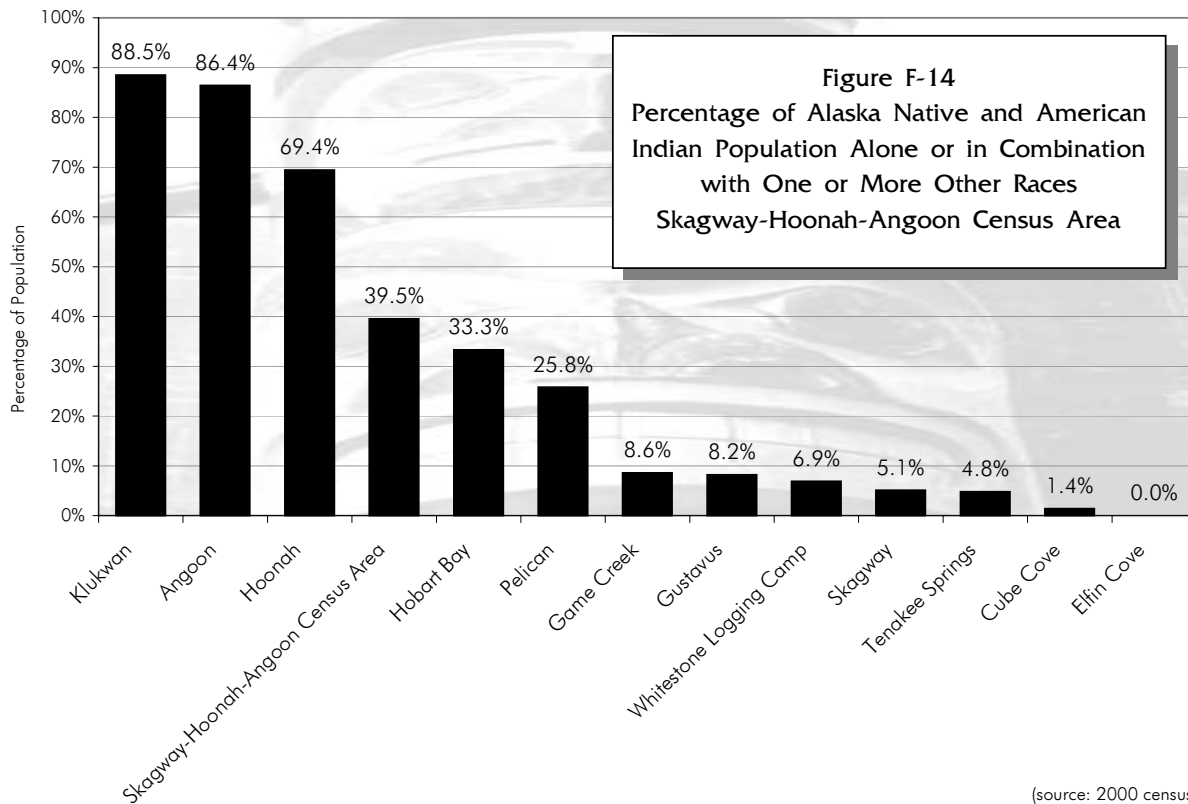


Figure F-12
City of Haines Racial Composition
Total 2000 Census Population: 1,811





First, the communities have demographic distinctions. The Haines City and Borough areas have a complex and rich Tlingit history. Chilkoot Tlingits from the Haines area did use the Taiya and Skagway river valleys for summer fish camps and as two of their several trade routes with inland tribes, however their primary homes were, and continue to be, in the Haines and Klukwan areas. This is illustrated by the corresponding Alaska Native populations of the Haines Borough at 13.2%, the City of Haines at 18.1% and Skagway's at 5.5%.

The Native population in Skagway, in relative terms, declined from the 5.5% reported in the Petition (1990 census data) to 5.1% in 2000. In contrast, the Native population in the

Haines Borough and the City of Haines increased, respectively, to 15.6% and 18.5% of the total population between 1990 to 2000.

DCED notes that the 2000 relative Native populations of the Haines Borough and the City of Haines are, respectively, 3.1 and 3.6 times greater than the comparable figure for Skagway. However, the racial composition of that portion of the Haines Borough outside the City of Haines is quite similar to that of the City of Skagway. Natives make up 6.5% of the population of the Haines Borough outside the City of Haines. That figure is only 1.4 percentage points more than Skagway. The racial composition of the three areas (City of Haines, Haines Borough outside the City of Haines, and City of Skagway) are depicted in Figures F-11, F-12, and F-13 (source: http://www.dced.state.ak.us/cbd/commdb/CF_BLOCK.cfm).

Figure F-15
NATIVE POPULACE IN ORGANIZED BOROUGHES
 (source: 2000 census)

Borough	Overall % of Native Population	City / CDP with Lowest % Native Population	City / CDP with Highest % Native Population	Range in Percentage Points
Kenai Peninsula Borough	10.2%	Miller Landing – 0.0%	Tyonek – 95.3%	95.3%
Kodiak Island Borough	17.6%	Aleneva – 1.5%	Karluk – 96.3%	94.8%
Lake & Peninsula Borough	79.7%	Port Alsworth – 22.1%	Perryville – 98.1%	76.0%
Aleutians East Borough	38.6%	Akutan – 16.4%	Nelson Lagoon – 81.9%	65.5%
Bristol Bay Borough	45.1%	King Salmon – 30.1%	South Naknek – 83.9%	53.8%
Ketchikan Gateway Borough	19.1%	Ketchikan – 22.7%	Saxman – 70.1%	47.4%
North Slope Borough	73.8%	Barrow – 64.0%	Atkasuk – 94.3%	30.3%
Northwest Arctic Borough	85.8%	Red Dog Mine – 68.8%	Buckland – 96.8%	28.0%
Denali Borough	8.6%	Ferry – 0.0%	Cantwell – 27.0%	27.0%
Matanuska-Susitna Borough	8.6%	Chase – 0.0%	Sutton-Alpine – 25.9%	25.9%
Haines Borough	15.6%	Excursion Inlet – 0.0%	Haines – 18.5%	18.5%
Fairbanks North Star Borough	9.9%	Eielson AFB – 1.5%	Fairbanks – 13.3%	11.8%
Anchorage, Municipality	10.4%	-NA -	-NA -	-NA -
Juneau, City & Borough	16.6%	-NA -	-NA -	-NA -
Sitka, City & Borough	24.7%	-NA -	-NA -	-NA -
Yakutat, City & Borough	46.8%	-NA -	-NA -	-NA -

The Native population in the City of Skagway, City of Haines, and the Haines Borough was less than the statewide average in 2000 of 19.0%. Neither Skagway nor Haines has a predominately Native population.

Figure F-14 lists the Native population in percentage terms in the Skagway-Hoonah-Angoon Census Area as a whole and in each city and census designated place within that census area.

It is important to note that many existing boroughs encompass communities with highly diverse racial compositions. For example, in the Kenai Peninsula Borough, the Miller Landing area recorded no Native inhabitants during the 2000 census, while Tyonek recorded a Native population in excess of 95%. In the Kodiak Island Borough, only 1.5% of the Aleneva area residents were recorded as Native during the 2000 census, while more than 96% of the residents of Karluk were recorded as Native. Both the Kenai Peninsula Borough and the Kodiak Island Borough have existed since the 1960s.

Information about the Native populace within each of Alaska's sixteen organized boroughs is provided in Figure F-15.

The factor at issue is the "predominately Native character of the populace." While the City of Haines has a higher relative Native population than Skagway, neither Haines nor Skagway has a predominately Native population. Based on the foregoing, DCED does not consider the disparity in the racial composition of the citizens of the City of Skagway and those in the Haines Borough to be a basis for incompatibility.

PART G. HISTORICAL LINKS

As noted previously, the Petitioner acknowledged Native historical links between the Skagway and Haines areas as follows:

The Haines City and Borough areas have a complex and rich Tlingit history. Chilkoot Tlingits from the Haines area did use the Taiya and Skagway river valleys for summer fish camps and as two of their several trade routes with inland tribes.

In DCED's view, the significance of the Native ties to the land warrants a more complete treatment of the topic. *Chilkoot Trail – Heritage Route to the Klondike*, by David Neufeld and Frank Norris (1996, Parks Canada) provides an excellent synopsis of the Native history of the area. Excerpts from pages 22 – 48 of that publication follow (footnotes omitted):

The coastal Tlingit trace their heritage back thousands of years. At the beginning of the 19th century, they were a wealthy and powerful group taking advantage of their rich environment to foster strong communities and a sense of cultural identity. . . .

Each community had its own strengths. For the Tlingit of the Lynn Canal, one of the most important was their control over the trade and travel routes reaching through the Coast Mountains to the continental interior. . . .

The Tlingit used five routes through the mountains. Each route was owned by a specific clan and the trade through it managed by the clan leader. . . .

At the head of Lynn Canal were the last two routes. The White Pass route was not used often. The other route, owned by the Tlingit Raven clan of the village of Chilkoot, led up the rugged Taiya River valley to the headwaters of the Yukon River. This was the Chilkoot Trail. . . .

