



1 The territory proposed for incorporation comprises 39.25 square miles (29.23 square  
2 miles of land and 10.02 square miles of water). The Petitioner's proposed boundaries  
3 encompass the community of Gustavus and surrounding territory including the Dude  
4 Creek Critical Habitat Area and portions of the Park. The proposed boundaries are  
5 identical to those approved by the Commission in 1997 when acting upon a 1996  
6 petition to incorporate Gustavus.  
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9 AS 29.05.100 provides that the Commission may approve the Petition if the  
10 Commission determines that it meets the applicable standards established in the  
11 Constitution of the State of Alaska, Alaska Statutes, and the Alaska Administrative  
12 Code. In all, the Gustavus proposal must meet thirteen specific standards before the  
13 Commission may approve it. The Commission identifies and addresses each of those  
14 standards in Section III of this decisional statement.  
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16  
17 Four members of the Commission were present at the public hearing and decisional  
18 session regarding the Gustavus city proposal held in Gustavus on October 29, 2003. In  
19 its evaluation of the proposal, the Commission considered the Petition, written public  
20 comments on the Petition, Petitioner's reply, the preliminary report of the Department of  
21 Community and Economic Development (DCED), written public comments on the  
22 DCED's preliminary report, and the DCED's final report. Additionally, the Commission  
23 toured portions of the proposed City of Gustavus.  
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26 Based on the written record, observations during the tour of the territory, and testimony  
27 at the public hearing in Gustavus, the four Commissioners attending the hearing and  
28 decisional session unanimously conclude that the Petition meets all requisite standards.  
29 Consequently, the Commission approves the Petition. The four Commissioners  
30 attending the hearing and decisional session were: Darroll Hargraves; Robert  
31 Harcharek; Robert Hicks; and Anthony Nakazawa. Commissioner Georgianna  
32 Zimmerle was unable to attend due to illness.  
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1 **Section II**  
2 **Background and Proceedings**

3 **A. History of Local Interest in City Incorporation**

4 The pending Petition is the third attempt in the past twenty-four years to incorporate a  
5 city government to serve the residents of Gustavus. The first occurred in 1979. At that  
6 time, the population of Gustavus was 98. The Commission denied the first proposal to  
7 form a city government in Gustavus on two grounds. The first was that the community  
8 lacked adequate financial resources to operate a city government. The second was that  
9 a demonstrated need for city government in Gustavus was not evident.  
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11  
12 In March 1996, voters in Gustavus initiated a second proposal. By that time, the  
13 population of Gustavus had grown to 357. The 1996 incorporation petition proposed  
14 corporate boundaries for the city encompassing nearly 144 square miles. In June 1997,  
15 following a hearing on the proposal, the Commission amended the Gustavus city  
16 incorporation petition by reducing the proposed jurisdictional area of the prospective city  
17 from the nearly 144 square miles requested by the petitioners to 39.25 square miles.  
18 Following the amendment, the Commission approved the petition. In October 1997, the  
19 State Division of Elections conducted an election to present the city incorporation  
20 proposition to the voters. The election was conducted by mail. The Division of  
21 Elections certified the results of the election on October 21, 1997. From the 280 votes  
22 cast, the tally was 139 votes in favor of incorporation (49.6 percent) and 141 votes  
23 against incorporation (50.4 percent).  
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27 **B. Formal Petition Submitted to the DCED and Accepted for Filing**

28 On January 22, 2003, voters in Gustavus submitted to the DCED the *Petition to*  
29 *Incorporate Gustavus as a Second Class City in the Unorganized Borough* (Petition).  
30 Forty-seven individuals signed the Petition. It was subsequently determined that thirty-  
31 eight of the signatures were from qualified voters. The thirty-eight signatures were  
32 sufficient to satisfy the requirements of AS 29.05.060(12) for filing the Petition. On  
33  
34

1 March 4, 2003, the DCED completed its technical review of the Petition and accepted it  
2 for filing.

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4 **C. Public Notice of the Filing of the Petition**

5 Under 3 AAC 110.640, the Chair of the Commission set May 2, 2003, as the deadline  
6 for receipt of responsive briefs and comments on the Petition.

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9 Notice of Filing of the Petition was given in accordance with 3 AAC 110.450.  
10 Specifically, notice was published as a display advertisement in the *Juneau Empire*.  
11 Notice was also published through the *Alaska Online Public Notice System* and on the  
12 Commission's Internet Web site maintained by the DCED.

13  
14  
15 Notice was also mailed to 33 potentially interested individuals and organizations,  
16 including the Haines Borough, City of Hoonah, and the Hoonah Indian Association.  
17 Request for a public service announcement of the filing of the Petition was submitted to  
18 radio station KTOO-FM, which serves the territory proposed for incorporation. Further,  
19 notice of the filing of the Petition was posted in the four following prominent locations  
20 accessible to the public within the territory proposed for incorporation: the Gustavus  
21 Post Office, Gustavus Public Library, Beartrack Mercantile, and the Park headquarters.

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23  
24 **D. Service of the Petition**

25 The Petitioner served copies of the Petition upon the Haines Borough and City of  
26 Hoonah. The Petitioner also made copies of the Petition materials available for public  
27 review at the Gustavus Public Library. In doing so, the Petitioner satisfied the  
28 requirements of 3 AAC 110.460.

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31 **E. Responsive Briefs and Comments**

32 No responsive briefs were filed under 3 AAC 110.480 in opposition to or in support of  
33 the Petition. However, six written comments concerning the proposal were received by  
34 the May 2, 2003, deadline. Commentors were:

- 1 1. Karen L. Pandel, a resident of Schenectady, New York.
- 2 2. Tomie Patrick Lee, Superintendent of the Park (signed by Jed Davis,
- 3 Assistant Superintendent).
- 4 3. Paul Berry, local resident and landfill manager.
- 5 4. Hoonah Indian Association (by David Betton, Director of Cultural/Natural
- 6 Resources).
- 7 5. State Senator Gary Wilken.
- 8 6. Craig H. Wilson, Gustavus resident.
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11 The comments were posted on the Commission's Internet Web site and subsequently  
12 provided to the Petitioner.

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15 **F. Reply Brief**

16 On May 15, 2003, the Petitioner's Representative submitted a brief in reply to the timely  
17 comments on the Petition. A draft of the brief had been presented to community  
18 residents at a meeting held by the Petitioner in Gustavus on May 13, 2003. The reply  
19 brief addressed concerns raised at that community meeting. A copy of the reply brief  
20 was posted on the Commission's Internet Web site.

