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STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

Before Commissioners: Darroll Hargraves, Chair
Bob Hicks, Vice-Chair
Robert Harcharek
Tony Nakazawa
Georgianna Zimmerle

*IN THE MATTER OF THE PETITION FOR)
INCORPORATION OF NAUKATI AS A CITY)
OF THE SECOND CLASS IN THE)
UNORGANIZED BOROUGH)*

STATEMENT OF DECISION

*SECTION I
SUMMARY OF PROCEEDINGS*

This section of the Statement of Decision provides a summary of the incorporation proceedings.¹ Naukati voters petitioned the Local Boundary Commission (hereinafter “LBC” or “Commission”) for incorporation of a second class city in January 2004. In March 2004, the Petitioner submitted supplemental materials deemed necessary to complete the Petition. On April 16, 2004, the Alaska Department of Commerce, Community, and Economic Development (hereinafter “Commerce”) accepted the Petition for filing.

The LBC Chair set June 15, 2004, as the deadline for receipt of responsive briefs and comments on the Petition. Public notice of the filing of the Petition was provided in accordance with 3 AAC 110.450.

The Petitioner provided a full set of Petition documents for public review and also provided one complete set of Petition documents to each municipality within 20 miles of the territory proposed for incorporation, as required by 3 AAC 110.460.

¹ The account here of the proceedings up to the public hearing on December 12, 2005, is abridged since details of such proceedings are provided in Commerce’s *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Naukati* (August 2005, pp. 27 – 38) and Commerce’s *Final Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Naukati* (November 2005, pp. 4 – 7). A detailed written account of the proceedings at the hearing and decisional session is provided here because none exists elsewhere.

1 Scott Van Valin, owner and operator of the El Capitan Lodge at Sarkar Cove
2 within the territory proposed for incorporation, (hereinafter "Respondent") filed the only
3 Responsive Brief in this proceeding. The Responsive Brief was prepared by attorney
4 H. Clay Keene and consultant James A. Van Altvorst.

5 In addition to the Responsive Brief, five sets of written comments concerning
6 the proposal were received by the June 15, 2004 deadline. Those comments were
7 submitted by Al and Delores Donnelly, Scott Van Valin, Vern and Sue Bauer, Roland
8 Nehring, and Morris and Verna Ververs. All of the commenters were property owners
9 at Sarkar Cove within the territory proposed for incorporation.²

10
11 In answer to the Responsive Brief and comments, the Petitioner submitted a
12 Reply Brief on August 23, 2004.³

13 In accordance with 3 AAC 110.530, Commerce prepared its *Preliminary Report*
14 *to the Local Boundary Commission Regarding the Proposal to Incorporate the City of*
15 *Naukati* (hereinafter "*Preliminary Report*") examining the Petition. The 196-page *Pre-*
16 *liminary Report* was published in August 2005. The LBC Chair set October 12, 2005,
17 as the deadline for comment on the *Preliminary Report*.

18
19 As required by AS 29.05.080 and 3 AAC 110.520, Commerce held a public in-
20 formational meeting in Naukati regarding the incorporation proposal. The duly-noticed
21 meeting was held in the new Naukati School on October 4, 2005, beginning at 7 p.m.
22 Aside from Commerce staff, approximately 35 persons attended the meeting. The
23 meeting lasted approximately three hours.⁴

24
25 Eighteen sets of comments on Commerce's *Preliminary Report* were timely
26 submitted by individuals, groups, and organizations. Those included nine sets of com-
27 ments from Naukati East residents and property owners (Ed and Chyral Berney, Larry
28 Wilkinson (2 sets of comments), Patrick and Leeann Thurston, Norman and Brenda

29
30
31 _____
32 ² The Responsive Brief and five sets of comments opposed incorporation, particularly with re-
33 spect to proposed boundaries encompassing Sarkar Cove. Commerce's *Preliminary Report* (pp. 39 –
34 151) summarizes the arguments in the Responsive Brief and comments.

³ Commerce's *Preliminary Report* (pp. 39 – 151) summarizes the Petitioner's Reply Brief.

⁴ A summary of the informational meeting is provided in Commerce's *Final Report* (pp. 8 – 11).

1 Coon, Robert and Isabel Huestis, Teresa Baskett, Robert Schmidt, and Jerry
2 Hermanson). Six sets of comments were filed by Sarkar Cove property owners (Arlyn
3 and Dolores Donnelly, Vern and Sue Bauer, Morris and Verna Ververs, H. Clay
4 Keene, Attorney representing Respondent Scott Van Valin, Ruth Ann Albright, and Ro-
5 land and Betsy Nehring). One set of comments was submitted by the Petitioner's
6 Representative, Art King. Mr. King also submitted separate comments as President of
7 Naukati West, Inc., an incorporated non-profit homeowners association. Written com-
8 ments were also submitted by Claire King, a resident of Naukati West.⁵

10 In November 2005, Commerce published its *Final Report to the Local Boundary*
11 *Commission Regarding the Proposal to Incorporate the City of Naukati* (hereinafter
12 "*Final Report*"). The *Final Report* comprised 108 pages.

13 On December 12, 2005, LBC Commissioners Hargraves, Hicks, Harcharek, and
14 Zimmerle traveled to Naukati to conduct a public hearing on the city incorporation pro-
15 posal.⁶ Prior to the hearing, the four participating LBC members briefly toured portions
16 of the territory proposed for incorporation. Commissioners Hicks and Harcharek also
17 inspected the community dock and the shellfish nursery.

19 At 7:00 p.m. on December 12, 2005, the Commission convened a duly noticed
20 public hearing on the proposal at the new Naukati School. Aside from the LBC and
21 Commerce staff, approximately 30 individuals attended the hearing.

23 The hearing began with a summary by LBC Staff of its reports and rec-
24 ommendations to the Commission. In brief, Commerce recommended that the LBC
25 amend the Petition to reduce the territory proposed for incorporation from the 44
26 square miles outlined in the Petition to approximately 11.7 square miles. Commerce
27 also recommended that the LBC condition incorporation upon voter approval of a
28 proposition providing for the levy of a sales tax and/or property tax.

30 Following Commerce's summary, Petitioner's Representative Art King
31 made the Petitioner's opening statement. Mr. King urged the LBC not to condition in-
32

33 ⁵ A summary of the comments on the *Preliminary Report* and analysis of the comments is pro-
34 vided in Commerce's *Final Report* (pp. 12 – 56).

⁶ Commissioner Nakazawa was absent due to illness.

1 corporation upon voter approval of propositions granting the city authority to levy either
2 a sales tax or property tax.

3 At the request of Commissioner Zimmerle, Mr. King outlined the extent of
4 citizen participation in the development of the Petition.

5 Commissioner Hicks invited Mr. King to reconcile the current interest in
6 forming a city with the lack of such cited in the April 1998 *Community Action Plan* pre-
7 pared on behalf of Naukati West, Inc.

8 Commissioner Hicks also addressed the need for capital improvements
9 at the dock. Since no provision had been made in the Petition to fund those capital
10 improvement needs, Commissioner Hicks asked whether the Petitioner's Representa-
11 tive considered dock capital improvements to be an "essential service" of the proposed
12 city. Further, he asked Mr. King to explain how the city would maintain roads with only
13 a grader, since the December 2003 *Naukati Community Comprehensive Strategic Ac-*
14 *tion Plan* indicated that a backhoe, loader, dump truck, and roller would also be
15 needed to maintain roads.

16 In response to a question from Commissioner Hargraves, Mr. King pro-
17 vided details about which specific roads would be maintained by the city.

18 Commissioner Hicks observed that the *Naukati Community Comprehen-*
19 *sive Strategic Action Plan* indicated that land use conflicts have arisen in Naukati be-
20 cause of industrial development in residential areas. He noted, however, that the
21 Petition makes no provision for land use regulation by the proposed city. Further,
22 Commissioner Hicks noted that law enforcement is conspicuously absent from the Pe-
23 tition despite the fact that the community once had a Village Public Safety Officer.
24 Commissioner Hicks also indicated that the *Naukati Community Comprehensive Stra-*
25 *tegic Action Plan* cited difficulties with illegal disposal of solid waste; yet the Petition
26 makes no provision for solid waste collection.

