

**Preliminary Report to the Local Boundary Commission  
Regarding the Proposal to Incorporate the City of Gustavus**



**August 2003**



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Alaska Department of Community &  
Economic Development**

**Gene Kane, Director  
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This is the preliminary report of the Department of Community and Economic Development (DCED) regarding the petition to incorporate a second class city to serve the residents of Gustavus. This report is available on the Internet at the following address:

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

The report is preliminary in the sense that it is issued 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.

## **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 **9:00 a.m., September 29, 2003**. All timely comments will become part of the formal record in the Gustavus incorporation proceeding. 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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Email: [LBC@dced.state.ak.us](mailto:LBC@dced.state.ak.us)**

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.

Cover photographs (clockwise from the top):

- ✓ Gustavus Community Association Building and Park
- ✓ Gustavus Clinic
- ✓ Beartrack Store
- ✓ Gas Station
- ✓ Gustavus Airport
- ✓ Gustavus Firehall

# Acknowledgements

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# Table of Contents

<b>Preface</b> .....	<b>I</b>
<b>Chapter 1 Background on Local Government, the LBC, and DCED</b> .....	<b>1</b>
A. Introduction .....	1
B. General Background on Local Government in Alaska .....	1
C. Background on Second Class Cities in the Unorganized Borough .....	11
D. Background on the Local Boundary Commission .....	18
E. Background on the Alaska Department of Community and Economic Development .....	24
<b>Chapter 2 Previous Incorporation Efforts and Proceedings Relating to the Pending Proposal</b> .....	<b>27</b>
A. Introduction .....	27
B. Prior Incorporation Efforts .....	27
C. Local Option City Incorporation Procedures .....	28
D. Past, Ongoing, and Future Proceedings Relating to the Pending Proposal .....	28
<b>Chapter 3 Application of Standards to the Gustavus Petition</b> .....	<b>41</b>
A. Standard Regarding Existence of a Community .....	41
B. Standards Regarding Boundaries .....	44
C. Standard Regarding Resources .....	54
D. Standard Regarding Population Size and Stability .....	71
E. Standards Regarding Need for City Government .....	75
F. Standard Regarding Best Interests of the State .....	88
G. Standard Regarding Transition .....	94
H. Nondiscrimination .....	96
<b>Chapter 4 Summary of Conclusions and Recommendation</b> .....	<b>101</b>
A. Summary of Conclusions Regarding the Application of City Incorporation Standards to the Petition .....	101
B. Recommendation to the LBC Regarding the Petition .....	111
<b>Appendix A Glossary</b> .....	<b>A-1</b>
<b>Appendix B Alaska Statutes Relevant to the Gustavus City Incorporation Proposal</b> .....	<b>B-1</b>
Alaska Statute 14.12.025 (New School Districts) .....	B-1
Alaska Statute 16.20.610 (Dude Creek Critical Habitat Area) .....	B-1
Alaska Statutes 29.05.011 – 29.05.021 (Standards and Limitations for City Incorporation) .....	B-2

*Table of Contents continued on next page*

**Appendix B continued**

Alaska Statutes 29.05.060 – 29.05.150  
 (Procedures for Incorporation) ..... B-3  
 Alaska Statute 29.05.180 (Organization Grants) ..... B-8  
 Alaska Statute 44.33.020 (Duties of the Department of  
 Community and Economic Development) ..... B-8  
 Alaska Statutes 44.33.810 – 44.33.828  
 (Local Boundary Commission) ..... B-12

**Appendix C Alaska Administrative Code  
 Provisions Relevant to the Gustavus City  
 Incorporation Proposal**

Alaska Administrative Code 3 AAC 110.005 – 3 AAC 110.042  
 (Standards for City Incorporation) ..... C-1  
 Alaska Administrative Code 3 AAC 110.400 – 3 AAC 110.660  
 (Procedures for Petitioning) ..... C-5  
 Alaska Administrative Code 3 AAC 110.900 – 3 AAC 110.990  
 (General Provisions) ..... C-34

**Appendix D Federal Statutes Pertaining to the  
 Gustavus City Incorporation Proposal**

42 U.S.C. 1973(c) – (Federal Voting Rights Act) ..... D-1

**Appendix E Code of Federal Regulations  
 Relevant to the Gustavus City Incorporation Proposal**

28 C.F.R. 51.51 – 28 C.F.R. 51.61 (Federal Voting Rights  
 Act Determinations by the U.S. Department of Justice) ..... E-1

**Appendix F LBC 1997 Statement of Decision  
 Regarding the Gustavus City Incorporation Proposal**

..... F-1

**Appendix G Tips to Maximize the Effectiveness of  
 Public Comments and Testimony During the LBC  
 Hearing Regarding the Gustavus City  
 Incorporation Proposal**

..... G-1

# Preface

**T**hirty-eight qualified voters in Gustavus (hereafter "Petitioner") have petitioned the State of Alaska to incorporate a city government.<sup>1</sup> A summary of the Petitioner's proposal is provided in the adjacent column.

The Gustavus city incorporation proposal seeks to establish a second class city in the unorganized borough. Chapter 1 of this preliminary report addresses the nature of the particular type of city government proposed by the Petitioner. It also provides general background about local government in Alaska.



*Aerial view of boats along the Salmon River in Gustavus*

<sup>1</sup> The petition contained 47 signatures; however, only 38 were confirmed to meet the qualifications set out in AS 29.05.060(12).

## SUMMARY OF GUSTAVUS CITY GOVERNMENT PROPOSED BY THE PETITIONER

**Name:** City of Gustavus

**Classification:** second class

**Borough Affiliation:** unorganized borough

**Jurisdictional Area:**  
 29.23 square miles of land  
10.02 square miles of water  
**39.25 square miles of total area**

**Taxes:**

- 4% bed tax/vacation package tax
- 2% general sales tax

**Services and Facilities:**

- library
- landfill
- emergency response
- road maintenance
- economic development (funding for Gustavus Visitor Association)

**Projected Annual Revenue**

- annual average over three years: \$464,400 (including entire 4% bed tax)

**Projected Annual Expenditures**

- annual average over three years: \$383,651 (including economic development expenditures)

The Gustavus city incorporation petition is subject to review by the Alaska Local Boundary Commission (hereafter "LBC" or "Commission"). Information about the Commission is provided in Chapter 1.

The Alaska Department of Community and Economic Development (hereafter "DCED" or "Department") serves as staff to the LBC.<sup>2</sup> Background regarding DCED's role as staff to the independent LBC is provided in Chapter 1.

The pending petition is the third attempt in the past twenty-four years to incorporate a city government to serve the residents of Gustavus. Information about the two prior efforts and details about the current proceedings are provided in Chapter 2.

The action to be taken by the LBC regarding the pending Gustavus city incorporation must have a reasonable basis in terms of the application of standards established in law to the specific facts in these proceedings. Those standards are addressed in Chapter 3.

As staff to the LBC, the Department is required by law to investigate the pending city incorporation proposal. Moreover, DCED must report its findings and recommendations on the matter to the LBC. The Department conducts its analysis of matters pending before the LBC using the same standards that the LBC must use to judge the merits of the proposal. Chapter 3 presents DCED's analysis and conclusions concerning whether the pending proposal meets the requisite standards. DCED's conclusions and recommendations are not binding on the LBC.

Chapter 4 summarizes DCED's conclusions and presents its recommendations regarding the matter for consideration by the LBC. A glossary of technical terms used in this report is included as Appendix A. Additional reference materials are included in other appendices of this preliminary report.

<sup>2</sup> DCED assumed the combined responsibilities of the former Department of Community and Regional Affairs (DCRA) and the Department of Commerce and Economic Development when they were merged in 1999. For ease of reference, "DCED" will be used even when referring to the former DCRA Department or staff, unless "DCRA" is needed for citation purposes.

# Chapter 1

## Background on Local Government, the LBC, and DCED

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### A. Introduction

This chapter provides general background on local government in Alaska, with emphasis on second class cities in the unorganized borough (i.e., the particular type of city government proposed by the Petitioner). This chapter also provides information about the LBC and DCED.

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### B. General Background on Local Government in Alaska

#### 1. Alaska has only Two Municipal Government Units – Cities and Organized Boroughs.

Most states have complex local government structures comprised of multiple local governmental units with narrow functions.<sup>3</sup> Typically, the agglomeration of local governments serving a particular area in other states is comprised of units with overlapping boundaries. Each of those governmental units typically has an independent elected governing body with authority to levy taxes.

When the framers of Alaska's constitution developed the foundation for state government during the Alaska Constitutional Convention in 1955 – 1956, they endeavored to avoid the shortcomings of the existing 48 states. Because Alaska had only a rudimentary system of local government at the time, the framers enjoyed greater capacity to be innovative when it came to formulating the structure for local government in the future State of Alaska.<sup>4</sup>

<sup>3</sup> For example, Washington state provides for 17 different local government units. They consist of counties, cities, port districts, transit districts, cemetery districts, fire protection districts, hospital districts, irrigation and reclamation districts, library districts, parks and recreation districts, school districts, sewer districts, water districts, public utility districts, diking and drainage districts, health districts, and weed control districts.

<sup>4</sup> Alaska's local government structure at the time of statehood consisted of city governments, public utility districts, and independent school districts. The Alaska Territorial Legislature was prohibited by federal law from establishing counties without the express approval of the United States House and Senate.

The framers of Alaska's constitution rejected the complex arrangement of local government found in other states, favoring instead, a simple, efficient, and effective local government structure. Alaska's constitution recognizes just two types of municipal government – cities and boroughs.



*Local Government Committee at the Alaska Constitutional Convention (February 1956)*

## **2. A City is a Community-Level Municipal Government; a Borough is a Regional Municipal Government.**

City governments and borough governments in Alaska are municipal corporations and political subdivisions of the State of Alaska.

City governments in Alaska operate at the community level. By law, the corporate boundaries of new city governments are limited to just that territory encompassing the present local community, plus

reasonably predictable growth, development, and public safety needs during the next ten years.<sup>5</sup> Similar limitations exist with regard to territory that may be annexed to existing city governments.

In clear contrast to the limits of city government, an organized borough is a regional government. Borough governments are intended to encompass large, natural regions. The Constitution of the State of Alaska requires that all of Alaska must be divided into boroughs – organized or unorganized.

## **3. State Law Provides for Different Classes of City and Borough Governments.**

There are three different classifications of city government in Alaska: home rule, first class, and second class. A community must have at least 400 permanent residents to form a first class or home rule city.

There is no minimum or maximum population requirement for the incorporation of a second class city. However, at least 25 resident registered voters must sign a local option petition for incorporation of a second class city.

<sup>5</sup> See, in particular, 3 AAC 110.040(b) and, more generally, AS 29.05.011 and 3 AAC 110.005 – 3 AAC 110.042.

The particular classification of a city and whether it is located within an organized borough (i.e., its borough affiliation) are significant in terms of the powers and duties of that city government. For example, AS 29.35.260(b) requires home rule and first class cities in the unorganized borough to operate a system of municipal public schools. In contrast, a second class city in the unorganized borough is expressly prohibited from exercising education powers. (AS 29.35.260(b).) No city within an organized borough operates a school district because schools are a mandatory areawide function of organized boroughs.

AS 29.35.260(c) requires home rule and first class cities in the unorganized borough to exercise planning, platting, and land use regulation powers. Second class cities in the unorganized borough have discretion to exercise planning, platting, and land use regulation.

Five different classes of borough government are recognized in State law. These include unified home rule boroughs (referred to as unified municipalities) and non-unified home rule boroughs. A home rule borough (or home rule city) is a municipal government that has adopted a charter (the equivalent of a municipal constitution). A home rule borough (or

home rule city) has all legislative powers not prohibited by State or federal law or by the home rule charter. (AS 29.04.010.)

The other three classes of boroughs recognized in State law are first class boroughs, second class boroughs, and third class boroughs.<sup>6</sup> Those three classes of boroughs are general law boroughs. They are unchartered municipal governments that have legislative powers conferred by law. (AS 29.04.020.)

State law provides for three different classes of city government. They are home rule cities, first class cities, and second class cities. First and second class cities are general law cities.

#### **4. All City and Borough Governments in Alaska Possess Broad Discretionary Powers.**

Article X of Alaska's constitution establishes the framework for local government in Alaska. Section 1 of Article X states as follows with

<sup>6</sup> In 1985, the legislature enacted a law prohibiting the incorporation of new third class boroughs. Only one third class borough was ever formed (Haines Borough in 1968); it was reclassified as a home rule borough in October 2002. While State laws still refer to third class boroughs, those laws are pointless since no new third class boroughs may be formed.

respect to the purpose and construction of the constitutional provisions regarding 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. A liberal construction shall be given to the powers of local government units.

The Alaska Supreme Court has held that the provisions of Article X, Section 1 were "intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.<sup>19 7</sup>" (*Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).)

As noted previously, general law city and borough governments in Alaska have legislative powers conferred by law. (AS 29.04.030.)

<sup>7</sup> Note 19 in the original read as follows:

<sup>19</sup>The rule, called Dillon's rule states:

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

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

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

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

. . . .

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

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

Omission in original.

The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature granting powers to general law governments. Among the statutes are the following provisions:

**Sec. 29.35.400. General construction.** A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

**Sec. 29.35.410. Extent of powers.** Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In 1983, the Alaska Supreme Court addressed Article X, Section 1 along with the version of the two statutes noted above that was in effect at the time. The Court concluded that a second class (general law) borough had powers beyond those expressly stated in law. Specifically, the Court concluded that even though State statutes did not specifically authorize a second class borough to dispose of land by lottery, that power was "fairly implied." (*Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983).)

In reaching its conclusion that a general law government had implied powers, the court cited the irreconcilable conflict rule that it utilized in *Jefferson v. State*,

527 P.2d 37, 43 (Alaska 1974). The court made no distinction as to the deference due to an enactment by a home rule municipality as compared to an enactment by a general law municipality. The application of the irreconcilable conflict rule in *Gilman* clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature abolished the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists were replaced with the broadest possible grant of powers to general law municipalities; i.e., ". . . any power not otherwise prohibited by law." (AS 29.35.200(a) and (c); AS 29.35.210(c) and (d); AS 29.35.220(d); AS 29.35.-250(a); and AS 29.35.260(a).)

The statutory grant of powers to general law municipalities has no general limitations such as "any municipal power" or "any local government power" that would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, Section 1,

*Liberati, Gilman*, and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of Article X, Section 1 reads, "A liberal construction shall be given to the powers of local government units" instead of, "A liberal construction shall be given to local government powers." The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a "local government power" as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska's constitution does not lend itself easily to such an interpretation and, coupled with the language of the Title 29<sup>8</sup> grants ("any power not otherwise prohibited by law"), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

<sup>8</sup> Title 29 is entitled "Municipal Government" and encompasses AS 29.03.010 - 29.71.800.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general law municipalities.

### **5. A Second Class City has no Duty under State Law to Provide a Particular Service or Facility.**

State law imposes duties to exercise particular powers only on certain municipalities.<sup>9</sup> However, cities within organized boroughs and second class cities in the unorganized borough are not obligated by State law to provide any particular service or facility.

Services and facilities provided by municipalities must be delineated by ordinance. AS 29.25.010 expressly requires the governing body of a general law municipal government to adopt an ordinance to: (1) establish, alter, or abolish municipal departments; (2) provide

<sup>9</sup> Organized boroughs, home rule cities in the unorganized borough, and first class cities in the unorganized borough are obligated to provide education, platting, planning, and land use regulation. Additionally, organized boroughs are obligated to assess and collect property, sales, and use taxes levied within the boundaries of the borough.

for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed; (3) provide for the levying of taxes; (4) make appropriations, including supplemental appropriations or transfer of appropriations; (5) grant, renew, or extend a franchise; (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map; (7) approve the transfer of a power to a first or second class borough from a city; (8) provide for the retention or sale of tax-foreclosed property; and (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

## **6. The Powers of Second Class Cities in the Unorganized Borough have certain Limitations.**

As noted previously, all municipalities have broad powers. However, State law limits the powers of second class cities in certain respects. This section of the report addresses the limitations imposed by State law on second class cities in the unorganized borough.

Limits are placed on the exercise of planning, platting, and land use regulation powers by second class cities in the unorganized borough in the sense that State law stipulates that such powers may be exercised as provided by AS 29.35.180(a) for first and second class boroughs. (AS 29.35.260.)

State law also limits the power of a second class city to levy property taxes. AS 29.45.590 provides that a second class city may by referendum levy property taxes as provided for first class cities. However, the levy of an ad valorem tax by a second class city may not exceed 2 percent of the assessed value of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness that is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

The power of a second class city to levy and collect sales and use taxes is limited to that of a first class city. (AS 29.45.700.) A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters. (AS 29.45.670.) Beyond property taxes, sales taxes, and use taxes, a second class city has the same implicit taxing powers as other general law municipal governments in Alaska.

## Title 29. Municipal Government.

### Chapter

- 03. The Unorganized Borough (§§ 29.03.010 — 29.03.030)
- 04. Classification of Municipalities (§§ 29.04.010 — 29.04.060)
- 05. Incorporation (§§ 29.05.011 — 29.05.210)
- 06. Alteration of Municipalities (§§ 29.06.010 — 29.06.530)
- 10. Home Rule Municipalities (§§ 29.10.010 — 29.10.200)
- 20. Municipal Officers and Employees (§§ 29.20.010 — 29.20.640)
- 25. Municipal Enactments (§§ 29.25.010 — 29.25.080)
- 26. Elections (§§ 29.26.010 — 29.26.360)
- 35. Municipal Powers and Duties (§§ 29.35.010 — 29.35.730)
- 40. Planning, Zoning, and Land Use Regulation (§§ 29.40.010 — 29.40.200)
- 45. Municipal Taxation (§§ 29.45.010 — 29.45.810)
- 46. Special Assessments (§§ 29.46.010 — 29.46.140)
- 47. Municipal Debt (§§ 29.47.010 — 29.47.470)
- 55. Municipal Programs (§§ 29.55.010 — 29.55.020)
- 60. State Programs (§§ 29.60.010 — 29.60.700)
- 65. General Grant Land (§§ 29.65.010 — 29.65.140)
- 71. General Provisions (§§ 29.71.010 — 29.71.800)

**Reviser's notes.** — The provisions of this title were realigned in 1986 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and in 1986, 1992, and 1996 to make other, minor word changes.

**Editor's notes.** — Section 1, ch. 74, SLA 1985 provides: "PURPOSE. The legislature finds that the municipal code contains many provisions that have created problems for municipalities that must function under AS 29 and that the title is poorly organized and difficult for people to use. Therefore, it is the purpose of the legislature to revise and reorganize the municipal code to permit local governments to function more effectively. Except as expressly provided, the legislature does not intend by this Act to alter or affect in any way the relations or balance of authority between the state and home rule or general law municipalities with respect to the timing or manner of resource development under AS 31, AS 38, or other provisions of law. Except as expressly provided, the legislature does not intend by this Act to increase or reduce the authority of state agencies to carry out their functions under other titles."

Section 85, ch. 74, SLA 1985 provides: "A right or

liability of a municipality existing on January 1, 1986, is not affected by the enactment of this Act. Ordinances and regulations in effect on January 1, 1986, remain in effect unless they conflict with provisions of this Act. Ordinances and regulations in effect on January 1, 1986, that conflict with provisions of this Act remain in effect for 180 days after January 1986. The terms of elected or appointed municipal officials in office on January 1986, are not affected by this Act, and their terms expire as provided before January 1, 1986."

**Legislative history reports.** — For legislative letter of intent relating to the effect on certain utilities of the passage of ch. 74, SLA 1985, see 1985 Senate Journal, page 874.

**Collateral references.** — 56 Am. Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 1 et seq.

62 C.A.S., Municipal Corporations, § 1 et seq.  
Waiver of competitive bidding requirements for state and local public building and construction contracts, 40 ALR4th 968.

### Chapter 03. The Unorganized Borough.

#### Section

- 10. Establishment
- 20. Service areas

**Sec. 29.03.010. Establishment.** Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough. (§ 2 ch 118 SLA 1972)

#### Section

- 30. Zoning authority

619

cised only within the city's boundaries in the performance of a power or function of the city under the procedures set out in AS 09.55.250 - 09.55.460. (AS 29.35.030.)

A second class city is required by law to provide for an annual audit or statement of annual income and expenditures. (AS 29.35.120.)

The mayor of a second class city is elected by and from the council. Alternatively, upon adoption of an ordinance, the mayor may be elected from the council by the voters. The mayor of a second class city serves a one-year term, unless a longer term is provided by ordinance. (AS 29.20.230.) The mayor of a second class city, as a council member, may vote on all matters. (AS 29.20.250.)

The mayor of a second class city has no veto power. (AS 29.20.-270.)

Each second class city has a council of seven members elected by the voters at large. By ordinance, a second class city may provide for election of council members by districts. (AS 29.20.130.)

## 7. Characteristics of Existing City and Borough Governments in Alaska.

Presently, there are 145 city governments and 16 organized borough governments in Alaska.

As noted previously, a second class city in the unorganized borough is expressly prohibited by law from operating a school district. (AS 29.35.260.)

The exercise of the power of eminent domain or declaration of taking by a second class city must be by ordinance that is submitted to the voters at the next general election or at a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance. The power may be exer-

**Table 1-1**  
**Classification of Existing City Governments in Alaska**

Classification	Cities Within Organized Boroughs		Cities Within the Unorganized Borough		Total of All Cities	
	Number of Cities	Percentage of All Cities	Number of Cities	Percentage of All Cities	Number of Cities	Percentage of All Cities
Home Rule Cities	7	4.8%	5	3.5%	12	8.3%
First Class Cities	7	4.8%	13	9.0%	20	13.8%
Second Class Cities	34	23.4%	79	54.5%	113	77.9%
<b>Total</b>	<b>48</b>	<b>33.0%</b>	<b>97</b>	<b>67.0%</b>	<b>145</b>	<b>100.0%</b>

Table 1-1 lists the number, in both absolute and relative terms, of cities in Alaska by classification and borough affiliation. It is noteworthy that more than three-quarters (77.9 percent) of all city governments in Alaska are second class cities.

Table 1-2 presents the classifications of the 16 existing organized boroughs in Alaska. A majority of the organized boroughs are home rule boroughs (either unified or non-unified). All of the remaining organized boroughs are second class boroughs.

The number of city governments in Alaska exceeds the number of organized boroughs by a margin of nine to one. Notwithstanding, the relatively few

organized boroughs serve three and one-half times more Alaskans than all city governments combined. Specifically, the 2002 estimated population of all 145 cities in Alaska was 158,397 (24.6 percent of the total population of Alaska). In comparison, the population of organized boroughs in 2002 was estimated to be 562,694 (87.4 percent of Alaska's population).

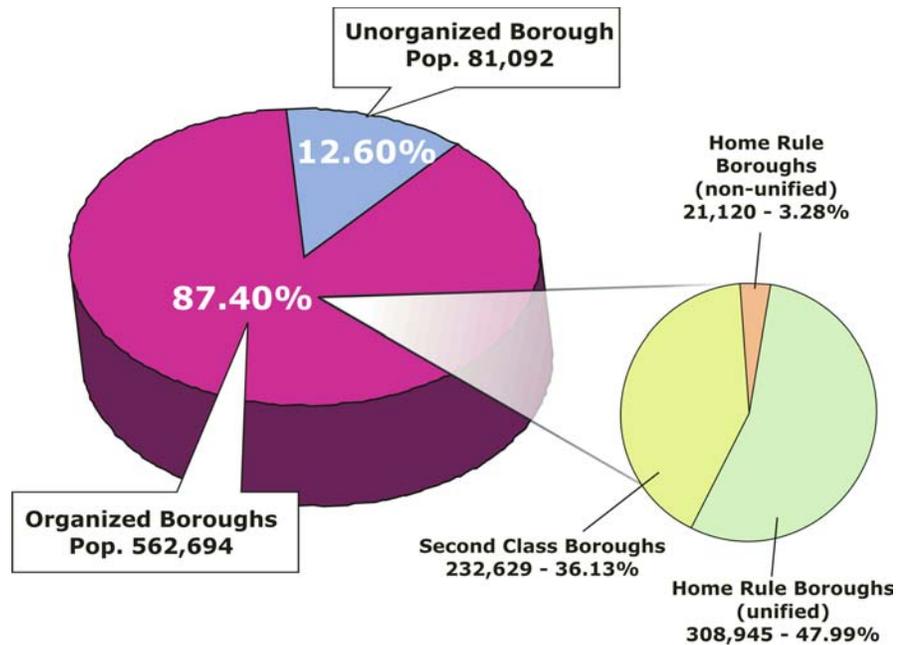
The relative number of citizens who lived within both an organized

**Table 1-2**  
**Classification of Existing Organized Borough Governments in Alaska**

Classification	Number of Boroughs	Percentage of All Boroughs
Home Rule Boroughs (unified)	3	18.8%
Home Rule Boroughs (non-unified)	6	37.5%
First Class Boroughs	0	0.0%
Second Class Boroughs	7	43.7%
Third Class Boroughs	0	0.0%
<b>Total</b>	<b>16</b>	<b>100.0%</b>

borough and a city government in 2002 was 17.1 percent. In contrast, more than three of every four Alaskans (76.2 percent) in the unorganized borough (i.e., the area of the state outside all organized boroughs) lived within a city in 2002.

The circumstances described above reflect the fact that Alaskans, in general, embrace Alaska's constitutional provision calling for "a minimum of local government units" (Art. X, sec. 1, Ak Const.). That is, 82.9 percent of organized borough residents receive local services exclusively from their borough government (the remaining 17.1 percent receive services from both a borough and a city). In the unorganized borough, the city is, by definition, the only existing municipal service provider.



**Chart 1-2. 2002 population of existing boroughs in Alaska**

Table 1-3 lists the total population of all cities in Alaska. The median population of cities in Alaska last year was 383, while the average population of all cities was 1,092.

Chart 1-2 illustrates the total population of all organized boroughs in Alaska. The figure for the unorganized borough is also provided.

On average, city governments in Alaska encompass 30.6 square miles. In contrast, the mean size of organized boroughs in Alaska is just over 17,400 square miles.

**Table 1-3  
2002 Population of Existing City Governments in Alaska**

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	2002 Population	Percentage of Entire State	2002 Population	Percentage of Entire State	2002 Population	Percentage of Entire State
Home Rule Cities	60,861	9.45%	12,414	1.93%	73,275	11.38%
First Class Cities	21,463	3.33%	16,522	2.57%	37,985	5.90%
Second Class Cities	14,246	2.21%	32,891	5.11%	47,137	7.32%
<b>Total</b>	<b>96,570</b>	<b>14.99%</b>	<b>61,827</b>	<b>9.61%</b>	<b>158,397</b>	<b>24.60%</b>



*Beartrack Store and Gusto Hardware within the territory proposed for incorporation*

However, the size of individual city and borough governments varies considerably. The City of Kiana, located along the Kobuk River in the Northwest Arctic Borough, takes in the smallest territory (0.3 square miles) of any city in Alaska. On the other end of the spectrum, the City of Skagway, located in the unorganized borough, covers the largest territory (466 square miles). The present median size of the territory within the corporate boundaries of city governments in Alaska is 9.4 square miles.

Organized boroughs encompass about 43 percent of the geographic area of Alaska. State statutes provide that the part of Alaska outside organized boroughs comprises a single unorganized borough. As it is presently configured, the unorganized borough encompasses 374,843 square miles.

The largest organized borough is the North Slope Borough (93,823 square miles); the Bristol Bay Borough is the smallest (918 square miles).

## **C. Background on Second Class Cities in the Unorganized Borough**

Second class city governments in the unorganized borough comprise 54.4 percent of all municipal governments in Alaska, yet they serve just 5.1 percent of the total population of the state. Second class cities in the unorganized borough cover a very diverse group of communities. Thus, efforts to characterize them as a whole are difficult. Subsections C-1 through C-7 of this chapter are offered to give a sense of the diversity and nature of second class cities in the unorganized borough.

### **1. Population.**

Among the second class cities in the unorganized borough is the least populous city government in the entire state and the sixth most-populous city in all of Alaska. During 2002, the 79 second class cities in the unorganized borough were inhabited by a total of 32,891 indi-

**Table 1-4  
Population Characteristics of Second Class Cities in the Unorganized Borough**

Least populous (City of Kupreanof)	23
Most populous (City of Bethel)	5,736
Median Population	291
Number of second class cities in the unorganized borough with populations over 5,000	1 (1.3%)
Number with populations over 2500, but less than 5000	0 (0.0%)
Number with populations over 1000, but less than 2500	1 (1.3%)
Number with populations at least 400, but less than 1000	28 (35.4%)
Number with populations under 400	49 (62.0%)

**2. Size of Jurisdictional Territory.**

As was the case with the population of second class cities, the size of the geographic area within the corporate boundaries of second class cities in the unorganized borough varies widely. Most second class cities in the unorganized borough have boundaries encom-

viduals. Nearly two-thirds (62 percent) of the second class cities in the unorganized borough had fewer than 400 residents in 2002. Only two of the 79 second class cities in the unorganized borough had more than 1,000 residents.

Table 1-4 reflects characteristics about the size of the populations of second class cities in the unorganized borough.

**Table 1-5  
Comparison of the Geographic Size of Jurisdictional Areas within Second Class Cities in the Unorganized Borough**

Smallest (City of Scammon Bay)	0.6 square miles
Largest (City of St. Paul)	295.5 square miles
Median Size	7.6 square miles
Mean Size	25.6 square miles
Number with jurisdictional territory exceeding 100 square miles	5 (6.3%)
Number with jurisdictional territory equal to or greater than 50 square miles but less than 100 square miles	2 (2.5%)
Number with jurisdictional territory equal to or greater than 40 square miles but less than 50 square miles	4 (5.1%)
Number with jurisdictional territory equal to or greater than 30 square miles but less than 40 square miles	9 (11.4%)
Number with jurisdictional territory equal to or greater than 20 square miles but less than 30 square miles	2 (2.5%)
Number with jurisdictional territory equal to or greater than 10 square miles but less than 20 square miles	13 (16.5%)
Number with jurisdictional territory less than 10 square miles	44 (55.7%)

**Table 1-6  
Local Tax Levies Among Second  
Class Cities in the Unorganized  
Borough**

Number that levy property taxes	1 (1.3%)
Number that levy a 5% general sales tax	5 (6.3%)
Number that levy a 4% general sales tax	6 (7.6%)
Number that levy a 3% general sales tax	19 (24.1%)
Number that levy a 2% general sales tax	15 (19.0%)
Number that levy a 1% general sales tax	2 (2.5%)
Number that Levy Targeted Excise Taxes (all but one also levy a general sales tax)	9 (11.4%)

passing less than ten square miles. A few have substantially larger boundaries. A comparison of the jurisdictional boundaries of those cities is provided in Table 1-5 shown on the previous page.

### 3. City Taxes.

Forty-seven of the 79 second class cities in the unorganized borough (59.5 percent) reported revenues from some type of local tax during fiscal year 2001. All but one of those levied a general sales tax. In addition to general sales taxes, ten levied special excise taxes such as bed taxes, fuel taxes, and raw fish taxes. Only one levied a property tax.