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23 **G. The DCED Preliminary Report**

24 In August 2003, the DCED completed its *Preliminary Report on the Gustavus*  
25 *Incorporation Proposal (Preliminary Report)* under 3 AAC 110.530(b). The *Preliminary*  
26 *Report* consists of 111 pages of background information, analysis, and conclusions.  
27 Additionally, the *Preliminary Report* includes seven appendices comprising 91 pages.  
28 The appendices provide additional background materials and analysis.

29  
30  
31 The DCED concluded in its *Preliminary Report* that the Gustavus incorporation proposal  
32 meets all the thirteen applicable standards established in the Constitution, Alaska  
33 Statutes, and the Alaska Administrative Code. Consequently, the DCED's *Preliminary*  
34 *Report* recommended that the Commission approve the Petition without modification.

1 The DCED mailed printed copies of its *Preliminary Report* to the Petitioner's  
2 Representative and 28 individuals and organizations on August 29, 2003. The  
3 *Preliminary Report* was released to the Petitioner's Representative in an electronic  
4 format on August 29, 2003. Additionally, the report was transmitted in an electronic  
5 format to twelve others on that date. Under 3 AAC 110.640, the Commission Chair set  
6 September 29, 2003, as the deadline for receipt of comments on the DCED's  
7 *Preliminary Report*.  
8

#### 9 10 **H. Scheduling of Commission Hearing**

11 After consulting with the Petitioner's Representative, the DCED scheduled a public  
12 hearing for the Commission to be held in Gustavus on October 29, 2003.  
13

#### 14 15 **I. Notice of Commission Hearing**

16 Formal notice of the October 29 public hearing was given by the DCED in accordance  
17 with 3 AAC 110.550. This included publication of the notice as a display ad in the  
18 *Juneau Empire* and *Icy Passages News*. Additionally, notice was posted on the Internet  
19 through the *Alaska Online Public Notice* system and on the Commission's Web site.  
20 Further, the DCED provided notice of the hearing at the September 25, 2003,  
21 informational meeting in Gustavus. Additionally, notice of the hearing was included in  
22 the DCED's final report. Moreover, the notice was posted in four prominent locations  
23 accessible to the public within the territory proposed for incorporation: the Gustavus  
24 Post Office, Beartrack Mercantile bulletin board, the Park headquarters, the Gustavus  
25 Public Library, and the Gustavus Public Library repository for the incorporation petition  
26 documents.  
27

28  
29 The DCED also submitted a request to KTOO for a public service announcement of the  
30 notice of the hearing. Further, the DCED provided notice of the hearing to those who  
31 received a copy of the *Preliminary Report*.  
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1 **J. The DCED Informational Meeting**

2 On September 25, 2003, the DCED conducted a duly noticed informational public  
3 meeting concerning the Gustavus incorporation proposal as required by AS  
4 29.05.080(a) and 3 AAC 110.520.<sup>1</sup> The meeting was held in the Gustavus School multi-  
5 purpose room.  
6

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8 **K. Written Comments on the DCED's Preliminary Report**

9 Four sets of written comments on the DCED's *Preliminary Report* were submitted by the  
10 September 29, 2003, deadline.  
11

12 **L. The DCED Final Report**

13 In accordance with 3 AAC 110.530(d), the DCED issued its final report to the  
14 Commission on the Gustavus incorporation proposal on October 7, 2003 (*Final Report*).  
15 The *Final Report* addressed the written comments on the DCED's *Preliminary Report*.  
16 The *Final Report* also addressed significant developments regarding the Gustavus  
17 incorporation proposal that had occurred since issuance of the *Preliminary Report*.  
18

19  
20 The DCED's *Final Report* affirmed the analysis and conclusions set out in the  
21 *Preliminary Report* with respect to all standards. However, based on subsequent  
22 clarifications by Petitioner's Representative and comments made at the public meeting  
23 and in response to the *Preliminary Report*, the DCED recommended in its *Final Report*  
24 that the Commission amend the Petition to provide that the proposed levy of the  
25 4 percent excise tax will apply only to overnight accommodations. On October 7, 2003,  
26 copies of the DCED's *Final Report* on the Gustavus incorporation proposal were  
27 distributed to the Commissioners, Petitioner's Representative, and other interested  
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33 <sup>1</sup>The informational meeting is summarized in the DCED's final report.  
34 According to DCED, approximately 55 – 60 persons attended the meeting at the  
Gustavus School. The meeting lasted approximately 1½ hours.

1 persons. Additional copies were mailed to the Petitioner's Representative, various State  
2 officials, and DCED personnel on October 8, 2003.<sup>2</sup>

3  
4 **M. Submission of Witness List**

5 In accordance with 3 AAC 110.550(e), on October 10, 2003, the Petitioner submitted to  
6 the DCED a list of witnesses that it planned to call to provide sworn testimony at the  
7 hearing. The following individuals were named in that regard:  
8

- 9  
10 1. Bruce Tedtsen – Long-time resident of Gustavus; grocery store owner; past  
11 chief of Gustavus Emergency Response (GER); present member of the  
12 Gustavus Community Association (GCA).  
13
- 14 2. Kenneth Klawunder – Petitioner's Representative; homeowner; Gustavus  
15 landowner since 1969; Gustavus resident for 13 years.  
16
- 17 3. Lois Nixon – Storeowner in the community since 1986; co-owner of the only  
18 grocery store in Gustavus.  
19
- 20 4. Melanie Nelson – Chairperson of the Gustavus Visitors Association (GVA)  
21 an organization that conducts advertisements for the community and the  
22 various tourist related business within Gustavus.  
23
- 24 5. Chuck Young - Chief Ranger in charge of enforcement within the Park. Or,  
25 Gus Martinez - District Ranger also in charge of enforcement in Park.  
26
- 27 6. Tracey Ricker – Realtor selling property in the area; homeowner in  
28 Gustavus.  
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34 <sup>2</sup>A total of 53 copies of the *Final Report* was distributed.