The Chilkoots were firm in their statements of ownership of the pass. Chief Klanot expressed their rights in clear terms: "We make our trail for our own use, if others wish to use it should they not compensate us for our labor? The white man builds a wharf and all who lands goods over it must pay."

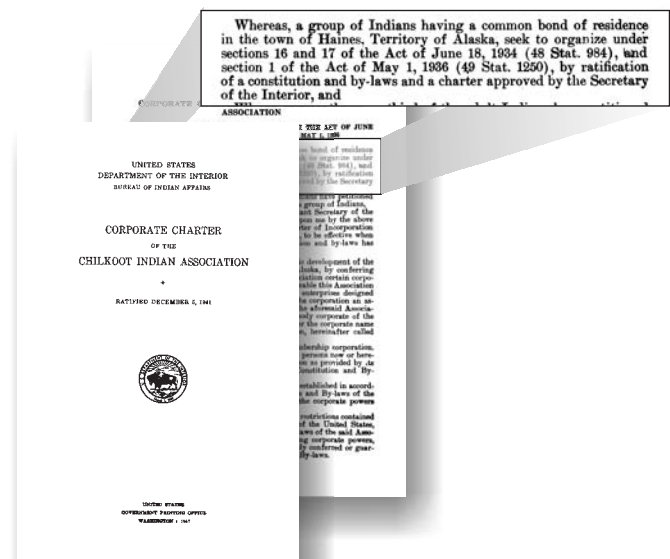
Other Native Americans – and even whites – trying to break into the commercial packing business were refused permission to pack goods on the trail. This was partially to keep as much money as possible in Chilkoot hands, but also because of a question of liability. Under Tlingit law, an injury or death on the trail would be the responsibility of the owning clan. The Chilkoots, therefore, limited the packing trade to members and relatives of their families. By 1886, there were about 200 packers working at Dyea. Half of these were men from the Lynn Canal Tlingit clans, along with 13 Yukon packers and two Auk Tlingit from around Juneau, all probably related to the Chilkoot Tlingit by marriage. Eighty women and children of the district also packed over the trail.

...

When Dyea merchant John Healy tried to take control of the miners' packing in 1887 and charge tolls for use of the trail, Klanot acted quickly. He refused to allow any white man to pack and asked the American government to clarify his clan's property rights.

...

High wages and a limited number of packers brought challenges to the Lynn Canal Tlingit monopoly. White miners demanded faster and cheaper passage and encouraged other Tlingit groups to come forward and pack. In the late 1880s, the American authorities also began to agitate for a more open packing business. The Tlingit definition of clan was



broad, ensuring a large number of people were eligible to pack. By the time of the Klondike gold rush, Indians from all over south-east Alaska had come to Dyea for packing work.

At the same time, however, several Juneau business owners began planning more advanced transportation measures. In 1885, the Chilkoot Pass and Summit Railroad Company was organized to run a rail line through the pass to the interior. Although the railway idea quickly faded, others sought more immediate solutions. Peter Peterson of Juneau designed a sled tramway for the pass; it was in operation by the spring of 1894. In 1895, Healy brought in the first pack horses. By the middle of 1897, some 200 horses were hauling freight. In the following year, several companies also introduced wagon trains and aerial tramways. By the end of 1898, there was little for the packers on the Chilkoot Trail to carry.

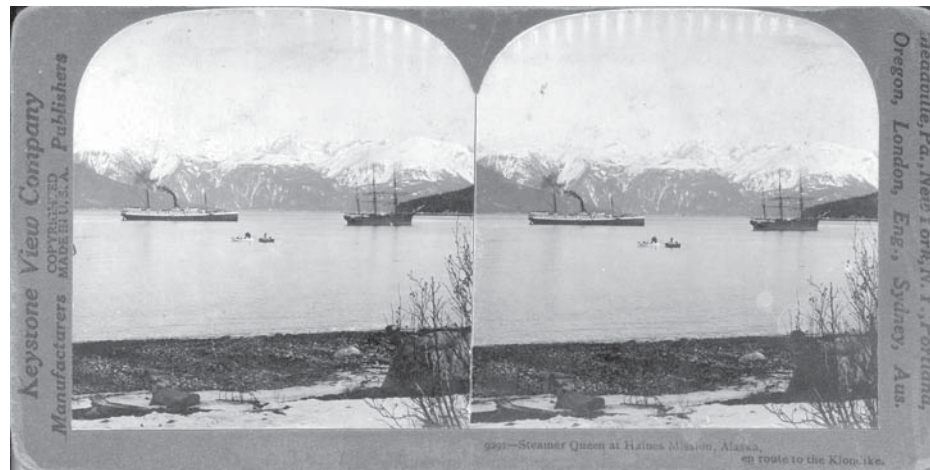
The Chilkoot Tribe lived at a village between Lutak Inlet and Chilkoot Lake (which, today, is in the Haines Borough). The Chilkoot Tribe remains based in Haines today. In December 1941, the Chilkoot Indians organized a federal corporation under sections 16 and 17 of the Indian Reorganization Act.

Today, Natives in Skagway are recognized by the federal government as a separate tribe (Skaqua Traditional Council).¹⁵

Skagway, Dyea, and Haines all served as important routes to the Klondike gold fields. While Dyea at the foot of the Chilkoot Pass and Skagway at the base of the White Pass were more popular routes to the Klondike, the Dalton Trail which ran from Pyramid Harbor near Haines was also a principal link to the gold fields of the Klondike. The Dalton Trail is described as follows on pages 69 – 70 of *The Chilkat River Valley, Alaska Geographic* (1984):

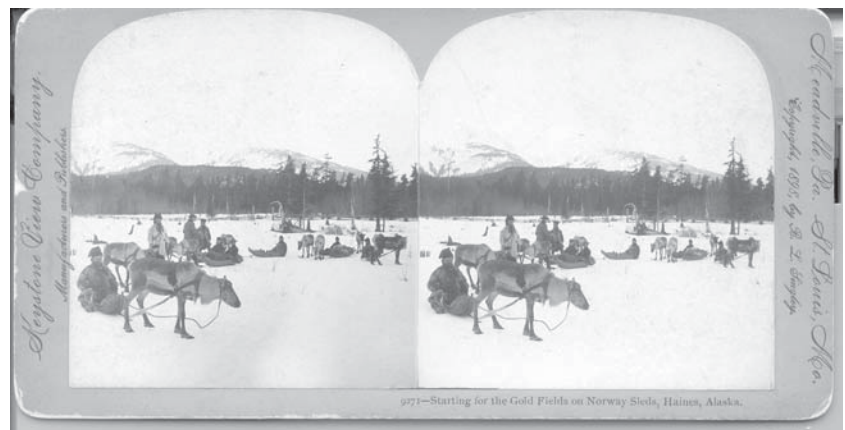
Dalton's route to the Yukon was longer than Chilkoot and White Pass trails, but not as physically demanding. Way stations were established every 20 miles, and bridges were in place for operation by 1896. A toll was charged for passage of people and animals, although Dalton did not acquire federal sanction for a toll road until March 1899. Natives were exempt from the fee.

¹⁵ *Federal Register* / Vol. 65, No. 49.



Steamer Queen on which Jefferson Randolph Smith left Skagway on September 14, 1897 to visit his wife in St. Louis (left) shown here later with reindeer ship (right) anchored at Portage Cove in Haines

One foot passenger with a pack was charged \$1.00. An unloaded sled or wagon with a single horse cost \$2.50; a four-horse team with one wagon cost \$10.00. Additional cattle, horses, and mules were assessed \$2.50 each, while sheep, goats, and swine could pass for \$.25 a head. The Dalton Trail Company, which included J. F. Mahoney and F. D. Nowell of Juneau, operated its toll route from mid-June through mid-September.



Reindeer relief expedition starting from Haines

The federal government picked the Dalton Trail in its rather unsuccessful international expedition to respond to threats of starvation in Dawson that first emerged in the winter of 1897. The effort is described on pages 196 – 200 of *The Klondike Fever*, Pierre Berton (1958):

By Christmas 1897 the stock of supplies in [Dawson] was running low and the last restaurant had closed its doors. The police were on reduced rations and would arrest no one unless he had his own provisions. There was no escape from Dawson anyway, for once again the town was isolated from the world. . . .

By mid-January, flour was so scarce that hunters had to trade an entire mountain sheep to get a sack of it. . . .

As Healy had predicted, no man starved in Dawson that winter, perhaps because so many had fled the town in the late fall. . . .

By March there were forty-five scurvy cases alone, jamming the wards and even the hallways.

By this time, tales of Dawson's famine had seeped to the Outside. Captain Ray, indeed, had sent a special messenger out by dog-team to tell the world about the Klondike's plight, and various Chambers of Commerce in the Pacific-coast cities, fearful that the bad news would ruin the spring trade, bombarded Congress with petitions for Yukon relief. Congress responded in December 1897 by voting an appropriation of two hundred thousand dollars for the purchase of a reindeer

herd, which Washington naively believed could be shipped north in time, as meat to assuage Dawson City's hunger. Thus was unfolded another tortured chapter in the odyssey of the gold rush.