Table 1-6 summarizes the types of taxes levied by second class cities in the unorganized borough during fiscal year 2001.<sup>10</sup>

More than 70 percent of the second class cities in the unorganized borough reported local tax revenues in FY 2001 of less than \$100 per capita. Included in that group are 32 of the 79 (40.5 percent) second class cities in the unorganized borough that reported no local tax revenues in FY 2001. Table 1-7 on the following page provides details about local tax revenues.

### 4. Other Local Revenues.

Second class cities in the unorganized borough collect local revenues from a variety of sources other than taxes. These include license and permit fees, service charges, and enterprise operations (e.g., water, sewer, and electric utilities, ports and harbors). All but one second class city reported raising some level of local revenues from sources other than taxes in FY 2001. Table 1-8 on page 15 provides additional information about this component of revenues.

<sup>10</sup> The latest year for which complete statistical information is available.

**Table 1-7  
Local Tax Revenues of Second Class  
Cities in the Unorganized Borough  
(FY 2001)**

Number that reported local tax revenues in FY 2001	47
Highest per capita local tax revenue collected by a second class city in the unorganized borough (City of Whittier)	\$2,584
Lowest per capita local tax revenue collected by any of the 48 reporting local tax revenue	\$8
Number that collected more than \$2,500 per capita	1 (1.3%)
Number that collected at least \$2,000 but less than \$2,500 per capita	0
Number that collected at least \$1,500 but less than \$2,000 per capita	0
Number that collected at least \$1,000 but less than \$1,500 per capita	1 (1.3%)
Number that collected at least \$500 but less than \$1,000 per capita	1 (1.3%)
Number that collected at least \$200 but less than \$500 per capita	8 (10.1%)
Number that collected at least \$100 but less than \$200 per capita	12 (15.2%)
Number that collected at least \$1 but less than \$100 per capita	24 (30.3%)
Number that collected \$0 per capita	32 (40.5%)

**5. Federal Revenues.**

Seventy-one of the 79 second class cities in the unorganized borough reported receiving federal funds for

operating expenses during FY 2001. The principal source of federal funds for second class cities in the unorganized borough is the federal Payment in Lieu of Taxes (PILT) program. In addition, second class cities in part of the unorganized borough in or near the Tongass National Forest or Chugach National Forest receive funding under the National Forest Receipts Program.

The level of funding among the 71 cities in the unorganized borough that reported receiving federal monies in FY 2001 ranged from a high of \$1,342 per capita to a low of \$3 per capita. Few received a significant amount of federal funding. Only four received more than \$500 per capita; an additional nine received more than \$100 per capita. The median figure among the 71 second class cities in the unorganized borough receiving federal funds was \$59 per capita.

**6. State Revenues.**

Seventy-seven of the 79 second class cities in the unorganized borough reported receiving funds from the State of Alaska for operating expenses during FY 2001. The principal sources of State funds for second class cities in the unorganized

**Table 1-8  
Non-Tax Local Revenues of  
Second Class Cities in the  
Unorganized Borough (FY 2001)**

Number that reported local tax revenues in FY 2001	78
Highest per capita non-tax local revenue collected by a second class city in the unorganized borough (City of St. Paul)	\$8,179
Lowest per capita non-tax local revenue collected by any of the 78 reporting local tax revenue	\$57
Number that collected more than \$5,000 per capita	4 (5.0%)
Number that collected at least \$2,500 but less than \$5,000 per capita	6 (7.6%)
Number that collected at least \$2,000 but less than \$2,500 per capita	2 (2.5%)
Number that collected at least \$1,500 but less than \$2,000 per capita	7 (8.9%)
Number that collected at least \$1,000 but less than \$1,500 per capita	8 (10.1%)
Number that collected at least \$500 but less than \$1,000 per capita	24 (30.4%)
Number that collected at least \$200 but less than \$500 per capita	20 (25.3%)
Number that collected at least \$100 but less than \$200 per capita	6 (7.6%)
Number that collected at least \$1 but less than \$100 per capita	1 (1.3%)
Number that collected \$0 per capita	1 (1.3%)

borough were State Revenue Sharing, Safe Communities Program, and State Shared Business Fisheries Taxes.

Among those 77 second class cities receiving State monies in FY 2001, funding ranged from a high of \$1,771 per capita to a low of \$50 per capita. The median figure was \$148 per capita.

## 7. Expenditures.

This section of the report summarizes expenditures of second class city governments in the unorganized borough during FY 2001 as reported to DCED.

All municipal governments in Alaska, except second class cities, are required to "provide for an annual independent audit of the accounts and financial transactions of the municipality." A second class city has the option of providing for an audit or a "statement of annual income and expenditures." (AS 29.-35.120.) The municipalities are required to submit a copy of the audit or financial statement to DCED. (AS 29.20.-640.) Thirteen of the 79 second class cities in the unorganized borough provided for audits of FY 2001 expenditures.

There is no standardized set of accounts for local governments in Alaska. Consequently, there is a lack of uniformity in the reporting of expenditures to DCED. Table 1-9 on the following page summarizes expenditures by second class cities in the unorganized borough in four broad categories as reported to DCED in FY 2001.

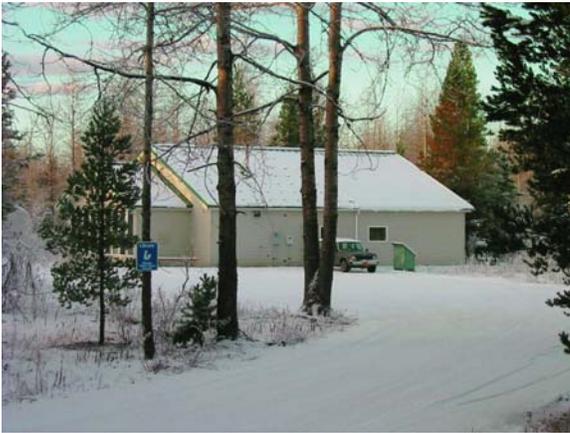
**Table 1-9  
Summary of Expenditures of Second Class Cities in the  
Unorganized Borough (FY 2001)**

Category	Number Reporting Expenditures for FY 2001	Lowest Per Capita Expenditure	Median Per Capita Expenditure Among Those Reporting Expenditures in Category	Highest Per Capita Expenditure
General Government	78 of 79	\$33	\$336	\$3,337
Public Safety	67 of 79	\$1	\$71	\$2,058
Other Public Services	78 of 79	\$77	\$593	\$9,848
Debt	3 of 79			
All Expenditures	78 of 79	\$271	\$1,055	\$13,144

The "General Government" category includes expenses relating to the mayor and other members of the council, financial administration, planning and zoning, and other general governmental expenditures. Expenses relating to "public safety" include police, fire protection, ambulance, and other public safety services. The "other public services" category consists of roads, harbors, airports, utilities (water, sewer, electric, telephone, refuse), public works, health, libraries, museums, parks and recreation, transit, and other services. Debt includes payment of principal and interest on debt. Since only three of the 79 second class cities reported debt payments in FY 2001, figures for the range of expenditures for that category are not reported in Table 1-9.

As noted earlier, the Petitioners have proposed that the City of Gustavus would provide five specific services. Those are library, landfill, emergency response, road maintenance, and economic development. The following summarizes the reported expenditures for library, landfill, emergency services, and road maintenance among second class cities in the unorganized borough (figures are not available for economic development expenditures):

**Library:** Twelve of the 79 second class cities reported expenditures for libraries and/or museums during FY 2001. The highest such expenditure – \$58,742 – was reported by the City of Delta Junction; the lowest expenditure among the twelve cities was \$500.



*Gustavus Library*

Viewed in per capita terms, expenditures among the twelve cities for libraries and museums ranged from a high of \$100 to a low of \$6. The median per capita expenditure among the twelve cities was \$33.50.

**Landfill:** According to reports submitted to DCED, 70 of the 79 (88.6 percent) second class cities in the unorganized borough operate landfills.



*Gustavus Landfill*

**Emergency response:** Each of the 79 communities in the unorganized borough that are served by second class cities has some form of fire protection and/or emergency rescue service. In most cases, city governments provide facilities, equipment, and/or some form of financial aid. Twenty-four of the 79 second class cities reported expenditures for fire protection and/or ambulance services in FY 2001.



*Gustavus Firehall*

**Road Maintenance:** Sixty-one of the 79 (77.2 percent) second class cities in the unorganized borough provided road maintenance in FY 2001.

## D. Background on the Local Boundary Commission

### 1. Constitutional Origin of the LBC.

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (*Alaska's Constitutional Convention*, p. 124, Victor Fischer.) The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the LBC in Article X, Section 12 of the constitution.<sup>11</sup>

The LBC is one of only five State boards or commissions established in the constitution (among a current total of approximately 120 active boards and commissions).<sup>12</sup> The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

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 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.

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

<sup>11</sup> Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

<sup>12</sup> The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

## 2. Duties and Functions of the LBC.

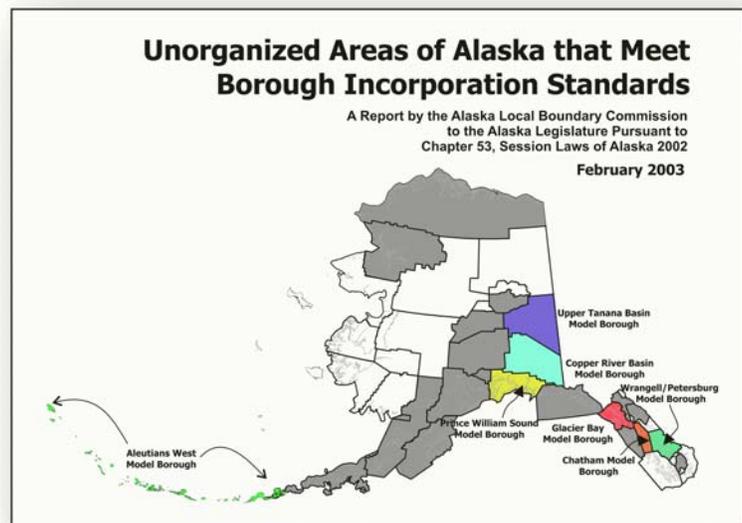
The LBC acts on proposals for seven different municipal boundary changes. These are:

- incorporation of municipalities;<sup>13</sup>
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;
- merger of municipalities; and
- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;

- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's constitution.



*Report of the LBC submitted to the Legislature in February 2003*

Further, the LBC is routinely assigned duties by the Legislature; e.g., the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards and the 2003 directive to work with the Department of Education and Early Development regarding school district consolidation.

<sup>13</sup> The term "municipalities" includes both city governments and borough governments.

### 3. LBC Decisions Must have a Reasonable Basis and Must be Arrived at Properly.

LBC decisions regarding petitions that come before the Commission must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.<sup>14</sup>

<sup>14</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

### 4. Communications with the LBC.

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection.

Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (ex parte) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on ex

parte contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address.

Local Boundary Commission Staff  
550 W. 7<sup>th</sup> Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
telephone: (907) 269-4559  
fax: (907) 269-4539  
alternate fax: (907) 269-4563  
e-mail: LBC@dced.state.ak.us

## 5. LBC Membership.

The LBC is an independent, quasi-judicial commission. Members of the LBC are appointed by the Governor for five-year overlapping terms. (AS 44.33.810.) Notwithstanding their terms, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d).)

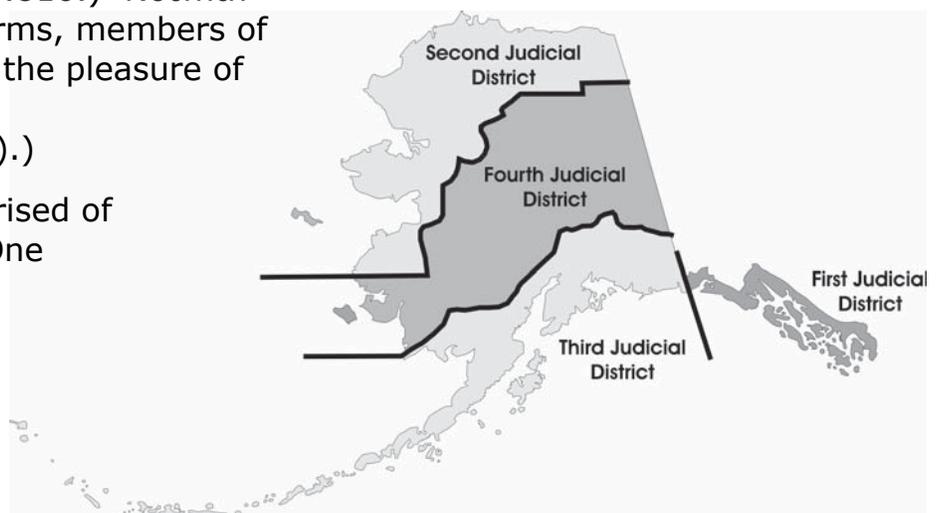
The LBC is comprised of five members. One member is appointed from each of Alaska's four

judicial districts. The fifth member is appointed from the state at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service on the Commission. However, they are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.



### **Darroll Hargraves, Chair, At-Large Appointment, Wasilla**

Darroll Hargraves of Wasilla was appointed Chair of the LBC by Governor Murkowski in March 2003. Commissioner



Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska, Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been School Superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and non-profit organizations. Commissioner Hargraves previously served as Chair of the LBC from 1992-1997. His current term on the Commission expires in January 2008.

### **Georgianna Zimmerle, First Judicial District, Ketchikan**

Georgianna Zimmerle serves from the First Judicial District. She is a resident of Ketchikan. Commissioner Zimmerle was appointed to the Commission on March 25, 2003. An Alaska Native, Commissioner Zimmerle is



Tlingit and Haida. She is currently the General Manager for Ketchikan Indian Community. She worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Her current term on the Commission expires January 31, 2006.

### **Robert Harcharek, Second Judicial District, Barrow**

Robert Harcharek serves from the Second Judicial District. He was appointed to the LBC on July 18, 2002. Mr. Harcharek has lived and worked on the North Slope for more



than 20 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is a Senior Planner and Social Science Researcher for the North Slope Borough Planning Department. Mr. Harcharek earned a Ph.D in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Capital Improvement Projects and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management,

Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Mr. Harcharek served for two years as a Peace Corps Volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska Municipal League Legislative Committee. His current term on the Commission expires on January 31, 2004.

**Robert Hicks, Vice-Chair, Third Judicial District, Seward**



Robert Hicks of Seward was appointed to the LBC from the Third Judicial District by Governor Murkowski in March 2003. His fellow commissioners elected him as Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the areas in which he specialized as an attorney was the field of local government, including the Local Boundary Commission. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. He also is an Adjunct

Instructor in Alaska Outdoor and Experiential Education at the University of Alaska in Anchorage. Commissioner Hicks' current term on the LBC expires in January 2007.

**Dr. Anthony Nakazawa, Fourth Judicial District, Fairbanks**

Anthony "Tony" Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in ten communities throughout Alaska. He previously served as the director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981 and with the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training



Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971, and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the Commission expires December 2004.

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## **E. Background on the Alaska Department of Community and Economic Development**

### **1. Constitutional Origin of the Local Government Agency.**

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's constitution followed a principle that no specific agency, department, board, or commission would be named in the constitution "unless a grave need existed" for such. In addition to the previously noted five boards and commissions named in the constitution, the framers provided for only one State agency or department – the local government agency mandated by Article X, Section 14 to advise and assist local governments.<sup>15</sup> The constitutional duty to support local governments is entrusted to

DCED.<sup>16</sup> Within DCED, the Division of Community Advocacy carries out the duty to advise and assist local governments.

It is worth reflecting that of the six boards, commissions, and agencies mandated by Alaska's constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The prominence that the framers of Alaska's constitution gave to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the constitution was dependent, in large part, upon those two entities. The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized

<sup>15</sup> Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

<sup>16</sup> AS 44.33.020 provides that DCED "shall (1) advise and assist local governments."

that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

## **2. DCED Serves as Staff to the LBC.**

DCED serves as staff to the LBC pursuant to AS 44.47.050(a)(2). DCED's duties as LBC staff are carried out by the Municipal Policy and Research Section of DCED's Division of Community Advocacy.

DCED is required by AS 29.05.080 and 3 AAC 110.530 to investigate each city incorporation proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCED adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, DCED's self-imposed standard requires its recommendations

to the LBC to be based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. DCED takes the view that due process is best served by providing thorough, credible, and objective analysis of every municipal boundary proposal to come before the LBC.

DCED's Commissioner, Deputy Commissioners, and the Director of DCED's Division of Community Advocacy provide policy direction concerning recommendations to the LBC.

DCED's recommendations to the LBC in this and other matters are not binding on the LBC. As noted previously, the LBC is an independent commission. While the Commission is not obligated to follow DCED's recommendations, it has, nonetheless, historically considered DCED's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.



# Chapter 2

## Previous Incorporation Efforts and Proceedings Relating to the Pending Proposal

### A. Introduction

This chapter summarizes the two previous Gustavus city incorporation proposals. It also addresses, in detail, past, pending, and future proceedings relating to the current proposal.

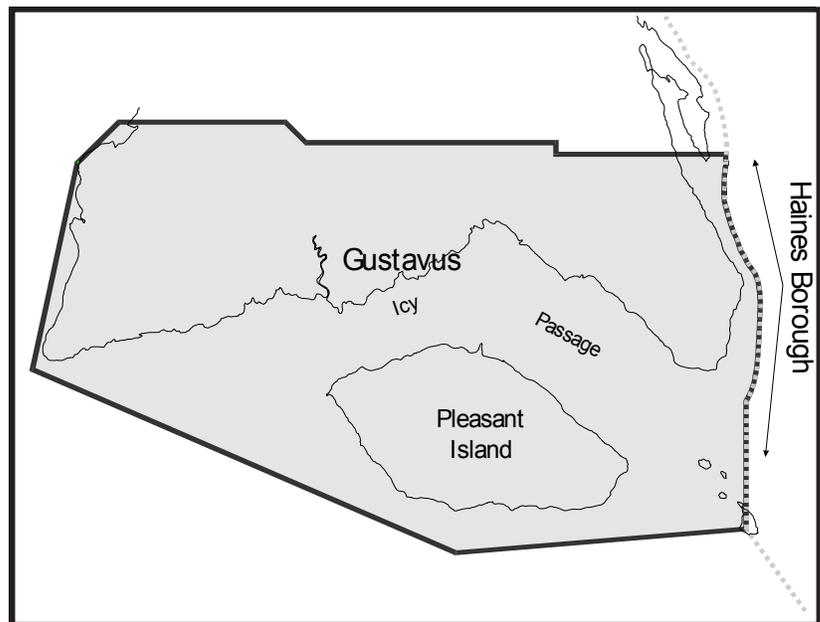
### B. Prior Incorporation Efforts

As noted in the preface, the current proposal to incorporate the City of Gustavus was preceded by two other attempts. The first occurred in 1979. At the time, the population of Gustavus was 98.

The LBC denied the first proposal to form a city government in Gustavus on two grounds. The first was that the commu-

nity lacked adequate financial resources to operate a city government. The second was that a demonstrated need for city government in Gustavus was not evident.

In March 1996, seventeen years after the first unsuccessful attempt to form a city, voters in Gustavus initiated a second proposal. By that time, the population of Gustavus had grown to 357.



Map 2-1. The 1996 Gustavus incorporation petition proposed to incorporate 144 square miles

The 1996 incorporation petition proposed corporate boundaries for the city encompassing nearly 144 square miles.

The 1996 proposal called for the city to provide the following services:<sup>17</sup>

- landfill;
- library;
- road maintenance;
- fire protection and rescue services;
- health clinic; and
- planning, platting, and land use regulation.

In June 1997, following a hearing on the proposal, the LBC amended the Gustavus city incorporation petition by reducing the proposed jurisdictional area of the prospective city from the nearly 144 square miles requested by the petitioners to 39.25 square miles. Following the amendment, the LBC approved the petition.

In October 1997, the State Division of Elections conducted an election to present the city incorporation proposition to the voters. The election was conducted by mail.

<sup>17</sup> The 1996 petition did not call for the proposed city to directly operate fire protection, rescue services, and the clinic. Rather, it proposed that the prospective city would provide financial support to organizations that provided those services to Gustavus.

The results of the 280 votes cast were certified on October 21, 1997. The tally was 139 (49.6 percent) in favor of incorporation and 141 (50.4 percent) against incorporation.

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### **C. Local Option City Incorporation Procedures**

Procedures in State law governing incorporation of cities are designed to secure the informed, reasonable, timely, and inexpensive determination of every petition that comes before the LBC. A summary of the local option method for incorporation, which is being used in this proceeding, is provided in Figure 2-1 on the following page.

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### **D. Past, Ongoing, and Future Proceedings Relating to the Pending Proposal**

#### **1. Petition Submitted.**

As allowed by AS 29.05.060(7), voters in Gustavus petitioned the LBC for incorporation of a second class city. The formal Petition was submitted to DCED on January 22, 2003. Forty-seven individuals signed the Petition.

**Figure 2-1****SUMMARY OF THE LOCAL OPTION METHOD FOR INCORPORATION**

1. Petition filed (may be amended prior to notice of LBC hearing);
2. public notice given of petition filing;
3. interested individuals and organizations may file responsive briefs and written comments regarding the petition;
4. Petitioner may file reply to responsive briefs and comments;
5. DCED prepares preliminary report concerning the proposal;
6. interested individuals and organizations may comment on preliminary report;
7. DCED holds public informational meeting in Gustavus;
8. DCED prepares final report concerning the proposal;
9. LBC holds public hearing in Gustavus;
10. LBC renders decision regarding the proposal;
11. opportunity to seek reconsideration of LBC decision;
12. if petition is approved, with or without amendments and conditions, Division of Elections is notified to order and conduct election;
13. Division of Elections conducts election;
14. Federal Voting Rights Act preclearance requested;
15. election held; and
16. city is formed if majority of voters cast ballots in favor of incorporation.

**2. Petition Accepted for Filing.**

DCED completed its review of the form and content of the Petition within the 45-day period allowed by 3 AAC 110.440(a). As a result of the review, it was determined that the petition was complete and that it contained a sufficient number of qualified signatures.<sup>18</sup> On March 4, 2003, DCED accepted the Petition for filing.

**3. Notice of Filing of the Petition.**

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

In accordance with 3 AAC 110.450, DCED prepared the text and maps to be used in the public notice of the filing of the Petition. DCED also prepared the text for the public service announcement request required by 3 AAC 110.450.

Notice of Filing of the Petition was published by the Petitioner as a display advertisement in accordance with 3 AAC 110.450.

<sup>18</sup> Thirty-eight of the signatures appearing on the Petition were determined to be valid. The number of valid signatures exceeded the number required under AS 29.05.060(12).

The notice was published in a display ad format (three columns by 6-inches) three times in the *Juneau Empire* as follows:

- March 9, 2003;
- March 16, 2003; and
- March 23, 2003.

Beginning March 7, 2003, public notice of the filing of the Petition was published electronically by DCED on the LBC Internet web site.<sup>19</sup> Public notice of the filing of the Petition was also published electronically by DCED on the State of Alaska *Online Public Notice* system from March 11, 2003, through May 2, 2003.<sup>20</sup>

On March 7, 2003, the Petitioner submitted a request for public service announcements of the filing of the Petition to KTOO-FM, the Juneau-based public radio station serving the territory proposed for incorporation and the surrounding area. The Petitioner asked that the announcement be broadcast for 14 days from the date of receipt.

On March 7, 2003, the Petitioner posted a printed notice of the filing of the Petition (8.5-inches by 11-inches) in the four following prominent locations accessible to the public within the territory proposed for incorporation:

- Gustavus Post Office bulletin board;
- Beartrack Mercantile bulletin board;
- Gustavus Public Library bulletin board; and
- Glacier Bay National Park Headquarters.

Following posting, the Petitioner inspected the notices on a regular basis to ensure that they remained posted until the close of the comment period.

On March 7, 2003, the Petitioner mailed a copy of the printed notice of the filing of the Petition to the City of Hoonah, Haines Borough, and the Hoonah Indian Association.

On March 12, 2003, DCED provided notice of the filing of the Petition in writing or electronically to thirty-three officials of the State of Alaska, including members of the LBC.

<sup>19</sup> <http://www.dced.state.ak.us/cbd/lbc/lbc.htm>. The notice will remain posted throughout this proceeding.

<sup>20</sup> <<http://notes3.state.ak.us/pn/pubnotic.nsf>>

#### 4. Deposit and Service of Petition.

On February 8, 2003, the Petitioner deposited a full set of the Petition documents for public review at the Gustavus Public Library. The Petitioner also acknowledged its obligation to add all new future Petition documents (e.g., briefs, written comments, DCED's reports, etc.) to the materials available for public review as those materials become available.

On March 7, 2003, the Petitioner served a complete copy of the Petition on the City of Hoonah and the Haines Borough.

#### 5. Responsive Briefs and Comments.

3 AAC 110.480 allows an interested person or entity with the capacity to sue or be sued to file a responsive brief in opposition to or in support of a municipal boundary petition. No such responsive briefs were filed regarding the Gustavus city incorporation Petition.

Individuals or organizations that file timely responsive briefs take on the status of respondents. Respondents gain certain rights in municipal boundary proceedings before the LBC. Those include the rights to:

- receive individual notice of DCED's informational meeting (3 AAC 110.520(b));
- receive a copy of DCED's preliminary report on the matter (3 AAC 110.530(b));
- receive a copy of any amendments to the petition (3 AAC 110.540(b));
- receive notice of the LBC hearing on the petition (3 AAC 110.550(b)(1));
- receive the list of witnesses that the petitioner intends to call to provide testimony at the LBC hearing on the petition (3 AAC 110.550(e));
- make an opening statement during the LBC hearing regarding the petition (3 AAC 110.560(b)(3));
- provide testimony at the LBC hearing by witnesses with expertise in matters relevant to the proposed change (3 AAC 110.560(b)(5));
- make a closing statement during the LBC hearing regarding the petition (3 AAC 110.560(b)(9));
- receive a copy of the LBC's written decisional statement regarding the petition (3 AAC 110.570(f));
- receive a copy of every properly filed request for reconsideration of the LBC's decision regarding the petition (3 AAC 110.580(c));

- file a response brief to any request for reconsideration that was granted by the LBC (3 AAC 110.580(f)); and
- receive a copy of the LBC's decision on reconsideration (3 AAC 110.580(g)).

While no responsive briefs were filed in this proceeding, six individuals or organizations submitted written comments concerning the proposal prior to the May 2, 2003, deadline. Those individuals and organizations are:

1. Karen L. Pandel, a resident of Schenectady, NY;
2. Tomie Patrick Lee, Superintendent of the Glacier Bay National Park and Preserve (signed by Jed Davis for Mr. Lee);
3. Paul Berry, local resident and landfill manager;
4. Hoonah Indian Association (by David Betton, Director of Cultural/Natural Resources);
5. State Senator Gary Wilken; and
6. Craig H. Wilson, Gustavus resident.

Upon receipt, the comments were posted on the LBC Internet web site. At the conclusion of the comment period, a copy of the comments was provided to the Petitioner.

## 6. Reply Brief.

The Petitioner's representative drafted a response to the timely comments on the Petition. The Petitioner's representative presented the draft for review by community residents at a meeting held by the Petitioner in Gustavus on May 13. With modifications stemming from the community meeting, the Petitioner's representative submitted the reply from the Petitioner on May 15. A copy of the reply was posted on the LBC Internet web site.

## 7. 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, including the six individuals and organizations that submitted timely comments on the 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 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 **September 29, 2003 at 9:00 a.m.**

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

**Local Boundary Commission  
550 W. 7th Ave., Suite 1770  
Anchorage, AK 99501-3510  
Primary Fax: 907-269-4539  
Alternate Fax: 907-269-4563  
E-mail: LBC@dced.state.ak.us**

DCED stresses, again, that comments on the preliminary report must be received by DCED prior to the deadline noted above.

### **8. Public Informational Meeting**

DCED is required by AS 29.05.080(a) and 3 AAC 110.520(a) to conduct at least one public informational meeting in the territory proposed for incorporation. The meeting provides an opportunity for citizens of the community to become better informed about the pending incorporation proposal and the process for establishing a city government. State law requires DCED to summarize the meeting in its final report to the LBC on the incorporation proposal.

### **9. DCED's Final Report.**

After DCED has considered timely written comments on this preliminary report, it will issue its final report on the Gustavus incorpora-

tion proposal. In accordance with 3 AAC 110.640, 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.

### **10. Pre-Hearing Requirements.**

As outlined in the following section (11. LBC Tour and Public Hearing), during the public hearing on the Petition to be conducted by the Commission in Gustavus, the Petitioner will be allowed to present sworn testimony. Sworn testimony is distinct from comments by members of the public.

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



*Local participants at a recent LBC hearing*

At least 14 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.

### **11. LBC Tour and Public Hearing.**

The Local Boundary Commission will hold at least one public hearing on the proposal in Gustavus. Prior to the hearing, the LBC will, if possible, tour the territory proposed for incorporation.

At this point in the proceeding, no date has yet been set for the hearing. It is anticipated, however, that the hearing will be conducted

in November 2003. 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.

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 LBC will receive sworn testimony from witnesses called by the Petitioner with expertise in



## State of Alaska Local Boundary Commission

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

# AGENDA

## Public Hearing of Gustavus City Incorporation

- 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 Second Class City of Gustavus:
  - A. Summary by DCED of its conclusions and 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

Members: Darroll Hargraves, Chairman; Georgianna Zimmerle, First Judicial District; Robert Harcharek, Second Judicial District; Bob Hicks, Vice-Chairman, Third Judicial District; Tony Nakazawa, Fourth Judicial District

Following the testimony from witnesses called by the Petitioner, the LBC 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. A draft hearing agenda is shown in Figure 2-2.

No brief or other written materials may be filed by the Petitioner or

Figure 2-2. Draft LBC hearing agenda

matters relevant to the proposal. The LBC Chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony. Commission members may question witnesses providing sworn testimony.

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.

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 for 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.

## **12. 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 brief-

ing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

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 concerning the Petition. A copy of the statement will be provided to the Petitioner and any others who request it.

## **13. Reconsideration.**

Within 18 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 20 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.

The person or entity filing a request for reconsideration must also file an affidavit of service stating that the request for reconsideration and affidavit were served on the Petitioner by regular mail, postage prepaid, or by hand-delivery. The person or entity filing a request for reconsideration must file an affidavit stating 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 and that a copy of the affidavit has been served on the Petitioner.

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 20 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 20 days after the decision was mailed under 3 AAC 110.570(f), the Commission will allow the Petitioner 10 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 must 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 90 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.

#### **14. 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 the incorporation election.

The election must be conducted thirty to ninety days after the election order. Historically, it has been the practice of the Division of Elections to conduct municipal incorporation elections by mail unless they are held at the same time as the State primary election, State general election, or the State election of REAA school board officials. Results of the election are typically certified within two to three weeks of the election.