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- 7. Rita Wilson – Landowner; long-time resident of Gustavus; very active in volunteering at the library and other activities; presently on the GCA board and a member of the GVA.
- 8. John Scott – Owner and operator of K & W Co., the local freight transfer business in Gustavus; owner of Gustavus Propane Co.
- 9. Paul Berry – In charge of the Gustavus community landfill and recycling.
- 10. Craig Wilson – Volunteer Chief of the GER.
- 11. Tim Gibson – Owner and operator of the family-owned hardware/lumber store in Gustavus; leader in the community’s pursuit of a boat launch ramp and a harbor facility.
- 12. Kathy Leary – Librarian and chairperson of the Chatham Strait REAA<sup>3</sup> School District; has coordinated the use of volunteers within the library and worked to secure grants for the continuation of the library function for Gustavus.
- 13. Bill Brown – Long-time resident of Gustavus; home owner; member of the team of petitioners who worked for incorporation of Gustavus in 1997; presently a board member of GCA; and active member of the community in the quest for city status.
- 14. Shana Crondahl – Petitioner's Alternate Representative and active member of the Governance Committee; presently a board member of GCA.

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<sup>3</sup>Regional Educational Attendance Area.

1 15. Greg Streveler – Long-time resident of the Gustavus area and present  
2 chairman of GCA; very active on committees including the board of Fish and  
3 Game.

4  
5 16. George Jensen – Long-time resident of Gustavus, former teacher in  
6 Gustavus; and Gustavus homeowner.  
7

8  
9 **N. Tour**

10 Before the hearing on October 29, the Commissioners attending the hearing toured the  
11 community of Gustavus and the surrounding area. The tour was by automobile.  
12

13 **O. Hearing**

14 Immediately before the hearing, the Petitioner submitted a revised witness list to the  
15 Commission Chair. The names of 15 of the 16 individuals on the original October 10  
16 witness list remained on the revised list (Bruce Tedtsen, Ken Klawunder, Lois Nixon,  
17 Melanie Nelson, Tracy Ricker, Rita Wilson, John Scott, Paul Berry, Craig Wilson, Tim  
18 Gibson, Kathy Leary, Bill Brown, Shana Crondal, Greg Streveler, and George Jensen).  
19 The names of one individual and his alternate on the original list did not appear on the  
20 revised list (Chuck Young and Guy Martinez). One individual whose name did not  
21 appear on the October 10 list appeared on the revised list (Maya Seraphin). While  
22 distributing the revised list, Petitioner orally amended the revised list by notifying the  
23 Commission that witnesses John Scott and Maya Seraphin were unable to appear and  
24 testify. At hearing, Petitioner presented the testimony of 14 witnesses.  
25  
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27  
28 The Commission convened the hearing on October 29, 2003, at 6 p.m. in the Gustavus  
29 School, Multi-Purpose Room, as scheduled. Approximately 100 individuals attended.  
30

31  
32 The hearing began with introductory remarks by the Chair concerning the Commission  
33 and the nature of the proceeding. Next, the DCED presented a summary of its analysis,  
34 conclusions, and recommendation to the Commission. Ken Klawunder made opening

1 remarks on behalf of the Petitioner. The opening remarks were followed by sworn  
2 testimony by the 14 witnesses named on the Petitioner's revised witness list. The  
3 witnesses appeared in the following order.

- 4
- 5 1. Bruce Tedtsen.
- 6 2. Kenneth Klawunder.
- 7 3. Lois Nixon.
- 8 4. Melanie Nelson.
- 9 5. Tracey Ricker.
- 10 6. Rita Wilson.
- 11 7. Paul Berry.
- 12 8. Craig Wilson.
- 13 9. Tim Gibson.
- 14 10. Kathy Leary.
- 15 11. Bill Brown.
- 16 12. Shana Crondahl.
- 17 13. Greg Streveler.
- 18 14. George Jensen. \
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23 Following the testimony of George Jensen, the Chair allowed Petitioner's  
24 Representative to make his closing statement. The Chair recessed the hearing at  
25 7:45 p.m.

26

27 After reconvening at 8 p.m., the Chair invited members of the public to offer comments  
28 on the Gustavus incorporation proposal to the Commission. Seven individuals did so in  
29 the following order:  
30

- 1 1. Jed Davis, Assistant Superintendent of the Park.
- 2 2. Jan Kunat.
- 3 3. John Scott (prepared statement read by Tracey Ricker).
- 4 4. Eugene Farley.
- 5 5. Thomas Imboden.
- 6 6. Rhio Harper.
- 7 7. Sandy Burd.

9  
10 The hearing concluded at approximately 9 p.m. The Chair recessed the meeting briefly  
11 at that time.

12  
13 **P. Decisional Session**

14 The Commission convened a decisional session at approximately 9:05 p.m. During the  
15 decisional session, the Commission reached findings and conclusions outlined in  
16 Section III of this decisional statement. The decisional session concluded at 9:15 p.m.,  
17 October 29, 2003.

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20 **Section III**  
21 **Findings and Conclusions**

22  
23 **Standard I. Existence of a Community**

24 ***The Standard Established in Law.***

25 State law provides that a locality proposed for incorporation as a city must comprise a  
26 community. Specifically, AS 29.05.011(a) states that “A community” that meets the city  
27 incorporation standards may incorporate as a city. Further, 3 AAC 110.005 requires  
28 that “An area proposed for incorporation as a city must encompass a community.” State  
29 law (3 AAC 110.990) defines a community as “a social unit comprised of 25 or more  
30 permanent residents as determined under 3 AAC 110.920.” That regulation establishes  
31 several criteria that the Commission may consider in determining whether the locality  
32 proposed for incorporation comprises a community. Specifically, the law states:  
33  
34

1                   **3 AAC 110.920. Determination of Community.** (a) In determining  
2 whether a settlement comprises a community, the commission may  
3 consider relevant factors, including whether the

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

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

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

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

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

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

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

23                   **Conclusion: Gustavus comprises a community as defined by Commission**  
24 **regulations (3 AAC 110.990) and as required for city incorporation under**  
25 **AS 29.05.011 and 3 AAC 110.005.**

26                   The conclusion that Gustavus is a *bona fide* community under the laws relating to city  
27 incorporation is supported by the following ten findings:

28                   (a) Gustavus has 421 residents; nearly 17 times the threshold used  
29 in the legal definition of a community applicable to the Gustavus  
30 incorporation proceedings.

31                   (b) For more than two decades, Gustavus has qualified for various  
32 unincorporated community financial aid programs offered by the State.

33                   (c) The right to reside in Gustavus is not restricted.

34                   (d) Gustavus is not adjacent to another community of which  
Gustavus could be reasonably considered a part.