27 Commissioner Hicks indicated that he was troubled by the Petitioner's
28 plan to sell general grant lands and then use the proceeds for operating expenses. He
29 stated that he felt that such would result in the serious depletion of the community's
30 capital assets, which could ultimately lead to bankruptcy of the proposed city.
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1 Commissioner Hicks questioned Mr. King about the wisdom of relying on
2 State and federal funding (e.g., Forest Receipts and Payment in Lieu of Taxes) to the
3 great extent reflected in the Petition. Commissioner Hicks questioned whether the lo-
4 cal citizens exhibited a level of interest and commitment in sustaining a city if they
5 were unwilling to levy a local sales or property tax.

6
7 Commissioner Hargraves asked about restrictions on the use of National
8 Forest Receipts by the prospective city government. Commissioner Harcharek asked
9 about current solid waste collection services in the community.

10 Commissioner Hicks noted that while the shellfish nursery currently ap-
11 pears to be a viable enterprise, mariculture (on which the nursery depends) has been
12 characterized by Commerce in this proceeding as a “struggling industry.” He ques-
13 tioned whether it is prudent to rely so heavily on a single enterprise – particularly one
14 that is serving a “struggling industry” – to support local government operations.

15
16 In response to a question from Commissioner Hargraves, Mr. King pro-
17 vided information about the value of oyster spat and the non-profit entity that currently
18 receives the proceeds from the sale of oyster spat by the Naukati nursery.

19 Commissioner Hicks indicated that he was also concerned about use of
20 the non-recurring organization grants for operating expenses. That concern was
21 founded upon a basis similar to the one that led to his concern about the use of capital
22 assets to fund day-to-day operations.

23
24 Commissioner Zimmerle expressed concern over the extent to which the
25 Petitioner relies on revenue from the shellfish nursery to support city operations. She
26 also expressed concern about the inherent risks of operating the shellfish nursery
27 (e.g., predators, Red Tide, fluctuating water temperatures, pollution, product liability,
28 etc.).

29
30 Commissioner Hicks noted that Commerce's Office of Economic Devel-
31 opment had expressed the hope that the main purpose of the nursery would not shift
32 from supporting for the struggling mariculture industry to providing revenue for local
33 government operations. He stressed that he was bothered by the prospect that oyster
34

1 farmers would end up supporting the operations of the City of Naukati because local
2 residents did not want to pay local sales and/or property taxes.

3 Commissioner Harcharek asked Mr. King to discuss the current capacity
4 of the nursery to produce spat. He also asked about plans to expand that capacity.

5 Commissioner Zimmerle stressed that she had numerous reservations
6 regarding the Petitioner's budget. She was particularly concerned over the multiple
7 changes the Petitioner had made to the original proposal. She noted that those
8 changes lend the impression that the original figures and subsequent changes may be
9 arbitrary.
10

11 Commissioner Zimmerle expressed further concern over the heavy reli-
12 ance of the Petitioner on the shellfish nursery enterprise. She noted that enterprise
13 operations of local governments often prove to be complex and fraught with difficulties.
14 As examples, she cited the Ketchikan Public Utilities operated by the City of Ketchi-
15 kan, and the Ketchikan International Airport operated by the Ketchikan Gateway Bor-
16 ough.
17

18 Commissioner Zimmerle expressed concern whether the Petitioner's pro-
19 jected expenses were realistic, particularly those for functions involving employees
20 and contractors.
21

22 Following the conclusion of the initial questioning of the Petitioner's Rep-
23 resentative by the Commission, the Chair invited those who wished to testify in favor of
24 the Petition to offer comments.

25 Brandy Prefontaine testified in favor of the Petition. She urged the LBC
26 not to condition incorporation upon voter approval of propositions authorizing the city
27 to levy sales and/or property taxes.

28 Commissioner Zimmerle asked Ms. Prefontaine whether she had partici-
29 pated in the development of the Petition. She also asked Ms. Prefontaine about the
30 sentiments of local residents regarding the proposed city government. Lastly, Com-
31 missioner Zimmerle asked Ms. Prefontaine to assess whether local residents were
32 well informed about the city incorporation proposal.
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34

1 Andy Richter, a property owner and business owner in Naukati West tes-
2 tified in favor of incorporation. Mr. Richter predicted that any condition imposed by the
3 LBC to require voter approval of a proposition authorizing the city to levy a sales tax
4 would impose a difficult hurdle. He expressed certainty that if incorporation were con-
5 ditioned on voter approval of a proposition to authorize the city to levy property taxes,
6 voters would reject the proposal. Mr. Richter stressed that if the funding projected in
7 the Petition did not materialize, community residents would do 'whatever is necessary'
8 to sustain the city government.

9
10 Commissioner Zimmerle asked Mr. Richter about his involvement in de-
11 veloping the Petition.

12 Ron Brown, property owner and Vice-President of Naukati West, Inc.,
13 testified in support of incorporation. He noted that he had lived in Naukati since 1982.
14 Mr. Brown said the community continues to grow and prosper. In that regard, Mr.
15 Brown stated that the Alaska Department of Natural Resources plans to sell 36 lots in
16 Naukati during 2006.

17
18 Mr. Brown disputed Commerce's population estimates. He indicated that
19 170 people currently live within the boundaries proposed in the Petition. He also ex-
20 pressed concern that Commerce's final boundary recommendation would place finan-
21 cial hardships on the prospective city, particularly in terms of denying the proposed city
22 lands that it could otherwise select under the city's municipal land entitlement.

23
24 Commissioner Harcharek asked Mr. Brown about the extent of land
25 sales in Naukati this year. He also asked for details about new commercial develop-
26 ment in the community.

27 Commissioner Hicks indicated that up to that particular point, his as-
28 sessment of the proposal suggested that the relevant standards do not warrant inclu-
29 sion of Naukati East within the proposed city. He invited Mr. Brown to persuade him
30 otherwise. In particular, he asked Mr. Brown to show why Naukati East is necessary
31 for delivery of essential city services over the next ten years as required by the stan-
32 dards.
33
34

1 Bob Smart testified in support of the proposed city. He stressed that
2 Naukati West emergency medical services and fire protection are currently provided to
3 Naukati East residents and property owners. Mr. Smart made a distinction between
4 Naukati East and Sarkar Cove in terms of the need for emergency medical services by
5 noting that staff at the El Capitan Lodge at Sarkar Cove has emergency medical train-
6 ing and capabilities. Thus, he reasoned that Naukati West emergency medical ser-
7 vices are not generally needed in Sarkar Cove.
8

9 Mr. Smart indicated that he is the shellfish nursery's sole part-time em-
10 ployee. He characterized the Naukati shellfish nursery as the "hub of the shellfish in-
11 dustry in Alaska."
12

13 Commissioner Zimmerle asked Mr. Smart about his role in the Naukati
14 fire department and the extent of the department's area of service. Commissioner
15 Zimmerle asked Mr. Smart if the local fire department had considered charging for its
16 services. Mr. Smart expressed the belief that the department could not do so because
17 it was not operated under the umbrella of a municipal government.
18

19 Mr. Smart expressed confidence that the city government could operate
20 with minimal funding, noting that Naukati West, Inc., had done so for the past several
21 years. He said that he saw no need for either local property taxes or sales taxes and
22 expressed opposition to such as a condition for incorporation.
23

24 Commissioner Hargraves responded that local citizens would find the
25 formality of a city government much different from the informal operation of Naukati
26 West, Inc., an incorporated non-profit homeowners association. He explained that the
27 LBC was particularly concerned about the fiscal viability of the proposed city because
28 so many city governments in Alaska have experienced financial difficulties. He noted
29 that citizens of a number of incorporated communities with small populations have
30 simply abandoned their city governments when they proved to be fiscally unsustain-
31 able.
32

33 Commissioner Hicks echoed the comments of Commissioner Hargraves.
34 He stressed that there is a critical, fundamental distinction between providing services
as an incorporated non-profit homeowners association vis-à-vis a second class city

1 government. That distinction centers on the extent to which the two types of organiza-
2 tions are obligated to provide services that are essential to the community.