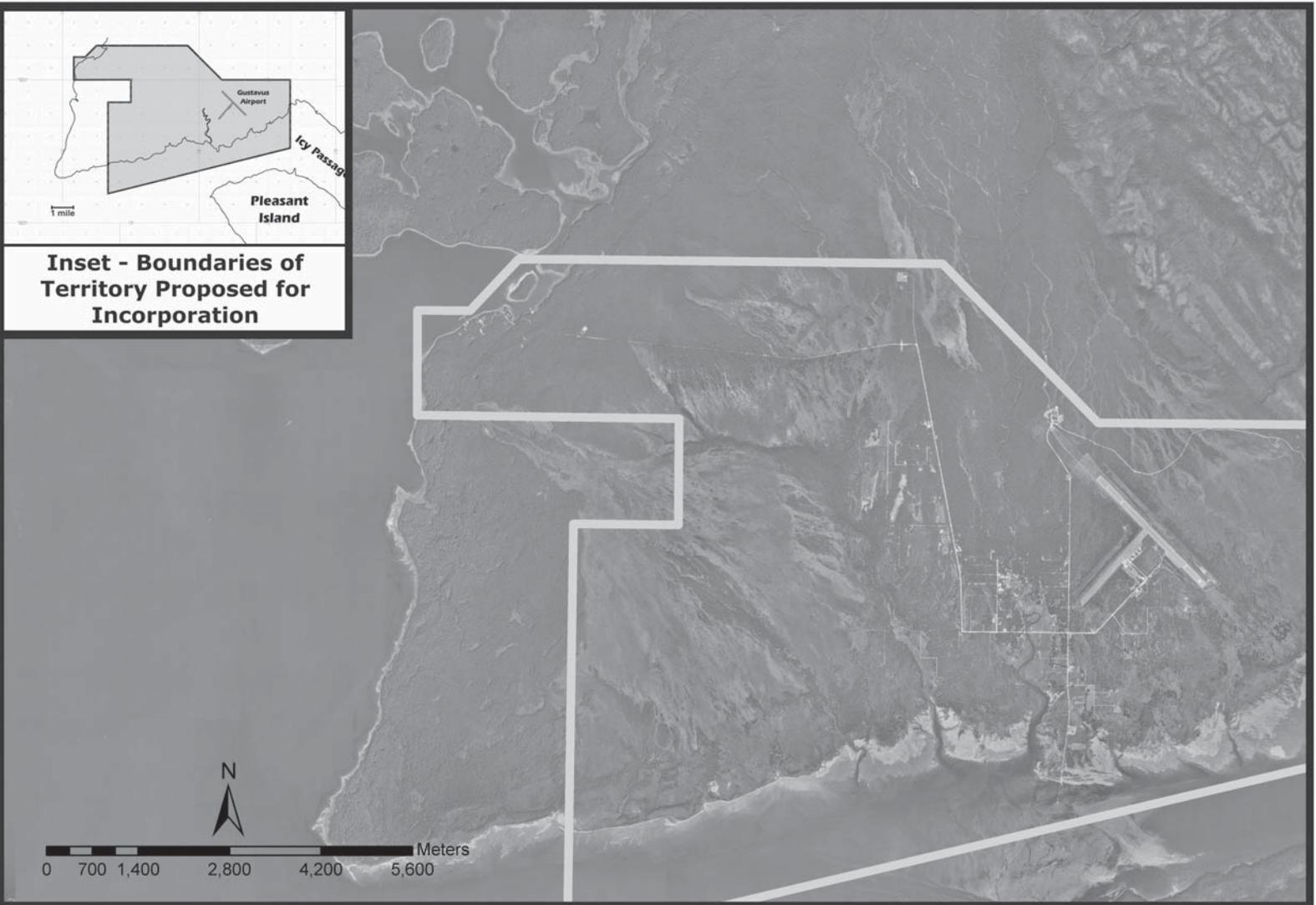
If a majority of those who vote on the proposition vote in favor of incorporation, the city will be formed upon certification of the election results. If a majority of the voters do not approve the proposition to form the city, incorporation is rejected.

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 city incorporation proposal, method of the incorporation election, and the proposed date for the incorporation election. Review by the Jus-

tice Department typically takes about sixty-five to seventy days. The State of Alaska is responsible for seeking from the U.S. Justice Department preclearance of any incorporation proposal.

### **15. 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.*)



**Map 2-2. 1996 aerial photo showing much of the territory proposed for incorporation**

# Chapter 3

## Application of Standards to the Gustavus Petition

Chapter 3 presents DCED's analysis of the evidence in these proceedings with respect to the standards that must be met in order for the Commission to approve the Petition.

### A. Standard Regarding Existence of a Community

#### 1. The Standard Established in Law.

State law provides that a locality proposed for incorporation as a city must comprise a community. Specifically, AS 29.05.011(a) states that "A community" that meets the

city incorporation standards may incorporate as a city. Further, 3 AAC 110.005 requires that "An area proposed for incorporation as a city must encompass a community." State law (3 AAC 110.990) defines a community as "a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920." That regulation establishes several criteria that the Commission may consider in determining whether the locality proposed for incorporation comprises a community. Specifically, the law states:

**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



*View of part of the community of Gustavus*

(3) inhabitants residing permanently at a location are a discrete and identifiable social unity, 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

(5) 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.

## 2. Views of the Petitioner.

The determination of community standard is addressed under Ex. H of the Petition and states:

Gustavus was established in the 1920's by a small group of homesteaders. The population of the area remained small until the 1960's when fishing, tourism and expand-

ing operations at Glacier Bay National Park attracted additional residents. Gustavus is now a rapidly growing community almost surrounded by Glacier Bay National Park and Preserve making it the 'Gateway' to this very beautiful but remote tourist attraction. Because Gustavus is almost surrounded by Glacier Bay National Park, where no private land is available, rapid growth will undoubtedly continue. Recent census figures verify this growth trend. Census population history shows 98 residents in 1980, 258 in 1990 and 429 in 2000.

## 3. Analysis by DCED.

A review by DCED of the relevant factors in determining whether Gustavus constitutes a community indicates the following:

### **(a) Settlement Inhabited by at Least 25 Residents.**

Federal census figures show that for at least the last 42 years, Gustavus has had more than the minimum number of residents required to meet the population test under 3 AAC 110.920(a)(1). In fact, at no time during that period did the locality have less than twice the resident population required by that factor. The current population of Gustavus is nearly seventeen times the population threshold listed in 3 AAC 110.920(a)(1).



*Another aerial view of part of Gustavus*

mile. The population density of the proposed City of Gustavus is 27 percent of the average of all cities and 31 percent of the median figure.

The population density of the land within the proposed City of Gustavus is relatively low due, in part, to

### **(b) Geographic Proximity of Residents.**

The 29.23 square miles of land included within the Petitioner's proposed boundaries are inhabited by an average of 14.4 persons per square mile. Existing cities in Alaska have population densities ranging from a high of 2,307 people per square mile of land (City of Ketchikan) to a low of 0.8 residents per square mile of land (City of Platinum).

Seventy-eight percent of existing cities in Alaska have greater population densities than the proposed City of Gustavus. The average population density of all 145 cities in Alaska is 53.1 residents per square mile of land; the median figure is 46.5 persons per square

the inclusion of the Dude Creek Critical Habitat Area and the adjoining State lands in Section 16, T40S, R58E that were designated many years ago for "schools" (the latter having no relation to the current school facilities at Gustavus). Those uninhabited lands comprise approximately 7 square miles. If those lands were excluded from consideration, the population density of the proposed City of Gustavus would increase by more than 30 percent to 18.9 persons per square mile of land. That would still be less than most existing cities (69 percent) in Alaska.

Other than the south side, which borders the waters of Icy Passage, Gustavus is virtually surrounded by national park lands. Consequently,

future population growth will likely occur within the locality proposed for incorporation resulting in a continued increase in its population density. Coupled with the fact that most of the locality's residents are connected by a broad network of public roads, this settlement is at least minimally characteristic of neighborhood living which promotes frequent personal contacts.

**(c) Inhabitants are a Discrete Social Unit.**

According to 2000 Census data, Gustavus has 199 occupied housing units, 153 of which are owner-occupied. The Gustavus election precinct encompasses all of the populated territory proposed for incorporation and includes 466 registered voters. K-12 school enrollment figures for the Gustavus school were 45 in 2002 and 2001; 48 in 2000; 56 in 1999; and 74 in 1998. There are currently 157 active business licenses in Gustavus. A substantial number of local employment sources are found in the community. According to the Petitioner, the list includes the National Park Service, school district, post office, 14 lodges and bed & breakfasts (B&Bs), 18 charter businesses, 10 service oriented businesses, 9 professional services, 6 contractors, 3 retail stores, 2 construction contractors, and 5 transport businesses.

**4. Conclusion by DCED.**

It is evident that the Gustavus settlement has functioned as a bona fide community for many years. In fact, it has qualified under State law for various financial assistance programs as a legitimate community for over 20 years. The public's right to reside in the community is not restricted; its population is not adjacent to another community of which Gustavus might be considered part; nor is the population's employment provided by an employer that requires occupancy in the community as a condition of employment. Therefore, the DCED concludes that the locality proposed for incorporation comprises a community.

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**B. Standards Regarding Boundaries**

**1. The Standards Established in Law.**

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

**3 AAC 110.040.**

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

(1) land use and ownership patterns;

(2) population density;

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

(4) natural geographical features and environmental factors; and

(5) extraterritorial powers of cities.

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

(c) The boundaries of the proposed 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 110.005 – 3 AAC 110.042.

(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 city services on an efficient, cost-effective level.

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

## **2. Application of the First Boundaries Standard - The Boundaries Must Include All Areas Necessary to Provide Essential City Services on an Efficient Scale.**

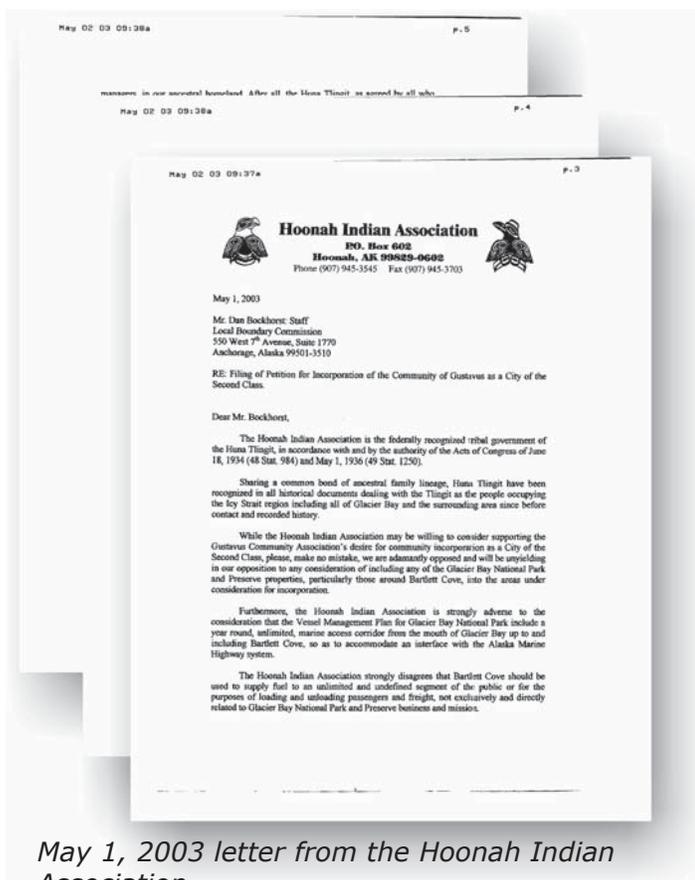
### **(a) Views of the Petitioner.**

This standard is addressed under Ex. H of the Petition and provides:

The proposed area for incorporation is large enough to provide the full development of essential city services in an efficient and cost-effective manner. The proposed area for city incorporation is bounded on three sides by Glacier Bay National Park and on the south side by the waters of Icy Passage. Most of the inhabited area is accessible by vehicle and will be served by the Gustavus Emergency Response [(GER)], the clinic and the Fire Dept. The 29.23 square miles of the Gustavus Proposed City is situated in a single compact block. State, local, and subdivision roads connect most areas of the proposed city. The proposed area of incorporation is the same as that which was approved by the [LBC] in its' (sic) 1997 'Statement of Decision in the Matter of the Petition for Incorporation of the City of Gustavus'.

### **(b) Public Comments.**

The DCED received several written comments concerning the boundaries of the territory proposed for city incorporation. Particular interest was expressed regarding Bartlett Cove. The Hoonah Indian Association provided three pages of written comment dated May 1, 2003. Their comments can be generally summarized in the following three paragraphs:



*May 1, 2003 letter from the Hoonah Indian Association*

While the Hoonah Indian Association may be willing to consider supporting the Gustavus Community Association's desire for community incorporation as a City of the Second Class, please, make no mistake, we are adamantly opposed and will be unyielding in our opposition to any consideration of including any of the Glacier Bay National Park and Preserve properties, particularly those around Bartlett Cove, into the areas under consideration for incorporation . . .

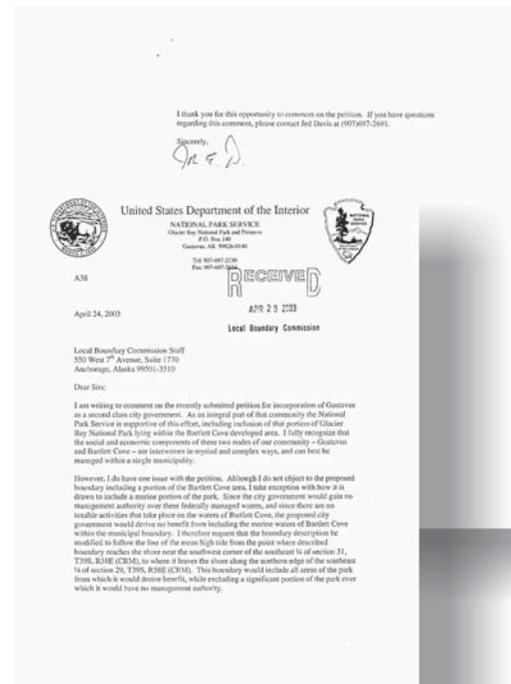
The Hoonah Indian Association views the Gustavus Community Association's proposition to include Bartlett Cove into its plan for incorporation as a measure that has profound and unacceptable development implications that will reach far into the future; implications that stab directly at the core of the Huna Tlingit soul and spirit . . .

The graves of our ancestors are all around this place and we have sacrificed much in what development has already been allowed to occur. What the Gustavus Community Association proposes, by including Bartlett Cove into their waterfront development plans, is thoroughly unacceptable to us and we cannot allow the sanctity of this place to be further violated by the establishment of a 'Gustavus Port' with all of its associated waterfront facilities, development and uses . . .

Tomie Patrick Lee, Superintendent of the Glacier Bay National Park and Preserve, provided written comment dated April 24, 2003. While acknowledging the National Park's Service's support of the incorporation effort, Mr. Lee raised one boundary issue regarding Bartlett Cove. He stated in part:

Although I do not object to the proposed boundary including a portion of the Bartlett Cove area, I take exception with how it is drawn to include a marine portion of the park. Since the city gov-

ernment would gain no management authority over these federally managed waters, and since there are no taxable activities that take place on the waters of Bartlett Cove, the proposed city government would derive no benefit from including the marine waters of Bartlett Cove within the municipal boundary. I therefore request that the boundary description be modified to follow the line of mean high tide from the point where described boundary reaches the shore near the southwest corner of the southeast 1/4 of section 31, T39S, R58E (CRM), to where it leaves the shore along the northern edge of the southeast 1/4 of section 29, T39S, R58E (CRM) . . . .



April 24, 2003 letter from the National Park Service



*National Park Service dock at Bartlett Cove*

**(c) Analysis by DCED.**

Upon incorporation, the City of Gustavus intends to provide several essential city services. These services include a landfill, public library, emergency medical services, fire protection, road maintenance, and economic development. The Petitioner also indicates that the City may provide funding for the clinic, although the clinic will remain independent. Permanent and residents, visitors, tourists, businesses and government agencies will all be beneficiaries of these services. And they will be asked accordingly to support the City financially through various means. This necessitates the boundaries of the proposed City to include all territory for the full development of these essential services.

The territory in and around Bartlett Cove is an integral part of the proposed City's development of essential services. It will benefit from most, if not all, of the services provided by the City. Moreover, it will be a vital source of local revenue for the City government. In that regard, the Petitioner noted as follows in its May 12, 2003, reply to the comments from the National Park Service regarding the incorporation proposal:

. . . Park management, policy making and enforcement of rules is and always will be the responsibility of the Park Superintendent and staff. The future city of Gustavus does, however, need the authority to tax commercial ventures within its boundary. Several commercial businesses use that public use facility to de-

part with guests and clients on day and extended trips. When the boundary of the future city of Gustavus is as the petitioner originally expressed it within the petition, the rights to tax business activities is clearly understood and acceptable. There is no clear understanding of the law which governs the legal right of a city to enforce taxing regulations on infrastructure which is built out over the waters when the boundary of the city is the "mean

high tide mark". The citizens of Gustavus have no ulterior motive other than to assure the rights of the future city to have the authority to implement taxing provisions as established by the future city council.

Because of jurisdictional considerations, the City may lack authority to regulate Bartlett Cove or any other part of the Glacier Bay National Park and Preserve. It will, however, give the residents of the city a voice in any future development plans for the territory and undisputed taxing jurisdiction over



*Glacier Bay Lodge*

it. Therefore, the concerns raised about including Bartlett Cove in the proposed incorporation boundaries may be somewhat overstated.

**3. Application of the Second Boundaries Standard - The Boundaries Must Include Only That Territory Comprising a Present Local Community, Plus Reasonably Predictable Growth, Development, and Public Safety Needs During the 10 Years Following the Effective Date of Incorporation.**

**(a) Views of the Petitioner.**

The Petitioner stated several times in its Petition that the territory proposed for incorporation is exactly the same as that approved by the LBC in its 1997 Statement of Decision.<sup>21</sup>

**(b) Public Comments.**

The public comments received are summarized under the first boundaries standard, section B2(b) of this chapter.

<sup>21</sup> LBC *Statement of Decision re Petition for Incorporation of the City of Gustavus, June 6, 1997*, hereinafter "LBC 1997 Statement of Decision."

**(c) Analysis by DCED.**

The 1996 petition for incorporation requested a city boundary of nearly 144-square miles, which stretched from Glacier Bay in the east, Excursion Inlet in the west, and Icy Strait in the south. That territory was reduced significantly to 39.25 square miles by the LBC, which found:

The nearly 144-square mile area proposed for incorporation by the Petitioners includes territory that is beyond both the present community of Gustavus and the area of reasonably predictable growth, development, and public safety needs for the next ten years.

It should be noted that a vicinity of potential growth and development which was excluded by the LBC in 1997 and by the Petitioner in its current petition for incorporation is the Falls Creek area located to the east of the territory proposed for incorporation. This territory has been cited as having the potential for development of a private hydroelectric facility that could supply power to Gustavus. However, in 1997 the LBC determined that:

[T]he prospect for such development has not been adequately demonstrated to warrant the inclusion of the territory at this time. In the event that development of

that area appears imminent, the area may be annexed to the City of Gustavus in the future.

**4. Application of the Third Boundaries Standard - The Boundaries Must Exclude Entire Geographic Regions or Large Unpopulated Areas, Except Where Justified by the Application of All of the Incorporation Standards.**

**(a) Views of the Petitioner.**

The Petitioner addressed this standard under Ex. H of the Petition by stating the following:

There are no large undeveloped, unpopulated areas within the proposed city boundaries. Some of the more remote areas are poorly drained and unpopulated but within the proposed city area. Those are in the Dude Creek Critical Habitat region and some areas along the Rink Creek road. The area does include a portion of Glacier Bay National Park and Preserve because it is populated and linked by paved highway with the community of Gustavus, which provides postal service, the school, stores, the library, health care, fire & emergency services, and other services to the employees and residents of Glacier Bay National Park and Preserve.

**(b) Public Comments.**

The public comments received are summarized under the first boundaries standard, section B2(b).

**(c) Analysis by DCED.**

In its *Provisional Report to the [LBC] Regarding the Proposal to Incorporate the City of Gustavus, December 1996*, the DCED<sup>22</sup> recommended the inclusion of all State lands within the territory for incorporation with the exception of "those [lands] within the Dude Creek Critical Habitat Area and those in Section 16, T40S, R58E that were set-aside years ago for 'schools' (the latter having no relation to the current school facilities at Gustavus)."

In its Final Report to the LBC dated January 23, 1997, the DCED restated its opposition to those unpopulated vicinities being included in the boundaries of the proposed incorporation. It did note, however:

While [DCED] does not find a compelling reason to extend the western boundary of the territory recommended for incorporation, it is the LBC that will make the final determination concerning the boundaries.

<sup>22</sup> See n. 2.



*Community Chest area in Gustavus*

The *LBC 1997 Statement of Decision* found that the two parts of the territory proposed for incorporation did conform to this particular standard and cited the following rationale for including them:

Testimony and comments from residents of Gustavus demonstrate significant concern over the management of the Dude Creek Critical Habitat Area. There is great interest in the inclusion of that area in the boundaries of the proposed city.

The Alaska Department of Fish and Game has expressed no concern about adverse consequences over the inclusion of the Dude Creek Critical Habitat Area in the territory proposed for incorporation.

AS 16.20.610 specifically mandates a role for Gustavus in the development of the Dude Creek Critical Habitat Area management plan. In enacting that statute, it appears that the legislature rec-

ognized the important interest that residents of Gustavus have with regard to the management of the Dude Creek Critical Habitat Area. Including the Dude Creek Critical Habitat Area in the City of Gustavus' boundaries would give the residents of Gustavus a greater voice in the development of the management plan.

All of Section 16, T40S, R58E, Copper River Meridian, is designated as State lands for educational purposes. Three-quarters of that area is also within the Dude Creek Critical Habitat Area. The one-quarter section that is not within the habitat area is the SW  $\frac{1}{4}$  of the section. That one-quarter section should be included in the proposed city boundaries because, like Mental Health Trust Lands, it too may be managed for revenue generating purposes. Therefore, it is appropriate that the City of Gustavus have some say in any future development in that property.

The Dude Creek Critical Habitat Area management plan is still under development by the Department of Fish and Game. No timeframe has been established for its completion.

**5. Application of the Fourth Boundaries Standard - The Boundaries Must be Contiguous and Without Enclaves to Allow for the Full Development of Essential City Services, Absent a Specific and Persuasive Showing to the Contrary.**

**(a) Views of the Petitioner.**

The Petitioner, in Exs. A and B to the Petition, provides a metes and bounds legal description and map of the boundaries of the territory proposed for city incorporation. The Petitioner again notes that the territory is identical to that approved in 1997 by the LBC.

**(b) Public Comments.**

No public comments were received on this particular standard.

**(c) Analysis by DCED.**

The DCED confirms that the legal boundary description and map of the territory proposed provided in the Petition are identical to the territory approved by the LBC in 1997. The territory is contiguous and without enclaves.

**6. Application of the Fifth Boundaries Standard - If the Boundaries Overlap the Boundaries of an Existing Borough or City, Standards and Procedures for Annexation and Detachment to Existing Boroughs and Cities Must be Applied.**

**(a) Views of the Petitioner.**

This standard is addressed under Ex. H of the Petition, which states:

The boundaries of the newly proposed city do not overlap any other local government entity. Excursion Inlet is the nearest populated area and is presently part of the Haines Borough. No other government entities exist along any boundary of the proposed city.

**(b) Public Comments.**

No public comments were received regarding this standard.

**(c) Analysis by DCED.**

The DCED concurs with the Petitioner that the boundaries of the proposed City of Gustavus do not overlap any other local government entity. The two nearest local governments are the City of Hoonah, located approximately 25 miles to the south, and the Haines Borough, located approximately 6 miles to the east.

**7. Conclusion by DCED.**

Based upon a review of the Petition, written public comment and past proceedings, the DCED concludes that there is a strong presumption that the boundaries approved by the LBC in 1997 remain appropriate today. Given the fact the boundary proposed by the Petitioner is exactly that approved by the LBC in 1997, the DCED concludes that the boundaries of the proposed City of Gustavus include all territory necessary to provide municipal services on an efficient scale and are otherwise in compliance with all applicable standards regarding boundaries.

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**C. Standard Regarding Resources**

**1. The Standard Established in Law.**

AS 29.05.011(a)(3) provides that a proposed city must have the human and financial resources to provide municipal services. Specifically, that law provides in pertinent part:

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

....

(3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the LBC shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

....

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.<sup>23</sup>

In addition, 3 AAC 110.020 provides as follows:

**3 AAC 110.020. RESOURCES.** In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission

(1) will consider

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

<sup>23</sup> As discussed previously, Gustavus requests incorporation as a second-class city.

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

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

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

(E) the economic base of the proposed city;

(F) property valuations for the proposed city;

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

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

(2) may consider other relevant factors, including

(A) land use for the proposed city;

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

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

## 2. Views of the Petitioner.

The Petitioner addresses the resources standard in several sections, most specifically in Ex. H to the Petition. In addition, budget information about the proposed City of Gustavus is provided in Ex. E of the Petition.

The Petition states that the economy of the proposed City of Gustavus includes the human and financial resources to provide essential city services on an efficient, cost-effective level. Further, it asserts that the population of the proposed City of Gustavus is sufficiently large and stable to support a local government. A detailed discussion of the numerous businesses and skilled and unskilled positions in the community is set out in the Petition.

The Petition indicates that the community has a substantial property tax base. However, the Petition proposes that the prospective City will levy only a general sales tax (2 percent) and a bed tax/vacation package tax (4 percent) at this time. It sets out the estimated value of retail sales in the community and the methodologies for calculating sales and bed tax/vacation tax revenues. It also points out the large number of tourists who visit Gustavus each year and the strain that such tour-

ism places on the infrastructure and services currently provided in the community, mostly on a volunteer basis.

The Petitioner addresses the functions, income, and expenses of the proposed City of Gustavus. It also provides details concerning the economic base of the community, which is mainly tourism due to its proximity to Glacier Bay National Park. That tourism is largely seasonal, peaking during the months of May through September.

The services and facilities to be provided by the proposed City of Gustavus are discussed in the Petition. They include library, land-fill, emergency response, road maintenance, and economic development. Those services are now provided by the Gustavus Community Association (GCA), volunteers, or local donation. The Petition also describes a transition plan for the City's acquiring the duties, assets, and liabilities for the operation of these services and facilities.

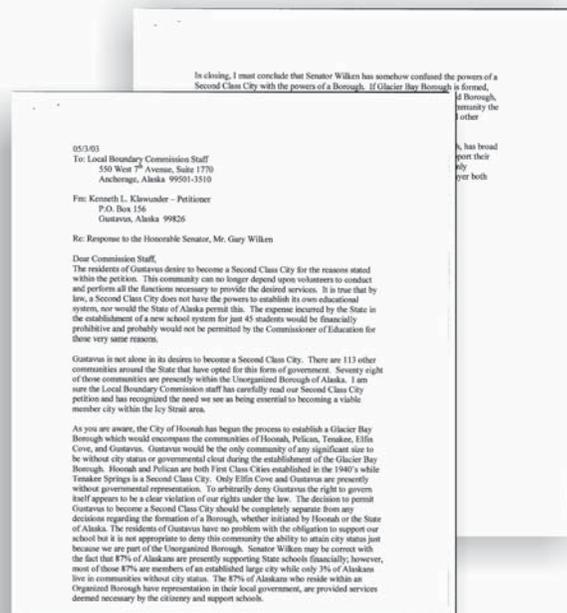
Among the purposes that the Petitioner cited for becoming a second-class city were the need to provide: locally generated revenue for the maintenance, operation, and establishment of capital projects; necessary services for an expanding population; and monies for infrastructure maintenance within the community. The Petitioner stated that the manner in which the various services have been provided in Gustavus, mainly

through volunteer effort, has led to an unfair burden on residents and an increasingly inadequate provision of services. It asserts that the need for incorporation is long overdue.

The Petitioner also addresses problems associated with the lack of land use and planning in Gustavus. It maintains that such problems could be rectified by a government with authority over these matters.

### 3. Public Comments and the Petitioner's Response.

The only comments received by DCED regarding resources were those offered by Senator Gary Wilken urging that the Commission carefully review petitions for incor-



*Petitioner's reply to comments on the proposed incorporation*

poration of second class cities in the unorganized borough. Senator Wilken noted that as a second class city, Gustavus would not have education powers; and, thus, its citizens would not provide financial support for public schools.<sup>24</sup> He advocated the continued pursuit of borough formation for the Glacier Bay area<sup>25</sup> as contemplated by the Commission's *Unorganized Borough Study*<sup>26</sup> and as promoted by Senate Concurrent Resolution Number 12 pending before the Twenty-Third Alaska Legislature. Senator Wilken supports the concept that where communities have the ability to support their schools, the citizens should organize as a municipality with education powers and the authority and responsibility to tax themselves to help support the local public school system.

In response to Senator Wilken, the Petitioner noted that it is not advocating that Gustavus establish its own school system and believes that it would be cost prohibitive to do so. It asserts that while borough formation for the area is being studied, the people of Gustavus should not be denied the right to organize as a second class city with the attendant powers and duties for self-government. The Petitioner opines that the Legislature has the authority to enact taxation to require that all communities, including those in the unorganized borough, provide financial support to their schools and that the issue should not prejudice Gustavus' right to form a local government.

#### 4. Analysis by the DCED.

##### **(a) The Reasonably Anticipated Functions of the Proposed City.**

The Petitioner proposes that the City operate the community's land-fill and library, currently managed by the GCA. It also plans for the City to provide emergency medical and fire-fighting services, currently provided through GER on a volunteer basis. Additionally, the Petitioner proposes that the City will maintain roads and provide for economic development. The Petitioner also discusses the need for planning, platting, land-use regulation, funding for the clinic, funding

<sup>24</sup> The State provides education through Regional Educational Attendance Areas (REAs) to second class cities in the unorganized borough.

<sup>25</sup> Gustavus lies within the Glacier Bay Model Borough.

<sup>26</sup> *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, February 2003, A Report by the Alaska Local Boundary Commission to the Alaska Legislature Pursuant to Chapter 53, Session Laws of Alaska 2002 (LBC Report).

**Table 3-1**

<b>Service or Facility</b>	<b>Date when City will begin service delivery</b>	<b>Organization currently providing service</b>
Gustavus Library	January 1, 2004	GCA
Landfill	January 1, 2004	GCA
GER	January 1, 2004	Volunteers under a non-profit status organization
Road Maintenance	January 1, 2004	Local donation

for the dock and boat harbor. However, the Petition includes no formal commitment to exercise the latter powers.

Gustavus is an unincorporated community in the unorganized borough. Therefore, it has neither the power to provide municipal services nor the authority to generate and collect taxes to pay for such. Moreover, as both DCED<sup>27</sup> and the LBC concluded in a prior proceeding involving incorporation of Gustavus as a second-class city, "it is infeasible for any existing city government to annex Gustavus in order to provide the municipal services desired by its residents,"<sup>28</sup> and "incorporation of a second class city is the only municipal government option that is realistically available to the residents of Gustavus. . . ."<sup>29</sup>

Table 3-1 sets out the services and facilities to be provided by the proposed City of Gustavus, the estimated dates when it would

begin providing the services and facilities, and the organization, if any, that currently provides each service or facility.

As discussed elsewhere in this report, the need for services in Gustavus is growing, while the availability of State financial assistance for such services is declining. The community of Gustavus has a population of 421,<sup>30</sup> but the num-

<sup>27</sup> See n. 2.