                  (e) Generally, employment in Gustavus is not provided by an  
employer that requires occupancy in the community as a condition of  
employment.

                  (f) The population density of the proposed City of Gustavus is  
comparatively low in relation to most incorporated communities. However,  
that characteristic is partly due to the inclusion of relatively substantial  
uninhabited and undeveloped lands within the proposed boundaries which,  
in 1997, the Commission determined to be properly part of a proposed City  
of Gustavus. Inhabitants of Gustavus generally live in close geographical  
proximity that is characteristic of neighborhood living.

1 (g) The Gustavus election precinct encompasses all of the  
2 populated territory proposed for incorporation and no other settlements.

3 (h) There is a public school in Gustavus. Student enrollment in the  
4 past five years was 45 in 2002 and 2001, 48 in 2000, 56 in 1999, and 74 in  
5 1998.

6 (i) There are currently 157 active business licenses in Gustavus.

7 (j) Gustavus exhibits local employment characteristics that are  
8 representative of a community.

9 **Standard II. Boundaries: Necessary Areas**

10 ***The Standard Established in Law.***

11 AS 29.05.011(a)(2) requires that “the boundaries of the proposed city include all areas  
12 necessary to provide municipal services on an efficient scale.” The provisions of 3 AAC  
13 110.040 establish five distinct standards relating to the suitability of the proposed  
14 boundaries. It states:

15 **3 AAC 110.040. Boundaries.** (a) In accordance with  
16 AS 29.05.011, the boundaries of a proposed city must include all land and  
17 water necessary to provide the full development of essential city services  
18 on an efficient, cost-effective level. In this regard, the commission may  
19 consider relevant factors, including

20 (1) land use and ownership patterns;

21 (2) population density;

22 (3) existing and reasonably anticipated transportation patterns and  
23 facilities;

24 (4) natural geographical features and environmental factors; and

25 (5) extraterritorial powers of cities.

26 ***Conclusion: The boundaries of the proposed City of Gustavus include all areas  
27 necessary to provide municipal services on an efficient scale as required for city  
28 incorporation by AS 29.05.011(a)(2) and 3 AAC 110.040(a).***

29 The following two findings support this conclusion:

30 (a) Land use in Gustavus by permanent and seasonal residents,  
31 tourists and other visitors, businesses, and government agencies is  
32 concentrated in the territory proposed for incorporation. Generally, all will  
33 benefit from proposed services of the prospective City of Gustavus (landfill,  
34 public library, emergency medical services, fire protection, road  
maintenance, and funding for the GVA). Other services (financial support

1 for the clinic, platting, planning, land use regulation, dock funding, and  
2 funding for a future boat harbor) may be provided in the future. The  
3 boundaries proposed by the Petitioner include all territory for the full  
4 development of these essential services.

5 (b) An argument has been made that the tidelands and submerged  
6 lands in Bartlett Cove should be excluded from the proposed city.  
7 Notwithstanding federal ownership, Bartlett Cove is an integral part of the  
8 proposed development of essential services. It will benefit from most, if not  
9 all, of the services provided by the city and will be a vital source of local  
10 revenue for the city.  
11

12  
13  
14 **Standard III. Boundaries: Local Community, Plus Growth, Development, and**  
15 **Public Safety Needs**

16 ***The Standard Established in Law***

17 Boundaries of a proposed city may include only the territory comprising the current local  
18 community plus predictable growth and certain other factors during the 10 years  
19 following incorporation. That second boundary standard is set out in 3 AAC 110.040(b)  
20 and provides:  
21

22 (b) The boundaries of the proposed city must include only that  
23 territory comprising a present local community, plus reasonably  
24 predictable growth, development, and public safety needs during the  
25 10 years following the effective date of incorporation.

26 ***Conclusion: The boundaries of the proposed City of Gustavus include only the***  
27 ***present community, plus reasonably predictable growth, development, and public***  
28 ***safety needs during the 10 years following incorporation as required for city***  
29 ***incorporation by 3 AAC 110.040(b).***

30 The following two findings support this conclusion:

31 (a) The 1996 petition to incorporate the City of Gustavus requested  
32 boundaries encompassing nearly 144 square miles. In 1997, the  
33 Commission reduced the boundaries to 39.25 square miles.  
34

1 (b) The pending Petition proposes boundaries identical to those  
2 approved by the Commission in 1997.

3  
4 **Standard IV. Boundaries: Exclusion of Large Geographic Regions and**  
5 **Unpopulated Areas**

6 ***The Standard Established in Law.***

7  
8 State law prohibits including entire geographical regions or large unpopulated areas in  
9 the boundaries of a proposed city, unless justified under certain criteria. That third  
10 boundary standard is set out in 3 AAC 110.040(c):

11 (c) The boundaries of the proposed city may not include entire  
12 geographical regions or large unpopulated areas, except if those  
13 boundaries are justified by the application of the standards in 3 AAC  
14 110.005 – 3 AAC 110.042.

15 ***Conclusion: The boundaries of the proposed City of Gustavus exclude entire***  
16 ***geographic regions or large unpopulated areas, except where justified by the***  
17 ***application of the incorporation standards as required for city incorporation by***  
18 ***3 AAC 110.040(c).***

19 The following finding supports this conclusion:

20 The proposed boundaries include the uninhabited and undeveloped Dude Creek  
21 Critical Habitat Area, comprising approximately seven square miles. In 1997, the  
22 Commission determined that those lands were properly included within the boundaries  
23 of a prospective Gustavus city government. That determination is still valid.  
24

25  
26 **Standard V. Boundaries: Contiguity and Inclusiveness**

27 ***The Standard Established in Law.***

28 State law presumes that territory proposed for incorporation of a city will be contiguous  
29 and without enclaves. Specifically, 3 AAC 110.040(d) provides:

30  
31 (d) Absent a specific and persuasive showing to the contrary, the  
32 commission will presume that territory proposed for incorporation that is  
33 non-contiguous or that contains enclaves does not include all land and  
34 water necessary to allow for the full development of essential city services  
on an efficient, cost-effective level.