The reindeer herd, five hundred and thirty-nine strong, was purchased in Norway, shipped to New York, shuttled across the continent by train to Seattle, and then taken north by steamer to Haines Mission, at the end of the Dalton Trail on the Lynn Canal ...

It was May 1898 before the reindeer reached Haines. Nine months later they were still struggling along the trail toward Dawson, and by this time a series of mishaps had decimated the herd. The swamps, the mountains, the snowfields and glaciers, the canyons and fallen trees which they had to traverse caused them to die by the scores, like the horses on the Skagway trail. . . .

And so, after a trek of seven hundred and fifty miles, the expedition staggered into Dawson City – to the amusement of the townspeople. The date was January 27, 1899, and the herd, which had been a year in transit, was now reduced to one hundred and fourteen animals, about one fifth of its original size. In that Starvation Winter the real victims of starvation had been the wretched reindeer themselves, and the greatest paradox, in that season of paradoxes, was that in the end it was the Klondike Relief Expedition itself that required relief.

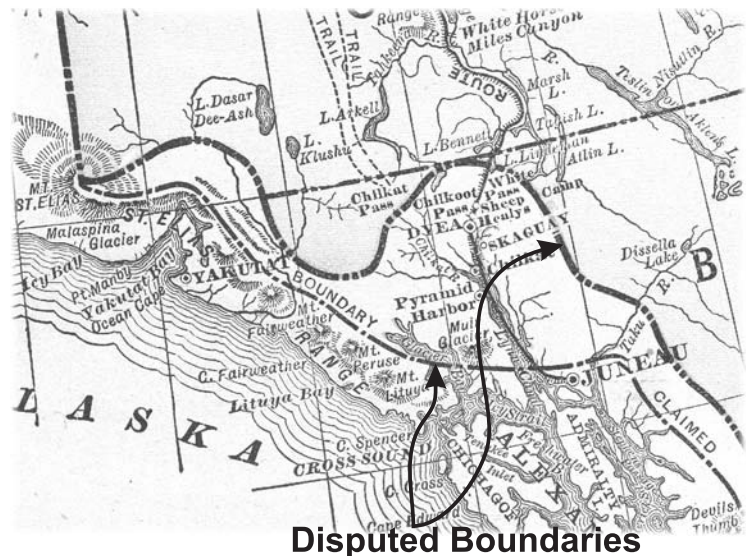
Another significant historical link between Haines and Skagway relates to the disputed Alaska-Canada boundary. As shown in Map 6 - Appendix F, Skagway, Dyea, and Haines were squarely in the middle of the contested territory. An account of the dispute is included in *The Chilkat River Valley*, *id.* (pages 75 – 77).

Negotiations between Britain and Russia placed the boundary on the crest of mountains nearest the sea, or along the coast no farther than 10 leagues (30 nautical miles) from the ocean.

Russians were piqued at the 10-league limitation. In 1826 they published a map showing the entire boundary about 10 leagues from the coast, even though some mountain crests would place it closer to the sea. There was no British protest to the map, and the map line was the boundary for the territory the United States understood it had purchased from Russia in 1867. William Seward, secretary of state, ordered publication of a map closely following the Russian map line, and for the next two decades it was copied by cartographers around the world. Seward had visited the Chilkat Valley in 1869. . . .

So long as the boundary area was used primarily by Indians and fur traders, precise location mattered little. As economic, social, and religious development grew, so did the need for a fixed boundary. . . .

Map 6 - Appendix F Disputed Alaska-Canada Boundary



After the 1898 presidential election, serious negotiations began. The United States consented to a Canadian proposal for a port at Pyramid Harbor. It would be under nominal sovereignty of the United States so long as Canada maintained customs and police posts at the harbor. Canada suggested that the general boundary fall midway between the boundaries claimed by Canada and the United States.

The proposal leaked out and caused such a storm of protest in the western states that the American delegation withdrew the Pyramid Harbor offer, and the High Commission broke down in 1899.

To maintain a government presence in the disputed border area and thereby enhance its prospects for a favorable boundary determination, the United States established Army facilities in 1898 at Dyea (Camp Dyea),

Skagway (Camp Skagway), and Haines (Post at Haines Mission).¹⁶ The barracks used by the Army in Skagway at the time is today the Golden North Hotel. To make the U.S. presence more significant, the Army commissioned the construction of Fort William



Troops in Skagway during WWII.

H. Seward at Haines in 1903. The Camp Skagway post was discontinued in 1904 and its garrison moved to Fort William H. Seward. The Dyea post had closed in 1899.

Agreement over the international boundary in the Skagway-Haines area was reached in 1903. The agreement, favorable to the United States, set the boundary nearly along the lines drawn by the Russians in 1826. Skagway, Dyea, and Haines remained part of Alaska under the boundary determination.

Fort William H. Seward was renamed as Chilkoot Barracks on December 13, 1922 to commemorate "the route which pioneers to Eastern Alaska had to pass."¹⁷ Two decades later, military developments again served as another important link between Skagway and Haines.

The need to prepare for a possible invasion of Alaska by the Japanese during World War II led to the construction of the Alaska-Canada (Alcan) Highway. The massive highway construction project, of course, required substantial quantities of fuel and lubricants. To meet the demand for such, the Canadian Oil (Canol) project was undertaken. The Canol project involved the construction of a refinery and oil pipeline at Whitehorse in the Yukon Territory.

Howard Clifford wrote the following account of the impact on Skagway from the Alcan and Canol construction projects in *The Skagway Story*.

Along with the remainder of the Allied world, the White Pass system went to war, and donned the uniform of the U.S. Army. Its rail line and river system were strained to the limits to carry the hundreds of thousands of tons of military equipment and construction machinery which poured over the docks at Skagway and was carried inland to help build the Alaska Highway (Alcan) and the Canol pipeline system. . . .

¹⁶ <<http://www.geocities.com/naforts/ak.htm>>

¹⁷ <http://www.alaskaindianarts.com/the_fort.html>



Jefferson Randolph Smith and associates in Skagway.

Trains were highballed over the pass every few hours. At one time the [770th Railway Operating Battalion] put 34 trains through the Log Cabin station in a single day. August 1943 was the record month with 45,000 tons hauled, an average of 1,500 tons a day.

Frank Wallace, a prominent and long-time resident of Haines, recounted that the Army activity during World War II generated considerable interaction between Haines and Skagway. Port Chilkoot Barracks served as an induction and training facility. It also served as a rest camp for military personnel. In November of 1942, 1,500 troops arrived at Chilkoot Barracks to work on the Alcan Highway construction project.

Personal accounts of interaction between residents of Skagway and Haines are also in evidence. Frank Wallace is one example. Mr. Wallace was born and raised in Skagway. His family came to Skagway at the end of the nineteenth century to work on the construction of the White Pass and Yukon Route Railroad.

Mr. Wallace moved to Haines where he distinguished himself in public service to the community. He served on the Haines Volunteer Fire Department for 35 years and was Chief of the department for 18 of those years. Mr. Wallace also served on the Haines City Council for eight years. Later, he was elected Mayor of the City of Haines for terms encompassing six years.

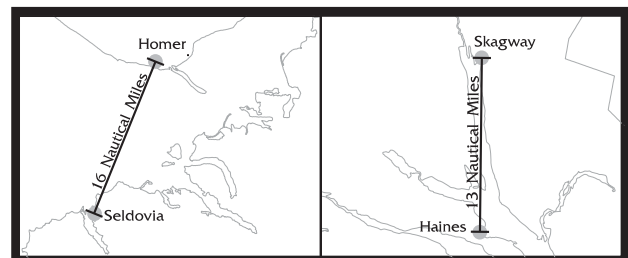
When asked about the interrelationships between Skagway and Haines, former Mayor Wallace stressed that there have long been

rivalries between the two communities. For that reason, in particular, he expressed personal support for the Skagway borough proposal. (Personal communication, May 16, 2002)

Mr. Wallace was not the first "Skagwegian" to relocate to Haines. Following the demise of well-known Skagway resident Jefferson Randolph Smith on July 8, 1898, many of Mr. Smith's associates hastily departed Skagway.

Map 7 - Appendix F

Comparing Proximity of Skagway Haines to Seldovia - Homer



At least one, Tim Vogel, relocated to Haines where he built a home. Today, that home is operated as the Summer Inn Bed and Breakfast.¹⁸

Other cases of interaction among residents of Skagway and Haines are also evident. The following account, published in Skagway's *Daily Alaskan*, in May 1915¹⁹ not only notes the relocation of a former well-known Skagway resident to the Haines area, but also touches on commerce between Haines and Skagway (emphasis added):

Jos. J. F. Ward, a former well-known resident of Skagway, but now a homesteader at Glacier Point, a few miles from Haines, has written the *Daily Alaskan* calling attention to the urgent need by the settlers of roads in the section in which he lives. It seems to us that with the 22 people he claims are located on homesteads in that vicinity it should not be a hard matter to get the Alaska road commission to put in the few miles of government highway necessary to connect them with the road up the Chilkat river from Haines. Mr. Ward's letter follows:

Glacier Point, May 10, 1915.