<sup>28</sup> DCRA's December 1996 *Provisional Report to the LBC Regarding the Petition to Incorporate by the City of Gustavus*, p. 14. The DCRA did not amend or retract that conclusion in its *Final Report of the DCRA to the LBC Regarding the Proposal to Incorporate the City of Gustavus*, dated January 23, 1997.

<sup>29</sup> *LBC 1997 Statement of Decision*, p. 6.

<sup>30</sup> Source: Alaska Department of Labor and Workforce Development estimates. The Petition, at p. 2, uses the 429-person count from the 2000 Population Figures derived from 2000 U.S. Census.

ber of permanent residents doubles in the summer and about 60,000 tourists visit the locality annually. (Ex. H, p. 2.) The population consists of skilled and professional people needed to support the local government proposed by the Petitioner.

**(b) The Reasonably Anticipated Expenses of the Proposed City.**

In its projected operating budget for the first three full years of operation, (fiscal year (FY) 05, FY 06, and FY 07) the Petitioner provided 15 line items of expenditures. Including economic development, those expenditures totaled \$393,651 for FY 05; \$378,651 for FY 06; and \$378,651 for FY 07. On June 12, 2003, the DCED notified the Petitioner in writing of the Governor's announced vetoes of the funding for the FY 04 State Revenue Sharing, Safe Communities and Capital Project Matching Grant Programs. In its proposed operating budget, the Petitioner had projected revenues totaling \$54,089 annually from those programs. The DCED stated in part:

The loss of \$54,089 annually to the prospective City of Gustavus represents a significant loss of total projected revenues ([13 percent] over three years). While projected revenues, adjusted for the annual loss of \$54,089, still exceed projected expenditures, the margin has shrunk considerably. We would ap-

preciate your comments on how the prospective city government might cope with these circumstances.

In response to DCED's inquiry, on June 18, 2003, the Petitioner revised its proposed three-year operating budget to substantially reflect the Governor's vetoes.<sup>31</sup> Two of the 15 line items were reduced. The Contractual expenditure (defined by the Petitioner as possibly including the Gustavus Community Clinic and Government Consultants) was reduced from \$60,000 to \$40,000 over each of the three years. Also, the Reserve Fund (defined by the Petitioner to be a fund that may be used each year or carried over to the next fiscal year for repair and improvements for landfill, GER, roads, dock and harbor, health clinic and library) was reduced from \$75,000 to \$43,589 over each of the three years. These actions reduced the overall projected operating expenditures (including economic development) to \$343,240 for FY 05; \$328,240 for FY 06; and \$328,240 for FY 07.

<sup>31</sup> The intended cuts identified by the Petitioner total \$51,411, which amounts to 95 percent of the cuts that will result from the vetoes.



*Equipment storage at the Gustavus landfill*

**(c) The Ability of the Proposed City to Generate and Collect Local Revenue, and the Reasonably Anticipated Income of the Proposed City.**

In addition to revising its operating expenses, the Petitioner also revised its projected operating revenues to show the elimination of anticipated funding from the State Revenue Sharing, Safe Communities and Capital Project Matching Grant Programs. This resulted in anticipated revenues (including entire 4 percent bed tax revenues) over the first three full years of \$438,811 for FY 05; \$410,311 for FY 06; and \$385,311 for FY 07. Based on the revised operating budget, the Petitioner projects budget surpluses of \$95,571 in FY 05; \$82,071 in FY 06; and \$57,071 in FY 07.

The DCED has analyzed both the projected expenses and revenues provided by the Petitioner. While the projected expenses overall appear to be reasonable and fairly consistent with municipalities of similar size and circumstance, the DCED recommends that the revenues be adjusted as shown on the following page in

Table 3-2 to more accurately reflect what the proposed city government could expect over the three-year period.

Since the effective date of incorporation would not likely occur until after 2003, the prospective City of Gustavus would not be eligible for fish tax sharing from either the Department of Revenue (DOR) or DCED until FY 06. The DCED also projects that the amount of fish tax sharing from DOR would be closer to \$1,500 rather than \$4,500 based upon historical fish processing activity. The DCED anticipates the City's National Forest Receipts funding to be \$160,000 annually over the first three full fiscal years and its annual PILT payment to be approximately \$43,805. The methodology used by the Petitioner and the corresponding estimates

Table 3-2

	FY 05 Petitioner	FY 05 DCED	FY 06 Petitioner	FY 06 DCED	FY 07 Petitioner	FY 07 DCED
Organizational Grant	\$50,000	\$50,000	\$25,000	\$25,000	\$0	\$0
Revenue Sharing	\$0	\$0	\$0	\$0	\$0	\$0
Municipal Assistance*	\$0	\$0	\$0	\$0	\$0	\$0
Raw Fish Tax	\$4,500	\$0	\$4,500	\$1,500	\$4,500	\$1,500
DCED Fish Tax	\$1,659	\$0	\$1,659	\$1,659	\$1,659	\$1,659
Forest Receipts	\$102,000	\$160,000	\$102,000	\$160,000	\$102,000	\$160,000
PILT**	\$38,850	\$43,805	\$38,850	\$43,805	\$38,850	\$43,805
Capital Matching Grant	\$0	\$0	\$0	\$0	\$0	\$0
Temporary Fiscal Relief	\$3,500	\$0	\$0	\$0	\$0	\$0
2% Bed Tax***	\$49,151	\$49,151	\$49,151	\$49,151	\$49,151	\$49,151
2% Sales Tax	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000
<b>Total Revenues</b>	<b>\$389,660</b>	<b>\$442,956</b>	<b>\$361,160</b>	<b>\$421,115</b>	<b>\$336,160</b>	<b>\$396,115</b>
<b>Total Expenses</b>	<b>\$294,089</b>	<b>\$294,089</b>	<b>\$279,089</b>	<b>\$279,089</b>	<b>\$279,089</b>	<b>\$279,089</b>
<b>Projected Surplus</b>	<b>\$95,571</b>	<b>\$148,867</b>	<b>\$82,071</b>	<b>\$142,026</b>	<b>\$57,071</b>	<b>\$117,026</b>

\* The Petitioner refers to Safe Communities Program funding as "Municipal Assistance," the former name of the program.

\*\* Payment-in-lieu-of-taxes.

\*\*\* The Petitioner formally proposes that the City levy a 4 percent bed tax/vacation package tax. However, the Petitioner plans to share half of the proceeds of that tax with the Gustavus Visitor Association to promote tourism. Consequently, the tax was listed in the Petitioner's budget as a 2 percent tax. It would be more accurate to reflect a 4 percent tax in the revenue portion of the budget with projected expenditures for economic development (funding for the Gustavus Visitor Association) as an expenditure.

for the proposed local Bed Tax/ Vacation Package Tax and Sales Tax revenues appear reasonable and defensible. It is also noted the Petitioner did not include in the operating budget the contract revenues with DOT/PF<sup>32</sup> for the

GER providing the crash-response vehicle at the airport during the summer months. Neither did the Petitioner include an annual public library assistance grant available from the Alaska Department of Education and Early Development. DCED estimates that the library grant would amount to approximately \$6,300 annually.

<sup>32</sup> Department of Transportation and Public Facilities.

Although the Petitioner's proposed operating budgets show projected surpluses (which increase with the incorporation of DCED's recommended revenue projections), the DCED has several concerns with the operating budget as proposed.

As a second class city in the unorganized borough, the City's National Forest Receipts payment would be restricted for expenditure on two categories of services, road maintenance and special projects. The projected \$160,000 annual payment would be based upon the maintenance of 50 miles of public road (the City of Gustavus will first need to provide the DCED adequate documentation, e.g. a scale map, showing their locations and lengths). Approximately \$135,000 must be designated for road maintenance, and the remaining \$25,000 for special projects. Per federal law, eligible "special project" expenditures are:

1. reimbursement for search and rescue and other emergency services, including fire fighting, performed on federal lands and paid for by the municipality;
2. reimbursement for all or part of the costs incurred by the municipality to pay the salaries and benefits of their employees who supervise adults or juveniles performing mandatory community service on Federal lands;
3. acquisition of easements on a willing seller basis to provide for non-motorized access to public lands for hunting, fishing, and other recreational purposes and conservation easements;
4. establishing and conducting forest-related after school programs;
5. educating homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and
6. planning efforts to reduce or mitigate the impact of development on adjacent federal lands and to increase the protection of people and property from wildfires.

Because of the limitations on the use of funds under the National Forest Receipts Program, a significant portion of the annual projected revenues for the City of Gustavus will be restricted to their use, leaving substantially less available to the City for other categories of service. As noted, approximately \$135,000 of the anticipated National Forest Receipts funding may be used only for road maintenance. The Petitioner's budget, however, projects that only \$60,000 will be



*Lodge cabins*

spent annually for road maintenance. The \$75,000 difference would not be available for any other expense. Additionally, as noted, approximately \$25,000 in projected annual National Forest Receipts funding must be used for one or more of the six special project activities listed above. The special project funds may be used for emergency services on federal lands; however, the entire emergency services budget proposed by the Petitioner is only \$10,000. As noted, funds may be used for certain general planning activities. However, planning expenditures included in the Petitioner's budget seem to be for capital project plan-

ning and design. It is unclear what other expenditures projected by the Petitioner might qualify as "special projects."

Of additional concern is the fact that after FY 07 there is a high likelihood that funding under the National Forest Receipts program will be reduced drastically.

Funding under the current National Forest Receipts program is being made under the "Secure Rural Schools and Self-Determination Act of 2000." Under that Act, each state receives an annual payment for fiscal years 02 through 07 based upon each state's highest average three years of payments during 1986 through 1999. For the State of Alaska, the calculation resulted in an annual payment for the Tongass National Forest of just over \$9 million a year. However, after FY 07, the annual National Forest Receipts payment to the State will likely revert back to the formula based on 25 percent of the income generated from the Na-

tional Forest. During the three fiscal years prior to FY 02, the State of Alaska's annual payment for the Tongass National Forest based on the 25 percent formula averaged just \$1.98 million. The City of Gustavus could, therefore, see a reduction in its annual National Forest Receipts payment of nearly 80 percent starting in FY 08.

Finally, as the Petitioner notes, if a borough forms in the area encompassing Gustavus, the City would immediately lose eligibility for both the National Forest Receipts and PILT Programs.<sup>33</sup> While the Petitioner anticipates that a borough would share some of those funds with city governments inside the borough, the newly formed borough would be under no obligation to share any of its National Forest Receipts or PILT revenues with the City of Gustavus. Additionally, the amount of Raw Fish Tax revenues received from the State, based upon the processing occurring



*Tourism plays a major part in the growing Gustavus economy*

within the city, would also be reduced. According to AS 43.75.130(d), the City would receive 45 percent of the taxes collected during the calendar year in which the borough was incorporated, 40 percent in year two, 35 percent in year three, 30 percent in year four, and 25 percent each year thereafter. Absent a corresponding reduction in services, this would result in the City of Gustavus having substantial and increasing deficits.

**(d) The Feasibility and Plausibility of the Anticipated Operating and Capital Budgets Through the Third Full Fiscal Year of Operation.**

Notwithstanding the above concerns with the proposed operating budget, the DCED believes that the three-year operating budget is feasible and plausible. Rather than

<sup>33</sup> That circumstance is one of the many regrettable examples identified by the LBC and DCED as disincentives for the incorporation of borough governments. Whereas Alaska's constitution encourages borough incorporation, the structure of many State programs and services discourages borough incorporation.

allocating expenditures based on a narrow definition of road maintenance costs, the City could legitimately include portions of its general government costs (clerk, accounting, insurance, etc.) that are incurred in support of road maintenance. Moreover, the Petitioner made the following statement in its proposed Transition Plan:

The [GCA] has been the de facto government for the community for almost 26 years. Over the years GCA has received Revenue Sharing, various grants and community donations and has assets of approximately \$100,000. In the near future GCA should also be receiving Glacier Bay Fish Compensation money. The community has already determined that this money will be deposited in a Smith Barney Fund in laddered CD's and will stay there for a period of approximately one year before any decision is made about how this money should be used. It is proposed that upon favorable vote of incorporation, the community association will vote to cease operations and move all assets and liabilities to the City. Money has been budgeted to conduct a formal audit of the GCA books before transfer to the City.

According to correspondence dated July 30, 2003, by the GCA's Compensation Task Force (an ad-hoc group formed to assemble proposals from various community members and present them to the GCA for further action), the National Park Service paid the GCA over \$900,000 as compensation for economic losses from the phase-out of commercial fishing in Glacier Bay. The Compensation Task Force is currently soliciting requests for ideas on how these funds could be used for the betterment of the community. With a favorable vote for incorporation, these funds could be made available to the City along with the other assets of the GCA for the provision of essential services or projects.

### **(e) The Economic Base of the Proposed City.**

Although somewhat seasonal in nature, the economic base of the community of Gustavus is best classified as expanding and sound. With the neighboring Glacier National Park as the foundation, the tourist industry and associated business opportunities should continue to grow and develop. Government jobs, whether State or federal, should remain steady. The community enjoys a relatively high level of property valuation and business activity.

**(f) Property Valuations for the Proposed City.**

On p. 4 of the Petition, the Petitioner provides an overview of its methodology for estimating the value of taxable property of Gustavus. The total value of all real and personal property not exempt from taxation under State law was estimated to be \$107,055,000. This includes \$58,235,000 in land; \$42,870,000 in residential and commercial buildings; and \$5,950,000 in personal property. The valuation does not include the National Park Service headquarters at Bartlett Cove, Glacier Bay Lodge at Bartlett Cove, Mental Health Trust Lands, Cook Inlet Regional Incorporated lands, Alaska DOT/PF or Alaska Department of Natural Resources lands or buildings, or Chatham REAA lands or buildings.

Based upon the above estimates, the proposed City of Gustavus would have a per-capita property value of \$254,287, which would place it with the second highest per-capita property value in the state ranking only behind the North Slope Borough. Within Southeast Alaska, this per-capita value compares with \$93,319 for Juneau; \$42,824 for Hoonah; \$70,937 for Pelican; and \$229,020 for Skagway.

DCED's State Assessor expressed some reservations concerning the estimate of value. Because the Petitioner does not propose that the prospective City of Gustavus will rely on property taxes to fund the operations, no effort was made to refine the estimate of taxable property. However, it appears that the levy of a local property tax would obviously be a viable option for the City.

**(g) Existing and Reasonably Anticipated Industrial, Commercial, and Resource Development for the Proposed City.**

Glacier Bay National Park Maintenance Supervisor Steve Anderson provided the following examples of National Park development projects within the proposed locality of incorporation:

1. recently completed utility upgrades within Bartlett Cove involving electric and water and sewer services (\$3 million);
2. recently completed paving of 4.5 miles of road;
3. current ongoing construction of a new 21,000 square foot maintenance building (\$4 million);
4. planned construction of three new housing facilities;

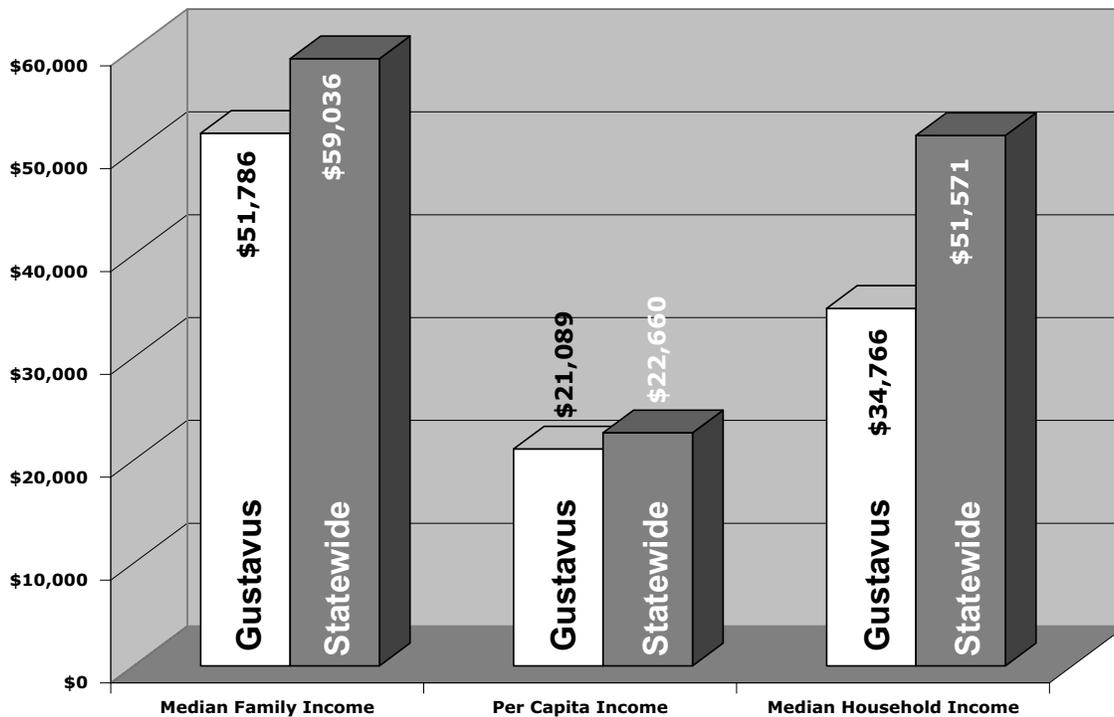


*Gustavus dock at Icy Passage*

5. planned remodel of existing maintenance facility (\$250,000);
6. planned addition to the Headquarters Building (\$1 million);
7. planned construction of a new Visitor Discovery Center (\$7 million).

Additionally, the Petitioner indicates that commercial development in Gustavus could be further enhanced through incorporation of a city government particularly with respect to business activities related to the dock. The Petitioner believes a new city government would be in a better position to rectify the following dock-related problems.

The proposed City of Gustavus, a community very dependent upon the sea, presently finds itself with a very old, inefficient, and ineffective dock. The last engineering survey conducted by DOT/PF found some of the structural members of the dock to be 90 percent rotten. Freight crossing this dock must be of the break/bulk type that is very inefficient. There are few carriers who will come to this community due to the poor facility. The community has no ferry service forcing residents to rely upon the more expensive air travel. Small tours, fishing charters, whale-watching vessels, fishing boats, crab boats, and freight-haul businesses all must compete for space on this limited facility.



**Chart 3-1. Per Capita Income Comparison**

**(h) Personal Income of Residents of the Proposed City.**

According to figures shown in Chart 3-1 from the 2000 U.S. Census, the median family income and per capita income for Gustavus residents was slightly below the statewide averages. However, there was a substantially greater disparity in median household income in Gustavus compared to the entire state. The difference for that measure is attributed to three fundamental population characteristics of Gustavus. First, families make up substantially fewer households in Gustavus (57 percent) compared to the entire state (69 percent). Second, the average number of individuals per household in Gustavus

is 2.16 compared to the statewide average of 2.74. Lastly, in Gustavus, 55 percent of persons at least 16 years of age are employed; the comparable statewide figure is 62 percent. All of those characteristics suggest greater household incomes statewide.

**(i) Land Use for the Proposed City.**

The land within the proposed City of Gustavus contains a wide variety of uses. Real property owners include the Glacier Bay National Park and Preserve, State of Alaska, Alaska Mental Health Trust, Cook Inlet Regional Corporation, and private individuals. Although it

does not appear that the City of Gustavus would immediately assume formal planning powers, the Petitioner recognizes that land use conflicts are an issue that will need to be addressed by the new local government.

The community at present has no formal way of planning or directing growth, or of separating various sorts of land use. There have already been problems between neighbors from intermingling of residential and industrial uses. Such conflicts will become more problematic as human activity in Gustavus increases.

**(j) The Need for and Availability of Employable Skilled and Unskilled Persons to Serve the Proposed City.**

**(1) The Population Consists of Skilled and Professional People Sufficient to Support a Local Government.**

The K-12 Chatham School District school employs 4 teachers and a number of teacher aides. There is a post office and a permanent DOT/PF employee on staff throughout the year. Presently there are 14 lodges or B&B's that provide a full range of accommodations and 18 charter

businesses that provide various tour activities. Most of these businesses operate during the summer months, May through September; however, there are 10 service oriented businesses, 9 professional services, 6 contractors, 3 retail stores, 2 construction contractors, and 5 transport businesses most of which continue activity throughout the year. There are many artists and three art galleries. The Glacier Bay National Park and Preserve employs 55 persons in full-time staff positions, a work force that grows to include 50 additional seasonal workers from May through September. Goldbelt Corporation, the Concessionaire that operates the Glacier Bay Lodge, also employs many workers on a summertime basis. Because the community does not have ferry service, there are four small airlines that conduct scheduled flights



*Glacier Bay Lodge provides seasonal jobs in Gustavus*



*Air Excursions office at the Gustavus airport*

to Juneau each day throughout the year and charter flights on an as-needed basis. In the summer, Alaska Airlines provides daily flight service to accommodate the increase in tourist activity. Further, in addition to the four small airlines that provide year-round services, two other small airlines provide service to Gustavus in the summer. In December 2002, Gustavus formally requested that DOT/PF provide ferry service, build a ferry terminal and construct a docking facility to accommodate roll-on roll-off freight.

**(k) A Reasonably Predictable Level of Commitment and Interest of the Residents in Sustaining a City.**

As was noted earlier, this is the third attempt by residents of the community to incorporate the City of Gustavus. In the last at-

tempt, the incorporation effort was defeated by only two votes. The community has historically benefited from the services of several very well managed organizations including the GCA, Gustavus Public Library, and GER. The DCED has every reason to believe that the new city government would receive a similar high level of commitment and interest from its residents as has been granted those organizations.

## 5. Conclusion by DCED.

It is the conclusion of the DCED that as a second class city in the unorganized borough, the proposed city has the human and financial resources necessary to provide municipal services.



*Wings of Alaska office at Gustavus airport*

## D. Standard Regarding Population Size and Stability

### 1. The Standard Established in Law.

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

**Sec. 29.05.011. Incorporation of a city.** (a) A community that meets the following standards may incorporate as a first class or home rule city:<sup>34</sup>

(4) the population of the community is stable enough to support city government . . .

<sup>34</sup> The standards established in Sec. 29.05.011 also apply to the incorporation of second class cities. While Sec. 29.05.-011(a)(1) requires that the community have 400 or more permanent residents in order to incorporate as a first class or home rule city, no minimum population standard has been established in state statute for the incorporation of a second class city other than the minimum 25 voters required to sign the incorporation petition under AS 29.05.060(12).

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

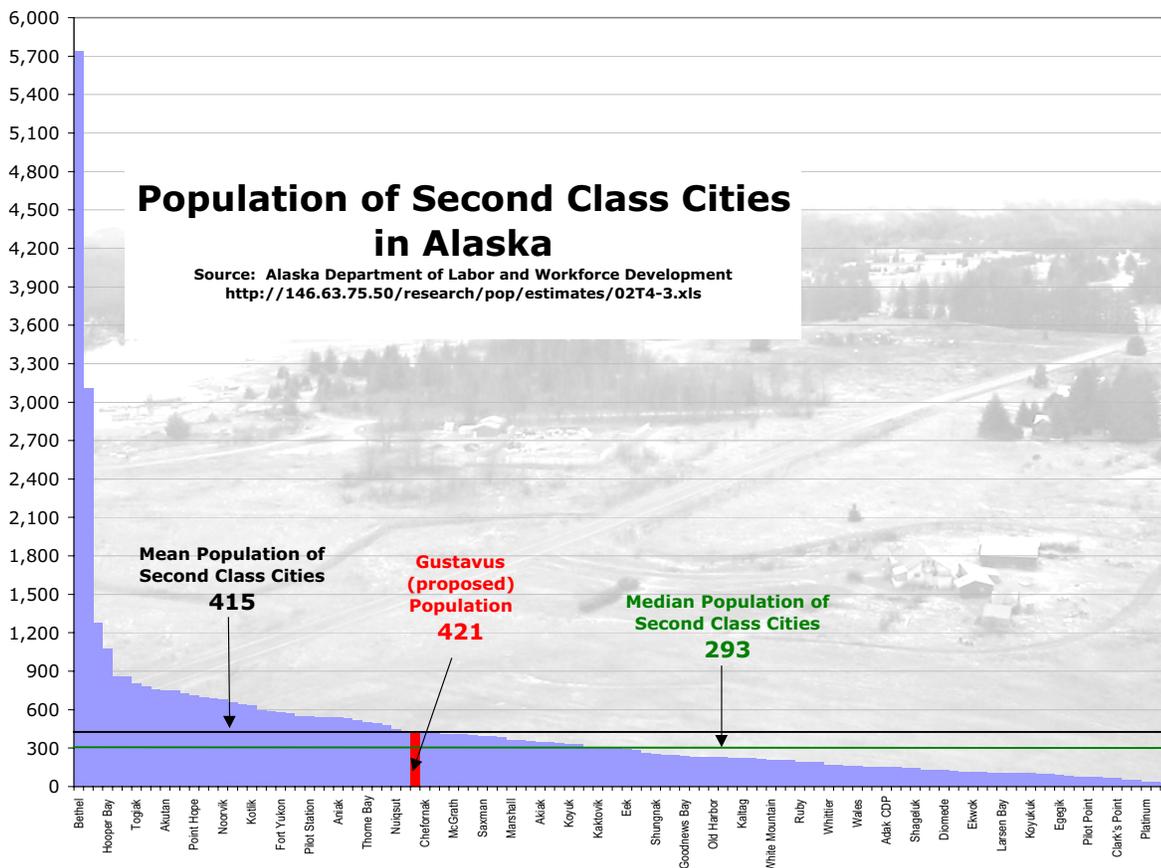
#### **3 AAC 110.030(a).**

**POPULATION.** (a) In accordance with AS 29.05.011, the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumeration;
- (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 p. 1 and under Ex. H of the Petition. On p. 1, the Petitioner states "Our population has greatly expanded in recent years and will continue to expand resulting in a greater need for services and financial resources. The population of Gustavus varies greatly from summer to winter providing many small businesses, tour operators, fishing charters, and lodge owners the opportunity to make substantial profits on a seasonal basis."



**Chart 3-2. Population of Second Class Cities in Alaska**

On p. 22, the Petitioner states “The community of Gustavus has a population of 429 persons in 199 households.”

**3. Analysis by DCED.**

Under the applicable population standards established in administrative code, the DCED makes the following observations.

**(a) Total Census Enumerations.**

The State Demographer estimates that 421 individuals lived in Gustavus in 2002. Comparisons of Gustavus’ population with those

of existing cities for the same period are useful in reviewing the factor at hand. Had Gustavus been incorporated as a city in 2002, it would have ranked as the 64th most populous city government out of what would have been 146 cities. Compared to just second class cities in Alaska (see Chart 3-2), had Gustavus been a city last year it would have ranked in the top one-third (36th out of what would have been 114 second class cities). Narrowing the field to just second class cities in the unorganized borough, had Gustavus been incor-

porated, it would have ranked as the 27th most populous such city in the unorganized borough out of a total of 80 second class cities.

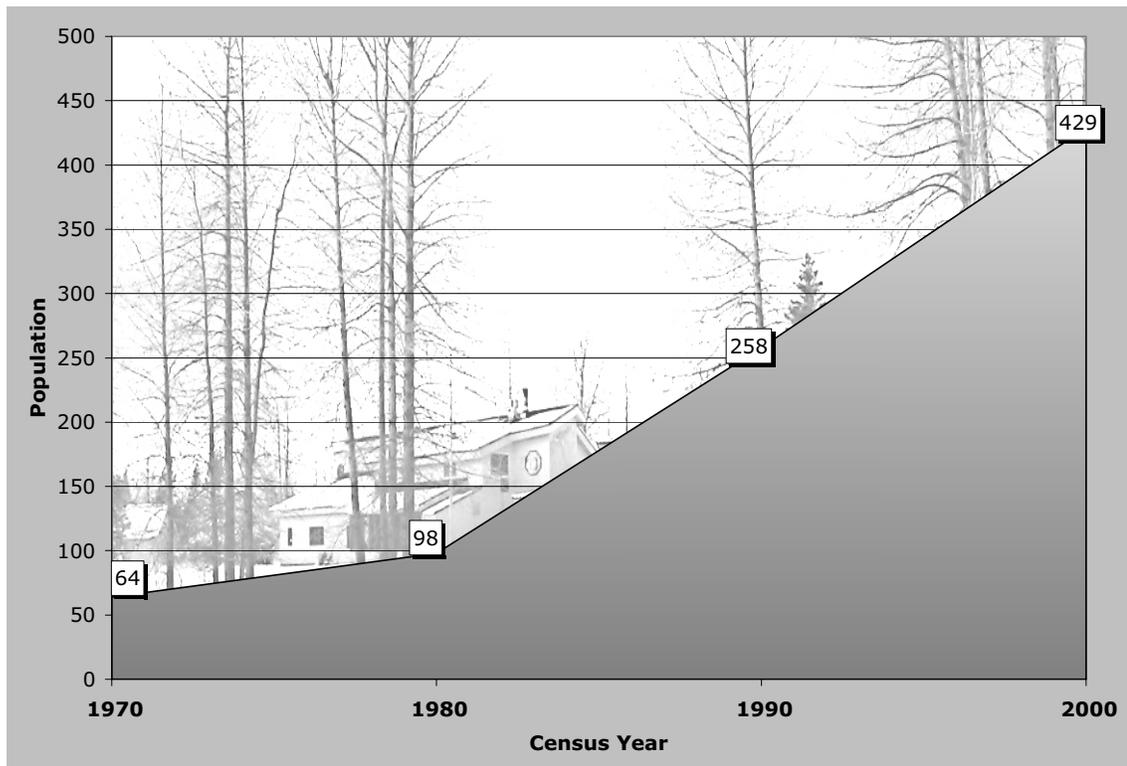
### **(b) Durations of Residency.**

Housing characteristics found in the U.S. Census data provide useful information on the durations of residents in Gustavus. According to the 2000 Census, 77 percent of the 199 occupied homes in Gustavus were inhabited by their owners, a percentage well above the statewide average owner-occupied housing rate of 62.5 percent. The 1990 Census found 101 occupied homes with 70 percent inhabited by their owners.

### **(c) Historical Population Patterns.**

Although it has been in a population growth plateau over the past three years, the community of Gustavus has experienced, in relative terms, a tremendous population growth over the last 30 years. Gustavus expanded from a community of 64 residents in 1970 to 429 residents in 2000, an increase of over 570 percent. The federal census figures for the community since 1970 are shown in Chart 3-3.

More recently, as noted above, the community's population has leveled off. According to estimates provided by the State Demographer,



**Chart 3-3. Gustavus Population Growth 1970 - 2000**

the community's population has decreased negligibly over the past two years from 429 in 2000, to 422 in 2001, and 421 in 2002.