1 **Conclusion: The boundaries of the proposed City of Gustavus are contiguous**  
2 **and without enclaves to allow for the full development of essential city services**  
3 **as required for city incorporation by 3 AAC 110.040(d).**

4 This conclusion is based on the following finding:

5 The territory proposed for incorporation is contiguous and without enclaves.  
6  
7

#### 8 **Standard VI. Boundaries: Overlapping Territory**

##### 9 ***The Standard Established in Law.***

10 State law provides that if a proposal to incorporate a city includes territory already within  
11 the boundaries of an existing organized borough or city, the proposal must address  
12 standards for annexation to or detachment from the existing borough or city, as  
13 applicable. Specifically, 3 AAC 110.040(e) provides:  
14

15 (e) If a petition for incorporation of a proposed city describes  
16 boundaries overlapping the boundaries of an existing organized borough  
17 or city, the petition for incorporation must also address and comply with all  
18 standards and procedures for either annexation of the new city to the  
19 existing borough, or detachment of the overlapping region from the  
20 existing borough or city. The commission will consider and treat that  
21 petition for incorporation as also being either an annexation petition to the  
22 existing borough, or a detachment petition from the existing borough or  
23 city.

24 **Conclusion: The boundaries of the proposed City of Gustavus do not overlap the**  
25 **boundaries of an existing borough or city. Therefore, standards and procedures**  
26 **for annexation to or detachment from existing boroughs and cities need not be**  
27 **applied as would otherwise be required by 3 AAC 110.040(e).**

28 The following finding supports this conclusion:

29 The boundaries of the territory proposed for incorporation do not overlap any  
30 other local government entity.  
31

#### 32 **Standard VII. Resources**

##### 33 ***The Standard Established in Law.***

34 AS 29.05.011(a)(3) provides that a proposed city must have the human and financial  
resources to support municipal government. Specifically, State law provides, in relevant  
part, as follows:

1           **Sec. 29.05.011. Incorporation of a city.** (a) A community that meets  
2 the following standards may incorporate as a home rule, first class or  
3 home rule city:

4           . . . . .  
5           (3) the economy of the community includes the human and financial  
6 resources necessary to provide municipal services; in considering the  
7 economy of the community, the Local Boundary Commission shall  
8 consider property values, economic base, personal income, resource and  
9 commercial development, anticipated functions, and the expenses and  
10 income of the proposed city, including the ability of the community to  
11 generate local revenue;

12 Additionally, 3 AAC 110.020 provides as follows:

13           In accordance with AS 29.05.011, the economy of a proposed city  
14 must include the human and financial resources necessary to provide  
15 essential city services on an efficient, cost-effective level. In this regard,  
16 the commission

17           (1) will consider

18                   (A) the reasonably anticipated functions of the proposed city;

19                   (B) the reasonably anticipated expenses of the proposed city;

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

22                   (D) the feasibility and plausibility of the anticipated operating and  
23 capital budgets of the proposed city through the third full fiscal year of  
24 operation;

25                   (E) the economic base of the proposed city;

26                   (F) property valuations for the proposed city;

27                   (G) existing and reasonably anticipated industrial, commercial, and  
28 resource development for the proposed city; and

29                   (H) personal income of residents of the proposed city; and

30           (2) may consider other relevant factors, including

31                   (A) land use for the proposed city;

32                   (B) the need for and availability of employable skilled and unskilled  
33 persons to serve the proposed city; and

34                   (C) a reasonably predictable level of commitment and interest of  
the residents in sustaining a city.

1 **Conclusion: The economy of Gustavus includes the human and financial**  
2 **resources necessary to provide municipal services on an efficient, cost-effective**  
3 **level as required for city incorporation by AS 29.05.011(a)(3) and 3 AAC 110.020.**  
4 **Based on the clarification regarding the intent of the proposed excise tax, the**  
5 **Petition should be amended to provide that the proposed levy of the 4 percent**  
6 **excise tax will apply only to overnight accommodations.**

7  
8 The following 13 findings support this conclusion:

9 (a) Anticipated functions of the proposed City of Gustavus in the  
10 immediate-term consist of landfill, public library, emergency medical services, fire  
11 protection, road maintenance, and funding for the GVA. Other services (e.g.,  
12 financial support for the clinic, platting, planning, land use regulation, dock funding  
13 and funding for a future boat harbor) may be provided over the long-term.

14 (b) The Petitioner originally projected expenditures of \$344,500 for  
15 FY 2005; \$329,500 for FY 2006; and \$329,500 for FY 2007. Following  
16 announcement of reductions in State financial aid to local governments, the  
17 Petitioner (without formally amending the Petition) advised the DCED that the  
18 cutbacks likely would be addressed by reducing both contractual expenditures and  
19 transfers to a planned reserve fund. The Petitioner's comments on the *Preliminary*  
20 *Report* reflected the need for further clarification regarding the proposed budget to  
21 include existing budgets for the library, landfill, and GER. The DCED's  
22 discussions with the Petitioner's Representative also indicated that the expenses  
23 of all the activities of the GCA that would be subsumed by the City should be  
24 reflected in the budget. The final analysis reflects the following reasonably  
25 projected operating expenditures: \$427,714 for FY 2005; \$412,714 for FY 2006;  
26 and \$412,714 for FY 2007.

27 (c) To correlate with the GCA adjustments made to the expense segment  
28 of the budget, Petitioner's Representative noted that the revenue associated with  
29 GCA activities should be reflected in the revenue segment of the budget, as well  
30 as proposed revenue adjustments for National Forest Receipts and raw fish taxes  
31 as discussed in the DCED *Preliminary Report*. The DCED's final analysis of  
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1 reasonably predicted revenues amount to the following: \$579,597 for FY 2005;  
2 \$554,597 for FY 2006; and \$529,597 for FY 2007.

3 (d) The revised revenue and expenditure projections result in anticipated  
4 surpluses of \$151,883 in FY 2005; \$141,883 in FY 2006; and \$116,883 in  
5 FY 2007.

6 (e) The Petitioner's expenditure projections appear to be reasonable and  
7 fairly consistent with municipalities of similar size and circumstance.

8 (f) The Petitioner's three-year operating budget, as modified in this final  
9 report is feasible and plausible. That view is reinforced by the Petitioner's  
10 proposal that upon incorporation, the GCA will transfer its assets (including more  
11 than \$900,000 in federal compensation for economic losses from the phase-out of  
12 commercial fishing in Glacier Bay) to the City.

13 (g) Although principal components of the local economy are seasonal, the  
14 Gustavus economic base is expanding and sound.

15 (h) Gustavus enjoys a relatively high level of property valuation and  
16 business activity.

17 (i) Anticipated industrial, commercial, and resource development includes  
18 several National Park Service projects.