3 Commissioner Hicks stressed that the LBC is required to determine in
4 this proceeding what specific services are “essential” for the community of Naukati.
5 He noted that once that determination is made, voters of the community will have the
6 opportunity to, in effect, ratify the Commission’s determination or reject it. He said that
7 if the citizens of Naukati do not agree with the Commission’s determination of “essen-
8 tial services,” they should not incorporate. However, if they incorporate, they take on a
9 commitment to provide those essential services.
10

11 Commissioner Hicks emphasized that the LBC must address the likeli-
12 hood that creating a city will expose the state government to unusual and substantial
13 risks as the prospective successor to the city in the event of its dissolution. Once a
14 community accepts the commitment as a second class city to provide essential ser-
15 vices, the State assumes a certain risk in the event the city government fails.
16

17 Mary Lou Smart, lead teacher in the Naukati School and Secre-
18 tary/Treasurer of Naukati West, Inc., testified in favor of incorporation. She said that a
19 local government structure is needed in Naukati. She expressed the belief that incor-
20 poration will foster community growth and development, which will benefit the school
21 and the community. She stressed that she was not opposed to the concept of local
22 taxes. She expressed a need for local law enforcement. Ms. Smart indicated that she
23 envisions a city government that will ultimately provide sidewalks, a sewer system,
24 paved streets, safe places for children to play, animal control, and a governmental
25 structure to adopt and enforce local laws.
26

27 In response to a question from Commissioner Hicks, Ms. Smart indicated
28 that the State Troopers generally do not provide law enforcement in Naukati, except in
29 the case of a clear emergency. She noted, for example, that Troopers might not re-
30 spond immediately to a report of domestic violence.
31

32 Commissioners Zimmerle and Harcharek asked Ms. Smart about com-
33 munity awareness of, and involvement in, the city incorporation proposal.
34

1 H. Clay Keene, representing Respondent Scott Van Valin, testified that
2 the Respondent was concerned with a single issue – exclusion of Sarkar Cove from
3 the boundaries of the proposed city. He noted that since the Petitioner’s Representa-
4 tive has implicitly conceded to the exclusion of Sarkar Cove from the territory proposed
5 for incorporation, the Respondent no longer has any concerns regarding the proposal.
6 Therefore, Mr. Keene indicated that the Respondent has nothing to add to the debate
7 at this time.

8
9 Mr. Keene indicated that he was genuinely impressed with the proceed-
10 ings to date and was confident that a proper decision would be rendered by the LBC.

11 David Sneed, Naukati West resident, a seasonally employed construc-
12 tion worker and author, testified that he was initially neutral regarding the incorporation
13 proposal. However, as time passed, he decided to oppose the proposal. Mr. Sneed
14 stressed that it was difficult for him to take that position because he has great respect
15 for the efforts of the Petitioner and others who provide community services. Mr. Sneed
16 noted that his opposition was more ‘philosophical’ than it was ‘analytical.’

17
18 Mr. Sneed indicated that while the best interests of the State are impor-
19 tant to consider in this proceeding, the “best interests of Naukati residents” are equally
20 important. He complimented Commerce’s *Final Report*, but noted that it “raised some
21 hackles” among proponents of city incorporation.

22
23 With respect to the LBC’s proposed condition of voter approval of a
24 proposition authorizing the city to levy a sales and/or property tax, Mr. Sneed indicated
25 that the prospect of city property taxes would be a “death knell” for incorporation. He
26 stated, however, that voters might approve a proposition granting the city authority to
27 levy sales taxes.

28
29 Mr. Sneed noted that when the Petition to incorporate was circulated for
30 signature, proponents stressed the need to form a city government before Naukati was
31 included within an organized borough. He testified that he did not consider that argu-
32 ment to be a legitimate basis for creating a city government.

33
34 Steve Matoon, local property owner, testified in opposition to the pro-
posal in as much as incorporation involved the prospect for local taxes. He testified

1 further that law enforcement, solid waste collection, and capital improvements for the
2 dock were essential city services.

3 Commissioner Hicks invited Mr. Matoon to reconcile his strong opposi-
4 tion to local taxes with his perception of the need for local law enforcement, solid
5 waste collection, water and sewer utilities, and improvements at the dock.

6 Commissioner Harcharek asked Mr. Matoon why he was opposed to a
7 local sales tax since he pays sales taxes when he shops within the corporate bounda-
8 ries of the City of Craig or the City of Klawock.

9 Commissioner Zimmerle asked Mr. Matoon to characterize local opposi-
10 tion to the incorporation proposal. Mr. Matoon expressed the belief that more than 50
11 percent of the registered voters in Naukati were opposed to the proposal.

12 Alan Ross, resident of Thorne Bay, Naukati registered voter, and a com-
13 mercial fisherman, testified in opposition to the proposal. He indicated that Naukati
14 lacks basic facilities to serve commercial fishermen. Mr. Ross stated that because the
15 prospective city plans to rely so heavily on the proceeds from the nursery to sustain
16 local operations, capital improvements to the dock and nursery are essential.

17 Mr. Ross also testified that the Naukati dock is poorly located. He noted,
18 for example, that the impact of wakes from passing watercraft on boats tied to the
19 dock often results in damage to the dock. Consequently, he is unwilling to moor his
20 boat in Naukati and live there with his two children. Mr. Ross indicated that a large
21 dive fleet and large troll fleet could operate at times in Naukati if the community had
22 facilities to support it.

23 Mr. Ross expressed concern that adequate notice of the LBC hearing
24 had not been provided.⁷ He indicated, however, that he learned of the hearing
25 through a public service announcement on the radio.

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31 ⁷ Notice of the hearing was: (1) mailed by Commerce on October 26, 2005, to 43 individuals,
32 groups, and organizations including the Petitioner's Representative, the Respondent, and those provid-
33 ing written comment on the Petition and *Preliminary Report*, (2) provided to the subscribers of the LBC
34 list service on October 26, 2005, (3) published on both the LBC Web site and the State of Alaska
Online Notice system; (4) posted on November 3, 2005, at the Naukati Connection Store and Post Of-
fice bulletin board, Naukati church bulletin board; Naukati Cabins Laundromat bulletin board; and Nau-
kati School bulletin board, and (5) published in the *Island News* on October 31 and November 7, 2005,
and in the *Ketchikan Daily News* on October 28, November 9, and November 30, 2005. Additionally,
Commerce requested KRBD-FM to broadcast notice of the hearing as public service announcements
(continued . . .)

1 Mr. Ross testified that he considered it poor public policy to create a city
2 government whose operations would be sustained in large part by the sale of capital
3 assets. He testified further that he had similar concerns about the proposal to use the
4 shellfish nursery to sustain local government operations. Mr. Ross stressed that the
5 nursery had been constructed with public grant funds and was intended to benefit the
6 mariculture industry. He expressed concern that the nursery was at risk not only from
7 natural disasters, but also from business competition by others, and pollution in the
8 event of a boat sinking in the vicinity.
9

10 Mr. Ross indicated that from his experience as an observer of the sec-
11 ond class City of Thorne Bay, proponents on the Naukati city government were grossly
12 underestimating the bureaucracy and staff that would result from creating a city.
13

14 In response to a question from Commissioner Hargraves, Mr. Ross indi-
15 cated that the City of Thorne Bay had a population of approximately 600 to 800 resi-
16 dents.