Daily Alaskan,

The west shores of Chilkat inlet and the Chilkat river are fast filling up with settlers. There are now 22 homesteaders from the Chilkat river down to the south end of Sullivan island, all of whom are improving their property, and raising vegetables, small fruits, cattle, hogs, chickens, etc., but there is one great drawback to that fertile country, it has no outlet except by small row or sail boat, by which

people go to Haines for supplies. This is very unsatisfactory, as bad weather conditions on Chilkat inlet will only allow one to travel at certain times, and again it is very hard to move horses, cattle or machinery by small boat. What is badly needed by the homesteaders there is a connection with the Haines road which would only be the matter of a few miles, as the homesteaders have cut a road as far as they can, which stretches for some miles along the west side of Chilkat inlet up near Pyramid harbor, but are there stuck on account of a short bit of rough country. Connection with the Haines road would put us in direct communication with that place and Skagway, as the homesteaders could start out at any time, regardless of weather conditions, with their horses and wagons, instead of by the very undesirable small boat, going as far as Haines with the horses, and from there to Skagway by the large steamers plying up and down the inside passage, and all the produce could be marketed instead of being let go to waste .

...

As discussed in Part I of this Appendix, there was also a period spanning three decades during which a physician who lived in Haines provided regular medical services to the residents of Skagway.

In sum, Skagway and Haines have strong historical ties to one another.

¹⁸ <http://alaska.uscity.net/Accommodations/Bed_and_Breakfast/>

¹⁹ <<http://www.library.state.ak.us/gold/simpledetail.cfm?DetailID=3108>>

PART H. GEOGRAPHIC PROXIMITY

Skagway and Haines are in close geographic proximity to one another. The two communities are approximately 13 nautical miles apart. There are no geographic impediments to marine or air transportation between Skagway and Haines.

When considering the geographic proximity between Skagway and Haines in the context of borough government, it is useful to make comparisons to other communities already within organized boroughs. For example, Seldovia and Homer – two communities within the Kenai Peninsula Borough – are 16 nautical miles apart. In relative terms, the distance between Seldovia and Homer is actually 23% greater than the distance between Skagway and Haines.

As is the case with Skagway and Haines, there are no impediments to marine or air transportation between Seldovia and Homer. However, unlike the case with Seldovia and Homer, one can drive from Skagway to Haines (albeit via a 359-mile journey through Canada).

There are other similarities between Seldovia – Homer and Skagway – Haines worth noting. All four communities were established in the late 1800s. Each of the four has operated as a first class city government for many decades. Additionally, when the Kenai Peninsula Borough formed, the size of the Homer population was 2.71 times greater than that of Seldovia. That figure is virtually identical to the size of the Skagway population relative to that of the Haines Borough at the time of the 2000 census. The 2000 census population of the Haines Borough was 2.77 times greater than that of Skagway.

In conclusion, Skagway and Haines have clear ties in terms of geographic proximity.

Geographic proximity and transportation ties between Skagway and Haines are stronger than is the case with a number of communities within existing boroughs.

PART I. DEPENDENCE ON A COMMUNITY FOR TRANSPORTATION, ENTERTAINMENT, NEWS AND PROFESSIONAL SERVICES

This part of the Appendix addresses Skagway's interrelationships with neighboring communities, particularly Haines, in terms of transportation, medical services, news media, and certain professional services.

TRANSPORTATION

Common interests in terms of transportation were addressed in Parts A and B of this Appendix. That material will be not repeated here except to state that there are strong transportation ties between Skagway, Haines, and Juneau.

MEDICAL SERVICES

The Petition (pages 36 – 37) notes that residents of Skagway were served by a physician from Haines over the course of three decades until his retirement at the end of the 1980s.

From the 1960's through the 1980's, Skagway was served by Dr. Stan Jones, a Haines physician who traveled weekly to Skagway to see patients at the medical clinic. Some note that what allowed this arrangement to

work was the fact that Dr. Jones enjoyed the weekly trips between Haines and Skagway so that he could fish the area.

However, the Petition indicates that after Dr. Jones retired, a subsequent joint arrangement for medical services between the two communities proved to be unsuccessful.

With Dr. Jones' retirement in the late 1980's, the Cities of Haines and Skagway formed a non-profit organization, the Lynn Canal Medical Corporation, to provide medical services to the two communities.

The Lynn Canal Medical Corporation ran clinics in both cities. The Board of Directors included seven Haines residents and two Skagway residents. The Board met in Haines with Skagway Board members participating via teleconference. Eventually, the City of Skagway found that sharing medical services with Haines did not meet Skagway's need for high quality, financially affordable health care. Skagway was concerned that only two of nine members of the Board were Skagway residents. This imbalanced representation made it difficult to get Skagway's needs and requests addressed by the Corporation. This magnified Skagway's concerns that the Lynn Canal Medical Corporation lacked corporate organization, sound financial management, and accountability.

The Lynn Canal Medical Corporation ultimately failed to meet either City's health care needs and dissolved. The failure demonstrates some of the problems

with attempted collaboration between Skagway and Haines. The communities have historically had different perspectives and philosophies, which makes it challenging to work together for common goals. Competition between the two communities was evident on the Lynn Canal Medical Corporation Board and Skagway's minority representation on the Board made it difficult to get Skagway's needs met. The distance between the cities made communication between Board members difficult and ineffective. Since Skagway Board members participated only via teleconference, they were never able to network effectively or build constructive relationships with other Board members.

Currently, the Skagway Medical Clinic is staffed by two physician's assistants supervised on a *locum tenens* basis by physicians from Juneau's Bartlett Hospital.

However, provision of routine medical service to the estimated 35 – 50 Skagway residents eligible for Indian Health Service benefits will shift to the Haines Medical Clinic. The Haines Medical Clinic was recently awarded a community health center grant from the Health Resources and Services Administration under the U.S. Department of Health and Human Services. That grant will facilitate the addition of more staff and facilities, including dental and pharmacy services. The Haines Medical Clinic's staffing now includes two full-time physicians and two physician's assistants. A part-time physician will begin a four-month stint in Haines beginning in June of this year. (Personal communication, Dave Caron, Administrator, Haines Medical Clinic, May 15, 2002)

An employee at the Haines dental office of Patrick Smalley, DDS, estimated that there were fewer than ten Skagway residents receiving service from that Haines dentist on an annual basis. (Personal communication, May 15, 2001)

For non-routine medical services residents of Skagway and Haines both rely principally on medical facilities in Juneau and Whitehorse.

NEWS MEDIA

The Petition indicates on page 46 that Skagway is served by two radio stations. Those are KHNS/FM based in Haines and KINY based in Juneau. KINY is heard in the upper Lynn Canal area via a translator (103.7 FM) located in Haines.

The Petitioner expressed dissatisfaction with KHNS (at page 38) as follows:

Other examples of problems with a Skagway-Haines collaboration include concerns regarding public radio services. The Haines-based public radio station, KNHS, periodically closes it's (sic) Skagway office when funding is cut back and often does not have a local Skagway reporter. Questions surface periodically about whether Skagway should continue to affiliate and help fund this radio station due to lack of satisfaction with the service it receives.

DCED invited KHNS to comment on the Petitioner's characterization. The General Manager of KHNS responded as follows on May 22 of this year.

KHNS takes no position officially or unofficially on any business before the voters or their elected officials in any of the voter districts served by our station.

KHNS works very hard to be a non-partisan venue for members of our community of listeners in Haines, Skagway, Klukwan and North Juneau. Therefore I must apologize that I cannot offer further response. I feel it is not in the best interest of this organization to participate in this political process.

KHNS considers itself a non voting member of the Skagway Community and as such we support whatever the majority of voters desires.

In addition to the radio stations, the Petitioner noted that three newspapers have general circulation in Skagway. Those are the *Skagway News* (published twice monthly), the *Chilkat Valley News* (based in Haines and published weekly), and the *Juneau Empire* (published daily, except Saturday).

In addition to the three newspapers listed in the Petition, the *Eagle Eye News* is also currently circulated on a wide basis in Skagway. Like the *Chilkat Valley News*, the *Eagle Eye News* is based in Haines and is published on a weekly basis. Robert Jump, Editor of the *Eagle Eye News*, indicated that approximately 100 copies of the newspaper are distributed weekly in Skagway from October to April free of charge. From May to September, more than 350 copies of the *Eagle Eye News* are distributed in Skagway free of charge.

ALASKA STATE TROOPERS

No State Trooper is stationed in Skagway. Instead, the State Trooper stationed at the Haines Trooper Post provides various public safety services to Skagway. During the period from January 1, 2001 to May 1, 2002, Alaska State Troopers responded to fourteen cases in Skagway. These included four prisoner

transports, one public assist, one report of harm, one public appearance, four agency assists, two search and rescues and one death investigation.