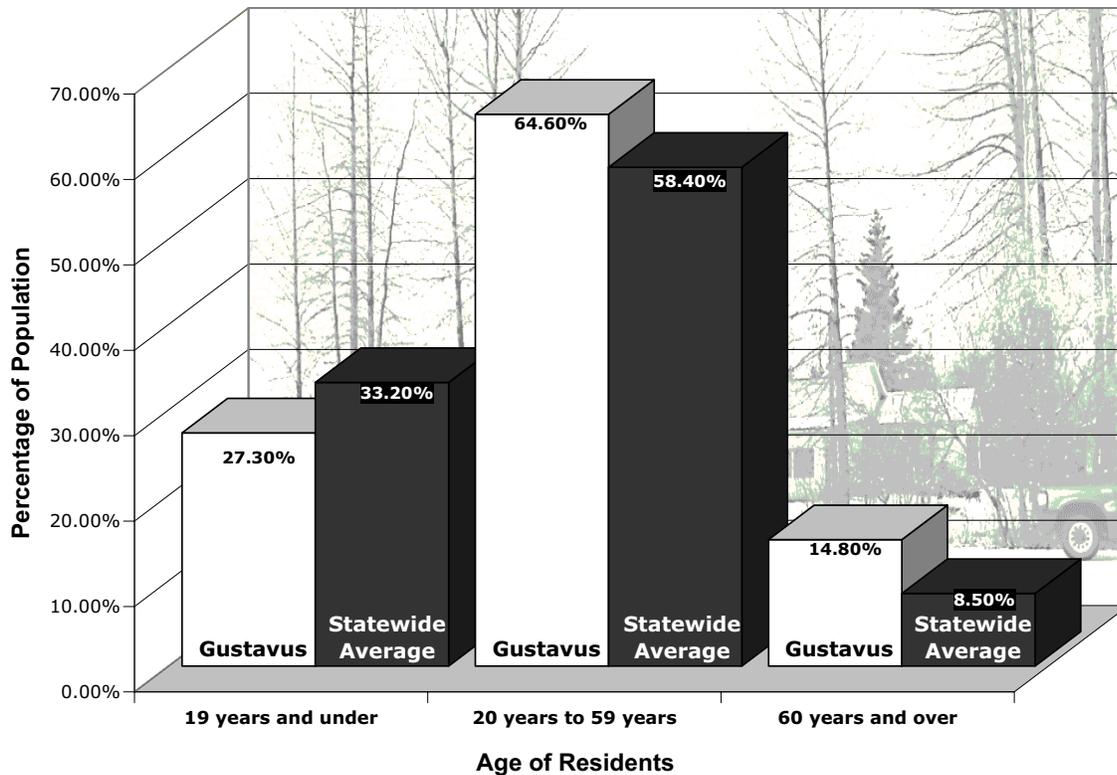
**(d) Seasonal Population Changes.**

At the time of the 2000 Census, the rental vacancy rate in Gustavus was 8 percent, nearly equivalent to the statewide average of 7.8 percent. The 2000 Census also reported that 146 or 42 percent of the 345 total housing units in Gustavus were vacant. Seasonal use was attributable to 60 or 41 percent of the vacancies. In 1990, more housing units were vacant than were occupied. Of the 218 total housing units, 117 or 54 percent were vacant. While the

latter two vacancy figures are significantly higher than the statewide average, there was a marked decrease in the overall vacancy rates from 1990 to 2000 even though the total number of housing units increased by over 58 percent.

**(e) Age Distributions.**

The community of Gustavus has a somewhat more aged population than the state as a whole. In 2000, the median age for a resident of the community was 40.3 years. This is 24 percent higher than the statewide average of 32.4 years. This is further illustrated under three age-group brackets: 19 years and under; 20 years to 59 years; and 60 years and over in Chart 3-4.



**Chart 3-4. Median Age Comparison**

#### 4. Conclusion by DCED.

Based on the above analysis, the DCED concludes that the community of Gustavus clearly has a population that is sufficiently large and stable enough to support the proposed Gustavus city government.

### E. Standards Regarding Need for City Government

#### 1. The Standards Established in Law.

State law provides two distinct city incorporation standards regarding the need for city government. The first requires the showing of a need for city government. Specifically, AS 29.05.011 provides that a community may incorporate as a city only if “there is a demonstrated need for city government.” The provisions of 3 AAC 110.010(a) implement, interpret, and make specific that statutory standard. The regulation provides that, “In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government.” It also states that the LBC may consider “relevant factors” in determining whether the standard is met. It lists four specific factors among the theoretically limitless number of relevant factors that the LBC may consider. The four listed factors relate to: (1) social or economic conditions, (2) health,

safety, and general welfare conditions, (3) economic development, and (4) adequacy of existing services.

The second standard regarding the need for city government is found in AS 29.05.021. It relates to the capacity of an existing municipality to serve the needs of the community. Different standards apply to a proposed city in the unorganized borough compared to one within an organized borough. The standard applicable in this case – the proposed formation of a city government in the unorganized borough – is found in subsection (a) of that statute.<sup>35</sup> It provides that, “A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.” AS 29.05.021 is implemented, interpreted, and made specific by 3 AAC 110.010(b). It provides as follows:

<sup>35</sup> AS 29.05.021(b) applies to proposals for incorporation of a city within an organized borough. In addition to considering whether needed services can be provided through annexation to an existing city, AS 29.05.021(b) requires consideration whether needed services can be provided by the organized borough of which the proposed city government is a part.



*Boats along the Salmon River at Gustavus*

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

## **2. Views of the Petitioner.**

The following summarizes the views of the Petitioner regarding the two standards relating to the need for city government.

### **(a) Demonstration of Need for City Government.**

The Petitioner states that the need for city government in Gustavus is evident in several factors. These include: (1) strains on community resources stemming from significant economic development and growth in the permanent population since the 1980s; (2) difficulty coping with demand for services stemming from the significant summer population increase and influx of summer visitors; (3) the need for a legal structure to generate revenue and reduce service delivery costs; (4) the lack of adequate community port and harbor facilities; and (5) the absence of

community planning and land use regulation. Details concerning the views of the Petitioner are provided below.

(1) Strains on Community Resources Stemming from Significant Economic Development and Growth in the Permanent Population Since the 1980s.

The Petitioner asserts that Gustavus has experienced substantial economic development and significant population growth for the past two decades. Specifically, the Petitioner states as follows:

Many of the residents who have relocated here recently chose Gustavus for the lifestyle, the nearness to natural resources, the beauty of the area and for subsistence reasons. Lodges, B & B's, fishing charters, and tours of all types were rapidly established due to the influx of tourists to the region



*Gustavus Inn*

starting in the 1980's and this growth continues. Glacier Bay National Park continues to expand, providing many new federal employment jobs, as well as contract labor jobs. (Ex. H, p. 2.)

(2) Difficulty Coping with Demand for Services Stemming from the Significant Summer Population Increase and Influx of Summer Visitors.

The Petitioner indicates that public service providers in Gustavus, who are mostly volunteers, are hard pressed to continue to effectively provide essential services and facilities such as the landfill, library, fire protection, rescue services, health clinic, roads, economic development, and airport. Specifically, the Petitioner states:

During the months of May through September, the population of Gustavus increases dramatically with summertime residents returning, small businesses resuming work, and the influx of the many tourists who visit the area. Permanent residents of Gustavus number approximately 429, however, the number doubles in the summer. In addition to the residents, approximately 60,000 tourists visit this small community annually. This condition greatly taxes the infrastructure and the fragile services that are mostly provided by volunteers. The Landfill, Library, [GER], clinic, roads, airport, and small dock



*Salmon River at Gustavus*

in Icy Passage are all pressed to the limit of their function. A small community attempting to provide all these services through volunteers, donations and small grants has led to inequitable pressure on the permanent residents and increasingly inadequate provision of services. The need for incorporation is long overdue. (Ex. H, p. 2.)

(3) Need for a Legal Structure to Generate Revenue and Reduce Service Delivery Costs.

The Petitioner expresses the view that City status provides a legal structure that enables the community to generate revenue and reduce service delivery costs. The Petitioner states in this regard:

Gustavus currently has Gustavus Emergency Response (combined fire and ambulance service) for emergencies, and a clinic with a physician's assistant, both of which are incorporated as non-profit agencies. The [GER] maintains its budget by running the crash-response vehicle at the airport during the summer months on contract with [DOT/PF]. The in-

come from this service is inadequate to cover insurance and other fixed operating costs. Second Class City status would permit GER and other non-profit agencies to enter an insurance pool, receive funding from the City of Gustavus, and seek other grants that would permit expansion of their functions to further protect life and property in the area. (Ex. H, p. 2.)

(4) Lack of Adequate Community Port and Harbor Facilities.

The Petitioner asserts that the condition of the community's dock restrains efficient and effective commerce. The views of the Petitioner regarding the dock are summarized in section C4(g) of this chapter.

Additionally, the Petitioner notes that residents make frequent use of small boats for transportation, but that the community lacks a boat harbor. Specifically, the Petitioner states the following:

Gustavus presently has no boat harbor. Small boats are now run up the Salmon River during high tides and permitted to go dry on the beach in a haphazard fashion. Some are attached to small docks

that are placed in the river and attached to shore. These docks also go dry at low tide and consequently alter the flow of river water. There are no regulations or controls over what is presently done on the river and there is no maintenance of the area or the boat ramp that is almost unusable. (Ex. H, p. 3.)

**(5) Absence of Community Planning and Land-Use Regulation.**

The Petitioner indicates that the community has no way of resolving land use conflicts absent local government. The Petitioner expressed the following views regarding this matter:

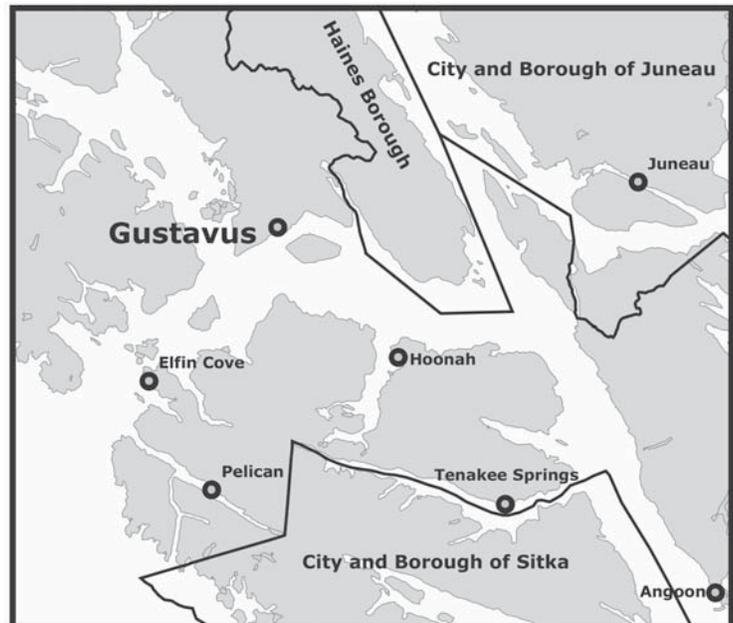
The community at present has no formal way of planning or directing growth, or of separating various sorts of land use. There have already been problems between neighbors resulting from intermingling of residential and industrial land uses. Such conflicts will become more problematic as human activity in Gustavus increases. (Ex. H, p. 3.)

**(b) Capacity for Existing City Governments to Serve Gustavus.**

The Petitioner expresses the view that the isolated nature of Gustavus renders the prospect of the delivery of services to the

community by an existing city government impractical. Specifically, the Petitioner states as follows:

Gustavus is almost alone on the north side of Icy Strait except for a small, unorganized community of residents in Excursion Inlet, presently part of the Haines Borough. Gustavus is not linked to any of the other communities in Icy Strait by ferry service, making even casual contact an expensive proposition. Hoonah, a First Class City on Chichagof Island, is 25 miles south of Gustavus across Icy Strait. There are no governmental entities in the area that could in any way assist the people of Gustavus in finding solutions to its problems.



Map 3-1. Gustavus and surrounding communities



*Gustavus landfill*

In the [LBC's 1997 Statement of Decision] on page 9 in the Findings & Conclusions states that, 'The prospect that local service needs in Gustavus could be satisfied by any existing city government is clearly implausible. Hoonah is the nearest city government to Gustavus.' (Ex. H, p. 3.)

### 3. Public Comments.

Among the timely written comments on the Petition, the views of one correspondent, in particular, focused on the need for city government. Paul Berry, who has managed the Gustavus landfill for nine years, expressed the following views in his letter of April 29, 2003:

I see challenges for the community such as coming up with a program for the small but constant flow of house-

hold hazardous wastes going nowhere due to lack of funds or assistance. Gustavus also has no means of treating septic tank pumpings or septage, there is no treatment facility for bio-solids in this community. Solutions can and do come through an un-incorporated community but there are more 'tools' available to an incorporated community. These examples are only a few of the challenges the municipal side of our community faces yet we have to tackle them with our limited, though effective, non-profit community association toolbox as it were.

Incorporation will not solve any problems in itself, solutions will always come from talented people, but incorporation would give us better tools to work with. It will create new challenges and pitfalls that greater power and responsibility always brings but I like to think we're up to it.

### 4. Analysis by DCED.

#### **(a) The Need for City Government in Gustavus.**

##### *(1) Social or Economic Conditions.*

In terms of "social conditions," the LBC determined in 1997 that Gustavus exhibited a need for city government, in part, due to the size of its population. Specifically,

the LBC made the following finding in support of its conclusion that a need for city government had been demonstrated:

Gustavus is a relatively populous unincorporated community (357 residents according to a census conducted in November of 1995). (*LBC 1997 Statement of Decision*, p. 9.)

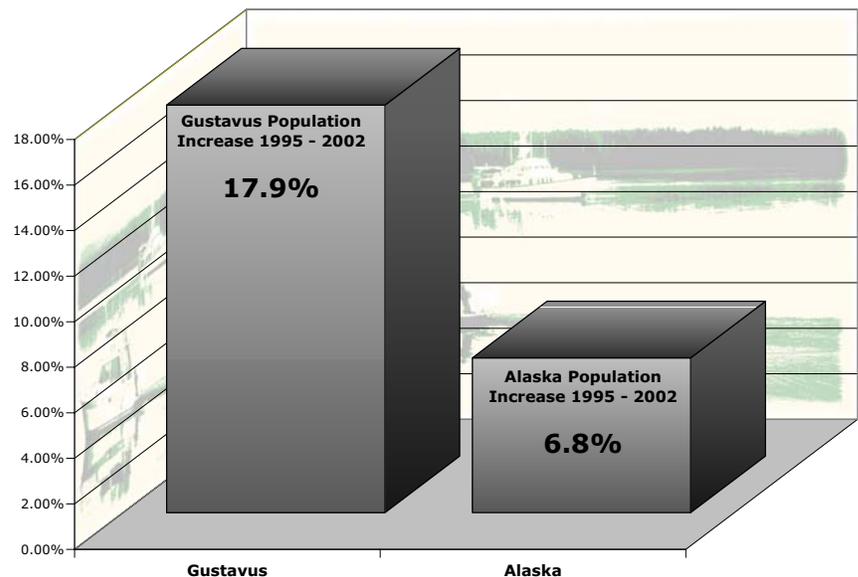
Contemporary population characteristics of Gustavus support an even stronger conclusion that there is a need in the community for municipal government (either incorporation as a city government and/or inclusion within a regional borough). Since the LBC's prior determination, the population of Gustavus has grown from 357 in 1995 to 421 in 2002, an increase of 17.9 percent.

The rate of population growth in Gustavus from 1995 to 2002 was more than two and one-half times greater than that of the state as a whole. Compared to the 17.9 percent growth in Gustavus, the population of Alaska grew by 6.8 percent during the same interval (602,897 in 1995 to 643,786 in 2002).

In 1997, Gustavus was the sixteenth most populous unincorporated community in the unorganized borough. Today, it holds ninth place in the ranking of most populous unincorporated communities in the unorganized borough.

The current estimated population of Gustavus exceeds that of 81 of Alaska's 145 city governments. In other words, there are more residents in Gustavus than in over half (56 percent) of the existing city governments in Alaska. The population of Gustavus is approximately 10 percent greater than the median population of all incorporated communities in Alaska.

As the Petition generally indicates, in relative terms, the population of Gustavus has grown very significantly during the past two de-



**Chart 3-5. Population Change Comparison 1995-2002**

ades. Specifically, in 1980, 98 people inhabited Gustavus. Ten years later, that figure had increased to 258, a 163 percent increase. In comparison, the population of Alaska and the nation increased, respectively, by 36.9 percent and 9.5 percent during the same 10-year period.

From 1990 to 2002, the population of Gustavus grew by 63 percent. In contrast, during the same 12-year interval, the population of the state increased by 17 percent and the population of the country grew by nearly 16 percent. Stated in other terms, the population growth in Gustavus outpaced that of the state and nation by more than three and one-half times during the period in question.

In terms of “economic conditions,” it is perhaps most noteworthy that as State government leaders continue to take measures to resolve the State of Alaska’s “fiscal gap”, State financial aid to local communities continues to decline. In 1997, the LBC found that there was a need for city government in Gustavus, in part, because of reductions in State assistance. Specifically, the LBC found that:

State funding for direct and indirect services in unincorporated communities in the unorganized borough has declined significantly. Since Fiscal Year 1987, State Revenue Sharing funding for unincor-

porated communities has declined by more than [70 percent] when adjusted for inflation. (*Id.*, p. 9.)

Currently, funding for State Revenue Sharing, Safe Communities, and State Capital Matching Grants has been eliminated altogether.<sup>36</sup> The Petitioner had originally anticipated that the prospective City of Gustavus would receive \$54,089 annually from those three programs. The loss of the anticipated State funding increases the need for city government because of the ability of cities to generate funds locally through taxes such as those proposed to be instituted by the prospective City of Gustavus. In Alaska, only the federal government, State of Alaska, borough governments, and city governments enjoy taxing authority.

<sup>36</sup> The State of Alaska will, however, pass through federal funds during FY 2004 to municipalities and unincorporated communities in the unorganized borough. The funds are intended to partially offset the loss of State funds and to facilitate the financial transition associated with the loss of State funding.

(2) Health, Safety, and General Welfare Conditions.

In 1997, the LBC concluded that Gustavus exhibited a need for city government partly due to health, safety, and general welfare conditions. In that regard, the LBC made the following three findings:

Gustavus has an exceptionally high water table and a fragile aquifer; but lacks provisions for sewage management. . . .

There is no platting authority in the unorganized borough.

On July 1, 1996, [ADEC] ceased all environmental/public health oversight of subdivision plans in Alaska. For many years prior to that, the agency performed plat reviews to ensure that subdivisions were designed in a manner that each lot had sufficient size and suitable conditions to allow water and sewage disposal systems that were adequate to protect public health. (*Id.*, p. 8.)

The Petitioner addresses matters relevant to public health, safety, and welfare in that portion of its Brief dealing with the standard regarding inclusion of all necessary areas within the proposed jurisdictional limits of the prospective city. Specifically, the Petitioner states as follows:

The community of Gustavus is situated on a very flat glacial out-wash plain formed during the Little Ice Age by the rock, sand, and silt carried by the waters of the melting ice and glaciers as they receded from the area. The soil is very thin due to a very short period of being exposed to weathering and the soil producing plant life of the area. . . .

There are, however, shortcomings of this flat sandy soil. . . . Septic systems for homes in those poorly drained areas are themselves poorly drained and many times demand a raised septic tank and drain field. Poor drainage and the raised water table presents a threat to the safety of drinking water in areas with a condensed population raising the desire for sewer facilities that are not possible without an incorporated city. (Ex. H, pp. 4 and 5.)

The Petition does not formally propose that the prospective City of Gustavus construct and operate a sewer system. Nevertheless, city status would increase the feasibility of a sewer system if the community wishes to pursue one.

As noted above, the LBC determined in 1997 that a need existed for city government in Gustavus, in part, because there was no platting authority in the unorganized borough. The following year, the State Legislature designated the Alaska Department of Natural Resources

(DNR) as the platting authority in areas of the state not within a municipal platting authority. (AS 40.15.070.)

DCED and DNR share the view that vital functions like platting are best carried out at the community or regional level. The platting functions provided by the Department of Natural Resources are quite restricted under State law. For example, the Department of Natural Resources does not consider engineering standards, soils, water tables, lot sizes, road standards, or other characteristics that relate to public health and safety. Instead, the Department of Natural Resources simply ensures that legal access is provided for all properties and that survey, plat, and monumentation meet minimum standards. It also requires a title review to insure that all interest holders of the property sign the plat.

The Petition does not propose that the prospective Gustavus city government exercise platting powers to impose local property subdivision standards. However, as a city government, it could do so if the local officials chose to exercise such powers.

### *(3) Economic Development.*

In its 1997 decision, the LBC found that Gustavus would likely experience continued growth and development. That finding supported

the Commission's determination that a need for city government existed. In this regard, the LBC stated:

Gustavus is faced with the prospect of continued growth and development. Its population has increased by more than 4½ times since 1970. Earlier this year, renewed interest was expressed by an out of state developer in a proposal to construct a resort with more than 110 rooms and cabins on 137 acres in Gustavus.

While the proposed 110-room and cabin facility known as the Sandhill Crane Resort never materialized, Gustavus has continued to experience significant growth and development since its last incorporation effort. As noted earlier, the rate of development (measured in terms of population growth) has greatly outpaced that of both Alaska and the nation.

### *(4) Adequacy of Existing Services.*

Article X, Section 1 of the Constitution of the State of Alaska promotes "maximum local self-government." Specifically, the constitutional provision states as follows:

#### **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 dupli-



*Gustavus school*

cation of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units (emphasis added).

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*, 518 P.2d 92, 101 (Alaska 1974), the Court stated with regard to boroughs that "Our constitution encourages their creation. Alaska const. art. X, § 1."

DCED takes the view that the constitutional provisions regarding maximum local self-government with a minimum of local government units are best achieved through borough formation. How-

ever, absent an organized borough, "maximum local self-government" is achieved through incorporation of a city government.

Ironically, establishment of city governments in the unorganized borough likely impedes formation of organized boroughs over the long-term. As noted in Chapter 1, city governments are prolific in the unorganized borough.<sup>37</sup> If city governments meet the need for local government services, even only partially, borough government opponents typically cite that circumstance as a reason not to form

<sup>37</sup> While the unorganized borough is inhabited by roughly 13 percent of the state's population, it encompasses two-thirds of the city governments in Alaska.

organized boroughs. (See *Alaska's Urban and Rural Governments*, Thomas A. Morehouse, Gerald A. McBeath, and Linda Leask, 1984, p. 43.)

The lack of borough government in unorganized regions that have the fiscal and administrative capacity to sustain regional government is the subject of growing debate among legislators.<sup>38</sup> With the exception of the 1963 Mandatory Borough Act, the State of Alaska has maintained a laissez-faire policy regarding borough formation. Given that circumstance, it would seem unjust to consider the adverse effect that city incorporation may have on the prospect for borough formation over the long-term.

Currently, residents of Gustavus must rely on non-municipal entities to provide fundamental public services in the community. Current service providers include the

State of Alaska, Chatham REAA, Gustavus Community Clinic, Inc., Gustavus Visitor Association, GCA, and GER.<sup>39</sup>

If a city government were formed, it would establish an entity to provide a broad range of fundamental services as noted in Chapter 1. That entity would have the capacity to provide essential services and facilities including the landfill, library, fire protection, rescue services, health clinic, roads, dock, boat harbor, airport, planning, platting, land use regulation, economic development, and other services.

<sup>38</sup> For example, Senate Concurrent Resolution Number 12, sponsored or co-sponsored by 45 percent of the members of the Alaska Senate, proposes that the LBC consider borough incorporation, subject to review by the legislature under Article X, Section 12 of the State constitution, for four unorganized regions. Gustavus is included in one of those four regions (Glacier Bay Model Borough).

<sup>39</sup> The Petition indicates (Ex. H, p. 2) that GER is incorporated as a nonprofit agency. However, according to DCED staff at the Division of Banking, Securities, and Corporations, GER is not incorporated under the laws of the State of Alaska. It is registered with the State Fire Marshall under 13 AAC 52.030. However, such registration does not convey organizational status to GER. If incorporation of the proposed city occurs, the Petition indicates that the City of Gustavus will provide fire protection and emergency medical services. However, if the incorporation proposal fails, GER will presumably continue to provide fire protection and emergency medical services. It would seem best for the community to formalize the organizational status of GER in that eventuality (if not before).

Regarding the transportation needs of the community outlined in the Petition, Andy Hughes, Planning Chief for the Southeast Region of the Alaska DOT/PF, confirmed that the Gustavus dock is an aged and deteriorating facility with load limitations that impede operations at the dock. He noted, however, that the facility probably has a projected remaining useful life of 10 – 15 years. He stressed that it would be very expensive (\$10-\$12 million) to replace the dock at its current location. The high cost is associated with the length of the structure and extensive piling that would be required.

Mr. Hughes enthusiastically welcomed the prospect of a Gustavus city government. He noted, in particular, that DOT/PF intends to undertake a study of the dock, boat harbor, and Marine Highway needs of Gustavus. Mr. Hughes expressed the view that formation of a city government in Gustavus would greatly facilitate that transportation planning effort. (Personal communication, August 13, 2003.) That view is consistent with those expressed in the Petition.

**(b) The Capacity for an Existing City Government to Serve the Needs of Gustavus Residents.**

As noted earlier, the existing city government nearest to Gustavus is the City of Hoonah. Hoonah is approximately 25 miles south of

Gustavus across Icy Strait. The substantial distance between the two communities alone strongly suggests that annexation of Gustavus to the City of Hoonah is not a viable option. In that regard, it is stressed that standards for annexation, specifically, 3 AAC 110.130(d), provide as follows:

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.<sup>40</sup>

DCED cannot conceive of circumstances under which the annexation of the large unpopulated expanse between Gustavus and Hoonah could be justified under 3 AAC 110.090 – 3 AAC 110.135. Moreover, as noted earlier, in 1997, the LBC was unambiguous about the capacity of the Hoonah city government to serve the needs of Gustavus:

The prospect that local service needs in Gustavus could be satisfied by any existing city government is clearly implausible. Hoonah is the nearest city government to Gustavus. Even so, Hoonah

<sup>40</sup> 3 AAC 110.090 – 3 AAC 110.135 establishes standards for annexation to cities.

and Gustavus are relatively distant and inaccessible to one another. (*LBC 1997 Statement of Decision*, p. 10.)

## 5. Conclusion by DCED.

DCED concludes that it is evident from the foregoing that the standard set out in AS 29.05.011(a)(5) and 3 AAC 110.010(a) is satisfied because there is clearly a need for city government in Gustavus. Such a need exists with regard to the community's landfill, library, emergency medical service, fire-fighting service, road maintenance and economic development (funding for the Gustavus Visitor Association). Responsibility for those services will be assumed immediately by the Gustavus city government. There is also a need for planning, platting, land-use regulation, clinic funding, support for the dock and funding for a future boat harbor. As the prospective local government matures, it may take on added responsibilities to meet those other needs.

DCED also concludes that it is equally evident that the standard set out in AS 29.05.021(a) and 3 AAC 110.010(b) is satisfied in that there is no existing city government with the capacity to serve the local needs of Gustavus through annexation.

## F. Standard Regarding Best Interests of the State

### 1. The Standard Established in Law.

State statutes permit the LBC to approve a city incorporation proposal only if the Commission concludes that it will serve the best interests of the state. Specifically, the statute provides as follows:

**AS 29.05.100. Decision.** 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 (emphasis added).

The Commission has adopted regulations to define *best interests of the state*, which provide:

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



*Letter from Senator Wilken regarding the Gustavus incorporation proposal*

- (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 city in the event of the city's dissolution.

## 2. Views of the Petitioner.

The Petitioner maintains that the best interests of the State are served by approval of the Gustavus city incorporation proposal. The Petition (at Ex. H, p. 6) states:

The incorporation of the city of Gustavus will provide an entity with whom the State government agencies may contact and with whom those agencies may enter into contractual agreements. The city of Gustavus will take ownership of and provide maintenance for those facilities that support the community as rapidly as the city can assume that responsibility.

## 3. Public Comments and Petitioner's Response.

The only comments received by DCED regarding the best interests of the state were those offered by Senator Gary Wilken urging that the Commission carefully review petitions for incorporation of second class cities in the unorganized borough. As discussed more fully in other sections of this report, Senator Wilken's concerns arise from such second class cities not having education powers and, thus, not providing financial support for public schools. Senator Wilken supports the concept that where viable, citizens should organize as

a municipality with education powers and the authority and responsibility to tax themselves to help support the local public school system. DCED shares that view. In this instance, that would be borough formation for the Glacier Bay area.

In response to Senator Wilken, the Petitioner noted that while borough formation for the area is being studied, the people of Gustavus should not be denied the right to organize as a second class city with the attendant powers and duties for self-government. They note correctly that the Legislature has the authority to enact taxation to require that all communities provide financial support to their schools and that the educational issue should not prejudice Gustavus' right to form a local government.



*Gustavus school gym*

#### 4. 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 with a minimum of local government units.

##### **(a) Promotion of Maximum Local Self-Government with Minimum of Local Government Units.**

Article X, Section 1 of the Constitution of the State of Alaska provides as follows:

##### **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 (emphasis added).

As discussed under *Need for City Government, supra*, the principles underlying the Alaska Supreme Court's rulings regarding maximum local self-government with a minimum of local government units apply to city incorporation, particularly if the proposed city is in the unorganized borough.

Gustavus is an unincorporated community in the unorganized borough. DCED concurs with the Petitioner's assessment that, "There are no governmental entities in the area that could in any way assist the people of Gustavus in finding solutions to its problems." (Petition, Ex. H, p. 3.)

As the Commission itself concluded in 1997 when ruling on the 1996 Petition for Incorporation of the City of Gustavus,

[T]he Commission finds that:

1. Gustavus is an unincorporated community within the unorganized borough. As such, it has no structure for delivery of municipal services.
2. While there is some measure of interest in forming an organized borough in the Glacier Bay region, incorporation of a second class city is the only municipal government option that is realistically available to the residents of Gustavus at this point.

Conclusion: Based on the above findings, the Commission concludes that incorporation of the City of Gustavus will promote the principles of



*Beartrack Store in Gustavus*

maximum local self-government with a minimum of local governmental units set forth in Article X, § 1 of Alaska's constitution.<sup>41</sup>

Those findings and conclusion regarding incorporation of Gustavus are just as valid today as they were in 1997.

**(b) Relief from Providing Local Services.**

Another factor in analyzing the best-interests standard is whether incorporation will relieve the State of the responsibility of providing local services.

<sup>41</sup> *LBC 1997 Statement of Decision*, p. 10.

The Petitioner proposes that, once incorporated, the City of Gustavus will operate the community's land-fill, library, GER, and all other responsibilities currently performed by the GCA. Petitioner also plans for the City to maintain local roads and cites the need for land-use planning and oversight, which could be undertaken by the City of Gustavus. The Petitioner's proposal for the City of Gustavus includes the levying of a sales tax (2 percent) and bed tax/vacation package tax (4 percent) to help pay for services.

Since 1987, State funding for direct and indirect services to communities has continued to decline significantly.<sup>42</sup> For FY 04, the State Revenue Sharing and Safe Communities Programs will not be funded in the same manner<sup>43</sup> as in the past and will not be part of the Governor's proposed FY 05 budget. Further, in FY 04 funds for community projects under the Municipal Capital Matching Grants were vetoed. Thus, while responsible for providing local services in unincorporated communities in the unorganized borough, declining revenues have forced the State to decrease its level of funding for such.