19 (j) 2000 federal census data indicate that median family income and per-  
20 capita income for Gustavus residents was only slightly below the statewide  
21 averages. A greater disparity exists between the 2000 median household income  
22 in Gustavus compared to that of the entire state. The difference for that measure  
23 is attributed to fundamental population characteristics of Gustavus that do not  
24 reflect negatively on the resources of the community of Gustavus.

25 (k) The land within the proposed city contains a wide variety of uses. Real  
26 property owners include the Park, State of Alaska, Dude Creek Critical Habitat  
27 Area, Alaska Mental Health Trust, Cook Inlet Regional Corporation, and private  
28 individuals.

29 (l) The population consists of skilled and professional people sufficient to  
30 support a local government.  
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1 (m) Community residents exhibit a reasonably predictable level of  
2 commitment and interest in sustaining a city government.

3  
4 **Standard VII. Population Size and Stability**

5 ***The Standard Established in Law.***

6 AS 29.05.011(a)(4) requires the population of the proposed community to be stable  
7 enough to support city government. Specifically, State law provides, in relevant part:

8  
9 **Sec. 29.05.011. Incorporation of a city.** (a) A community that  
10 meets the following standards may incorporate as a first class or home  
11 rule city:

12 (4) the population of the community is stable enough to  
13 support city government;

14 Additionally, 3 AAC 110.030(a) states as follows regarding this standard:

15 **3 AAC 110.050. Population.** (a) In accordance with AS 29.05.011,  
16 the population of a proposed city must be sufficiently large and stable to  
17 support the proposed city government. In this regard, the commission  
18 may consider relevant factors, including

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

24 ***Conclusion: The population of Gustavus is large and stable enough to support***  
25 ***city government as required for city incorporation by AS 29.05.011(a)(4) and***  
26 ***3 AAC 110.030(a).***

27 The following five findings support this conclusion:

28 (a) The State Demographer estimates that 421 individuals lived in  
29 Gustavus in 2002. That population is larger than over half of all  
30 incorporated communities in Alaska.

31 (b) The population of Gustavus exhibits relatively high permanent  
32 residency (the 2000 census reported that 77 percent of the occupied homes  
33

1 in Gustavus were inhabited by their owners, a figure well above the  
2 statewide average of 62.5 percent).

3 (c) Although Gustavus has experienced a population growth  
4 plateau for the past three years, it has undergone, in relative terms,  
5 significant population growth for the previous three decades.

6 (d) At the time of the 2000 census, the rental vacancy rate in  
7 Gustavus was 8 percent, slightly higher than the statewide average of  
8 7.8 percent.

9 (e) The community of Gustavus has a somewhat more aged  
10 population than the state as a whole (in 2000, the median age for a resident  
11 of Gustavus was 24 percent higher than the statewide average).

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15 **Standard IV. Need For City Government: Demonstration of**

16 ***The Standard Established in Law.***

17 State law provides two distinct city incorporation standards regarding the need for city  
18 government. The first requires the showing of a need for city government. Specifically,  
19 AS 29.05.011 provides that a community may incorporate as a city only if “there is a  
20 demonstrated need for city government.” The provisions of 3 AAC 110.010(a)  
21 implement, interpret, and make specific that statutory standard. The regulation provides  
22 that, “In accordance with AS 29.05.011, a community must demonstrate a reasonable  
23 need for city government.” It also states that the Commission may consider “relevant  
24 factors” in determining whether the standard is met. It lists four specific factors among  
25 the theoretically limitless number of relevant factors that the Commission may consider.  
26 The four listed factors relate to: (1) social or economic conditions, (2) health, safety,  
27 and general welfare conditions, (3) economic development, and (4) adequacy of  
28 existing services.

29  
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32 ***Conclusion: There is a need for city government in Gustavus as required by***  
33 ***AS 29.05.011(a)(5) and 3 AAC 110.010(a) for city incorporation.***

34 The following seven findings support this conclusion:

1 (a) In 1997, the Commission determined that Gustavus exhibited a  
2 need for city government, in part, due to the size of its population. Since  
3 then, the population of Gustavus has grown by 17.9 percent – more than  
4 2 ½ times the growth of Alaska’s population rate as a whole during the  
5 same period. In the past six years, Gustavus has risen in ranking from the  
6 sixteenth most populous unincorporated community in the unorganized  
7 borough to the ninth such community. The current estimated population of  
8 Gustavus exceeds that of 81 of Alaska’s 145 city governments. The  
9 population of Gustavus is approximately 10 percent greater than the  
10 median population of all incorporated communities in Alaska. Based on  
11 population size, the need for municipal government (either incorporation as  
12 a city government and/or inclusion within a regional borough) has increased  
13 over the past six years.  
14

15  
16 (b) In 1997, the Commission found that there was a need for city  
17 government in Gustavus, in part, because of reductions in State financial  
18 aid to communities. Since then, funding for State Revenue Sharing, Safe  
19 Communities, and State Capital Matching Grants has been eliminated  
20 altogether. Based on such considerations, the need for city government in  
21 Gustavus has increased because city governments have the capacity to  
22 generate funds through taxes and other means not available to  
23 unincorporated communities.  
24

25 (c) In 1997, the Commission concluded that circumstances relating  
26 to health, safety, and general welfare in Gustavus contributed to the need  
27 for city government in the community. Those circumstances related to  
28 (1) Gustavus’ exceptionally high water table, fragile aquifer, and lack of  
29 sewage management; (2) lack of a platting authority; and (3) the cessation  
30 of all State environmental/public health oversight of subdivision plans in  
31 Alaska. While the Petition does not formally propose that the prospective  
32 City of Gustavus construct and operate a sewer system or exercise platting  
33 authority, it would have the capacity to do so.  
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(d) In the year following the last Gustavus incorporation effort, the State designated the Department of Natural Resources as the platting authority for areas of the unorganized borough outside of city governments that exercise platting. However, the platting functions provided by the Department of Natural Resources are severely limited under State law. For example, no consideration is given by the State platting authority to engineering standards, soils, water tables, lot sizes, road standards, or other characteristics that relate to public health and safety. Instead, the review is limited to ensure that legal access is provided for all properties and that provisions are made for survey and monumentation. A title review to insure that all interest holders of the property sign the plat is also currently required.