(Personal communication, James S. Guenther, Department of Public Safety, May 3, 2002)

FISH AND WILDLIFE PROTECTION

The Alaska

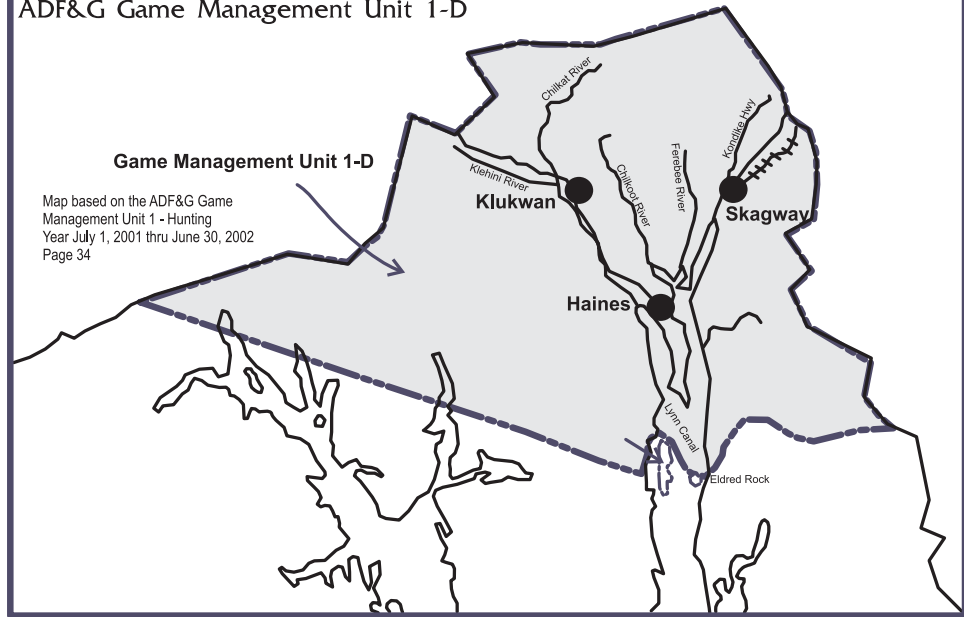
Department of Public Safety, Fish and Wildlife Protection officers from the Haines Post also serve the Skagway area. That agency patrols Lynn Canal using two vessels based in Haines, the Patrol Vessel *Nolo Contendere* and an 18-foot Boston Whaler.

Department of Public Safety Staff estimate that Fish and Wildlife Protection staff are involved in service delivery on a weekly or semi-weekly basis during the summer months. (Personal communication, Carolyn S. Hall, Department of Public Safety, April 24, 2002) Haines-based Fish and Wildlife Protection officers regularly board vessels entering Skagway in the course of their monitoring and enforcement duties.²⁰

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Alaska Department of Environmental Conservation (DEC) staff based in Haines respond to events such as fuel spills in Skagway on an as-needed basis. Additionally, DEC is involved in an ongoing remediation program of the White Pass and Yukon Route Railroad bulk fuel tank farm. That effort

Map 8 - Appendix F
ADF&G Game Management Unit 1-D



requires DEC staff from Haines to perform work in Skagway about three times per year. (Personal communication, Annemarie G. Palmieri, Department of Environmental Conservation Haines, April 25, 2002)

DIVISION OF MOTOR VEHICLES

The Haines office of the Alaska Division of Motor Vehicles (DMV) provides extensive service to Skagway. According to Haines DMV staff, there is steady demand upon the Haines office from Skagway for processing motor vehicle titles and registrations. Additionally, staff from the Haines DMV office travel to Skagway once or twice each year to conduct road tests for licensing of commercial drivers. That occurred most recently on May 3, 2002. Demand for commercial license testing services in Skagway is driven by the demand

²⁰ The level of service provided by the Haines post was somewhat curtailed during 2001 because of a six-month vacancy in the Haines Fish and Wildlife Protection post resulting from retirement of the officer.

for certification by the numerous seasonal tour bus drivers employed in that community.²¹ (Personal communication, Elaine A. Pigott, Motor Vehicle Customer Service Representative)

PUBLIC HEALTH NURSE

The Haines office of the Alaska Department of Health and Social Services provides itinerant nursing services to Skagway on a monthly basis. Visits to Skagway from Haines-based public health providers are of two to three days' duration. (Personal communication, Debra J. Stanford, Alaska Department of Health and Social Services, May 1, 2002)

DIVISION OF FAMILY AND YOUTH SERVICES

Staff from the Division of Family and Youth Services provide itinerant services to Skagway on an as-needed basis. Service delivery from Haines-based Division of Family and Youth Services staff is usually required about four times per year. (Personal communication, Debra J. Stanford, Administrative Clerk, Alaska Department of Health and Social Services, Haines office, May 3, 2002)

DAYCARE PROGRAM

It was noted in the analysis of standard number one that the City of Skagway had previously administered daycare program funds, but does not do so currently. Presently,

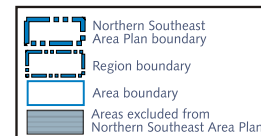
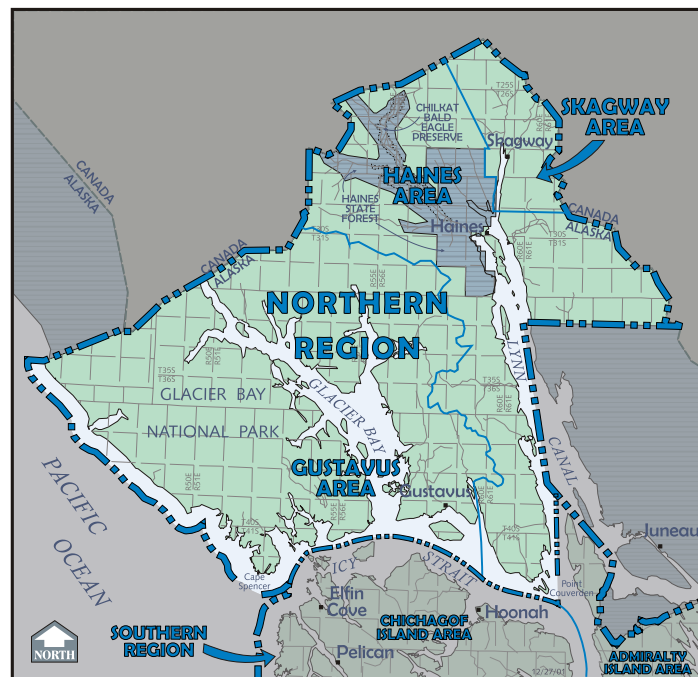
Map 9 - Appendix F

The Northern Region of the Northern Southeast Area Plan

**NORTHERN
SOUTHEAST
AREA PLAN**

Map 3-2.

Northern Region & Areas



the City of Haines administers limited daycare assistance funds awarded by the Alaska Department of Education and Early Development for delivery of the program to the area encompassing Haines, Skagway, and Yakutat. The grant amount for FY '02 was \$104,294 and the amount for FY '03 is \$103,926.

²¹ Non-commercial license testing is conducted by the Skagway Police Department.

ENTERTAINMENT

Residents of Skagway and Haines have common opportunities in terms of a host of outdoor recreational pursuits such as hiking, boating, fishing, and hunting. As previously noted, the Petitioner offered an anecdotal account that Dr. Stan Jones so enjoyed fishing in Skagway that it may have been a decisive factor in his willingness to provide weekly medical service to Skagway over the course of three decades.

In terms of hunting, Skagway is located in Game Management Unit 1D. As shown on Map 8 - Appendix F, Game Management Unit 1D encompasses the Lynn Canal area north of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay. Haines and Klukwan are also within Game Management Unit 1D.

In terms of "indoor recreation" it was noted in Part C of this Appendix that Haines and Skagway are served by the same cable television provider. It was also noted under the previous discussion of the news media that both Haines and Skagway are served by the *Chilkat Valley News*, the *Eagle Eye News*, and KHNS – all based in Haines.

PART J. GEOGRAPHICAL SIMILARITIES

As was addressed in Part E of this Appendix, Skagway, Haines, and Gustavus are part of the "Northern Region" in the *Northern Southeast Area Plan* being prepared by the Alaska Department of Natural Resources.

The Northern Region was defined based on major geographic features. The Northern Region is described in the planning document as encompassing "areas having generally similar physical attributes." (*Northern*

Southeast Area Plan, Chapter 3, page 12) Map 9 - Appendix F depicts the Northern Region as described in the *Northern Southeast Area Plan*.

Moreover, the planning area encompassed by the *Northern Southeast Area Plan* is divided into three large physiographic "provinces." Skagway and the significantly inhabited portions of the Haines area lie within the "Boundary Ranges Province" of the region covered by the *Northern Southeast Area Plan*. The Boundary Ranges Province is described in the Plan as follows (Chapter 3, page 9):

. . . the Boundary Ranges encompasses lands to the east of Lynn Canal, including Skagway and the eastern portion of the Haines area. In terms of sheer area, this is the most significant province within the planning area. The Boundary Ranges, in general, form a glacier-covered upland, with deep, steep walled U shaped valleys and numerous fjords. The area is drained largely by glacial streams less than 20 mi. long, which follow braided courses as they flow southwestward across the range. The Chilkat River forms the western boundary of this province, with the Alsek Range situated immediately to the west.