As observed in the Commission's report<sup>44</sup> to the Legislature in February 2003:

The State encourages regions to assume and exercise local self-determination and provide municipal services that are funded and provided at the local level. Such is in the best interests of the public statewide and is consistent with the constitutional intent regarding municipal government throughout the unorganized borough (emphasis added).

<sup>42</sup> Also of significant note is the fact that the State in 1996 ceased environmental/public health oversight of subdivision plans by the Department of Environmental Conservation (DEC). In the past, DEC reviewed plats to ensure that subdivisions were designed so that each lot had sufficient size and suitable conditions to allow water and sewage disposal systems adequate to protect public health.

<sup>43</sup> In place of these programs, the State is distributing to communities \$15 million of the \$25 million "one-time money" it received in July 2003 from the federal government under the "State Fiscal Relief Program." It will distribute a similar payment to communities in October 2003. Between 1987 and 1997, funds from the State Revenue Sharing Program had declined by more than 70 percent, when adjusted for inflation. With the veto of funds for the Program for FY 04 and its anticipated nonfunding in FY 05, the State Revenue Sharing Program has, in essence, declined 100 percent since 1987.

<sup>44</sup> *Unorganized Borough Report*, p. 213.



*Gustavus clinic*

While that statement was made with regard to borough formation, it is no less applicable to city formation in the unorganized borough when there is no existing city or borough to which a community could attach.

Gustavus is a relatively populous unincorporated community. The community is located adjacent to Glacier Bay National Park, which attracts thousands of visitors each year. The community is expected to see continued growth and development at the same time it is faced with a decline in State funding for local services. The population of Gustavus is sufficiently large and stable to support the proposed city government, the costs of which will, in significant part, be paid for through local taxes. Incorporation

of the City of Gustavus will, to paraphrase the LBC Report, allow the community “to assume and exercise local self-determination and provide municipal services that are funded and provided at the local level,” thereby reducing the State’s responsibility to provide such services in Gustavus.

### **(c) Risk in Event of Dissolution.**

The final factor in analyzing the best-interests standard is whether incorporation will expose the State to unusual and substantial risks as the prospective successor to the city in the event of the city’s dissolution.

As noted elsewhere in this report, Gustavus has functioned as a community for many years and has qualified for various State financial assistance programs as a legitimate community for over 20 years. The population of the community is sizable and has increased steadily over the last 30 years, although there has been a negligible decline in the past three years.

Because of its growth, the demand for more services, and the future uncertainty of State financial assistance, many in the community have recognized the need to provide and pay for services at the local level. As evidenced by the prior petitions to incorporate that have been filed by Gustavus voters, many community residents have expressed a consistent desire to establish a city government. Once incorporated, it is questionable whether the issue of dissolution would arise. Nonetheless, should dissolution occur, the risk to the State would be minimal.

First, before a city can dissolve, the Commission must find, among other things, that the dissolution is in the best interests of the public and that the city is free of debt or has satisfied each creditor with a method of repayment. Moreover, as a second class city in the unorganized borough, Gustavus would not be allowed to provide a school district<sup>45</sup> and, thus, would not be faced with education, which is generally the largest category of municipal expense.

<sup>45</sup> AS 29.35.260(b); AS 14.12.010. In the unorganized borough, the State provides education to second class cities through REAAs. The funding of education is generally the largest expense that a municipality faces.

Senator Wilken's comments regarding the issue of education funding are particularly significant to DCED in light of identical concerns raised by the LBC in its *Unorganized Borough Study, supra*. DCED, however, also agrees with Gustavus that those concerns do not outweigh constitutional local self-government rights where there is a viable proposal to achieve such and there are no other municipal avenues available.

## 5. Conclusion by DCED.

DCED concludes that the factors in 3 AAC 110.042 requiring incorporation of a city to be in the best interests of the State are satisfied with respect to the pending Petition.

## G. Standard Regarding Transition

### 1. The Standard Established in Law.

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

**3 AAC 110.900. TRANSITION.** (a) A petition for incorporation, . . . must include a practical plan that demonstrates the capacity of the municipal government to extend essential city . . . services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. . . .

(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 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 states that Gustavus is an unincorporated community in the unorganized borough and that, for the past 26 years, the GCA has been the *de facto* government in Gustavus. The Petition (at p. 6 and Ex. F) includes a transition plan that describes the manner in which the assets, liabilities, powers, and duties of the GCA will be

transferred to the City of Gustavus. The Petitioner's proposal states that funds have been budgeted to conduct a formal audit of the GCA books before transfer to the City.

### 3. Public Comments.

No public comments were received regarding this standard.

### 4. 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.

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

The Petitioner's plan contemplates that, upon a favorable vote for incorporation of Gustavus, the GCA will vote to cease operations and move all assets and liabilities to

the City. Additionally, the plan sets out an anticipated process for the levying and collection of taxes in accordance with city ordinances.

The affidavit of the Petitioner's Representative (at Ex. J) includes a list of the individuals in the community who worked on the transition plan and the dates of the meetings held to discuss it.

### 5. Conclusion by DCED.

Currently there is no municipal government structure in or near Gustavus, and the only community oversight in Gustavus is that provided through the GCA on a largely volunteer basis. The Petitioner's proposed transition plan to local self-government as a second-class city is acceptable. Therefore, DCED concludes that the standard relating to transition planning set out in 3 AAC 110.900 is satisfied with respect to the pending Petition.

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## H. Nondiscrimination

### 1. The Standard Established in Law.

The provisions of 3 AAC 110.910 state that the LBC may not approve a petition if the proposed municipal boundary change will deny civil or political rights based on race, color, creed, sex, or national origin. Specifically, the law provides as follows:

**3 AAC 110.910. State-ment 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. § 1973, establishes standards relating to the effects that incorporation has upon civil and political rights of minorities. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; or 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 p. 7 and Ex. G) addresses the Gustavus city proposal in the context of the Voting Rights Act. The Petitioner asserts that it does “not foresee any effect on the voting rights of minorities should the proposed territory incorporate . . . .” Petitioner also asserts that all residents of Gustavus,

including minorities, have been encouraged to participate in the development of the incorporation proposal. The Petitioner states that it is not aware of any minorities in the territory proposed for incorporation who do not speak or write English and that there was no person at any meeting who did not understand English.

### 3. Public Comments.

No public comments were received regarding this standard.

### 4. 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"<sup>46</sup> and

<sup>46</sup> "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."

if the Census Bureau determined that less than 50 percent 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 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 percent 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.<sup>47</sup> 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 incorporations in Alaska are subject to review under the Voting Rights Act. The Petitioner

states that the electoral system of the proposed city will follow all State electoral laws and will include all registered voters in the district.

**5. Conclusion by DCED.**

Given the foregoing, DCED concludes that 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. DCED concludes further that 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. Thus, the standards set forth in Section 1973 of 42 U.S.C. and 3 AAC 110.910 are satisfied by the Gustavus city proposal.

<sup>47</sup> Using 2000 U.S. Census data, the population, by race, of the area proposed for incorporation is:

**Population by Race:**

Population in 2000: .....	<b>429</b>
White .....	383
Alaska Native or American Indian* ..	18
Asian .....	1
Hawaiian Native .....	1
Other Race .....	7
Two or More Races* .....	19

\* Percent Native: 8.20%  
(Percent reporting Alaska Native alone or in combination with one or more races)

The data in the Petition that addressed this issue is in error in that it appears to undercount the Caucasian population and overcount others.



# Chapter 4

## Summary of Conclusions and Recommendation

Chapter 4 summarizes the conclusions DCED reached in Chapter 3 with regard to the standards for city incorporation. It also presents DCED's recommendation to the LBC regarding the Petition.

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### **A. Summary of Conclusions Regarding the Application of City Incorporation Standards to the Petition**

Based on the analysis presented in the preceding chapter, DCED has reached the conclusions summarized below regarding the Petition.

**Conclusion 1: Gustavus comprises a community as defined by LBC regulations (3 AAC 110.990) and as required for city incorporation under AS 29.05.011 and 3 AAC 110.005.**

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

- (a) Gustavus has 421 residents; nearly 17 times the threshold used in the legal definition of a community applicable to the Gustavus incorporation proceedings.
- (b) For more than two decades, Gustavus has qualified for various unincorporated community financial aid programs offered by the State.
- (c) The right to reside in Gustavus is not restricted.
- (d) Gustavus is not adjacent to another community of which Gustavus could be reasonably considered 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 LBC 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.

- (g) The Gustavus election precinct encompasses all of the populated territory proposed for incorporation and no other settlements.
- (h) There is a public school in Gustavus. Student enrollment in the past five years was 45 in 2002 and 2001, 48 in 2000, 56 in 1999, and 74 in 1998.
- (i) There are currently 157 active business licenses in Gustavus.
- (j) Gustavus exhibits local employment characteristic that are representative of a community.

**Conclusion 2: The boundaries of the proposed City of Gustavus include all areas necessary to provide municipal services on an efficient scale as required for city incorporation by AS 29.05.-011(a)(2) and 3 AAC 110.040(a).**

The conclusion that this standard is met reflects the following two findings:

- (a) Land use in Gustavus by permanent and seasonal residents, tourists and other visitors, businesses, and government agencies is concentrated in the territory proposed for incorporation. Generally, all will benefit from proposed services of the prospective City of Gustavus (landfill, public library, emergency medical services, fire protection, road maintenance, and funding for the Gustavus Visitor Association). Other services (financial support for the clinic, platting, planning, land use regulation, dock funding and funding for a future boat harbor) may be provided in the future. The boundaries proposed by the Petitioner include all territory for the full development of these essential services.
- (b) Some have argued that Bartlett Cove should be excluded from the proposed City. Notwithstanding federal ownership, Bartlett Cove is an integral part of the proposed development of essential services. It will benefit from most, if not all, of the services provided by the City and will be a vital source of local revenue for the City.

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

The conclusion that this standard is met stems from the following two findings:

- (a) The 1996 petition to incorporate the City of Gustavus requested boundaries encompassing nearly 144-square miles, which the LBC reduced in 1997 to 39.25 square miles.
- (b) The pending Petition proposes boundaries identical to those approved by the LBC in 1997.

**Conclusion 4: The boundaries of the proposed City of Gustavus exclude entire geographic regions or large unpopulated areas, except where justified by the application of the incorporation standards as required for city incorporation by 3 AAC 110.040(c).**

The conclusion that this standard is met reflects the following finding:

- The proposed boundaries include the uninhabited and undeveloped Dude Creek Critical Habitat Area, comprising approximately 7 square miles. In 1997, the LBC determined that those lands were properly included within the boundaries of a prospective Gustavus city government.

**Conclusion 5: The boundaries of the proposed City of Gustavus are contiguous and without enclaves to allow for the full development of essential city services as required for city incorporation by 3 AAC 110.040(d).**

The conclusion that this standard is met is based on the following finding:

- The territory proposed for incorporation is contiguous and without enclaves.

**Conclusion 6: The boundaries of the proposed City of Gustavus do not overlap the boundaries of an existing borough or city. Therefore, standards and procedures for annexation to or detachment from existing boroughs and cities need not be applied as would otherwise be required by 3 AAC 110.040(e).**

The following finding supports the conclusion that this standard is met:

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

**Conclusion 7: The economy of Gustavus includes the human and financial resources necessary to provide municipal services on an efficient, cost-effective level as required for city incorporation by AS 29.05.011(a)(3) and 3 AAC 110.020.**

The conclusion that this standard is met results from the following sixteen findings:

- (a) Anticipated functions of the proposed City of Gustavus in the immediate-term consist of landfill, public library, emergency medical services, fire protection, road maintenance, and funding for the Gustavus Visitor Association. Other services (e.g., financial support for the clinic, platting, planning, land use regulation, dock funding and funding for a future boat harbor) may be provided over the long-term.
- (b) The Petitioner originally projected expenditures of \$344,500 for FY 05; \$329,500 for FY 06; and \$329,500 for FY 07. Following announcement of reductions in State financial aid to local governments, the Petitioner (without formally amending the Petition) advised DCED that the cutbacks likely would be addressed by reducing both contractual expenditures and transfers to a planned reserve fund. The anticipated reductions outlined by the Petitioner cut overall operating expenditures to \$294,089 for FY 05; \$279,089 for FY 06; and \$279,089 for FY 07.
- (c) With adjustments for the State financial aid cutbacks, the Petitioner projects revenues of \$389,660 for FY 05; \$361,160 for FY 06; and \$336,160 for FY 07.

- (d) The revised revenue and expenditure projections result in anticipated surpluses of \$95,571 in FY 05; \$82,071 in FY 06; and \$57,071 in FY 07.
- (e) The Petitioner's expenditure projections appear to be reasonable and fairly consistent with municipalities of similar size and circumstance.
- (f) The Petitioner's revenue estimates for the proposed local bed tax/vacation package tax and sales tax revenues appear reasonable. However, certain adjustments to the Petitioner's revenue projections appear warranted. These consist of: (1) elimination of the projected \$6,150 in raw fish tax revenues for FY 05 only; (2) \$3,000 annual reduction in projected raw fish tax proceeds; (3) \$58,000 annual increase in National Forest revenues; and (4) \$4,955 annual increase in federal Payment in Lieu of Taxes (PILT) funding. It is also noted that the Petitioner did not include the contract revenues for providing the crash-response vehicle at the airport during the summer months.
- (g) While the Petitioner projects budget surpluses (which increase with DCED's adjustments), DCED notes that there are restrictions on the use of National Forest Receipts. Approximately \$135,000 of the estimated \$160,000 in National Forest Receipts would have to be used for road maintenance. However, the Petitioner's budget anticipates that only \$60,000 will be spent for road maintenance. DCED takes the view that the prospective City of Gustavus could legitimately adopt a broader definition of road maintenance costs to fund portions of its expenditures for insurance, clerk, accounting, etc., that could justifiably be associated with road maintenance costs. Approximately \$25,000 of the estimated \$160,000 in funding must be used for "special projects" as defined in law. Emergency services on federal lands are included in the definition of special projects. However, the entire emergency services budget proposed by the Petitioner is only \$10,000. Since only emergency services on federal lands are eligible for funding under that program, presumably only a portion of the EMS budget can be funded using National Forest Receipts. Funds could be used for certain community planning efforts if the prospective City of Gustavus undertakes responsibility for such.
- (h) There is a high likelihood that funding under the National Forest Receipts Program will be reduced by as much as 80% beginning in FY 08.

- (i) Notwithstanding warranted adjustments and anticipated long-term funding changes, the Petitioner's three-year operating budget is feasible and plausible. That view is reinforced by the Petitioner's proposal that upon incorporation, the Gustavus Community Association will transfer its assets (including more than \$900,000 in federal compensation for economic losses from the phase-out of commercial fishing in Glacier Bay) to the City.
- (j) Although somewhat seasonal in nature, the Gustavus' economic base is expanding and sound.
- (k) Gustavus enjoys a relatively high level of property valuation and business activity.
- (l) Anticipated industrial, commercial, and resource development includes several National Park Service projects.
- (m) 2000 federal census data indicate that median family income and per capita income for Gustavus residents was only slightly below the statewide averages. A greater disparity exists between the 2000 median household income in Gustavus compared to that of the entire state. The difference for that measure is attributed to fundamental population characteristics of Gustavus that do not reflect negatively on the resources of the community of Gustavus.
- (n) The land within the proposed city contains a wide variety of uses. Real property owners include the Glacier Bay National Park and Preserve, State of Alaska, Dude Creek Critical Habitat Area, Alaska Mental Health Trust, Cook Inlet Regional Corporation, and private individuals.
- (o) The population consists of skilled and professional people sufficient to support a local government.
- (p) Community residents exhibit a reasonably predictable level of commitment and interest in sustaining a city government.

**Conclusion 8: The population of Gustavus is large and stable enough to support city government as required for city incorporation by AS 29.05.011(a)(4) and 3 AAC 110.030(a).**

The conclusion that this standard is met reflects the following five findings:

- (a) The State Demographer estimates that 421 individuals lived in Gustavus in 2002. That population is larger than over half of all incorporated communities in Alaska.
- (b) The population of Gustavus exhibits relatively high permanent residency (the 2000 census reported that 77 percent of the occupied homes in Gustavus were inhabited by their owners, a figure well above the statewide average of 62.5 percent).
- (c) Although Gustavus has experienced a population growth plateau for the past three years, it has undergone, in relative terms, significant population growth for the previous 3 decades.
- (d) At the time of the 2000 census, the rental vacancy rate in Gustavus was 8 percent, slightly higher than the statewide average of 7.8 percent.
- (e) The community of Gustavus has a somewhat more aged population than the state as a whole (in 2000, the median age for a resident of Gustavus was 24 percent higher than the statewide average).

**Conclusion 9: There is a need for city government in Gustavus as required by AS 29.05.011(a)(5) and 3 AAC 110.010(a) for city incorporation.**

The conclusion that this standard is met reflects the following seven findings:

- (a) In 1997, the LBC determined that Gustavus exhibited a need for city government, in part, due to the size of its population. Since then, the population of Gustavus has grown by 17.9 percent – more than two and one-half times the growth of Alaska’s population during the same period. In the past six years, Gustavus has risen in ranking from the sixteenth most populous unincorporated community in the unorganized borough to the ninth such community. The current

estimated population of Gustavus exceeds that of 81 of Alaska's 145 city governments. The population of Gustavus is approximately 10 percent greater than the median population of all incorporated communities in Alaska. Based on population size, the need for municipal government (either incorporation as a city government and/or inclusion within a regional borough) has increased over the past six years.

- (b) In 1997, the LBC found that there was a need for city government in Gustavus, in part, because of reductions in State financial aid to communities. Since then, funding for State Revenue Sharing, Safe Communities, and State Capital Matching Grants has been eliminated altogether. Based on such considerations, the need for city government in Gustavus has increased because city governments have capacity to generate funds through taxes and other means not available to unincorporated communities.
- (c) In 1997, the LBC concluded that circumstances relating to health, safety, and general welfare in Gustavus contributed to the need for city government in the community. Those circumstances related to (1) Gustavus' exceptionally high water table, fragile aquifer; and lack of sewage management; (2) lack of a platting authority; and (3) the cessation of all State environmental/public health oversight of subdivision plans in Alaska. While the Petition does not formally propose that the prospective City of Gustavus construct and operate a sewer system or exercise platting authority, it would have the capacity to do so.
- (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 LBC determined that existing and anticipated growth and development in Gustavus was 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 for the Gustavus Visitor Association). 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.

**Conclusion 10: The services to be provided by the proposed City of Gustavus cannot be provided by annexation to an existing city as required by AS 29.05.021(a) and 3 AAC 110.010(b).**

The conclusion that this standard is met reflects the following three findings:

- (a) Hoonah is the incorporated community (city government) in closest proximity to Gustavus. However, it is approximately 25 miles south of Gustavus separated by Icy Strait.
- (b) State law (3 AAC 110.130(d)) prohibits the annexation of "entire geographical regions or large unpopulated areas," except where justified by application of all city annexation standards. DCED cannot conceive of circumstances under which the annexation of the large unpopulated expanse between Gustavus and Hoonah could be justified.
- (c) In 1997, the LBC concluded that it was "implausible" that the City of Hoonah could serve Gustavus.

**Conclusion 11: Incorporation of the City of Gustavus would serve the best interests of the state as required for city incorporation under AS 29.05.100 and as defined under 3 AAC 110.042.**

The conclusion that this standard is met reflects the following three findings:

- (a) In 1997, the LBC concluded that incorporation of the City of Gustavus will promote the principles of maximum local self-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 funded and provided at the local level. Such is in the best interests of the public statewide and is consistent with the constitutional intent regarding municipal government in the unorganized borough.
- (c) Incorporation will not expose the State to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.

**Conclusion 12: The Petitioner has provided a transition plan properly addressing the proposed change as required for city incorporation under 3 AAC 110.900.**

The conclusion that this standard is met reflects the following four findings:

- (a) The Petitioner's transition plan demonstrates forethought regarding which services will be provided to the territory proposed for incorporation.
- (b) The transition plan demonstrates the Petitioner's good faith to extend services.
- (c) The Petitioner's plan contemplates that, upon a favorable vote for incorporation of Gustavus, the GCA will vote to cease operations and move all assets and liabilities to the City. Additionally, the plan sets out an anticipated process for the levying and collection of taxes in accordance with ordinances of the City of Gustavus.

- (d) The Petitioner has conferred with appropriate individuals and organizations regarding transition to city government.

**Conclusion 13: Incorporation of the City of Gustavus 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. Such is a condition under 3 AAC 110.910 for city incorporation. Federal law, 42 U.S.C. § 1973, establishes similar requirements.**

The conclusion that this standard is met reflects the following two findings:

- (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.

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## **B. Recommendation to the LBC Regarding the Petition**

Based on its analyses, findings, and conclusions in Chapter 3, DCED recommends that the LBC approve the Petition without modification.



# Appendix A

## Glossary

Appendix A lists terms that are used in this report or that otherwise relate to municipal boundary changes that have particular meanings. Unless the context in which those terms and acronyms listed below are used in these proceedings suggests otherwise, they are defined as follows:

**“Annexation”** is the expansion of the jurisdictional boundaries of an existing city government 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 borough (first class, second class, or third class), a non-unified home rule borough, or a unified home rule borough (unified municipality). (3 AAC 110.990(1).)

In general terms, the word borough means a place organized for local government. Boroughs exist in certain other states in this country and in other countries; however, they bear no similarity to boroughs in Alaska.

After much debate, Alaska’s Constitutional Convention Delegates chose the term borough over alternatives such as county, canton, division, and province. They did so because they felt that the term borough did not carry the connotations of the other terms. The Delegates wanted to preclude rigid thinking and the application of restrictive court decisions based on the extensive body of county law developed in the existing states. (See *Borough Government in Alaska*, p. 37, Thomas A. Morehouse and Victor Fischer, (1971).)

In Alaska, a borough is a regional unit of municipal government (see *Alaska's Constitutional Convention*, pp. 116 – 123, Victor Fischer, (1975); *Borough Government in Alaska*, pp. 37 – 41, Thomas A. Morehouse and Victor Fischer, (1971); *Mobil Oil v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974); and *Proceedings of the Alaska Constitutional Convention*, pp. 2638 and 2641, Alaska State Legislature, Legislative Counsel, (1963).)

“**City**” means a general law (first class or second class city or a home rule city government. (AS 29.71.800.) In this particular case, the term may refer to the proposed City of Gustavus.

“**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**” refers to 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 six individuals or organizations that submitted timely written comments concerning the Gustavus city incorporation proposal.

“**Council**” means the governing body of a city. (AS 29.71.800.)

“**DCED**” means the Alaska Department of Community and Economic Development.

**“Department”** refers to the Alaska 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. (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 2003 petition for incorporation of the City of Gustavus.

“**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 “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. It is a school district that provides education services to that portion of the unorganized borough outside of home rule and first class cities.

“**Petitioner**” refers collectively to the 38 qualified voters who signed the Petition.

“**Petitioner’s Representative**” refers to Kenneth L. Klawunder, designated representative of the Petitioner for matters relating to the pending city incorporation proceedings.

**“Reply Brief”** means a reply brief filed by a petitioner under 3 AAC 110.490. No reply brief was filed in the Gustavus city incorporation proceedings.

**“Responsive Brief”** means a brief filed in support of or in opposition to a petition under 3 AAC 110.480.

**“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, Section 1 of Alaska’s Constitution.

**“State”** (where capitalized) refers to the State of Alaska government.

**“Territory”** refers to the estimated 29.23 square miles of land and 10.02 square miles of water within the boundaries of the proposed City of Gustavus.

**“Unorganized borough”** means areas of Alaska 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

## Alaska Statutes Relevant to the Gustavus City Incorporation Proposal

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### **Alaska Statute 14.12.025 (New School Districts)**

#### **Sec. 14.12.025. New school districts.**

Notwithstanding any other provision of law, a new school district may not be formed if the total number of pupils for the proposed school district is less than 250 unless the commissioner of education and early development determines that formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district.

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### **Alaska Statute 16.20.610 (Dude Creek Critical Habitat Area)**

#### **Sec. 16.20.610. Dude Creek Critical Habitat Area.**

(a) The purpose of the Dude Creek Critical Habitat Area is the protection and enhancement of the wet meadow habitat that is the key roosting area for migrating lesser sandhill cranes, for the protection of lesser sandhill cranes, and for the continued public use and enjoyment of the area.

(b) The following described area is established as the Dude Creek Critical Habitat Area:

Township 40 South, Range 58 East, Copper River Meridian  
Section 2: W1/2  
Section 3  
Sections 9 – 10  
Section 11: W1/2NE1/4, W1/2  
Section 14: Lot 3, NW1/4, N1/2SW1/4, SW1/4SW1/4  
Section 15  
Section 16: N1/2, SE1/4.

(c) The Dude Creek Critical Habitat Area described in (b) of this section shall be managed under a management plan prepared and implemented by the department in consultation with the community of Gustavus and the Board of Game.

(d) The department shall allow public uses, including fishing, hunting, trapping, mechanized and nonmechanized public access, grazing, firewood harvesting, wildlife viewing, hiking, and berry picking under the management plan adopted under (c) of this section to the extent that the activities are compatible with (a) of this section.

(e) The legislature understands that a portion of the state land described in (b) of this section is mental health trust land of the state and the legislature intends that the land retain its status as mental health trust land, notwithstanding its inclusion in the Dude Creek Critical Habitat Area.

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## **Alaska Statutes 29.05.011 – 29.05.021 (Standards and Limitations for City Incorporation)**

### **Sec. 29.05.011. Incorporation of a city.**

(a) A community that meets the following standards may incorporate as a first class or home rule city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

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

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

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

***Sec. 29.05.020. Legislative powers of home rule cities. [Repealed, Sec. 1 ch 118 SLA 1972].***

Repealed or Renumbered

**Sec. 29.05.021. Limitations on incorporation of a city.**

(a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city.

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**Alaska Statutes 29.05.060 – 29.05.150 (Procedures for Incorporation)**

**Sec. 29.05.060. Petition.**

Municipal incorporation is proposed by filing a petition with the department. The petition must include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) maps, documents, and other information required by the department;
- (5) composition and apportionment of the governing body;
- (6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;

(7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in

(A) home rule and first class cities in the area of the proposed borough or unified municipality; and

(B) the area of the proposed borough or unified municipality outside home rule and first class cities;

(8) for a first class borough or unified municipality, a designation of areawide powers to be exercised;

(9) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(10) for a first class, second class, or home rule city, a designation of the powers to be exercised;

(11) for a first class or home rule city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(13) for a home rule city, home rule borough, or unified municipality a proposed home rule charter.

#### **Sec. 29.05.070. Review.**

The department shall review an incorporation petition for content and signatures and shall return a deficient petition for correction and completion.

#### **Sec. 29.05.080. Investigation.**

(a) If an incorporation petition contains the required information and signatures, the department shall investigate the proposal and shall hold at least one public informational meeting in the area proposed for incorporation. The department shall publish notice of the meeting.

(b) The department may combine incorporation petitions from the same general area.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

**Sec. 29.05.090. Hearing.**

The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

**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.

(b) A Local Boundary Commission decision under this section may be appealed under AS 44.62 (Administrative Procedure Act).

**Sec. 29.05.110. Incorporation election.**

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of an incorporation petition. Within 30 days after notification, the director of elections shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial municipal officials. If incorporation is rejected, no officials are elected. The election shall be held not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

(b) A voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in an incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each nonareawide power to be exercised is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing in the proposed borough but outside all cities in the proposed borough.

(d) A home rule charter included in an incorporation petition under AS 29.05.060(13) is considered to be part of the incorporation question. The home rule charter is adopted if the voters approve incorporation of the city, borough, or unified municipality.

(e) The director of elections shall supervise the election in the general manner prescribed by AS 15 (Election Code). The state shall pay all election costs under this section.

### **Sec. 29.05.120. Election of initial officials.**

(a) Nominations for initial municipal officials are made by petition. The petition shall be in the form prescribed by the director of elections and must include the name and address of the nominee and a statement of the nominee that the nominee is qualified under the provisions of this title for the office that is sought. A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly; or

(2) city mayor and as a member of the council in a first class city.

(b) Except for a proposed second class city, petitions to nominate initial officials must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officials are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) Petitions to nominate initial officials of a second class city must include the signature and resident address of 10 voters in the area of the proposed city.

(d) The director of elections shall supervise the election in the general manner prescribed by AS 15 (Election Code). The state shall pay all election costs.

(e) The initial elected officials take office on the first Monday following certification of their election.

(f) The initial elected members of the governing body shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

**Sec. 29.05.130. Integration of special districts and service areas.**

(a) A service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation. On integration the municipality succeeds to all the rights, powers, duties, assets, and liabilities of the service area. On integration all property in the service area subject to taxation to pay the principal and interest on bonds at the time of integration remains subject to taxation for that purpose.

(b) After integration, the municipality may exercise in a former service area all of the rights and powers exercised by the service area at the time of integration, and, as successor to the service area, may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a municipality in which the service area was formerly located.

**Sec. 29.05.140. Transition.**

(a) The powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality.

(b) Before the assumption, the new municipality shall give written notice of its assumption of the rights, powers, duties, assets, and liabilities under this section and AS 29.05.130 to the city or service area concerned. Municipal officials shall consult with the officials of the city or service area concerned and arrange an orderly transfer.

(c) After the incorporation of a new municipality, a service area in it may not assume new bonded indebtedness, make a contract, or transfer an asset without the consent of the governing body.

(d) Upon incorporation, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter.

(e) This section applies to home rule and general law municipalities.

**Sec. 29.05.150. Challenge of legality.**

A person may not challenge the formation of a municipality except within six months after the date of its incorporation.

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**Alaska Statute 29.05.180 (Organization Grants)****Sec. 29.05.180. Organization grants to cities.**

(a) To defray the cost of transition to city government and to provide for interim government operations, each city incorporated after December 31, 1985 is entitled to an organization grant of \$50,000 for the first full or partial fiscal year after incorporation.

(b) To defray the cost of reclassification, each second class city in the unorganized borough incorporated before January 1, 1986 that reclassifies as a first class city or adopts a home rule charter after December 31, 1985 is entitled to an organization grant equal to \$50,000 for the first full or partial fiscal year after reclassification.

(c) The department shall disburse an organization grant under (a) or (b) of this section within 30 days after certification of the incorporation, reclassification, or home rule charter election, or as soon after certification as money is appropriated and available for the purpose.

(d) A city entitled to an organization grant under (a) or (b) of this section is entitled to a second organization grant of \$25,000. The department shall disburse the second organization grant within 30 days after the beginning of the city's second fiscal year after incorporation, reclassification, or adoption of a home rule charter or as soon after that time as money is appropriated and available for the purpose.