17 Commissioner Zimmerle asked Mr. Ross to clarify his statement that he
18 is a Thorne Bay resident who is registered to vote in Naukati. Mr. Ross repeated that
19 he currently lives in Thorne Bay, but emphasized that that he also owns property in
20 Naukati (a residence that was rented to a friend of his who recently passed away). He
21 also stated that he maintains a post office box in Naukati. He said that he finds it “ap-
22 palling” that a Naukati landowner and member of the Naukati homeowners association
23 would not have the right to vote in the incorporation election unless that individual
24 were also registered to vote in Naukati. He expressed the philosophy that until a city
25 government is formed, a homeowner in the community should be allowed to vote in an
26 incorporation election. He contended that his philosophy on that point was one of the
27 reasons why he registered to vote in Naukati. Mr. Ross indicated further that, as a
28 commercial fisherman, he is “allowed to register anyplace [he] wants because [he] is
29 living on his boat and working out of Naukati - Sea Otter Sound for . . . 9 months of the
30 year.”
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34 (. . . continued)
from November 21 – December 12, 2005. The notice of the hearing exceeded the requirements set out
in 3 AAC 110.550.

1 Commissioner Hicks asked Mr. Ross to clarify why he felt that he could
2 not moor his boat in Naukati. Mr. Ross responded that it was because of a lack of
3 space, and because winds and wakes from passing boats create hazardous condi-
4 tions.

5 At the request of the LBC Chair, Art King made the Petitioner's closing
6 statement. Mr. King noted that in terms of the concerns expressed by Mr. Ross re-
7 garding the lack of facilities along the Naukati waterfront, it should be recognized that
8 waterfront development had been impeded because Louisiana-Pacific Corporation had
9 encumbered the Naukati waterfront with permits until 2000. He indicated that subse-
10 quent efforts to fund development of the waterfront have met with limited success. Mr.
11 King indicated that he was confident that city incorporation would better enable the lo-
12 cal government to obtain funding to make improvements to the waterfront.
13

14 Mr. King reiterated his preference to avoid the imposition of conditions
15 that would require voter approval of propositions to authorize the city to levy a sales
16 and/or property tax. He acknowledged that "somewhere down the line" the city would
17 need taxes. However, he felt that the elected officials of the City of Naukati should
18 make the determination as to when voters would be asked to authorize the city to levy
19 taxes.
20

21 Commissioner Hargraves indicated that in order to operate a city gov-
22 ernment, the community must have a dedicated group of people to campaign for
23 elected office and faithfully carry out their duties upon election to office. He asked Mr.
24 King whether Naukati has such dedicated individuals. Mr. King responded affirma-
25 tively.
26

27 Commissioner Hargraves also asked Mr. King whether Naukati had local
28 residents with the skills and interests who could be employed to provide city services.
29 Mr. King responded that local residents had the skills and interest for some city jobs,
30 but perhaps not all. Mr. King indicated that where positions demanded skills and in-
31 terests that were lacking in local residents, recruitment could occur from outside the
32 community. Commissioner Hargraves indicated that it might be difficult to recruit from
33 outside the community for part-time positions.
34

1 Commissioner Hargraves observed that the Petitioner appeared to have
2 learned a great deal over the course of the city incorporation proceedings. He asked
3 Mr. King, if the community were to start over again, would it have approached the mat-
4 ter differently. Mr. King responded that community residents worked hard to prepare
5 and promote their proposal, which had been modeled after the recent Gustavus city
6 incorporation effort. However, he indicated that proponents often struggled because of
7 the lack of experience and resources. He felt that if the community initially had the ex-
8 perience that it now has, a better effort could be made.

10 Commissioner Hicks indicated that he felt that the community had done a
11 commendable job. He noted that he had read the Petition and the Petitioner's Reply
12 Brief six times. He felt that the Petitioner's materials provided 95 percent of the infor-
13 mation needed by the LBC to make an informed decision. He indicated that, notwith-
14 standing questions and concerns expressed by the Commission at the hearing, he felt
15 that the Petitioner had done an excellent job.

17 The LBC Chair invited H. Clay Keene to make the Respondent's closing
18 statement. Mr. Keene indicated that he had nothing further to state beyond his earlier
19 comments at the hearing and the formal statements presented in the Respondent's
20 Responsive Brief.

22 Commissioner Zimmerle indicated that she wanted to ensure that Mr.
23 Keene and others present at the hearing understood that the Petition had not yet been
24 formally amended. Although Commerce had recommended a reduction in the territory
25 proposed for incorporation from 44 square miles to 11.7 square miles, the 44-square
26 mile proposal was before the LBC.

27 Mr. Keene assured Commissioner Zimmerle that he understood the dis-
28 tinction, but emphasized that the Petitioner had implicitly agreed to exclude Sarkar
29 Cove from the territory proposed for incorporation. The Respondent concluded by
30 asking the Commission to amend the Petition to exclude Sarkar Cove for the reasons
31 outlined in the Responsive Brief.

33 In response to an invitation from the LBC Chair for closing comments
34 from others opposing incorporation, David Sneed addressed the LBC. Mr. Sneed indi-

1 cated that, in addition to his previous remarks, he was concerned about the effect that
2 the sale of some or all of the University of Alaska's 937 acres of land in Naukati would
3 have upon the value of municipal entitlement land for the city. He also expressed con-
4 cern regarding the extent to which the Petitioner relies on the shellfish nursery for op-
5 erating revenue. Mr. Sneed stressed, however, that a need for services in the
6 community exists. He expressed confidence that community residents would prefer to
7 contribute to the financing of those services, but questioned whether they would vote
8 for propositions authorizing the city to levy taxes.
9

10 Candy Hempel noted for the record that she was opposed to incorpora-
11 tion.

12 At the invitation of the LBC Chair, Mr. King made the Petitioner's reply to
13 Respondent's closing statement. Mr. King advised the Commission that the Petitioner
14 indeed agreed with Commerce's final boundary recommendation. He urged the LBC
15 to amend the Petition to modify the boundaries accordingly.
16

17 Mr. King stressed that if a Prince of Wales Island borough were to form,
18 it would be entitled to ten percent of the vacant, unappropriated, and unreserved State
19 lands within the boundaries of the borough. Mr. King speculated that a Prince of
20 Wales Island borough would likely select available waterfront lands in Naukati.
21

22 In conclusion, Mr. King thanked those in the community that had assisted
23 in the incorporation effort. He also thanked Karen Petersen with the Cooperative Ex-
24 tension Service for her assistance.

25 The hearing concluded at approximately 10 p.m.

26 Following the hearing, the LBC discussed for approximately eight min-
27 utes whether to proceed with a decisional session. All four participating members of
28 the LBC indicated that they were prepared to render a decision at that time.

29 Commissioner Hicks made a motion that the LBC accept the Petition for
30 incorporation of a second class city at Naukati, along the boundaries recommended by
31 Commerce in its *Final Report*, on the condition that the voters of Naukati approve two
32 propositions in the incorporation election: the first is a proposition authorizing the levy
33 of a sales tax of five percent and the second is a proposition authorizing the levy of a
34

1 real and personal property tax of 3.5 mills. The motion was seconded by Commis-
2 sioner Harcharek.

3 For approximately 90 minutes, the LBC members debated the motion by
4 addressing the legal standards governing incorporation of a second class city in the
5 unorganized borough. That discussion is reflected in the findings and conclusions of
6 the Commission set out in Section II of this Statement of Decision.
7

8 During the debate, several Commission members expressed various
9 concerns about the proposal to condition incorporation upon voter approval of a propo-
10 sition authorizing the city to levy a 3.5 mill property tax. Commissioner Zimmerle
11 questioned whether it was appropriate for the Commission to specify the maximum
12 rate of taxation. The LBC concluded, however, that AS 29.45.710 requires such speci-
13 ficity.⁸
14

15 Commissioner Harcharek expressed concern whether local residents
16 could afford a property tax. Consequently, he made a motion to amend the main mo-
17 tion to remove the condition requiring voter approval of a proposition authorizing the
18 levy of a real and personal property tax of 3.5 mills. The motion died for lack of a sec-
19 ond. Commissioner Harcharek later conveyed that his concern over the prospect of a
20 property tax levy was largely addressed by the fact that the city government would not
21 be obligated to levy the tax, but would be empowered to do so.
22

23 As reflected below, Commissioner Hargraves also expressed concern
24 over the condition to mandate voter approval of a proposition authorizing the levy of a
25 property tax. Commissioner Hargraves concerns, however, extended beyond that par-
26 ticular aspect of the motion.
27

28 Commissioner Hargraves expressed reservations about the proposed
29 budget and staffing set forth in the Petition. He was concerned about the extent of the
30 proposed city's fiscal dependence on enterprise operations such as the shellfish nurs-
31 ery and the recreational vehicle park. Further, he expressed his opinion that the Peti-
32

33
34 ⁸ AS 29.45.710 states, "A petition for incorporation of a second class city may request that a sales and use tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the tax proposition. If so, the incorporation proposition fails if the tax fails."