Lastly, the *Northern Southeast Area Plan* describes the physical features of the Skagway and Haines area as follows (Chapter 3, page 19):

Steep or mountainous terrain characterizes almost all of the parcels in the Skagway and Haines Areas, except for areas along the Tsirku and Takhin Rivers in the northern part of the Haines Area and certain areas near Dyea and along portions of the Taiya River in the Skagway

Area. East of the Chilkat River, the terrain is associated with the Alsek range of the Chilkat – Baranof Mountains and east of that river, with the terrain of the Boundary Ranges. In the few areas of state uplands in the central portion of the Haines Area, generally south of the location known as Glacier Point southwest of Haines, state uplands occupy the few areas of either flat or moderately sloped terrain. These sites are all located along the coast, generally coinciding with areas of coastal plains associated with the Glacier Bay Lowlands, areas of accretion at the mouth of rivers where they enter Lynn Canal, and isolated areas of generally flat terrain at river mouths. The community of Gustavus, occupying a portion of the Glacier Bay Lowlands, is altogether different in its topography. State land there tends to be flat to gently rolling, and the vegetation tends to be more of a birch-cottonwood mix.

It is evident from the preceding discussion that Skagway and Haines have strong geographic similarities.

PART K. HISTORICAL ECONOMIC LINKS

Historical economic links between Skagway and Haines have been addressed previously in Parts C, G, and I of this Appendix. Those include a rich Native history, the Klondike gold rush, military activities, medical services, tourism, and common utility providers.

Beyond the factors recognized by the Alaska Supreme Court as evidence of social and economic integration which were addressed in Parts A – K of this Appendix, 3 AAC 110.045(a) lists four factors that may also be considered. Those are examined in Parts L – O of this Appendix.

PART L. COMPATIBILITY OF URBAN AND RURAL AREAS WITHIN THE PROPOSED BOROUGH

This factor calls for a review of whether the area within a proposed borough encompasses both urban areas and rural areas and, if so, whether those areas are compatible.

The Petition (at page 35) addresses the compatibility of the territory within the existing boundaries of the City of Skagway (proposed Skagway borough) as follows:

The residents of the current City of Skagway and proposed Municipality of Skagway historically, and currently, have far stronger ties to each other and the land within its 455 square miles than to the land, people or culture of the City of Haines, Haines Borough or any other municipal entity. There are no spoken language differences amongst its residents or within the proposed municipality. Skagway residents have a rich interwoven connection with the land and history in the area that is proposed for borough incorporation. The community of Skagway incorporated as Alaska's first City in 1900. In 1978 and 1979, the City annexed surrounding lands, including Dyea and the Klondike Gold Rush National Historic Park, with which its people have had a long historic connection. Many of the

original families that settled in Skagway or Dyea who were merchants or prospectors on the Klondike or Dyea trails still live in Skagway today. The Taiya and Skagway River valleys help define the present City (and proposed Borough) of Skagway's boundaries and were major routes to the Yukon gold fields. Since the early 1900's, transportation and the transshipment (sic) of freight has dominated the economy and culture of the area proposed for borough incorporation. By contrast, after the gold rush, Haines area history was dominated by U.S. Army presence.

Urban and rural areas within the area proposed for borough incorporation are compatible – both the City and the National Park Service have prepared plans that consider land use throughout the entire area (see City of Skagway Comprehensive Plan; Skagway Coastal Management Plan; and the National Park Service Klondike Gold Rush National Historic Park Management Plan). Businesses, residents, and visitors use transportation corridors and land within the proposed borough for dispersed recreation, low density and urban residential housing, hydroelectric power generation, and for transshipment (sic) of petroleum products, lumber, food, dry goods, and occasionally timber and ore, through town ports to local highways and beyond to Canada (and visa versa).

While the Petitioner maintains that the proposed Skagway borough is a homogeneous unit, it takes the position that compatibility ends at the existing boundaries

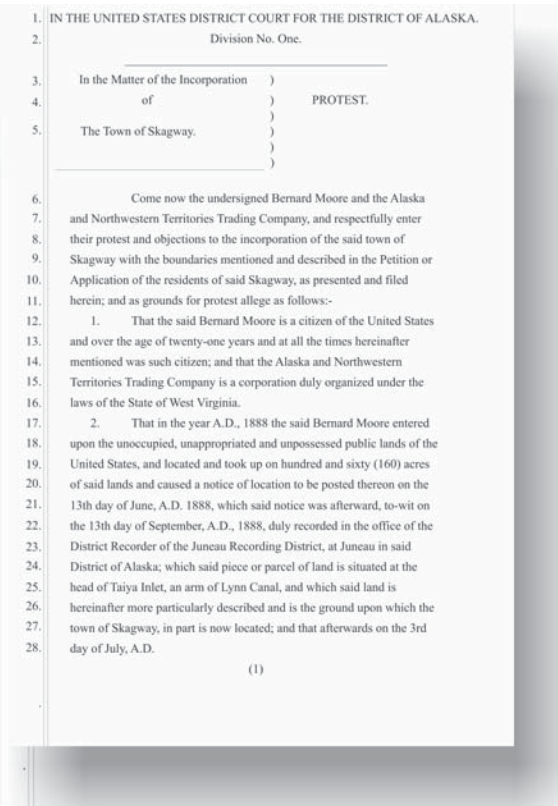
of the City of Skagway. Specifically, the Petitioner asserts the following at page 35 of the proposal:

In contrast, Skagway and Haines area residents generally do not have the strong economic, cultural, and social ties as is required by State law - in fact there are long standing economic, social, and cultural rivalries between these communities that makes it virtually impossible to imagine the voters of these towns approving a consolidation.

In addition to the Petitioner's previously cited arguments of incompatibility, the Petitioner refers to the split vote on the 1998 proposal for consolidation of the City of Haines and the Haines Borough. The Petitioner offers such as evidence that the "general attitudes towards municipal government" in Haines compared to Skagway are incompatible. Specifically, on page 38 of the proposal, the Petitioner states:

General attitudes toward municipal government are also quite different in the Haines and Skagway areas. As Commissioners are aware, residents of the City of Haines and Haines Borough have recently struggled with questions of how to best provide efficient government service in that area. The recent Haines area vote on consolidation demonstrates the deep divisions within the Haines communities.

DCED has yet to find a community whose voters exhibit uniform preferences over a full range of public policy issues. The fact that voters in the Haines Borough were divided in 1998 over the question of consolidation is no



Protest filed by Bernard Moore in 1900 against incorporation of Skagway.

more evidence of incompatibility between Haines and Skagway than it is evidence of incompatibility among residents of the Haines Borough.

An examination of voter records in Skagway would likely yield evidence of similar mixed voter preferences on any number of contentious issues over the years.

Indeed, while Skagway residents are justly proud of the fact that the City of Skagway was the first municipal government incorporated in Alaska, their local government was created among controversy and protest.

Incorporation of the earliest city government in Alaska was not the only first that was achieved in Skagway with respect to municipal boundary proceedings. The City of Skagway incorporation events witnessed the first respondents to express formal opposition to a municipal boundary proposal. Specifically, Bernard Moore and Northwestern Territories Trading Company, filed a formal protest over the proposed incorporation of the Town of Skagway on June 20, 1900.²² The protest centered on a dispute over ownership of land in Skagway.

The protest by the respondents was disallowed on June 21, 1900 by the Honorable Melville C. Brown, Judge in the District Court for the District of Alaska. Having dismissed the protest, Judge Brown then ordered as follows:

That an election by qualified electors residing within the boundaries of the proposed incorporation, be held at the City Hall, on Fifth Avenue, on said proposed incorporation, on Thursday, the 28th day of June, A. D. 1900, between the hours of nine o'clock in the fore-

²² Bernard Moore was the son of Captain William Moore. Captain Moore first came to Skagway in 1887. He traveled up Lynn Canal with William Ogilvie and others as part of a Canadian survey party whose job it was to explore the "North-West Territories" drained by the Yukon River and to survey the 141st meridian. The survey party arrived at Haines Mission – then the end of the line for steamers – on May 24, 1887. From there the party took smaller boats to Dyea. Ogilvie followed the Chilkoot Pass while Moore and Skookum Jim followed the White Pass. Following survey work, Captain Moore and his son Bernard returned to Skagway on October 29, 1887. The Moores staked a claim to 160 acres in Skagway shortly thereafter. The Alaska and Northwestern Territories Trading Company was formed by the British Columbia Development Association Limited to secure land and rights to construct a railroad in the U.S. portion of the White Pass. (Source: *The White Pass – Gateway to the Klondike*, Roy Minter, pages 1 – 52.)

noon and six o'clock in the afternoon of said day, for the purposes hereinafter set forth, and it is ordered that John W. Troy, W. L. Green and L. S. Keller be, and they hereby are appointed a board of election to control the said election, count votes cast, declare results and make returns thereof as provided by law;

In the end, the City was formed by a narrow margin. In accordance with federal law at the time, Judge Brown ordered that, "if a two-thirds majority of the ballots cast are 'For incorporation' the said election board shall declare the said community duly incorporated with the boundaries hereinafter set forth, under the name and style of 'City of Skagway'."

On June 29, 1900, the board of election reported that 360 ballots had been cast. Thus, 240 or more votes in favor of incorporation were necessary for incorporation of the City of Skagway. 246 ballots were cast in favor of city incorporation – six more than necessary. Sixty votes were cast against incorporation. Additionally, fifty-four ballots were cast for candidates, but without votes for or against incorporation of the city government.