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**Alaska Statute 44.33.020 (Duties of the Department of Community and Economic Development)****Sec. 44.33.020. Duties of department.**

The Department of Community and Economic Development shall

(1) advise and assist local governments;

(2) advise the governor and other commissioners on the delivery of government services to rural areas, including services relating to public safety, justice, economic development, natural resource management, education, and public health;

(3) make recommendations to the governor and other commissioners about policy changes that would affect rural governments and rural affairs;

(4) serve as staff for the Local Boundary Commission;

(5) conduct studies and carry out experimental and pilot projects for the purpose of developing solutions to community and regional problems;

(6) promote cooperative solutions to problems affecting more than one community or region, including joint service agreements, regional compacts, and other forms of cooperation;

(7) serve as a clearinghouse for information useful in solution of community and regional problems, and channel to the appropriate authority requests for information and services;

(8) advise and assist community and regional governments on matters of finance, including but not limited to bond marketing and procurement of federal funds;

(9) prepare suggested guidelines relating to the content of notice of bond sale advertisements, prospectuses, and other bonding matters issued by local governments;

(10) administer state funds appropriated for the benefit of unorganized regions within the state, allowing for maximum participation by local advisory councils and similar bodies;

(11) as assigned through a delegation by the governor, administer and implement the state's role in the federal community development quota program established under 16 U.S.C. 1855(i) or a successor federal program; the department may adopt regulations under a delegation from the governor to implement duties under this paragraph;

(12) carry out those administrative functions in the unorganized borough that the legislature may prescribe;

(13) study existing and proposed laws and state activities that affect community and regional affairs and submit to the governor recommended changes in those laws and activities;

(14) coordinate activities of the state that affect community and regional affairs;

(15) assist in the development of new communities and serve as the agent of the state for purposes of participation in federal programs relating to new communities;

(16) supervise planning, management, and other activities required for local eligibility for financial aid under those federal and state programs that provide assistance to community and regional governments;

(17) advise and assist municipalities on procedures of assessment, valuation, and taxation, and notify municipalities of major errors in those procedures;

(18) apply for, receive, and use funds from federal and other sources, public or private, for use in carrying out the powers and duties of the department;

(19) request and utilize the resources of other agencies of state government in carrying out the purposes of this chapter to the extent such utilization is more efficient than maintaining departmental staff, reimbursing the other agencies when appropriate;

(20) administer state and, as appropriate, federal programs for revenue sharing, grants, and other forms of financial assistance to community and regional governments;

(21) administer the state programs relating to commerce or community development, enforce the laws relating to these programs, and adopt regulations under these laws;

(22) register corporations;

(23) collect corporation franchise taxes;

(24) enforce state laws regulating public utilities and other public service enterprises, banking and securities, insurance, and other businesses and enterprises touched with a public interest;

(25) make veterans' loans;

(26) furnish the budgeting, clerical, and administrative services for regulatory agencies and professional and occupational licensing boards not otherwise provided for;

(27) conduct studies, enter into contracts and agreements, and make surveys relating to the economic development of the state and, when appropriate, assemble, analyze, and disseminate the findings obtained;

(28) provide factual information and technical assistance for potential industrial and commercial investors;

(29) receive gifts, grants, and other aid that facilitate the powers and duties of the department from agencies and instrumentalities of the United States or other public or private sources;

(30) establish and activate programs to achieve balanced economic development in the state and advise the governor on economic development policy matters;

(31) formulate a continuing program for basic economic development and for the necessary promotion, planning and research that will advance the economic development of the state;

(32) cooperate with private, governmental, and other public institutions and agencies in the execution of economic development programs;

(33) review the programs and annual reports of other departments and agencies as they are related to economic development and prepare an annual report on the economic growth of the state;

(34) administer the economic development programs of the state;

(35) perform all other duties and powers necessary or proper in relation to economic development and planning for the state;

(36) request tourism-related businesses in the state to provide data regarding occupancy levels, traffic flow and gross receipts and to participate in visitor surveys conducted by the department; data collected under this paragraph that discloses the particulars of an individual business is not a matter of public record and shall be kept confidential; however, this restriction does not prevent the department from using the data to formulate tourism economic impact information including expenditure patterns, tax receipts and fees, employment and income attributable to tourism, and other information considered relevant to the planning, evaluation, and policy direction of tourism in the state;

(37) provide administrative and budgetary services to the Real Estate Commission under AS 08.88 as requested by the commission;

(38) sell at cost, to the extent possible, publications and promotional materials developed by the department;

(39) as delegated by the governor, administer under 16 U.S.C. 1856 the internal waters foreign processing permit procedures and collect related fees;

(40) administer state laws relating to the issuance of business licenses;

(41) comply with AS 15.07.055 to serve as a voter registration agency to the extent required by state and federal law, including 42 U.S.C. 1973gg (National Voter Registration Act of 1993);

(42) foster the growth of international trade within the state and administer Alaska foreign offices;

(43) carry out other functions and duties, consistent with law, necessary or appropriate to accomplish the purpose of this chapter.

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## **Alaska Statutes 44.33.810 – 44.33.828 (Local Boundary Commission)**

### **Sec. 44.33.810. Local Boundary Commission.**

There is in the Department of Community and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission.

### **Sec. 44.33.812. Powers and duties.**

(a) The Local Boundary Commission shall

(1) make studies of local government boundary problems;

(2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;

(3) consider a local government boundary change requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state; and

(4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to

be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The Local Boundary Commission may

(1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and

(2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.

#### **Sec. 44.33.814. Meetings and hearings.**

The chair of the commission or the commissioner of community and economic development with the consent of the chair may call a meeting or hearing of the Local Boundary Commission. All meetings and hearings shall be public.

#### **Sec. 44.33.816. Minutes and records.**

The Local Boundary Commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes.

#### **Sec. 44.33.818. Notice of public hearings.**

Public notice of a hearing of the Local Boundary Commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner of community and economic development shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible.

**Sec. 44.33.820. Quorum.**

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing.

**Sec. 44.33.822. Boundary change.**

A majority of the membership of the Local Boundary Commission must vote in favor of a proposed boundary change before it may be presented to the legislature.

**Sec. 44.33.824. Expenses.**

Members of the Local Boundary Commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

**Sec. 44.33.826. Hearings on boundary changes.**

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change.

**Sec. 44.33.828. When boundary change takes effect.**

When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

# Appendix C

## Alaska Administrative Code Provisions Relevant to the Gustavus City Incorporation Proposal

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### **Alaska Administrative Code 3 AAC 110.005 – 3 AAC 110.042 (Standards for City Incorporation)**

#### **Article 1 Standards for Incorporation of Cities**

##### *Section*

*5. Community.*

*10. Need.*

*20. Resources.*

*30. Population.*

*40. Boundaries.*

*42. Best interests of state.*

#### **3 AAC 110.005. Community**

An area proposed for incorporation as a city must encompass a community.

History: Eff. 5/19/2002, Register 162

Authority: AS 29.05.011 AS 44.33.812

#### **3 AAC 110.010. Need**

(a) In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government. In this regard, the commission may consider relevant factors, including

- (1) existing or reasonably anticipated social or economic conditions;
- (2) existing or reasonably anticipated health, safety and general welfare conditions;
- (3) existing or reasonably anticipated economic development; and
- (4) adequacy of existing services.

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

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: AS 29.05.011 AS 29.05.021  
AS 44.33.812

### **3 AAC 110.020. Resources**

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

(1) will consider

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

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

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

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

(E) the economic base of the proposed city;

(F) property valuations for the proposed city;

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

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

(2) may consider other relevant factors, including

(A) land use for the proposed city;

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

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

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 29.05.011  
AS 44.33.812

### **3 AAC 110.030. Population**

(a) In accordance with AS 29.05.011 the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including

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

(b) To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 29.05.011  
AS 44.33.812

### **3 AAC 110.040. Boundaries**

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

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

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

(c) The boundaries of the proposed 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 110.005 - 3 AAC 110.042.

(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 city services on an efficient, cost-effective level.

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

History: Eff. 7/3/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 29.05.011  
AS 44.33.812

### **3 AAC 110.042. Best interests of state**

In determining whether incorporation of a city 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 city in the event of the city's dissolution.

History: Eff. 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 29.05.100  
AS 44.33.812

## **Alaska Administrative Code 3 AAC 110.400 – 3 AAC 110.660 (Procedures for Petitioning)**

### **Article 12 Procedures for Petitioning**

#### *Section*

*400. Applicability.*

*410. Petitioners.*

*420. Petition.*

*425. Legislative review annexation petitions.*

*430. Consolidation of petitions.*

*440. Technical review of petition.*

*450. Notice of petition.*

*460. Service of petition.*

*470. Proof of notice and service.*

*480. Responsive briefs and written comments.*

*490. Reply brief.*

*500. Limitations on advocacy.*

*510. Informational sessions.*

*520. Departmental public meetings.*

*530. Departmental report.*

*540. Amendments and withdrawal.*

*550. Commission public hearing.*

*560. Commission hearing procedures.*

*570. Decisional meeting.*

*580. Reconsideration.*

*590. Certain local action annexations.*

*600. Local action/local option elections.*

*610. Legislative review.*

*620. Judicial review.*

*630. Effective date and certification.*

*640. Scheduling.*

*650. Resubmittals and reversals.*

*660. Purpose of procedural regulations; relaxation or suspension of procedural regulation.*

### **3 AAC 110.400. Applicability**

Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.660 apply to petitions for city reclassification under AS 29.04, for incorporation under AS 29.05, and for alterations to municipalities under

AS 29.06. However, only those sections of 3 AAC 110.410 - 3 AAC 110.660 with which compliance is required under 3 AAC 110.590 apply to an annexation petition filed under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.100
	AS 20.04.040	AS 29.06.450
	AS 29.05.060	AS 29.06.460
	AS 29.06.040	AS 44.33.812
	AS 29.06.090	

### **3 AAC 110.410. Petitioners**

(a) A petition for a proposed action by the commission under this chapter may be initiated by

(1) the legislature;

(2) the commissioner;

(3) the staff of the commission or a person designated by the commission, subject to (d) of this section;

(4) a political subdivision of the state;

(5) a regional educational attendance area;

(6) a coastal resource service area;

(7) at least 10 percent of the persons registered to vote in a political subdivision of the state, in a regional educational attendance area, or in a coastal resource service area, if the petition seeks the alteration of a municipality under AS 29.06, other than by local option under AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2);

(8) at least 10 percent of the persons registered to vote in a territory proposed for annexation by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2);

(9) at least 25 percent of the persons registered to vote in a territory proposed for detachment by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2);  
or

(10) the number of qualified voters required under

(A) AS 29.04.040, if the petition seeks reclassification of a city;

(B) AS 29.05.060, if the petition seeks a municipal incorporation;  
and

(C) AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2), if the petition is a local option petition under those provisions.

(b) If, to achieve compliance with AS 29.06.100 (a), a petition for merger or consolidation must be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.

(c) The provisions of (a)(10) of this section may not be construed to apply to petition procedures established by the commission under AS 44.33.812 (a)(2), AS 29.06.040 (c) for annexation and detachment, AS 29.06.090 (b)(1) for merger and consolidation, or AS 29.06.450 (a)(1) for dissolution.

(d) The staff of the commission or a person designated by the commission may initiate a petition if the commission

(1) determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter; and

(2) directs the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The entity or group initiating a petition under (a) of this section is the petitioner. A petition must include a designation of one person as representative of the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.100
	AS 29.04.040	AS 29.06.450
	AS 29.05.060	AS 29.06.460
	AS 29.06.040	AS 44.33.812
	AS 29.06.090	

### **3 AAC 110.420. Petition**

(a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and supporting materials with the department.

(b) A petition must be filed on forms provided by the department. On the forms provided, the department shall require that the petition include the following information and supporting materials:

- (1) the name of the petitioner;
- (2) the name and class of any
  - (A) existing municipal government for which a change is proposed;and
  - (B) proposed municipal government;
- (3) a general description of the nature of the proposed commission action;
- (4) a general description of the area proposed for change;
- (5) a statement of reasons for the petition;
- (6) legal descriptions, maps, and plats for a proposed municipality, or for any existing municipality for which a change is proposed;
- (7) the size of the area proposed for change;
- (8) the physical address and mailing address of the petitioner's representative designated under 3 AAC 110.410(e), and the telephone number, facsimile number, and electronic mail address, if any, for the representative;
- (9) data estimating the population of the area proposed for change;
- (10) information relating to public notice and service of the petition;
- (11) the following tax data:
  - (A) the assessed or estimated value of taxable property in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;
  - (B) projected taxable sales in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;
  - (C) each municipal government tax levy currently in effect in the territory proposed for change.

- (12) a three-year projection of revenue, operating expenditures, and capital expenditures for a proposed municipality, or for any existing municipality for which a change is proposed;
- (13) information about any existing long-term municipal debt;
- (14) information about the powers and functions of
  - (A) a proposed municipality;
  - (B) any existing municipality for which a change is proposed, before and after the proposed change; and
  - (C) alternative service providers, including regional educational attendance areas and other service areas within the area proposed for change;
- (15) the transition plan required under 3 AAC 110.900;
- (16) information about the composition and apportionment of the governing body of
  - (A) a proposed municipality; and
  - (B) any existing municipality for which a change is proposed, before and after the proposed change;
- (17) information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965);
- (18) a supporting brief that provides a detailed explanation of how the proposal satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action;
- (19) documentation demonstrating that the petitioner is authorized to file the petition under 3 AAC 110.410;
- (20) for petitions to incorporate or consolidate a home rule city or borough, the proposed municipal charter;
- (21) an affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

(c) The petitioner shall provide the department with a copy of the petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const. AS 29.06.100  
AS 29.04.040 AS 29.06.450  
AS 29.05.060 AS 29.06.460  
AS 29.06.040 AS 44.33.812  
AS 29.06.090

### **3 AAC 110.425. Legislative review annexation petitions**

(a) Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of the prospective annexation petition and a summary of the prospective petition. The prospective petitioner shall also conduct a public hearing on the annexation proposal in accordance with (d) - (e) of this section.

(b) The prospective annexation petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section must include a map of the territory proposed for annexation, a synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, a summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.990.

(c) The prospective annexation petition and the summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioner shall make one copy of the prospective petition available for public review at a convenient location in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation. However, the prospective petitioner need not provide more than five copies of the prospective petition for public review regardless of the population of the territory proposed for annexation. The prospective petitioner shall make the summary of the annexation proposal available for distribution to the public without charge at a convenient location in or near the territory proposed for annexation.

(d) The public hearing required under (a) of this section must address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the proposed transition plan required under 3 AAC 110.900. The hearing must be held at a convenient location in or near the territory proposed for annexation. The hearing must allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipality, the governing body shall conduct the hearing.

(e) In the manner provided for a hearing of the commission under 3 AAC 110.550, a prospective petitioner shall give public notice and a public service announcement of the public hearing required under (a) of this section.

(f) The department shall specify the text of the public notice required under (e) of this section, to ensure that the notice contains the following information:

- (1) the title of the notice of the hearing;
- (2) the name of the prospective petitioner;
- (3) a brief description of the nature of the prospective legislative review annexation proposal, including the size and general location of the area under consideration;
- (4) information about where and when the prospective petition is available for public review;
- (5) information about where the public may receive, without charge, a summary of the prospective petition;
- (6) a statement concerning who will conduct the hearing;
- (7) a statement of the scope of the hearing;
- (8) notification that public comments will be accepted during the hearing, and a statement of any time limits to be placed on individuals who offer comments;
- (9) the date, time, and place of the hearing;
- (10) a statement of compliance with 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act);
- (11) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(g) The department shall specify the text of the public service announcement required under (e) of this section, to ensure that the announcement contains the following information:

- (1) the title of the public service announcement;
- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the prospective petitioner;
- (4) a description of the prospective proposed action;
- (5) a statement of the size and general location of the area being considered for annexation;
- (6) information about where and when the prospective petition is available for public review;
- (7) information about where the public may receive, without charge, a summary of the prospective petition;
- (8) a statement concerning who will conduct the hearing;
- (9) the date, time, and place of the hearing;
- (10) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(h) When filing a petition with the department under this section, the prospective petitioner shall submit evidence of compliance with the requirements of (e) of this section, a written summary or transcript of the hearing, a copy of any written materials received during the hearing, and an audio recording of the hearing.

History: Eff. 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 29.06.040  
AS 44.33.812

### **3 AAC 110.430. Consolidation of petitions**

If two or more petitions pending action by the commission affect all or some portion of the same territory, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure

under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.470
	AS 29.04.040	AS 44.33.812
	AS 29.05.060	AS 44.33.814
	AS 29.06.040	AS 44.33.818
	AS 29.06.090	AS 44.33.822
	AS 29.06.100	AS 44.33.826
	AS 29.06.450	

### **3 AAC 110.440. Technical review of petition**

(a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving

them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing, and the department shall file the petition.

(d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.110
	AS 29.04.040	AS 29.06.480
	AS 29.05.070	AS 44.33.020
	AS 29.06.040	AS 44.33.812

### **3 AAC 110.450. Notice of petition**

(a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall require the petitioner to provide notice through other means designed to reach the public;

(2) post public notice of the filing of the petition in

(A) at least three prominent locations readily accessible to the public and in or near the territory proposed for change; and

(B) other locations designated by the department;

(3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;

(4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond

the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:

(1) the title of the notice of the filing of the petition;

(2) the name of the petitioner;

(3) a description of the proposed action;

(4) a statement of the size and general location of the territory proposed for change;

(5) a map of the territory proposed for change, or information where a map of the territory is available for public review;

(6) a reference to the constitutional, statutory, and regulatory standards applicable to the commission's decision;

(7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;

(8) designation of where and when the petition is available for public review;

(9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(10) a reference to the regulations applicable to the filing of responsive briefs;

(11) the deadline for receipt of responsive briefs and comments;

(12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;

(13) a telephone number for inquiries to the commission staff.

(c) The department shall specify the text of the public service announcement required in (a)(5) of this section, to ensure that the announcement contains the following information:

- (1) the title of the public service announcement;
- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the petitioner;
- (4) a description of the proposed action;
- (5) a statement of the size and general location of the territory proposed for change;
- (6) a statement of where and when the petition is available for public review;
- (7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;
- (8) a statement of the deadline for responsive briefs and comments;
- (9) a statement of where the complete notice of the filing may be reviewed;
- (10) a telephone number for inquiries to the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const. AS 29.06.130  
AS 29.04.040 AS 29.06.500  
AS 29.05.100 AS 44.33.812  
AS 29.06.040

### **3 AAC 110.460. Service of petition**

(a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other interested persons and entities designated by the department. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department

reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.130
	AS 29.04.040	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	

### **3 AAC 110.470. Proof of notice and service**

No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.130
	AS 29.04.040	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	

### **3 AAC 110.480. Responsive briefs and written comments**

(a) If an interested person or entity seeks to participate as a respondent to a petition, that person or entity must have the capacity to sue and be sued, and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) An interested person or entity may file with the department written comments supporting or opposing the petition. Upon receiving those comments, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.130
	AS 29.04.040	AS 29.06.480
	AS 29.05.080	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	
	AS 29.06.110	

### **3 AAC 110.490. Reply brief**

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be

accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const. AS 29.06.130  
AS 29.04.040 AS 29.06.480  
AS 29.05.080 AS 29.06.500  
AS 29.05.100 AS 44.33.812  
AS 29.06.040  
AS 29.06.110

### **3 AAC 110.500. Limitations on advocacy**

(a) Unless otherwise ordered by the commission, for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const. AS 29.06.130  
AS 29.04.040 AS 29.06.480  
AS 29.05.080 AS 29.06.500  
AS 29.05.100 AS 44.33.812  
AS 29.06.040  
AS 29.06.110

### **3 AAC 110.510. Informational sessions**

(a) If the department determines that persons or entities within or near the area of the proposed change have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.110
	AS 29.04.040	AS 29.06.130
	AS 29.05.080	AS 29.06.480
	AS 29.05.100	AS 29.06.500
	AS 29.06.040	AS 44.33.812

### **3 AAC 110.520. Departmental public meetings**

(a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the area of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the area of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The

public meeting shall be recorded and summarized in the report with recommendations of the department prepared under 3 AAC 110.530.

(d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.110
	AS 29.05.080	AS 29.06.480
	AS 29.06.040	AS 44.33.812
	AS 29.06.090	

### **3 AAC 110.530. Departmental report**

(a) The department shall investigate and analyze a petition filed with the department under this chapter, and shall submit to the commission a written report of its findings with recommendations regarding the petition.

(b) The department shall mail to the petitioner and respondents its preliminary report with recommendations before submitting its final report with recommendations to the commission. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report with recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) In its final written report with recommendations, the department shall consider timely submitted written comments addressing the preliminary report with recommendations.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.110
	AS 29.04.040	AS 29.06.490
	AS 29.05.080	AS 44.33.812
	AS 29.06.040	

### **3 AAC 110.540. Amendments and withdrawal**

(a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. If voters initiated the original petition,

(1) the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended petition with the original petition documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

(c) The chair of the commission may determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the chair of the commission may shorten the timing.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within

or near the area of the proposed change is best served by allowing the proposed amendment or withdrawal.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.100
	AS 29.04.040	AS 29.06.450
	AS 29.05.060	AS 29.06.460
	AS 29.06.040	AS 44.33.812
	AS 29.06.090	AS 44.33.814

### **3 AAC 110.550. Commission public hearing**

(a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by the department to the petitioner and to each respondent;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall provide notice through other means designed to reach the public; and

(3) posted by the petitioner in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.

(d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the

hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery or postage-prepaid mail.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.812
	AS 29.04.040	AS 44.33.814
	AS 29.05.090	AS 44.33.818
	AS 29.06.040	AS 44.33.826
	AS 29.06.120	
	AS 29.06.490	

### **3 AAC 110.560. Commission hearing procedures**

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses
  - (A) with expertise in matters relevant to the proposed change; and
  - (B) called by the petitioner;

- (5) sworn testimony of witnesses
    - (A) with expertise in matters relevant to the proposed change; and
    - (B) called by each respondent;
  - (6) sworn responsive testimony of witnesses
    - (A) with expertise in matters relevant to the proposed change; and
    - (B) called by the petitioner;
  - (7) a period of public comment by interested persons, not to exceed three minutes for each person;
  - (8) a closing statement by the petitioner, not to exceed 10 minutes;
  - (9) a closing statement by each respondent, not to exceed 10 minutes; and
  - (10) a reply by the petitioner, not to exceed five minutes.
- (c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.
- (d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.
- (e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.
- (f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.812
	AS 29.04.040	AS 44.33.814
	AS 29.05.090	AS 44.33.816
	AS 29.06.040	AS 44.33.820
	AS 29.06.120	AS 44.33.826
	AS 29.06.490	

### **3 AAC 110.570. Decisional meeting**

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition as altered. If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.814
	AS 29.04.040	AS 44.33.816
	AS 29.05.100	AS 44.33.818
	AS 29.06.040	AS 44.33.820
	AS 29.06.130	AS 44.33.822
	AS 29.06.500	AS 44.33.826
	AS 44.33.812	

### **3 AAC 110.580. Reconsideration**

(a) Within 18 days after a 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, describing in detail the facts and analyses that support the request for reconsideration.

(b) Within 20 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.

(c) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because 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 and each respondent 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.

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

(e) 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.

(f) If the commission does not act on a request for reconsideration within 20 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 20 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 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 or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department 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 and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.812
	AS 29.04.040	AS 44.33.814
	AS 29.05.100	AS 44.33.820
	AS 29.06.040	AS 44.33.822
	AS 29.06.130	AS 44.33.826
	AS 29.06.500	

### **3 AAC 110.590. Certain local action annexations**

(a) Except as otherwise provided in this section, if a petition is filed with the department under a local action method provided for in AS 29.06.040(c)(2) or (c)(3) for annexation of adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners, only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

(1) filing a petition under 3 AAC 110.420;

(2) technical review of the petition under 3 AAC 110.440;

(3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;

(4) responsive briefs and comments under 3 AAC 110.480, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;

(5) a reply brief under 3 AAC 110.490, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to seven days from the date that the petitioner received the responsive brief;

(6) a departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days before the public hearing under 3 AAC 110.550; interested persons may submit written comments to the department on its report no later than seven days before the public hearing;

(7) the commission's public hearing under 3 AAC 110.550, except that the commission may conduct the hearing by teleconference;

(8) the decisional meeting under 3 AAC 110.570;

(9) reconsideration under 3 AAC 110.580.

(b) The commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.

(c) The commission may relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

(d) Repealed 5/19/2002.

(e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission may convert a local action petition for an annexation described in (a) of this section to a legislative review petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.812
	AS 29.06.040	AS 44.33.814
	AS 29.06.090	AS 44.33.818
	AS 29.06.450	AS 44.33.826

### **3 AAC 110.600. Local action/local option elections**

(a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.

(b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost, and in the manner prescribed by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.

(c) Under AS 29.06.040(c) and AS 44.33.812 (a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.040
	AS 29.04.040	AS 29.06.140
	AS 29.05.110	AS 29.06.510
	AS 29.05.120	AS 44.33.812

### 3 AAC 110.610. Legislative review

(a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 44.33.812
	AS 29.06.040	AS 44.33.822
	AS 29.06.090	AS 44.33.826
	AS 29.06.450	AS 44.33.828

### 3 AAC 110.620. Judicial review

A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.130
	AS 29.04.040	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	

### 3 AAC 110.630. Effective date and certification

(a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, or municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed, and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.140
	AS 29.04.040	AS 29.06.510
	AS 29.05.120	AS 44.33.812
	AS 29.06.040	AS 44.33.828

### **3 AAC 110.640. Scheduling**

(a) The chair of the commission shall set or amend the schedule for action on a petition.

(b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least

(1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days after the date of mailing of a departmental preliminary report with recommendations to the petitioner for receipt of written summary comments to the department; and

(4) 21 days between the date of mailing of a final report with recommendations by the department to the petitioner and the commission hearing on the petition.

(c) The commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all of the same territory and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.120
	AS 29.04.040	AS 29.06.480
	AS 29.05.070	AS 29.06.490
	AS 29.05.080	AS 44.33.020
	AS 29.05.090	AS 44.33.812
	AS 29.06.040	AS 44.33.814
	AS 29.06.090	AS 44.33.826
	AS 29.06.110	

### **3 AAC 110.650. Resubmittals and reversals**

Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

History: Eff. 7/31/92, Register 123

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.130
	AS 29.04.040	AS 29.06.450
	AS 29.05.100	AS 29.06.500
	AS 29.06.040	AS 44.33.812
	AS 29.06.090	

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

### **3 AAC 110.660. Purpose of procedural regulations; relaxation or suspension of procedural regulation**

The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.660 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const. AS 29.06.090  
 AS 29.04.040 AS 29.06.450  
 AS 29.05.100 AS 44.33.812  
 AS 29.06.040

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## **Alaska Administrative Code 3 AAC 110.900 – 3 AAC 110.990 (General Provisions)**

### **Article 13 General Provisions**

#### *Section*

*900. Transition.*

*910. Statement of non-discrimination.*

*920. Determination of community.*

*970. Determination of essential city or borough services.*

*980. Determination of best interests of the state.*

*990. Definitions.*

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

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.090
	AS 29.04.040	AS 29.06.130
	AS 29.05.100	AS 29.06.150
	AS 29.05.130	AS 29.06.160
	AS 29.05.140	AS 44.33.812
	AS 29.06.040	

### **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.

History: Eff. 7/31/92, Register 123

Authority: Art. X, sec. 12, Ak Const.  
AS 44.33.812

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

### **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.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 44.33.812

### **3 AAC 110.970. Determination of essential city or borough services**

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the territory; and
- (2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

- (1) assessing and collecting taxes;
- (2) providing primary and secondary education;
- (3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the community; and
- (2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

- (1) levying taxes;

(2) for a city in the unorganized borough, assessing and collecting taxes;

(3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;

(4) public safety protection;

(5) planning, platting, and land use regulation; and

(6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

History: Eff. 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.090
	AS 29.04.040	AS 29.06.130
	AS 29.05.011	AS 29.06.450
	AS 29.05.031	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	

### **3 AAC 110.980. Determination of best interests of the state**

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

(1) the broad policy benefit to the public statewide; and

(2) whether the municipal government boundaries that are developed serve

(A) the balanced interests of citizens in the area proposed for change;

(B) affected local governments; and

(C) other public interests that the commission considers relevant.

History: Eff. 5/19/2002, Register 162

Authority:	Art. X, sec. 12, Ak Const.	AS 29.06.090
	AS 29.04.040	AS 29.06.130
	AS 29.05.011	AS 29.06.450
	AS 29.05.031	AS 29.06.500
	AS 29.05.100	AS 44.33.812
	AS 29.06.040	

### 3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality;

(2) "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) "commission" means the Local Boundary Commission;

(4) "commissioner" means the commissioner of community and economic development;

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

(6) "contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other;

(7) "department" means the Department of Community and Economic Development;

(8) "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;

(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;

(10) "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;

(11) "political subdivision" means a borough or city organized and operated under state law;

(12) "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;

(13) "regional educational attendance area" means an educational service area established and organized under AS 14.08 and AS 29.03.020;

(14) "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.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority: Art. X, sec. 12, Ak Const.  
AS 44.33.812

Editor's note: The Local Boundary Commission's publication Model Borough Boundaries, adopted by reference in 3 AAC 110.990, is on file at the offices of the Local Boundary Commission staff, Department of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, Alaska, and is available at the web site of the Department of Community and Economic Development, at [www.dced.state.ak.us/cbd/lbc/lbc.htm](http://www.dced.state.ak.us/cbd/lbc/lbc.htm).

# Appendix D

## Federal Statutes Pertaining to the Gustavus City Incorporation Proposal

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### **42 U.S.C. 1973(c) – (Federal Voting Rights Act)**

#### **Sec. 1973c. - Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court**

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for

failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

# Appendix E

## Code of Federal Regulations Relevant to the Gustavus City Incorporation Proposal

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### **28 C.F.R. 51.51 – 28 C.F.R. 51.61 (Federal Voting Rights Act Determinations by the U.S. Department of Justice)**

#### **Subpart F—Determinations by the Attorney General**

##### **Sec. 51.51 Purpose of the subpart.**

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5 and in defending section 5 declaratory judgment actions.

##### **Sec. 51.52 Basic standard.**

(a) Surrogate for the court. Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia.

Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina v. Katzenbach*, 383 U.S. 301, 328, 335 (1966). (b) No objection. If the Attorney General determines that the submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change. (c) Objection. An objection shall be interposed to a submitted change if

the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

### **Sec. 51.53 Information considered.**

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

### **Sec. 51.54 Discriminatory effect.**

(a) Retrogression. A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer v. United States*, 425 U.S. 130, 140-42 (1976).

(b) Benchmark. (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (b)(4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review under Sec. 51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See Sec. 51.18(c).

(4) Where at the time of submission of a change for section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or

adopted for the purpose of discriminating against members of racial or language minority groups.

**Sec. 51.55 Consistency with constitutional and statutory requirements.**

(a) Consideration in general. In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) Section 2. Preclearance under section 5 of a voting change will not preclude any legal action under section 2 by the Attorney General if implementation of the change demonstrates that such action is appropriate.

[52 FR 490, Jan. 6, 1987, as amended at 63 FR 24109, May 1, 1998]

**Sec. 51.56 Guidance from the courts.**

In making determinations the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts.

**Sec. 51.57 Relevant factors.**

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists.

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change.

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change.

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.

### **Sec. 51.58 Representation.**

(a) Introduction. This section and the sections that follow set forth factors—in addition to those set forth above—that the Attorney General considers in reviewing redistrictings (see Sec. 51.59), changes in electoral systems (see Sec. 51.60), and annexations (see Sec. 51.61).