1 tioner's proposal went well beyond the traditional role of a city government, which is to
2 provide for local public service needs of the community.

3 Commissioner Hargraves also expressed concern that the size and sta-
4 bility of the population could be problematic for the city in the future.

5 Commissioner Hargraves indicated that he would vote for the motion be-
6 fore the Commission only if it were amended to remove the mandate for voter approval
7 of propositions authorizing the city to levy a sales tax and property tax. He stated that
8 he did not consider it appropriate for the Commission to act as "guardian" or overseer
9 of the community in that manner. He stressed that the community might have more
10 creative and appropriate ways to generate local revenues needed to fund local gov-
11 ernment operations. Further, he expressed concern that the mandate for voter ap-
12 proval of the tax propositions could cause the voters to reject the incorporation
13 proposal.
14

15
16 When the debate had ended, the Chair put the question to the Commis-
17 sion. The roll was taken with the following result: yeas: 3 (Commissioner Harcharek,
18 Hicks, and Zimmerle); nays: 1 (Commissioner Hargraves); absent: 1 (Commissioner
19 Nakazawa). And so, the motion was approved by the LBC.
20

21 The Commission adjourned its meeting at approximately 11:40 p.m.

22 *SECTION II*
23 *FINDINGS AND CONCLUSIONS*

24 **A. The Population of the Proposed City of Naukati is Sufficiently Large**
25 **and Stable to Support a Second Class City Government.**

26 AS 29.05.011(a)(4) requires the population of the proposed city to be
27 stable enough to support city government. Additionally, 3 AAC 110.030(a) requires
28 that the population of a proposed city be sufficiently large and stable to support the
29 proposed city government. The latter provides further that the LBC may consider rele-
30 vant factors, including total census enumerations, durations of residency, historical
31 population patterns, seasonal population changes, and age distributions in making this
32 determination.
33

34 The LBC finds that the population of Naukati West is sufficiently large to
support a second class city. Census data indicate that 135 individuals lived in Naukati

1 West in 2000. In December 2003, the Petitioner’s house-to-house “head count” indi-
2 cated that there were 133 year-round residents and 11 part-time summer residents.

3 The LBC finds that historical population patterns suggest that Naukati is
4 only marginally stable enough to support a city. For example, only 13 of the present
5 residents worked for the Louisiana-Pacific Corporation in the past. That suggests that
6 many residents are new, arriving after the Louisiana-Pacific Corporation logging camp
7 at Naukati closed six years ago. That factor is offset to an extent by the fact that 68
8 percent of housing in Naukati West was owner-occupied in 2000, an increase from 47
9 percent in 1990.
10

11 Of 78 households in Naukati West counted during the 2000 census, 60
12 were occupied and 18 were used only on a seasonal basis. Forty-two of those house-
13 holds were stick-built and the remaining 36 were trailers or mobile homes. Everyone
14 at Sarkar Cove is a seasonal resident. There are only about five individuals in two
15 households residing in Naukati East year-round.
16

17 In 2000, the median age of Naukati residents was 36.6 years. That fig-
18 ure is slightly less than the rest of northern Prince of Wales Island. The percentage of
19 children in the community is about the same as Thorne Bay, but higher than the rest of
20 northern Prince of Wales Island. In 2000, 44 residents (33 percent) were under 18
21 years of age, while 11 (8 percent) were 62 years of age or older. There were 80 resi-
22 dents between the age of 22 and 61. None of this age-distribution data suggests any
23 anomaly in Naukati demographics.
24

25 Based on the foregoing findings, despite the marginal stability of the
26 community, the LBC concludes that the population of Naukati is large and stable
27 enough to support a second class city. Therefore, the standards set out in
28 AS 29.05.011(a)(4) and 3 AAC 110.030(a) are satisfied.
29

30 **B. There is a Demonstrated Need for a City Government in Naukati.**

31 AS 29.05.011 provides that a community may incorporate as a city gov-
32 ernment only if, “there is a demonstrated need for city government.” 3 AAC
33 110.010(a) provides that the LBC may consider “relevant factors” in determining
34 whether the community demonstrates “a reasonable need for city government.”

1 Among the relevant factors specifically listed in 3 AAC 110.010(a) are social or eco-
2 nomic conditions; health, safety, and general welfare conditions; economic develop-
3 ment; and adequacy of existing services.

4 The LBC finds that several social and economic conditions exist in Nau-
5 kati West, which demonstrate a need for a city government. Those include poor drain-
6 age; a high water table; porous karst terrain; and prevalent use of septic systems,
7 outhouses, or compost toilets, all of which create the potential for pollution of ground
8 water and threaten the safety of drinking water.

9 The LBC also finds that solid waste disposal is a problem in Naukati
10 West. While many citizens burn their solid waste and a private company hauls some
11 solid waste to the Thorne Bay regional solid waste facility, others sometimes improv-
12 erly dump trash at log landings, road ends, and other unauthorized areas.

13 The LBC notes that Naukati lost its local law enforcement officer with the
14 curtailment of the Village Public Safety Officer program. Moreover, the State Troopers
15 are unable to respond to certain of the local law enforcement needs in Naukati West.
16 Thus, the LBC finds a need for local law enforcement.

17 The evidence leads the LBC to determine that roads in Naukati West
18 have inadequate drainage, ditching, ballast, and material foundations. A number of
19 roads in Naukati West lie below the level of the adjoining property, resulting in sub-
20 merged roads in times of heavy rain. Naukati West roads are presently maintained in
21 a haphazard manner, the burden for which is not equitably shared among local resi-
22 dents. Necessary maintenance and repair of roads cannot be performed with the sin-
23 gular grader presently available to the community. There is a need for funding to rent or
24 purchase such additional road equipment as a front-end loader, a roller, a backhoe,
25 and a dump truck.

26 The Commission finds that the Naukati West boat ramp is in need of re-
27 pair or replacement. The Naukati West dock can accommodate only a few small
28 boats. Absent a local government, there is no regulation or enforcement mechanism
29 for dock use.

1 Naukati West lacks the formal means of planning or directing growth.
2 There is evidence of land use conflicts among neighbors resulting from intermingling of
3 residential and industrial land uses in Naukati West. Absent local government, the
4 Commission finds that such conflicts will likely become more problematic as growth
5 and development occur in Naukati West.

6 The LBC also notes that fire protection and emergency medical services
7 in Naukati West are funded by donations, grants, and volunteers. Second class city
8 status would permit Naukati West to enter an insurance pool. It would also create a
9 more stable source of funding for fire protection and emergency medical services.
10

11 City status could also increase the community's eligibility for grants and
12 general financial aid. Such grants might provide for much needed capital improve-
13 ments to the community dock and for construction of water and sewer utilities. Gen-
14 eral financial aid might support such fundamental needs as road maintenance,
15 municipal planning, land use regulation, and law enforcement.
16

17 Based on the foregoing, the LBC concludes that a demonstrated need
18 for city government exists in Naukati West. Thus, the requirements of AS 29.05.011
19 and 3 AAC 110.010(a) are met with regard to that portion of the territory proposed for
20 incorporation.
21

22 **C. No Existing Municipality Can Serve the Public Service Needs of Nau-**
23 **kati as Efficiently and Effectively as the Proposed City.**

24 AS 29.05.021 requires consideration of the capacity of an existing mu-
25 nicipality to serve the local public service needs of the community. Different standards
26 apply to a proposed city in the unorganized borough compared to one within an organ-
27 ized borough. The standard applicable in this case – the proposed formation of a city
28 government in the unorganized borough – is found in subsection (a) of that statute. It
29 provides that, "A community in the unorganized borough may not incorporate as a city
30 if the services to be provided by the proposed city can be provided by annexation to an
31 existing city." Further, 3 AAC 110.010(b) provides, "a community may not incorporate
32 as a city if essential city services can be provided more efficiently or more effectively
33 by annexation to an existing city, or can be provided more efficiently or more effec-
34

1 tively by an existing organized borough on an areawide basis or non-areawide basis,
2 or through an existing borough service area.”