Another controversy over municipal boundaries in Skagway surfaced in the late 1970s. In 1978, voters in Skagway exhibited deeply divided preferences (55% against and 45% for) regarding an advisory proposition concerning annexation of Dyea and other areas to the City of Skagway. The following year, the same proposition was reportedly approved by a margin of some 55% for and 45% against. In his previously noted November 6, 1979 letter to the Local

Boundary Commission, Mr. Elliott outlined his perception that parochial interests precipitated the change in voter preferences (emphasis original):

Even in Skagway, as recently as the Oct 3, 1978 General Election, Skagway voters defeated an annexation proposal identical to the current one 176 against and 144 for. A more recent vote reversed these percentages based entirely upon the current notion that the City of Skagway could better disperse the lands between Long Bay and Dyea (called the Dyea Point) than could the State of Alaska. In other words, competition for these lands would be local, not statewide!

Annexation was initiated by the Skagway City Council on June 21, 1979 when it appeared that the State of Alaska would not allow Skagway to nominate unincorporated lands as part of their municipal selections. Why this massive annexation was initiated rather than a much smaller one confined to the Dyea Point, esp. considering the still-prevailing feeling in Skagway that other lands should not be annexed, is a mystery to all save the Skagway City Manager and certain City Council members who have introduced this same annexation ordinance for years only to have it repeatedly defeated.

The Skagway borough Petition (at page 38) also cites an action by the Haines Borough Assembly as further evidence of incompatibility between Skagway and Haines in terms of local government philosophies:

Skagway also has serious concerns over recent actions the Haines Borough took to unilaterally disband three-quarters of the Mud Bay Service Area within that borough. Skagway does not wish to become embroiled in the local government confusion and controversies to the west, nor does it wish to be combined against its will with Juneau or other south-east communities in a rural South-east super borough.

The action by the Haines Borough Assembly about which the Petitioner expresses concern is viewed by DCED to have been a legitimate exercise of the areawide public policy making responsibility of the governing body of the Haines Borough. The Haines Borough Assembly apparently acted to remove what it perceived – in an areawide context – were unreasonable and unwarranted obstacles to commercial and tourism development in the Mud Bay area.²³

DCED fails to see a philosophical distinction between the unilateral action taken by the Haines Borough Assembly in Mud Bay over the objection of residents of the affected area and the unilateral action taken by the Skagway City Council in 1979 to annex Dyea and other areas over the strong objections of the

residents of those areas. Moreover, voters in the then 11-square mile City of Skagway were deeply polarized on the question of expanding the boundaries of their city.

The Skagway annexation was undertaken by the “legislative review” process set out in Article X, Section 12 of the constitution – an action which is analogous to a legislatively-mandated incorporation. Presumably, the decision to seek the legislative review annexation of the area in question was the result of the legitimate exercise of the areawide public policy making responsibility of the governing body of the City of Skagway.

Clearly, there are rivalries between Skagway and Haines. However, rivalries between neighboring communities are nothing out of the ordinary. The late Representative Ronald L. Larson²⁴ – an advocate during the 1980s and early 1990s for compulsory formation of boroughs in Alaska – was often confronted at public forums regarding borough formation with the argument that a particular community could never be included in the same borough as a neighboring community because of rivalries between the two. Representative Larson’s response was that intense rivalries existed between Palmer and Wasilla before the formation of the Matanuska-Susitna Borough under the 1963 Mandatory Borough Act.²⁵

²³ *Review of the Draft Petition for Incorporation of the City of Mud Bay*, Department of Community and Regional Affairs, March 28, 1997.

²⁴ Ronald L. Larson moved to Alaska in 1959 where he taught school in the Palmer Independent School District. The Palmer Independent School District was incorporated into the much larger Matanuska-Susitna Borough when it was formed by legislative fiat under the 1963 Mandatory Borough Act. Mr. Larson continued to teach for the Matanuska-Susitna Borough until 1982. From 1970-1972, Mr. Larson also served on the Palmer City Council. From 1973 – 1982, he served as the Mayor of the Matanuska-Susitna Borough. From 1983 – 1994, he served as a member of the State House of Representatives.

²⁵ DCED staff – then with the predecessor DCRA – participated at numerous public forums and legislative proceedings with Representative Larson and his aide Larry J. Bussone involving the question of compulsory formation of boroughs. The attribution here of views expressed by Representative Larson is based on recollections from those forums and proceedings.

Representative Larson noted further that notwithstanding the rivalries, Wasilla and Palmer have since exhibited compatibility in the context of borough government.²⁶

Rivalries – commercial and otherwise – between neighboring communities are not a valid basis for declaring incompatibility in the broad context of borough government. Neither is the perception of differences in local governmental philosophies.²⁷

PART M. COMPATIBILITY OF ECONOMIC LIFESTYLES, AND INDUSTRIAL OR COMMERCIAL ACTIVITIES

Economic lifestyles, industrial activities, and commercial characteristics were addressed extensively in Part C of this Appendix. To avoid redundancy, the matter will not be addressed again here except to state the following conclusion.

Based on the discussion in Part C, DCED found significant economic links between Skagway and Haines. They include shared interests in the tourism industry (both generally and in the particular tourists served), commonalities in terms of utility service

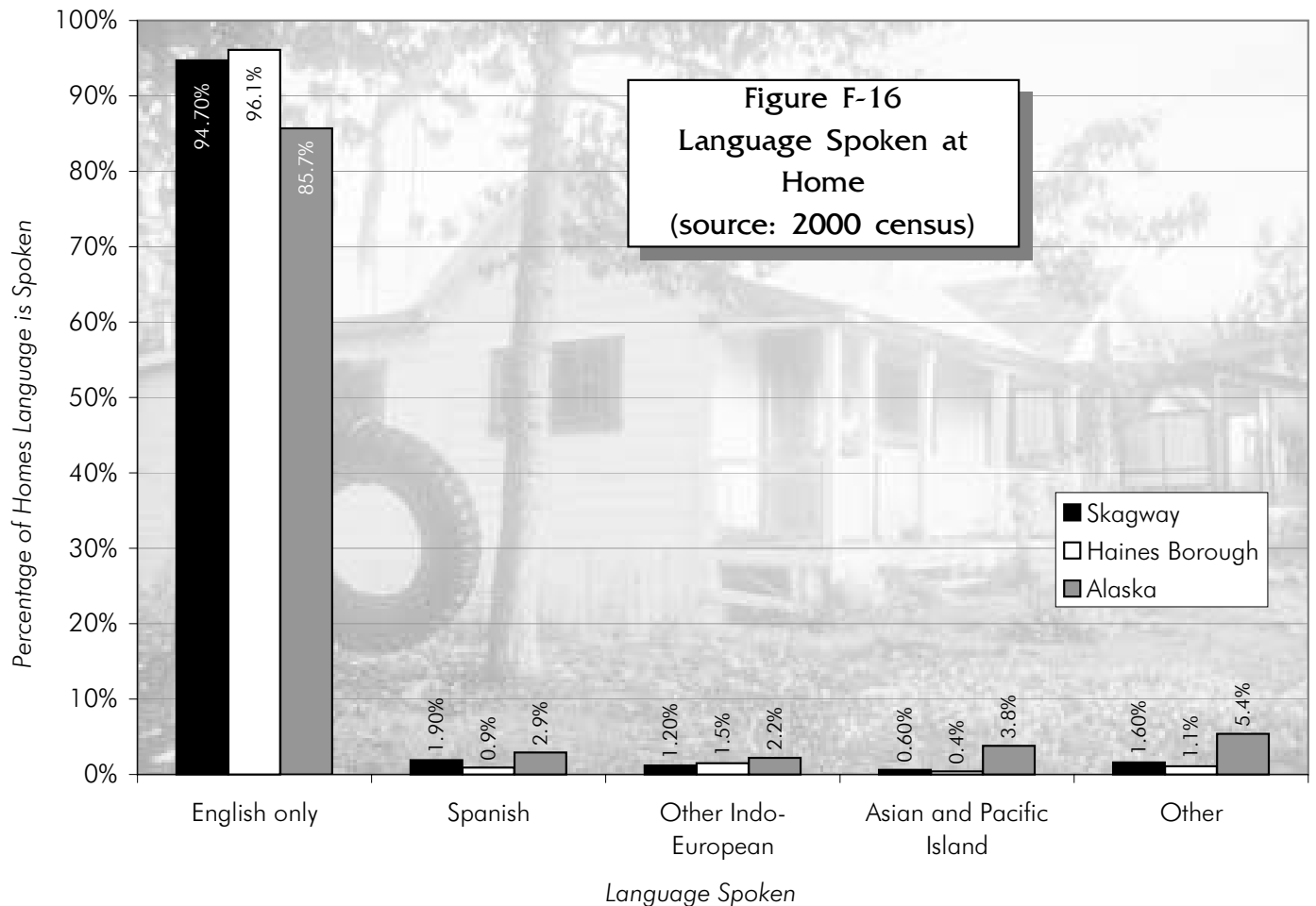
providers for electricity and cable television; and similarities with respect to the nature of employment by industry, occupation, and classification of workers.