(b) Background factors. In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections and the decisionmaking of elected officials in the jurisdiction.

(3) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(4) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

### **Sec. 51.59 Redistrictings.**

In determining whether a submitted redistricting plan has the prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens.

(b) The extent to which minority voting strength is reduced by the proposed redistricting.

(c) The extent to which minority concentrations are fragmented among different districts.

(d) The extent to which minorities are overconcentrated in one or more districts.

(e) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered.

(f) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries.

(g) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

### **Sec. 51.60 Changes in electoral systems.**

In making determinations with respect to changes in electoral systems (e.g., changes to or from the use of at-large elections, changes in the size of elected bodies) the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which minority voting strength is reduced by the proposed change.

(b) The extent to which minority concentrations are submerged into larger electoral units.

(c) The extent to which available alternative systems satisfying the jurisdiction's legitimate governmental interests were considered.

### **Sec. 51.61 Annexations.**

(a) Coverage. Annexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. In analyzing annexations under section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) Section 5 review. It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations together. See *City of Pleasant Grove v. United States*, C.A. No. 80-2589 (D.D.C. Oct. 7, 1981).

(c) Relevant factors. In making determinations with respect to annexations, the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(2) The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future.

(3) Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See *City of Richmond v. United States*, 422 U.S. 358, 367-72 (1975).

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

# Appendix F

## LBC 1997 Statement of Decision Regarding the Gustavus City Incorporation Proposal



### Local Boundary Commission

*Darroll Hargraves, Chairperson*  
*Kathleen Wasserman, Member, First Judicial District*  
*Nancy Cannington, Member, Second Judicial District*  
*Kevin Waring, Member, Third Judicial District*  
*William Walters, Member, Fourth Judicial District*

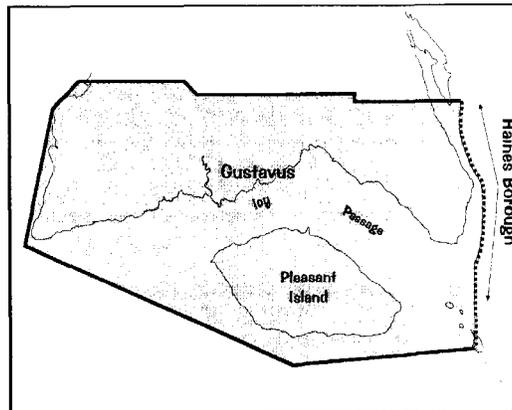
## Statement of Decision

### IN THE MATTER OF THE PETITION FOR INCORPORATION OF THE CITY OF GUSTAVUS

#### SECTION I BACKGROUND AND DESCRIPTION OF AREA

Voters in Gustavus, a community of 357 residents, petitioned the Local Boundary Commission to form a second class city. Gustavus is located approximately 48 miles northwest of Juneau, in Alaska's unorganized borough.

The territory proposed for incorporation comprised nearly 144 square miles. The Petitioners' boundaries encompassed the community of Gustavus and surrounding territory including Pleasant Island (a U.S. Forest Service wilderness area) and portions of the Glacier Bay National Park and Preserve.



143.92 Square Mile Area Petitioned for Incorporation

Five individuals or organizations filed responsive briefs in opposition to the incorporation petition. The objections of the respondents centered on what they perceived to be excessive boundaries, particularly with respect to the inclusion of Pleasant Island and portions of the Glacier Bay National Park and Preserve. The five respondents were the Hoonah Indian Association, City of Hoonah, Wanda Culp (a Hoonah resident), Whitestone Southeast Logging Co., and Richard Dalton, Jr., along with seven other Hoonah residents.

## SECTION II SUMMARY OF PROCEEDINGS

The following is a summary of the proceedings relating to the proposal to incorporate the City of Gustavus.

- 03/27/96 – The Gustavus city incorporation petition was received by the Department of Community and Regional Affairs (DCRA).
- 04/05/97 – DCRA completed its technical review of the petition in accordance with AS 29.05.070 and accepted the petition for filing. The Chairman of the LBC established June 21, 1996, as the deadline for filing responsive briefs and comments.
- 04/09/96 – Notice of the filing of the petition was mailed by DCRA to 38 potentially interested agencies and individuals. Additionally, notice was posted at the Gustavus Post Office, Beartrack Mercantile in Gustavus, and the Gustavus Public Library. The notice remained posted at the locations noted for at least 14 consecutive days from the date of posting.
- 04/10/96 – The petition was made available for public review at the Gustavus Public Library.
- 04/13/96 – The Petitioners provided notice of the filing to 10 individuals and organizations designated by DCRA. The Petitioners also served a copy of the petition on the Haines Borough and the City of Hoonah.
- 04/15/96 – Notice of the filing of the petition was published for the first time in the *Alaska Administrative Journal*. The notice was subsequently published 10 additional times in the *Alaska Administrative Journal*, with the last time being June 24, 1996.
- 04/24/96 – Notice of the filing of the petition was published for the first time in the *Juneau Empire* as a display advertisement 2-columns wide and six-inches long. The *Juneau Empire* is a newspaper of general circulation in Gustavus. The same notice was subsequently published in the *Juneau Empire* on May 1 and May 15, 1996.
- 05/01/96 – Notice of the filing of the petition was published for the first time in the *Icy Passages* as a display advertisement. The *Icy Passages* is also a newspaper of general circulation in Gustavus. The same notice was subsequently published in the *Icy Passages* on June 1, 1996.
- 06/21/96 – This date was established as the deadline for filing responsive briefs and written comments. When the deadline was reached, written comments had been filed by the following:
  1. Chatham School District (a 1-page letter in support of the petition);
  2. U.S. Forest Service (a 2-page letter expressing objections to the boundaries of the proposed city);
  3. Gregory Brown, Hoonah resident (a 1-page letter in opposition to the petition);
  4. Patrick G. Mills, Hoonah resident (a 3-page letter in opposition to the petition);
  5. Thomas Mills, Sr., Hoonah resident (a 1-page letter in opposition to the petition); and
  6. Paul N. Berry, Gustavus resident (a 2-page letter in support of the petition).

Additionally, the following five organizations and individuals filed materials that were considered to be timely responsive briefs pursuant to 19 AAC 10.480:

  1. Hoonah Indian Association (a 2-page submission in opposition to the petition);

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
**Page 3**

2. City of Hoonah (a 1-page submission in opposition to the petition);
  3. Wanda Culp, Hoonah resident (a 2-page submission in opposition to the petition);
  4. Whitestone Southeast Logging Co. (a 1-page submission in opposition to the petition); and
  5. Richard Dalton Jr., et al., Hoonah residents (a 1-page submission signed by 8 Hoonah residents in opposition to the petition).
- 07/12/96 – Petitioners filed a 3-page brief pursuant to 19 AAC 10.490 in reply to the responsive briefs and comments. A copy of the reply brief was served on the respondents.
- 07/30/96 – DCRA held a public informational meeting regarding the Gustavus city incorporation proposal in Hoonah.
- 07/31/96 – DCRA held a public informational meeting regarding the Gustavus city incorporation proposal in Gustavus.
- 12/09/96 – DCRA's 42-page Provisional Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus was mailed to the Petitioners' Representative and all respondents.
- 12/10/96 – DCRA's provisional report was mailed to an additional 28 individuals and organizations.
- 12/24/96 – Notice of the February 14, 1997 LBC hearing on the Gustavus city incorporation proposal was issued by DCRA to 41 individuals and organizations. DCRA also requested that KTOO-FM broadcast public service announcements concerning the hearing beginning no later than January 24, 1997.
- 12/30/96 – Notice of the February 14 hearing was posted at the Gustavus Post Office. The same notice was also posted at the Beartrack Mercantile and the Gustavus Library on January 2, 1997, and at the National Park Service offices at Bartlett Cove on January 3.
- 01/03/97 – Notice of the February 14, 1997 LBC hearing was published for the first time in the *Juneau Empire*. The same notice was published again in the *Juneau Empire* on January 10 and 17, 1997.
- 01/08/97 – This date was established as the deadline for filing written comments on DCRA's provisional report. When the deadline was reached, written comments had been filed by the following 10 individuals and organizations:
1. Chris Smith, Petitioners' Representative (two-page letter dated January 4, 1997, accompanied by a one-page attachment);
  2. J.M. Brady, Superintendent of the Glacier Bay National Park and Preserve (one-page letter dated January 3, 1997);
  3. R. Imboden and Rhio Harper of TRI Bed and Breakfast of Glacier Bay (one-page letter dated January 2, 1997);
  4. Patrick G. Mills, member of family with Native allotment at Fall Creek (four-page letter dated January 7, 1997);
  5. Greg Brown, Juneau resident (one-page undated letter received January 6, 1997);
  6. Janie G. Eldemar, Juneau resident (two-page letter dated January 6, 1997);
  7. Eleanor Mills Moritz, Juneau resident (two-page letter dated January 6, 1997);
  8. Rosemary Mills Jimboy, resident of Lawrence, Kansas (two-page letter dated January 8, 1997);
  9. Wanda Culp, Hoonah resident (two-page letter dated January 8, 1997);
  10. Thomas L. Mills, Sr., Hoonah resident (one-page letter dated January 7, 1997).

LBC Statement of Decision  
Incorporation of the City of Gustavus  
Page 4

- 01/13/97 – Notice of the hearing was published for the first time in the *Alaska Administrative Journal*. The notice was subsequently published 4 additional times in the *Alaska Administrative Journal*, with the last time being February 10, 1997.
- 01/15/97 – Notice of the February 14, 1997 LBC hearing was published in the January/February edition of the *Icy Passages*.
- 01/23/97 – The eleven-page Final Report of the Department of Community and Regional Affairs to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus was issued to 47 individuals and organizations.
- 02/14/97 – Poor weather prevented the LBC from flying to Gustavus to conduct its hearing as scheduled. The hearing was postponed until 9:00 a.m. the following day. Notice of the postponement was given in accordance with 19 AAC 10.550.
- 02/15/97 – Poor weather again prevented the LBC from flying to Gustavus. Consequently, the hearing was canceled. A new hearing was subsequently scheduled to be held in Gustavus on May 24, 1997, with a teleconference connection to Hoonah.
- 04/16/97 – DCRA received the Petitioners' Amendment Number 1 to the incorporation petition. The Amendment added a proposition to authorize the prospective City of Gustavus to levy a 1% tax on sales other than those that were subject to the 3% tax on overnight accommodations. The amendment was accepted for filing by DCRA. The Chairperson of the LBC made a determination that the amendment did not warrant opportunity for further briefing, public meetings, or any other step or process specified in 19 AAC 10.400 - 19 AAC 10.660.
- 04/17/97 – DCRA requested that KINY-AM and KTOO-FM broadcast public service announcements of the May 24 hearing beginning at least by May 3.
- 04/18/97 – Notice of the May 24 hearing was issued by DCRA to 56 individuals and organizations, including the Petitioners' Representative and all respondents. The Gustavus School was established as the hearing site, a teleconference site was established at the Hoonah City Council Chambers.
- 04/21/97 – Notice of the hearing was published for the first time as a display ad in the *Juneau Empire*. The same notice was subsequently published again in the *Juneau Empire* on April 28 and May 5.
- 04/23/97 – Notice of the hearing was posted at the Gustavus Post Office, Gustavus Library, Gustavus School, and Beartrack Mercantile.
- 05/19/97 – Notice of the hearing was published in the *Icy Passages*.
- 05/20/97 – Notice of the hearing was posted at the Hoonah Trading Company, the Hoonah branch of the Key Bank of Alaska, Hoonah City Hall, and the Hoonah Post Office.
- 05/24/97 – The LBC conducted its hearing as scheduled. The hearing began at approximately 2:00 p.m. Approximately 50 individuals were present in Gustavus and two were present at the teleconference site in Hoonah. Approximately 30 individuals provided comments or sworn testimony to the Commission during the hearing. The hearing lasted for approximately 3.5 hours. Following the hearing, the Commission amended and approved the petition for incorporation of the City of Gustavus.

LBC Statement of Decision  
Incorporation of the City of Gustavus  
Page 5

### SECTION III FINDINGS AND CONCLUSIONS

The Local Boundary Commission makes the findings and conclusions set out in this section based on the evidence in this proceeding, including:

1. the March 1996 Petition for Incorporation of the City of Gustavus;
2. the five responsive briefs in opposition to the Petition for Incorporation of the City of Gustavus;
3. six letters in support of or in opposition to the Petition for Incorporation of the City of Gustavus;
4. the Petitioners' July 12, 1996 brief in reply to the five responsive briefs;
5. DCRA's December 1996 42-page Provisional Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus;
6. ten letters commenting on DCRA's Provisional Report;
7. the January 23, 1997 eleven-page Final Report of the Department of Community and Regional Affairs to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus;
8. Amendment Number 1 to the March 1996 Petition for Incorporation of the City of Gustavus;
9. DCRA's memorandum of May 22, 1997 concerning Amendment Number 1 to the Petition and potential sales tax revenues for the prospective City of Gustavus.
10. testimony from Gustavus and Hoonah during the May 24, 1997 hearing of the Local Boundary Commission.

#### **Findings and Conclusions Concerning Local Self-Government.**

Article X, § 1 of the Constitution of the State of Alaska states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units . . .". Regarding that particular provision, the Commission finds that:

1. Gustavus is an unincorporated community within the unorganized borough. As such, it has no structure for delivery of municipal services.
2. While there is some measure of interest in forming an organized borough in the Glacier Bay region, incorporation of a second class city is the only municipal government option that is realistically available to the residents of Gustavus at this point.

Conclusion: Based on the above findings, the Commission concludes that incorporation of the City of Gustavus will promote the principles of maximum local self-government with a minimum of local governmental units set forth in Article X, § 1 of Alaska's constitution.

#### **Findings and Conclusions Concerning the Boundaries of the Prospective City of Gustavus.**

AS 29.05.011(a)(2) stipulates that the boundaries of a proposed city must include all areas necessary to provide municipal services on an efficient scale. In addition, 19 AAC 10.040(a) provides that, "In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level." In that regard, the Commission finds that:

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
**Page 6**

1. All of the areas necessary for the City of Gustavus to provide essential city services as defined by 19 AAC 10.990(8) are included within the boundaries proposed by the Petitioners.

19 AAC 10.040(b) stipulates that, "The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation of that city." Regarding this standard, the Commission finds that:

1. The nearly 144-square mile area proposed for incorporation by the Petitioners includes territory that is beyond both the present community of Gustavus and the area of reasonably predictable growth, development, and public safety needs for the next 10 years.
2. The boundaries recommended by DCRA, encompassing an estimated 32.62 square miles, better satisfy this particular standard for the reasons outlined by DCRA in its provisional and final reports. DCRA's recommended boundaries include:
  - A. all of the privately owned property in the community, with the exception of the three or so Native allotments at Point Gustavus and near Fall Creek;
  - B. all Mental Health Trust lands in Gustavus;
  - C. all vacant, unappropriated, and unreserved State lands in the area proposed for incorporation; and
  - D. the Glacier Bay lodge, Glacier Bay National Park headquarters and Bartlett Cove.
3. There is potential for development of a hydroelectric facility in the Fall Creek area east of DCRA's recommended boundaries. However, the prospect for such development has not been adequately demonstrated to warrant the inclusion of the territory at this time. In the event that development of that area appears imminent, the area may be annexed to the City of Gustavus in the future.

19 AAC 10.040(c) provides that, "The boundaries of the proposed city must not include entire geographical regions or large unpopulated areas, except when such boundaries are justified by the application of the standards in 19 AAC 10.010 - 19 AAC 10.040." In this respect, the Commission finds as follows:<sup>1</sup>

1. The boundaries recommended by DCRA, plus the Dude Creek Critical Habitat Area and the SW ¼ of Section 16, T40S, R58E, Copper River Meridian, conform to this particular standard. The rationale for DCRA's boundaries was addressed earlier. The rationale for adding the Dude

<sup>1</sup> Commissioners Wasserman, Hargraves, and Waring supported the inclusion of the Dude Creek Critical Habitat Area, comprising an estimated 6 and 3/8 square miles, for the reasons stated above. Commissioners Cannington and Walters opposed the inclusion of that area because they did not consider it necessary for the delivery of essential city services on an *efficient, cost-effective level*. Additionally, Commissioners Cannington and Walters found that the Dude Creek Critical Habitat Area comprised a large unpopulated area that lacked justification for inclusion by the application of the standards in 19 AAC 10.010 - 19 AAC 10.040. A motion to include the Dude Creek Critical Habitat Area in the proposed municipal boundaries was approved by a 3-2 vote. Having included that area, all members of the Commission subsequently voted in favor of a separate amendment to include an additional ¼ square mile of State land, set aside for educational purposes, adjacent to the Dude Creek Critical Habitat Area (SW ¼ of Section 16, T40S, R58E, Copper River Meridian).

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
**Page 7**

Creek Critical Habitat Area and the SW  $\frac{1}{4}$  of Section 16, T40S, R58E, Copper River Meridian, includes the following:

- A. Testimony and comments from residents of Gustavus demonstrate significant concern over the management of the Dude Creek Critical Habitat Area. There is great interest in the inclusion of that area in the boundaries of the proposed city.
- B. The Alaska Department of Fish and Game has expressed no concern about adverse consequences over the inclusion of the Dude Creek Critical Habitat Area in the territory proposed for incorporation.
- C. AS 16.20.610 specifically mandates a role for Gustavus in the development of the Dude Creek Critical Habitat Area management plan. In enacting that statute, it appears that the legislature recognized the important interest that residents of Gustavus have with regard to the management of the Dude Creek Critical Habitat Area. Including the Dude Creek Critical Habitat Area in the City of Gustavus' boundaries would give the residents of Gustavus a greater voice in the development of the management plan.
- D. All of Section 16, T40S, R58E, Copper River Meridian, is designated as State lands for educational purposes. Three-quarters of that area is also within the Dude Creek Critical Habitat Area. The one-quarter section that is not within the habitat area is the SW  $\frac{1}{4}$  of the section. That one-quarter section should be included in the proposed city boundaries because, like Mental Health Trust Lands, it too may be managed for revenue generating purposes. Therefore, it is appropriate that the City of Gustavus have some say in any future development of that property.

Conclusion: Based on the preceding findings, the Commission concludes that the boundaries recommended by DCRA, with the addition of the Dude Creek Critical Habitat Area and the SW  $\frac{1}{4}$  of Section 16, T40S, R58E, Copper River Meridian, best satisfy the boundary standards set forth in AS 29.05.011(a)(2) and 19 AAC 10.040(a)-(c).

**Findings and Conclusions Concerning the Human and Financial Resources Necessary to Provide Municipal Services on an Efficient, Cost-Effective Level.**

AS 29.05.011(a)(3) provides that a community may incorporate as a city only if, "the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue." 19 AAC 10.020(a) provides that, "In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. . . ." In this respect, the Local Boundary Commission finds that:

1. Upon consideration of Gustavus' economic base, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, the budget of the proposed city is plausible, albeit modest.

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
 Page 8

2. Upon consideration of Gustavus' commercial development, property values, and personal income, Gustavus has significant financial resources to support growth of the city government as the needs of the community increase.
3. The adequacy of the human resources in Gustavus is evident from the long-term successful operation of non-profit corporations to provide quasi-municipal services such as the library, landfill, fire protection, and search and rescue.
4. The adequacy of the human resources is further demonstrated through the impressive efforts of the Petitioners with respect to the pending effort to form a city government.

Conclusion: Based on the above findings, the Commission concludes that Gustavus has the human and financial resources necessary to provide municipal services on an efficient, cost-effective level.

**Findings and Conclusions Concerning the Size and Stability of the Population of Gustavus.**

AS 29.05.011(a)(4) provides that a community may incorporate a city only if, "the population of the community is stable enough to support city government." Additionally, 19 AAC 10.030(a) provides that, "In accordance with AS 29.05.011 the population of a proposed city must be sufficiently large and stable to support the proposed city government. . ." The Commission finds in this regard that:

1. The population of Gustavus has increased steadily since at least 1970 at which time the population of the community was 64. The current population of Gustavus is estimated to be 357. Over the past ten years, the rate of increase in the population of Gustavus has averaged about 6½% annually.

Conclusion: Based on the above finding, the Commission concludes that the population of Gustavus is sufficiently large and stable to support the proposed city government.

**Findings and Conclusions Concerning the Need for City Government.**

AS 29.05.011(a)(5) provides that a city may be incorporated only if, "there is a demonstrated need for city government." In addition, 19 AAC 10.010(a) provides that, "In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government." With respect to this standard, the Commission finds that:

1. Gustavus has an exceptionally high water table and a fragile aquifer; but lacks provisions for sewage management.
2. The State of Alaska has abdicated certain of its planning responsibilities. Specifically:
  - A. There is no platting authority in the unorganized borough.
  - B. On July 1, 1996, the Alaska Department of Environmental Conservation ceased all environmental/public health oversight of subdivision plans in Alaska. For many years prior to that, the agency performed plat reviews to ensure that subdivisions were designed in a manner that each lot had sufficient size and suitable

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
**Page 9**

conditions to allow water and sewage disposal systems that were adequate to protect public health.

3. Gustavus is a relatively populous unincorporated community (357 residents according to a census conducted in November of 1995);
4. Being in the unorganized borough, there is no existing structure to provide municipal services.
5. State funding for direct and indirect services in unincorporated communities in the unorganized borough has declined significantly. Since Fiscal Year 1987, State Revenue Sharing funding for unincorporated communities has declined by more than 70% when adjusted for inflation.
6. Gustavus is faced with the prospect of continued growth and development. Its population has increased by more than 4½ times since 1970. Earlier this year, renewed interest was expressed by an out of state developer in a proposal to construct a resort with more than 110 rooms and cabins on 137 acres in Gustavus.

Conclusion: Based on the above findings, the Commission concludes that there is a need for city government in Gustavus.

**Findings and Conclusions Concerning the Fulfillment of Service Needs Through Annexation to an Existing City.**

AS 29.05.021(a) provides that, "A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city." Additionally, 19 AAC 10.010(b) provides that, in accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough. In this regard, the Commission finds that:

1. The prospect that local service needs in Gustavus could be satisfied by any existing city government is clearly implausible. Hoonah is the nearest city government to Gustavus. Even so, Hoonah and Gustavus are relatively distant and inaccessible to one another.

Conclusion: Based on the above finding, the Commission concludes that services proposed to be provided by the prospective City of Gustavus cannot be provided by annexation to an existing city.

**SECTION IV**  
**ORDER OF THE COMMISSION**

Based on the preceding findings and conclusions, the Local Boundary Commission determines that all constitutional, statutory, and regulatory standards for incorporation of a second class city in the unorganized borough are satisfied by the petition for incorporation of the City of Gustavus, as amended. The amendments to the petition consist of: (1) Amendment Number 1 by the Petitioners, adding a proposition to authorize the City of Gustavus to levy a 1% general sales tax; (2) an amendment by the Commission to reduce the boundaries of the proposed city to conform to DCRA's recommendation, plus the Dude Creek Critical Habitat Area; and (3) the further

**LBC Statement of Decision**  
**Incorporation of the City of Gustavus**  
**Page 10**

amendment by the Commission to add the SW  $\frac{1}{4}$  of T40S, R58E, Copper River Meridian to the territory approved for incorporation.

The Commission hereby orders approval of the amended petition for incorporation of the City of Gustavus. As approved by the Commission, the petition provides for:

1. A proposition to be placed before the voters to authorize the City of Gustavus to levy a three percent tax on overnight accommodations (i.e., 3% "bed tax"). Voter approval of the proposition for the levy of the three percent tax on overnight accommodations is a condition for incorporation of the City of Gustavus. In other words, voters must approve the bed tax proposition in order for the City of Gustavus to be formed.
2. A proposition to be placed before the voters to authorize the City of Gustavus to levy a one percent tax on sales, except those sales that are subject to the tax on overnight accommodations (i.e., 1% "general sales tax"). Voter approval of the proposition for the levy of the one percent sales tax is *not* a condition for incorporation of the City of Gustavus.
3. A proposition to be placed before the voters for the incorporation of a second class city. The boundaries of the territory approved for incorporation are described as follows:

Beginning at the northeast corner of section 3, T40S, R59E, Copper River Meridian (C.R.M.); as shown on USGS Quadrangle Juneau (B-5) (minor revisions 1966), the true point of beginning;

Thence south approximately 1.1 miles to the line of mean high tide of Icy Passage;

Thence continuing south 1.9 miles to a point in Icy Passage;

Thence southwesterly at approximately S75°W an approximate distance of 8.2 miles to a point in Icy Strait;

Thence north 1.2 miles to a point where the common section line between sections 20 and 21, T40S, R58E, meet the line of mean high tide;

Thence continuing north along said section line and partly along the western boundary of the Dude Creek Critical Habitat Area to the northwest corner of section 9, T40S, R58E, C.R.M.;

Thence east along the western boundary of the Dude Creek Critical Habitat Area to the northeast corner of section 9, T40S, R58E, C.R.M.;

Thence north along the western boundary of the Dude Creek Critical Habitat Area to the northwest corner of section 3, T40S, R58E, C.R.M.;

Thence west along the township line dividing T39S and T40S, C.R.M. to the line of mean high tide of Glacier Bay;

Thence continuing west approximately 375' to a point in Glacier Bay;

Thence north 1 mile to a point in Bartlett Cove;

Thence east  $\frac{1}{2}$  mile to a point in Bartlett Cove;

**LBC Statement of Decision  
Incorporation of the City of Gustavus  
Page 11**

Thence northeast (N45°E) approximately ¼ mile to a point in Bartlett Cove;

Thence east approximately ¼ mile to a point where the line of mean high tide meets the south boundary of the northeast ¼ of section 29, T39S, R58E, C.R.M.;

Thence continuing east to the protracted center of section 25, T39S, R58E, C.R.M.;

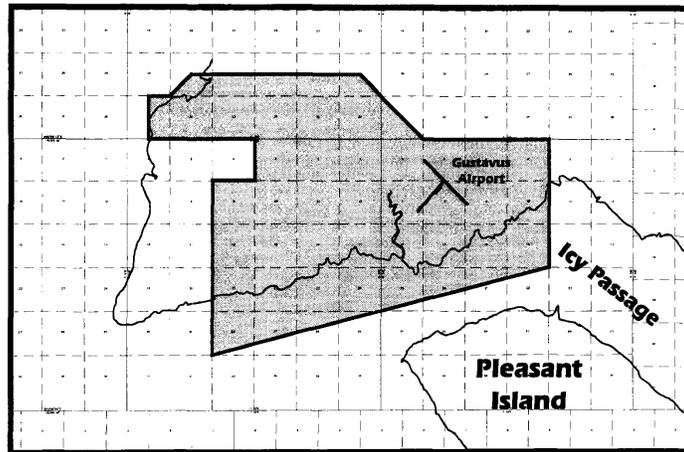
Thence southeasterly to the northwest corner of section 5, T40S, R59E, C.R.M.;

Thence east to the northwest corner of section 3, T40S, R59E, C.R.M., the true point of beginning.

Note: description is based on USGS quadrangles Juneau (B-5 and B-6) with minor revisions in 1966 and 1967 respectively.

*The boundaries encompass an estimated 29.23 square miles of land and 10.02 square miles of tidelands and submerged lands.*

A map of the area approved for incorporation appears below.



39.25 Square Mile Area Approved for Incorporation

Approved in writing this 6th day of June, 1997.

LOCAL BOUNDARY COMMISSION

BY

*Darroll Hargraves*  
Darroll Hargraves, Chairperson

Attest:

*Dan Bockhorst*  
Dan Bockhorst, Staff

LBC Statement of Decision  
Incorporation of the City of Gustavus  
Page 12

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### **RECONSIDERATION BY THE COMMISSION**

Within 20 days after this decision becomes final under 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

### **JUDICIAL APPEAL**

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, 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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# Appendix G

## Tips to Maximize the Effectiveness of Public Comments and Testimony During the LBC Hearing Regarding the Gustavus City Incorporation Proposal

The following suggestions are offered to residents of Gustavus and others interested in the proposed incorporation of the City of Gustavus. The suggestions are intended to offer ways to make public comments and testimony at the LBC hearing more effective.

**1. Come prepared and informed.** Carefully plan your comments. Prior to the hearing, you may wish to review the following materials:

- A. the standards established in State law for incorporation of cities (these are also summarized in # 2 below);
- B. the January 2003, petition for incorporation of the City of Gustavus;
- C. the letters from the six correspondents regarding the petition;
- D. the petitioner's reply to the six letters; and
- E. the preliminary and final reports of the Alaska Department of Community and Economic Development regarding the proposed incorporation of the City of Gustavus.

**2. Provide relevant comments.** The LBC's decision on the incorporation proposal will be based on standards established in law and applied to the facts regarding the Gustavus incorporation proposal. Comments and testimony that address those standards and facts will be most helpful to the LBC. In summary, the standards require a determination by the LBC that in this case:

- A. Gustavus must meet the definition of a community set out in 3 AAC 110.990.
- B. The boundaries of the proposed City of Gustavus must include all areas necessary to provide municipal services on an efficient scale as required by AS 29.05.011(a)(2) and 3 AAC 110.040(a).
- C. The boundaries of the proposed City of Gustavus must include only the present community, plus reasonably predictable growth,

development, and public safety needs during the 10 years following incorporation as required by 3 AAC 110.040(b).

- D. The boundaries of the proposed City of Gustavus must exclude entire geographic regions or large unpopulated areas, except where justified by the application of the incorporation standards as required by 3 AAC 110.040(c).
- E. The boundaries of the proposed City of Gustavus must be contiguous and without enclaves as required by 3 AAC 110.040(d).
- F. The boundaries of the proposed City of Gustavus may not overlap the boundaries of an existing borough or city without addressing standards and procedures for annexation to or detachment from existing boroughs and cities as required by 3 AAC 110.040(e).
- G. The economy of Gustavus must include the human and financial resources necessary to provide municipal services on an efficient, cost-effective level as required by AS 29.05.011(a)(3) and 3 AAC 110.020.
- H. The population of Gustavus must be large and stable enough to support city government as required by AS 29.05.011(a)(4) and 3 AAC 110.030(a).
- I. There must be a need for city government in Gustavus as required by AS 29.05.011(a)(5) and 3 AAC 110.010(a).
- J. As required by AS 29.05.021(a) and 3 AAC 110.010(b), an existing city government cannot be capable of efficiently and effectively providing services to Gustavus through annexation.
- K. Incorporation of the City of Gustavus must serve the best interests of the state as required by AS 29.05.100 and as defined under 3 AAC 110.042.
- L. The Petitioner must provide a plan for the proper transition to the proposed new city government as required by 3 AAC 110.900.
- M. Incorporation of the City of Gustavus must not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin as required by 3 AAC 110.910 and 42 U.S.C. § 1973.

**3. Observe the rules.**

- A. New written materials may not be filed with the LBC at the hearing unless allowed by the LBC Chair upon a showing of good cause.
- B. A three-minute limit on comments to the LBC by the public is established in law. The limit is intended to ensure that the LBC will be able to hear from all persons who wish to provide relevant comments. Please honor the time limits.

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