3 The LBC finds that there is no existing city or borough government that
4 can meet the local public service needs of Naukati residents. Thus, the requirements
5 of AS 29.05.021(a) and 3 AAC 110.010(b) are satisfied.
6

7

8 **D. Naukati West Constitutes a “Community” as Defined by the LBC.**

9 State law provides that a locality proposed for incorporation as a city
10 must comprise a community. Specifically, AS 29.05.011(a) states that “a community”
11 that meets the city incorporation standards may incorporate as a city. Further, 3 AAC
12 110.005 requires that “An area proposed for incorporation as a city must encompass a
13 community.” In 3 AAC 110.990, the term "community" is defined as “a social unit com-
14 prised of 25 or more permanent residents as determined under 3 AAC 110.920.”
15 3 AAC 110.920 also establishes several criteria that the Commission may consider in
16 determining whether the locality proposed for incorporation comprises a community.
17 Specifically, it states that the LBC may consider whether the settlement is inhabited by
18 at least 25 individuals; inhabitants reside permanently in a close geographical prox-
19 imity that allows frequent personal contacts and comprise a population density that is
20 characteristic of neighborhood living; and inhabitants residing permanently at a loca-
21 tion are a discrete and identifiable social entity, as indicated by such factors as school
22 enrollment, number of sources of employment, voter registration, precinct boundaries,
23 permanency of dwelling units, and the number of commercial establishments and
24 other service centers.
25

26

27 3 AAC 110.920 provides further that absent a specific and persuasive
28 showing to the contrary, the LBC will presume that a population does not constitute a
29 community if public access to or the right to reside at the location of the population is
30 restricted; the population is adjacent to a community and is dependent upon that com-
31 munity for its existence; or the location of the population is provided by an employer
32 and is occupied as a condition of employment primarily by persons who do not con-
33 sider the place to be their permanent residence.
34

1 The LBC finds that the permanent inhabitants of Naukati West are a dis-
2 creet and identifiable social unit with reference to school enrollment, number of
3 sources of employment, permanency of dwelling units, number of commercial estab-
4 lishments, and other identifiable social units.

5 However, Naukati East has only five permanent residents in two house-
6 holds, and Sarkar Cove has no permanent residents. The residents of Sarkar Cove,
7 Naukati East and Naukati West do not live in close geographical proximity to one an-
8 other, in any manner allowing frequent personal contacts or the population density of
9 neighborhood living.
10

11 The permanent inhabitants of Naukati East and Naukati West do not
12 constitute a single discreet and identifiable social unit. Moreover, there are no perma-
13 nent inhabitants of Sarkar Cove. Hence, it too is not an identifiable social unit with ei-
14 ther Naukati East or Naukati West.
15

16 The children of Naukati East are home-schooled, not enrolled in the one
17 brick-and-mortar school of the region located in Naukati West.

18 No person from Naukati East is employed in Naukati West, or vice versa.
19 There are no commercial establishments bridging these two distinct localities to any
20 significant extent, and there are no identifiable social units integrating these two com-
21 munities.
22

23 Public access to Sarkar Cove is restricted by a gate and signage. Fur-
24 ther, there has been no persuasive showing by Petitioner to overcome the presump-
25 tion that Sarkar Cove is not a part of the Naukati community.

26 Based on the foregoing, the LBC concludes that Naukati West consti-
27 tutes a discreet settlement of at least 25 permanent residents living in sufficiently close
28 geographical proximity to allow frequent personal contact and the population density of
29 neighborhood living in small-town Alaska. Thus, the requirements of AS 29.05.011(a)
30 and 3 AAC 110.005, as determined under 3 AAC 110.990 and 3 AAC 110.920, are
31 satisfied.
32
33

34 **E. Based on Present Needs, the Boundaries of the Proposed City Should
Extend Moderately Beyond the Present Cluster of Naukati West Private Property.**

1 The corporate boundaries of the proposed new city must be drawn in a
2 manner allowing for the full development of efficient and cost-effective essential ser-
3 vices. Specifically, AS 29.05.011(a)(2) requires that the boundaries of a proposed city
4 include all territory necessary to provide municipal services on an efficient scale. Fur-
5 ther, 3 AAC 110.040(a) provides that, the boundaries of a proposed city must include
6 all land and water necessary to provide the full development of essential city services
7 on an efficient, cost-effective level. The latter provides that the LBC may consider
8 relevant factors, including land use and ownership patterns, population density, exist-
9 ing and reasonably anticipated transportation patterns and facilities, natural geo-
10 graphical features and environmental factors, and extraterritorial powers of cities.
11

12 Thus, the LBC must first identify which municipal services are “essential”
13 for Naukati. The LBC concurs with the Petitioner that first-responder emergency
14 medical services and fire fighting are essential services. The LBC also finds that water
15 and sewer utilities are essential services in a region of relatively high rainfall, a high
16 water table, and porous karst terrain. Road repair and maintenance is an essential
17 city service where gravel and dirt roads lie below adjoining territory, are inadequately
18 contoured, and do not drain properly. Improvement and management of the local dock
19 and boat ramp are essential city services in a coastal community where transportation
20 patterns include water routes, and where water resources and water recreation are the
21 focus of local economic development.
22

23 The LBC also finds that some land use planning and regulation is neces-
24 sary to limit industrial development in residential areas, and to provide regulation of the
25 uses of the boat ramp, dock, and other public facilities.
26

27 However, the LBC does not concur with the Petitioner that developing
28 and administering a shellfish nursery or a recreational vehicle park are “essential” city
29 services.
30

31 It is unclear to the LBC why the Petitioner did not include law enforce-
32 ment as an “essential” service for the city to perform, particularly when Naukati West
33 had a functioning Village Public Safety Officer in the recent past. Additionally, the lack
34 of solid waste disposal for a population of more than 100 residents with no nearby land

1 fill is of concern to the LBC, particularly where the population-pressure on the envi-
2 ronment increases with tourism in the summer, and where there already is evidence of
3 inappropriate dumping of trash at road ends, log landings, and other unauthorized lo-
4 cations.

5
6 Hence, for purposes of defining appropriate boundaries for the proposed
7 city, the LBC must include all land and water necessary to provide for the full, efficient,
8 and cost-effective development of water and sewer utilities; solid-waste disposal;
9 emergency medical service; fire protection; law enforcement; planning; land use regu-
10 lation; road upgrades, maintenance and repair; and a docking facility and boat launch-
11 ing ramp.

12
13 Viewed in the context of these “essential” city services, land use and
14 ownership patterns suggest that the city boundaries should include all of the present
15 private property of the community of Naukati West, the tidelands offshore from those
16 developed areas, and some additional land for sewer lagoons and possibly a landfill if
17 the environment allows.

18
19 Present and anticipated transportation patterns and facilities suggest that
20 the boundaries must include present roadways in and around the community, and
21 some tidelands around the community.

22
23 The natural geography of the community requires that all essential mu-
24 nicipal development in Naukati West must be planned carefully, with due regard for
25 sensitive environmental factors. Varying soils, porous karst terrain, and water tables
26 mean that a sewage lagoon cannot be located just anywhere near the populated
27 community. An appropriate site for a solid-waste facility also may be some distance
28 from the populated community. Hence, boundaries should be liberally expanded to
29 include the territory necessary for developing those essential services in an environ-
30 mentally sound manner and location.