PART N. EXISTENCE THROUGHOUT THE PROPOSED BOROUGH OF CUSTOMARY AND SIMPLE TRANSPORTATION AND COMMUNICATION PATTERNS

Transportation and communication patterns were addressed extensively in Parts A, B, and I of this Appendix. To avoid redundancy, the matter will not be addressed further here except to note that DCED found significant transportation and communication links between Skagway, Haines, and Juneau.

²⁶ The term “compatible” is defined in Merriam-Webster’s Collegiate Dictionary as follows: (1) capable of existing together in harmony (compatible theories); (2) capable of cross-fertilizing freely or uniting vegetatively; (3) capable of forming a homogeneous mixture that neither separates nor is altered by chemical interaction; (4) capable of being used in transfusion or grafting without immunological reaction (as agglutination or tissue rejection); (5) designed to work with another device or system without modification; especially: being a computer designed to operate in the same manner and use the same software as another computer.

²⁷ Even if it were the case that Skagway voters exhibited generally uniform governmental philosophies while Haines voters were generally polarized, it would not mean that Skagway voters had a philosophical difference with *all* voters in Haines – just roughly half. Moreover, if all 919 registered voters in Skagway paired up with half of the 2,241 voters in the Haines Borough they would constitute nearly a two-thirds majority (64.5%).



PART O. EXTENT AND ACCOMMODATION OF SPOKEN LANGUAGE DIFFERENCES THROUGHOUT THE PROPOSED BOROUGH

According to 2000 census data, 94.7% of the population of the City of Skagway at least five years old spoke only English. The comparable figure for the Haines Borough was 96.1%, 1.4 percentage points greater than the figure for Skagway. In contrast, 85.7% of Alaskans aged

five or older spoke English only. The statewide figure was 9 percentage points lower than the figure for Skagway and 10.4 percentage points below the figure for the Haines Borough. Further details are about spoken language differences are provided in Figure F-16.

Characteristics of language spoken in homes are more similar in Skagway and Haines than throughout Alaska as a whole.

APPENDIX G

KEY COMPONENTS OF 1979 SKAGWAY ANNEXATION RECORD

(PAGES 9 - 11 OF CITY'S BRIEF; DCRA'S REPORT; AND LBC STATEMENT OF
DECISION)

V. Why the Boundaries Proposed? The municipal boundaries of Skagway remained unchanged for 75 years. Until the last several years, growth in and around the City has not warranted extension of the municipal boundaries on the basis of need for provision of municipal services when viewed in the light of costs and services benefit to residents both within and outside the municipal boundaries. In 1976 it became apparent to the City Council that the City, by reason of its serving as a major port in a transportation corridor and as the commercial and industrial center of the area, has conferred substantial benefits upon residents and owners of properties outside the City without corresponding tax contributions on their part for these services and benefits. Due to opposition on the part of some of these non-residents and primarily because of a lack of consensus within the Council, the City petitioned for only a limited extension of its boundaries. The Local Boundary Commission considerably reduced the extent of the territory applied for and the annexation was approved by the Legislature in March of 1978. Subsequently, in its administration of government, the City has established differential tax districts for the annexed areas based on the City's capability to provide municipal services and the level of services provided.

The lines of communications in the Skagway area are limited and there is a dearth of developable land which is readily accessible - e.g. the area is largely river flood plain, mountain and glaciers. There are however, pockets of land suitable for residential or industrial development and to which provision of access will be practicable through

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road improvements and construction, e.g., along the Dyea road, in the Dyea valley and along the AB Mountain ridge line. 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 accomodate ongoing and foreseen increased population and industrial growth. Under the State municipal land selection program the City's entitlement is 500 acres. There are, however, not 500 acres of State land within the City boundaries which are suitable for selection. Therefore, with the concurrence and assistance of the State Division of Lands, the City has nominated lands for selection which lie outside the present municipal boundaries. In making these nominations, it was understood that the City would have until 1986 to extend its boundaries through annexation and thereby select its full allocation. The recent legislature, however, set a deadline of 1 October 1980 for municipal land selection. Therefore, completion of the annexation process has become a matter of urgency.

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

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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 into 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. 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. Specifically, it would be approximately one-third as large as the present smallest borough, about one-tenth as big as the "average" borough, and little useful purpose could be seen in organizing yet another separate local government unit in the form of a borough. A borough would furnish no greater services, and the City of Skagway has adopted a scheme of differential tax zones to implement a policy of real property taxation to correspond with the level of services provided.

VI. City Owned Properties Outside the Existing Boundaries.

A segment of the west side of the City's recreational park at Yakutania Point lies outside the present boundary. The City has nominated several hundred acres of land for municipal selection which lies outside the City limits. Subject to approval of this petition, some of these lands will be selected prior to 1 October 1980.

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Report to the Local Boundary
Commission on the proposal to
Annex territory to the City of Skagway

November 14, 1979

Department of Community and
Regional Affairs

I. PROCEEDINGS TO DATE

On July 27, 1979, the Department of Community and Regional Affairs received a petition proposing annexation of some 431.35 square miles of territory to the City of Skagway. Review of the petition indicated that it was in the proper form and did contain all the necessary information. A letter stating acceptance of the petition was sent to L.B. Jacobson, petitioners representative, on July 30.

Notice of the Commission's forthcoming hearing was mailed to petitioners' representative on October 23 and was posted in three public places and televised over the Skagway Network Television during the period of October 29 through November 16.

II. PETITION

The petition, for all intents and purposes, is the same petition the Commission considered in November of 1976. Admittedly, it is a larger geographic area, but the vast majority of additional territory is mountainous, not suitable for development and, according to petitioners representative, is included so that the entirety of the region could be within the confines of one local government. Because the issues are the same as in 1976 and because the Commission's Statement of Decision entered in that proceeding (copy attached) does not indicate a basis for the deletion of

territory from the annexation proposal, the Department's recommendation is, literally, the same as it was in the prior proceeding.

III. RECOMMENDATIONS

Normally, our reports attempt to analyze an annexation proposal, note the positive and negative aspects of the proposal and make recommendations pursuant thereto. However, we have chosen to take a different approach this time; petitioners' arguments are clear and the information provided is detailed and accurate. We feel no need to expand or comment on petitioners' arguments - the decision is the Commission's.

However, we feel a broader question has been ignored; that question is "what size should a city be?" In our opinion all of petitioners' arguments are, to lessor or greater degrees valid, but at what point does a city become an inappropriate service mechanism. We are not suggesting that we have the answer, only that the question needs to be asked. Specifically, we recommend that petitioners be questioned as to how the city will provide services to such an enormous area.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

City of Skagway petition for)
Annexation of unorganized }
borough territory)

Statement of Decision

WHEREAS, on July 24, 1979, the City of Skagway submitted a petition to the Local Boundary Commission through the Department of Community and Regional Affairs in accordance with Title 29 of the Alaska Statutes requesting the annexation of all unorganized borough territory outside of the City of Skagway's current boundaries between the Haines Borough boundary and the Canadian border and contiguous to the present corporate limits of the city; and

WHEREAS, on July 30, 1979, the Department found the petition in proper form; and

WHEREAS, the Local Boundary Commission scheduled a public hearing with prescribed public notice; and

WHEREAS, the Commission conducted a physical inspection of the proposed annexation territory and held a public hearing in the Skagway City Council Chambers on November 17, 1979; and

WHEREAS, the Commission held a public decisional meeting immediately following the adjournment of the public hearing;

NOW, therefore, the Commission confirms its decision to accept the City of Skagway boundary change proposal in accordance with Exhibits "A" and "B" attached hereto and enters the following summary of findings in correlation with Commission regulations:

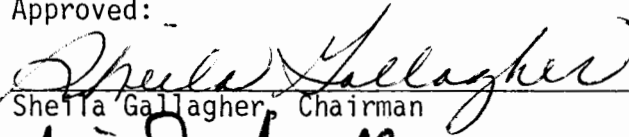
19 AAC 05.010 (a) (4): The territory approved for annexation is in need of Skagway City general fund services, is presently benefitted thereby, and the City of Skagway is capable and willing to provide general fund services. The City is the only local government entity in existence in the area capable of supplying needed services and jurisdiction to residents of the territory.

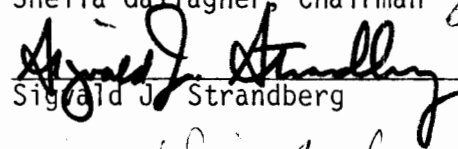
19 AAC 05.010 (a) (5): The Commission finds that the territory approved is absorbing Skagway population growth and community expansion and because of this, should be under the jurisdiction of the City of Skagway for orderly control of this growth.

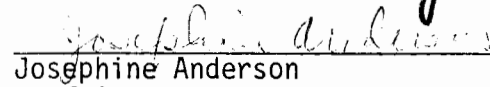
LOCAL BOUNDARY COMMISSION

December 19, 1979

Approved: -

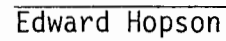

Sheila Gallagher, Chairman


Sigvald J. Strandberg


Josephine Anderson


Charles B. Bettisworth

Absent Excused


Edward Hopson