(e) In its 1997 decision, the Commission determined that existing and anticipated growth and development in Gustavus were further evidence of the need for city government in Gustavus. As noted, the rate of growth (measured in terms of population growth) since 1997 has greatly outpaced that of Alaska.

(f) Particularly in the absence of borough government, city incorporation promotes maximum local self-government.

(g) The City of Gustavus would have the capacity to provide a broad range of fundamental services for which a need exists. In the immediate term, services would include the landfill, library, fire protection, rescue services, roads, and economic development (funding to promote tourism). Over the long-term other services such as financial support for the clinic, dock, boat harbor, airport, planning, platting, land-use regulation, and other services may be added.

1 **Standard X: Need for City Government: Existing Municipal Governments**

2 ***The Standard Established in Law.***

3 The second standard regarding the need for city government is found in AS 29.05.021.  
4 It relates to the capacity of an existing municipality to serve the needs of the community.  
5 Different standards apply to a proposed city in the unorganized borough compared to  
6 one within an organized borough. The standard applicable in this case – the proposed  
7 formation of a city government in the unorganized borough – is found in subsection (a)  
8 of that statute. It provides that, “A community in the unorganized borough may not  
9 incorporate as a city if the services to be provided by the proposed city can be provided  
10 by annexation to an existing city.” That statute is implemented, interpreted, and made  
11 specific by 3 AAC 110.010(b), which provides:  
12

13           In accordance with AS 29.05.021, a community may not incorporate as a  
14 city if essential city services can be provided more efficiently or more  
15 effectively by annexation to an existing city, or can be provided more  
16 efficiently or more effectively by an existing organized borough on an  
17 areawide basis or non-areawide basis, or through an existing borough  
18 service area.

18 ***Conclusion: The services to be provided by the proposed City of Gustavus***  
19 ***cannot be provided by annexation to an existing city as required by AS***  
20 ***29.05.021(a) and 3 AAC 110.010(b).***

21 The following three findings support this conclusion:

22           (a) Hoonah is the incorporated community (city government) in closest  
23 proximity to Gustavus. However, it is approximately 25 miles south of Gustavus  
24 separated by Icy Strait.  
25

26           (b) State law (3 AAC 110.130(d)) prohibits the annexation of “entire  
27 geographical regions or large unpopulated areas,” except where justified by  
28 application of all city annexation standards. The Commission cannot  
29 conceive of circumstances under which the annexation of the large  
30 unpopulated expanse between Gustavus and Hoonah could be justified.  
31

32           (c) In 1997, the Commission concluded that it was “implausible” that  
33 the City of Hoonah could serve Gustavus. That conclusion is still valid.  
34

1 **Standard XI. Best Interests of the State**

2 ***The Standard Established in Law.***

3 The Commission may approve a city incorporation proposal only if the Commission  
4 concludes that such incorporation meets applicable standards and will serve the best  
5 interests of the state. Specifically, the statute provides:

6  
7 **Sec. 29.05.100. Decision.** (a) The Local Boundary Commission  
8 may amend the petition and may impose conditions on the incorporation.  
9 If the commission determines that the incorporation, as amended or  
10 conditioned if appropriate, meets applicable standards under the state  
11 constitution and commission regulations, meets the standards for  
12 incorporation under AS 29.05.011 or 29.05.031, and is in the best  
13 interests of the state, it may accept the petition. Otherwise it shall reject  
14 the petition. (Emphasis added.)

15 The Commission has adopted regulations to define the *best interests of the state*.

16 Those regulations provide as follows:

17 **3 AAC 110.042. Best interests of state.** In determining whether  
18 incorporation of a city is in the best interests of the state under  
19 AS 29.05.100 (a), the commission may consider relevant factors, including  
20 whether incorporation

21 (1) promotes maximum local self-government;

22 (2) promotes a minimum number of local government units;

23 (3) will relieve the state government of the responsibility of  
24 providing local services; and

25 (4) is reasonably likely to expose the state government to  
26 unusual and substantial risks as the prospective successor to the city in  
27 the event of the city's dissolution.

28 ***Conclusion: Incorporation of the City of Gustavus would serve the best interests***  
29 ***of the state as required for city incorporation under AS 29.05.100 and as defined***  
30 ***under 3 AAC 110.042.***

31 The following three findings support this conclusion:

32 (a) In 1997, the Commission concluded that incorporation of the  
33 City of Gustavus will promote the principles of maximum local self-  
34 government with a minimum of local governmental units set forth in Article  
X, § 1 of Alaska's constitution. That conclusion remains valid today.

(b) The State encourages regions and communities to assume and  
exercise local self-determination and provide municipal services that are

1 funded and provided at the local level. Such is in the best interests of the  
2 public statewide and is consistent with the constitutional intent regarding  
3 municipal government in the unorganized borough.

4 (c) Incorporation will not expose the State to unusual and  
5 substantial risks as the prospective successor to the city in the event of the  
6 city's dissolution.  
7

8  
9 **Standard XII. Transition Plan**

10 ***The Standard Established in Law.***

11 Under 3 AAC 110.900, a petitioner is required to provide a transition plan addressing  
12 the proposed change. The standards for the transition plan are broadly fashioned to  
13 pertain to any proposal that comes before the Commission from an existing or  
14 prospective city or borough government. Specifically, the law provides as follows:

15  
16 **3 AAC 110.900. Transition.** (a) A petition for incorporation,  
17 annexation, merger, or consolidation must include a practical plan that  
18 demonstrates the capacity of the municipal government to extend  
19 essential city or essential borough services into the territory proposed for  
20 change in the shortest practicable time after the effective date of the  
21 proposed change. A petition for city reclassification under AS 29.04, or  
22 municipal detachment or dissolution under AS 29.06, must include a  
23 practical plan demonstrating the transition or termination of municipal  
24 services in the shortest practicable time after city reclassification,  
25 detachment, or dissolution.

26 (b) Each petition must include a practical plan for the assumption  
27 of all relevant and appropriate powers, duties, rights, and functions  
28 presently exercised by an existing borough, city, unorganized borough  
29 service area, and other appropriate entity located in the territory proposed  
30 for change. The plan must be prepared in consultation with the officials of  
31 each existing borough, city, and unorganized borough service area, and  
32 must be designed to effect an orderly, efficient, and economical transfer  
33 within the shortest practicable time, not to exceed two years after the  
34 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

1 other entities wholly or partially included in the area of the proposed  
2 change execute an agreement prescribed or approved by the commission  
3 for the assumption of powers, duties, rights, and functions, and for the  
4 transfer and integration of assets and liabilities.