31
32 Based on present needs for essential services, the LBC concludes that
33 the requirements of AS 29.05.011(a)(2) and 3 AAC 110.040(a) are best met with the
34 boundaries that extend moderately beyond the present cluster of private property in

1 Naukati West. The Commission stresses, however, that other boundary standards
2 must also be considered in setting the appropriate boundaries of the proposed city.

3 **F. Allowing for Ten Years of Growth, Development, and Public Safety**
4 **Needs, Commerce’s Final Boundary Recommendation is Reasonable.**

5 Beyond the existing territorial needs of the proposed city, which were
6 addressed in the preceding standard, 3 AAC 110.040(b) requires that the boundaries
7 of a proposed city include the territory comprising the current local community plus
8 reasonably predictable growth, development, and public safety needs during the ten
9 years following the effective date of incorporation.

10 The LBC finds that Sarkar Cove and Naukati East are not likely to be-
11 come part of the same “community” as Naukati West over the next ten years. There
12 are several privately owned parcels of land in both of those localities. However, there
13 is no present indication that growth, development, intensity of land use, permanent
14 residency, or the need for public safety or other essential city services in Sarkar Cove
15 and Naukati East will increase to any significant degree during the next ten years.
16 Hence, the boundaries proposed by the Petitioner must be amended to exclude both
17 of those localities.
18

19 The LBC finds that the alternative 35-square mile territory proposed by
20 the Petitioner in October 2005 contains large unpopulated areas that cannot be justi-
21 fied by any other standard for incorporation. Moreover, the LBC finds no plausible evi-
22 dence that those large expanses will be necessary for growth, development and public
23 safety during the next ten years.
24

25 The LBC is mindful that the University of Alaska controls 937 acres
26 within the territory proposed for incorporation. The Commission finds that there is a
27 reasonable likelihood that some of this land will be developed during the next ten
28 years. However, there is no reasonable basis to conclude, as suggested by the Peti-
29 tioner, that any federal grant of more land to the University will result in other Univer-
30 sity selections, conveyance, and development in the Naukati region during the next ten
31 years.
32

33 The LBC finds no reasonable basis to conclude, as suggested by the Pe-
34 titioner, that Sealaska Corporation will select and develop lands in Naukati West.

1 The LBC stresses that the corporate boundaries of city governments
2 should be delineated by territory necessary for developing essential community ser-
3 vices over ten years, not to maximize local government revenues.

4 Contrary to the suggestions from the Petitioner, the Commission finds no
5 evidence that oyster farms or any other shellfish mariculture sites require or could re-
6 ceive essential community services from the City of Naukati. Hence, there is no rea-
7 son to include those sites within the city’s boundaries. Moreover, there is no evidence
8 to indicate that the shellfish mariculture sites existing or planned in the waters near
9 Naukati will cause growth, development, or public safety needs for the Naukati com-
10 munity during the next ten years.

11 The Commission previously concluded that city incorporation standards
12 require Naukati East to be excluded from the boundaries of the proposed city. Like-
13 wise, the LBC finds no reason to include any of the eastern portion of the “State’s Cru-
14 cial Timber Base” or scheduled harvest areas, which have been correctly excluded
15 from Commerce’s final boundary recommendation.

16 The LBC notes that the *Naukati Community Comprehensive Strategic*
17 *Action Plan* provides that the “Naukati community” “encompasses 4.8 square miles of
18 land and 0.2 square miles of water.” Allowing for development of essential city ser-
19 vices over ten years, the LBC concludes that the 11.7-square mile final boundary rec-
20 ommendation by Commerce appears to constitute a moderately expansive allotment
21 of territory for the new City of Naukati. While the LBC accepts the 11.7-square mile
22 territory founded in Commerce’s expertise, the LBC takes the view that Commerce’s
23 final boundary recommendation reflects a somewhat liberal and lenient construction
24 and application of the standard.

25 **G. Commerce’s Final Boundary Recommendation Excludes Large Geo-**
26 **graphic Regions and Unpopulated Areas.**

27 3 AAC 110.040(c) provides that the boundaries of the proposed city may
28 not include entire geographical regions or large unpopulated areas, except where
29 those boundaries are justified by the application of the city incorporation standards in
30 3 AAC 110.005 – 3 AAC 110.042.
31
32
33
34

1 The LBC finds that the 11.7-square mile territory recommended by
2 Commerce does not include entire geographic regions or large unpopulated areas.
3 Therefore, Commerce’s final boundary recommendation meets the standard set out in
4 3 AAC 110.040(c).

5
6 **H. Commerce’s Final Boundary Recommendation Embraces a Contiguous Territory Without Enclaves.**
7

8 3 AAC 110.040(d) provides that absent a specific and persuasive show-
9 ing to the contrary, the LBC will presume that territory proposed for incorporation that
10 is non-contiguous or that contains enclaves does not include all land and water neces-
11 sary to allow for the full development of essential city services on an efficient, cost-
12 effective level.

13 The LBC finds that the 11.7-square mile territory recommended by
14 Commerce is contiguous and does not contain enclaves. Therefore, Commerce’s final
15 boundary recommendation meets the standard set out in 3 AAC 110.040(d).

16
17 **I. Commerce’s Final Boundary Recommendation Excludes Territory Already Within the Boundaries of an Existing Organized Borough or City.**
18

19 3 AAC 110.040(e) provides that if a proposal to incorporate a city in-
20 cludes territory already within the boundaries of an existing organized borough or city,
21 the proposal must address standards for annexation to or detachment from the exist-
22 ing borough or city, as applicable.

23 The LBC finds that the 11.7-square mile territory recommended by
24 Commerce does not include any territory presently within the boundaries of an existing
25 organized borough or city government. Therefore, Commerce’s final boundary rec-
26 ommendation meets the standard set out in 3 AAC 110.040(e).

27
28 **J. With the Condition that the City Gain the Authority to Levy a 5 Percent Sales Tax and a 3.5 Mill Property Tax, the Community has the Human and Financial Resources to Support City Government.**
29

30 AS 29.05.011(a)(3) provides that the economy of the community must
31 include the human and financial resources necessary to provide municipal services.
32 That law provides further that, in considering the economy of the community, the LBC
33 must consider property values, economic base, and personal income. The Commis-
34 sion is also required to consider resource and commercial development, anticipated

1 functions, and the expenses and income of the proposed city, including the ability of
2 the community to generate local revenue.

3 Additionally, 3 AAC 110.020 provides that the economy of a proposed
4 city must include the human and financial resources necessary to provide essential
5 city services on an efficient, cost-effective level. In this regard, the commission must
6 consider the reasonably anticipated functions of the proposed city; the reasonably an-
7 ticipated expenses of the proposed city; the ability of the proposed city to generate and
8 collect local revenue, and the reasonably anticipated income of the proposed city; and
9 the feasibility and plausibility of the anticipated operating and capital budgets of the
10 proposed city through the third full fiscal year of operation. Further, the Commission is
11 required to evaluate the economic base of the proposed city; property valuations for
12 the proposed city; existing and reasonably anticipated industrial, commercial, and re-
13 source development for the proposed city; and personal income of residents of the
14 proposed city. Beyond those specific requirements, the standard allows the Commis-
15 sion to consider other relevant factors, including land use for the proposed city; the
16 need for and availability of employable skilled and unskilled people to serve the pro-
17 posed city; and a reasonably predictable level of commitment and interest of the resi-
18 dents in sustaining a city government.

19 The LBC finds that the economy in the community of Naukati West pos-
20 sesses the human resources necessary to provide efficient and effective road mainte-
21 nance and repair; water and sewer utilities; solid-waste disposal; planning and land
22 use regulation; public safety; emergency medical services; fire protection; docking fa-
23 cilities; and boat-ramp administration. The LBC notes that trained emergency medical
24 technicians and firefighters are already serving the community. Roads in Naukati are
25 being maintained by local residents, but in an inconsistent and inadequate fashion.
26 Unemployment is high in Naukati West, where many residents are skilled at operating
27 heavy equipment for road maintenance.