4 ***Conclusion: The Petitioner has provided a transition plan properly addressing***  
5 ***the proposed change as required for city incorporation under 3 AAC 110.900.***

7 The following four findings support this conclusion:

8 (a) The Petitioner's transition plan demonstrates forethought  
9 regarding which services will be provided to the territory proposed for  
10 incorporation.

11 (b) The transition plan demonstrates the Petitioner's good faith to  
12 extend services.

13 (c) The Petitioner's plan contemplates that, upon a favorable vote  
14 for incorporation of Gustavus, the GCA will vote to cease operations and  
15 move all assets and liabilities to the City. Additionally, the plan sets out an  
16 anticipated process for the levying and collection of taxes in accordance  
17 with ordinances of the City of Gustavus.

18 (d) The Petitioner has conferred with appropriate individuals and  
19 organizations regarding transition to city government.  
20  
21

22  
23 **Standard XIII. Effect on Civil and Political Rights**

24 ***The Standard Established in Law.***

25 As provided for under 3 AAC 110.910, a petition will not be approved by the  
26 Commission if the effect of the proposed change denies any person the enjoyment of  
27 any civil or political right, including voting rights, *because of race, color, creed, sex, or*  
28 *national origin*. Specifically, that law provides:

29  
30 **3 AAC 110.910. Statement of Non-Discrimination.** A petition will  
31 not be approved by the commission if the effect of the proposed change  
32 denies any person the enjoyment of any civil or political right, including  
33 voting rights, because of race, color, creed, sex, or national origin.

33 In addition to the provisions in State law, the federal Voting Rights Act of 1965, codified  
34 as amended at 42 U.S.C. § 1973, establishes standards relating to the effects that

1 incorporation would have upon civil and political rights of minorities. The Voting Rights  
2 Act prohibits political subdivisions from imposing or applying voting qualifications, voting  
3 prerequisites, standards, practices, or procedures to deny or abridge the right to vote on  
4 account of race or color or because a person is a member of a language minority group.  
5 Specifically, the Federal law provides as follows:

6  
7 **Sec. 1973. - Denial or abridgement of right to vote on account**  
8 **of race or color through voting qualifications or prerequisites;**  
9 **establishment of violation**

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

16 (b) A violation of subsection (a) of this section is established if,  
17 based on the totality of circumstances, it is shown that the political  
18 processes leading to nomination or election in the State or political  
19 subdivision are not equally open to participation by members of a class of  
20 citizens protected by subsection (a) of this section in that its members  
21 have less opportunity than other members of the electorate to participate  
22 in the political process and to elect representatives of their choice. The  
23 extent to which members of a protected class have been elected to office  
24 in the State or political subdivision is one circumstance which may be  
25 considered: Provided, That nothing in this section establishes a right to  
26 have members of a protected class elected in numbers equal to their  
27 proportion in the population.

28 ***Conclusion: Incorporation of the City of Gustavus will not deny any person the***  
29 ***enjoyment of any civil or political right, including voting rights, because of race,***  
30 ***color, creed, sex, or national origin. Such is a condition under 3 AAC 110.910 for***  
31 ***city incorporation. Federal law, 42 U.S.C. § 1973, establishes similar***  
32 ***requirements.***

33 The following two findings support this conclusion:

34 (a) No voting qualifications, prerequisites, standards, practices, or  
procedures will result from incorporation of the City of Gustavus 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.

(b) The proposed city 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.

1 **Section IV**  
2 **Order of the Commission**

3  
4 Based on the findings and conclusions set out in Section III, the Commission hereby  
5 determines that the Gustavus city incorporation Petition complies with all requisite city  
6 incorporation standards established in the Constitution of the State of Alaska, Alaska  
7 Statutes, and Alaska Administrative Code. The Commission further determines that the  
8 Petition should be amended to provide that the proposed levy of the 4 percent excise  
9 tax will apply to overnight accommodations only. With that amendment, the Petition to  
10 incorporate Gustavus as a second class city is approved.  
11

12  
13 Approved in writing this 17th day of November, 2003.  
14

15 **LOCAL BOUNDARY COMMISSION**

16 *(Commissioner Anthony Nakazawa, concurring in result; Commissioner*  
17 *Georgianna Zimmerle, not participating due to illness.)*  
18

19  
20 BY:

  
\_\_\_\_\_  
Darroll Hargraves, Chair

21  
22 Attest:

  
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Dan Bockhorst, Staff

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### **Reconsideration by the Commission**

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 the DCED with a copy of the request for reconsideration and supporting materials in an electronic format. the 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 (1) a substantial procedural error occurred in the original proceeding;  
2  
3 (2) the original vote was based on fraud or misrepresentation;  
4  
5 (3) the Commission failed to address a material issue of fact or a controlling  
6 principle of law; or  
7  
8  
9 (4) new evidence not available at the time of the hearing relating to a matter  
10 of significant public policy has become known.  
11

12 The law provides that if the Commission does not act on a request for reconsideration  
13 within twenty days after the decision was mailed under 3 AAC 110.570(f), the request is  
14 automatically denied. If it orders reconsideration or grants a request for reconsideration  
15 within twenty days after the decision was mailed under 3 AAC 110.570(f), the  
16 Commission will allow the Petitioner ten days after the date reconsideration is ordered  
17 or the request for reconsideration is granted to file an original and five copies of a  
18 responsive brief describing in detail the facts and analyses that support or oppose the  
19 decision being reconsidered. The Petitioner shall provide the DCED with a copy of the  
20 responsive brief in an electronic format, unless the DCED waives this requirement  
21 because the Petitioner lacks a readily accessible means or the capability to provide  
22 items in an electronic format. the day that the written statement of decision is mailed,  
23 postage prepaid, to the Petitioner.  
24  
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27 Within ninety days after the DCED receives timely filed responsive briefs,  
28 the Commission, by means of the decisional meeting procedure set out in 3 AAC  
29 110.570(a) – (f), will issue a decision on reconsideration. A decision on reconsideration  
30 by the Commission is final on the day that the written statement of decision is mailed,  
31 postage prepaid, to the Petitioner.  
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**Judicial Appeal**

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

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**Local Boundary Commission**  
550 West Seventh Avenue, Suite 1700  
Anchorage, Alaska 99501  
(907) 269-4560 (tel); (907) 269-4539 (fax)