28 Naukati West has been served by a law enforcement officer in the past,
29 and there is no indication that such a person would be unavailable in the future. Solid-
30 waste services for the community may involve nothing more than trucking solid waste
31
32
33
34

1 to the refuse facility at Thorne Bay. If a site is built closer, training of an administrator
2 should not be difficult. Similarly, staff training will be a budgetary component of devel-
3 oping water and sewer utilities.

4 Planning and land use regulation expertise is available to the community
5 from the State of Alaska and the Cooperative Extension Services of the University.

6 Without local taxation, however, the LBC finds that the economy in the
7 community of Naukati West does not include the financial resources necessary to pro-
8 vide efficient and cost-effective road maintenance and repair, water and sewer utilities,
9 solid-waste disposal, public safety, emergency medical services, fire protection, plan-
10 ning and land use regulation, docking facilities and boat-ramp administration.

11 The LBC finds that the contemporary economic base of Naukati West is
12 tenuous. Personal income is low. With one exception, the Petitioner and others who
13 testified rejected local taxation as a means of financing any part of their city services.
14 The LBC finds that the widespread objections to local taxation among Naukati West
15 residents call into question their level of commitment and interest in sustaining a city
16 government.

17 The LBC must also consider the reasonably anticipated functions of the
18 proposed city. As noted above, those functions include not only emergency medical
19 services, waterfront development, planning, and road maintenance functions recog-
20 nized by the Petitioner, but also law enforcement and solid waste management.
21 Moreover, it is reasonable to anticipate that water and sewer utilities will become ne-
22 cessities sooner than the 2015 date projected by the Petitioner.

23 The LBC finds two deficiencies in the Petitioner's budget of \$50,371 for
24 road maintenance and repair. First, it relies totally on federal receipts. The actual
25 federal receipts will be less than that amount, given the boundary adjustment deemed
26 necessary by the Commission. In addition, it is unduly risky to rely totally on federal
27 receipts for roadwork in a political climate of cuts in government assistance.

28 Second, Naukati lacks the heavy equipment needed for road mainte-
29 nance and repair. The community presently owns only a grader, which cannot install
30 culverts, dump and compress ballast, trench toes in the road, dig out sand lenses, cut
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1 brush, etc. The *Naukati Community Comprehensive Strategic Action Plan* correctly
2 notes that road maintenance and repair require not only a grader but also a loader,
3 dump truck, backhoe and roller. Nothing in the Petitioner's expense projections pro-
4 vides for the purchase or rental of that other heavy equipment. The total amount of
5 National Forest receipts available to the new city is less than \$50,000 per year. That
6 is hardly enough to cover wages, fuel, maintenance and repair, and administration of a
7 road program, if anything more than periodic grading is contemplated.
8

9 The expense projection for "harbor maintenance" is set at a mere \$5,000
10 for Year 1 and \$7,000 each for Year 2 and Year 3. However, the Petition indicates
11 that the present boat-launching ramp is almost unusable. The *Naukati Community*
12 *Comprehensive Strategic Action Plan* states that the dock can accommodate only
13 small craft less than 32 feet. The amounts allocated in the expense projection are in-
14 sufficient either to accomplish the provision of "essential" city services at the harbor, or
15 to remedy what the Petitioner has identified as harbor needs that would be provided by
16 the new city.
17

18 "Planning" expenses in the Petitioner's budget are limited to "legal fees."
19 The projection fails to provide for use regulation enforcement expenses associated
20 with "planning." Projected expenses for legal fees may be accurate over three years,
21 but incorrect in scheduling expenditures. Legal fees during the first year of organiza-
22 tion, ordinance legislation, and development of the infrastructure of a city administra-
23 tion will be much higher than legal fees during the third year of operation of the city.
24

25 The Commission finds that shellfish nursery expenses should be deleted
26 from the expense projection, because the Naukati shellfish nursery itself should be de-
27 leted from *essential* city administration. Statistics indicate that over 90% of small busi-
28 nesses in America fail within five years. The Commission finds that no city should rely
29 upon a new business venture for revenues, much less one that is entirely dependent
30 upon a "struggling industry." The shellfish mariculture itself is a miniscule, newly ex-
31 perimental industry in Alaska, with a farm value of little more than \$600,000 statewide.
32 None of the five farms around Naukati is operating at full capacity, with at least one
33 having difficulty paying basic rent and another wanting to reduce its area of operation.
34

1 While this budding industry may become a significant economic factor, it is far too new
2 and speculative today to constitute a safe and reliable source of essential revenues for
3 the proposed city government.

4 Moreover, the Naukati shellfish nursery was conceived as a non-profit
5 operation with a mission very different from financing the operating costs of a city gov-
6 ernment. It was created through a State economic development grant “intended to
7 spur the development of the struggling shellfish farming industry.” The LBC shares the
8 concern expressed by Commerce’s Office of Economic Development that the nurs-
9 ery’s “main purpose is not changed to be one of supporting a local government at the
10 burden of this industry sector.” Struggling shellfish farmers should not be required to
11 pay higher prices for spat so that Naukati inhabitants gain tax relief for the provision of
12 their essential city services.
13

14 The focal mission of the Naukati shellfish nursery is to spur the develop-
15 ment of shellfish farming, not to relieve taxpayers and finance government. Introduc-
16 ing that ulterior “government” motive will not only result in business analyses
17 misdirected from the mission of the non-profit organization, but inefficient and unduly
18 costly administration.
19

20 Similarly, the LBC takes the position that the recreational vehicle park
21 should be deleted from the list of *essential* city services, or from the budget of the pro-
22 posed city government. Like the shellfish nursery, it is an enterprise activity. It is a
23 new, small business, and unreliable as a source for funding *essential* city services.
24

25 The LBC also concurs with Commerce that the new city should not in-
26 clude the one-time \$75,000 organization grant or the one-time \$12,000 “economic re-
27 covery grant” as sources of revenue for operating expenses. Those funds are non-
28 renewable.
29

30 The LBC considers prospective sales of municipal entitlement lands as
31 an unsound source of funding operating expenses. First, there is no assurance that
32 the municipal land grant will be completed in sufficient time to fund city services by
33 Year 3, as projected by the Petitioner. Secondly, there is no assurance that municipal
34 lands will be in the location or at the value projected by the Petitioner. Thirdly, the re-

1 duced size of the city boundaries means less land available for selection by the new
2 city. Finally, it is fundamental to good business practices that capital assets should not
3 be liquidated to cover operating expenses. The land grant is basic capital wealth for
4 the city. It would be appropriate to sell that land in a manner that simply “converts” it
5 into another form of capital, such as a small boat harbor or a sewer utility. However,
6 selling capital land to cover the routine day-to-day operating expenses of the city is a
7 manifest wasting of assets, and may lead to eventual bankruptcy.

8
9 If the dock and boat ramp are in serious disrepair, the Commission ques-
10 tions how “harbor fees” can generate \$3,000 per year. Moreover, the proposed harbor
11 maintenance expenditures are inadequate to repair and upgrade those facilities.

12 Projected federal Payment in Lieu of Tax funding is no more reliable than
13 the Forest Receipts. The LBC’s concerns expressed above with respect to National
14 Forest funding also apply to Payment in Lieu of Tax payments.

15
16 The LBC concurs with Commerce’s conclusion that shellfish sales trans-
17 actions are unlikely to be a source of sales tax revenues to the City of Naukati, be-
18 cause those transactions will not have a sufficient nexus to the city.

19 Based on the foregoing, the LBC concludes that the three-year operating
20 budget, as amended repeatedly by the Petitioner, is neither feasible nor plausible.
21 The LBC is mindful of the testimony and Petition documents indicating that the elec-
22 torate will reject incorporation conditioned upon a requirement for voter approval of the
23 power to levy sales taxes and/or property taxes.

24
25 The Commission finds that real estate property values in the community
26 are reasonably estimated to exceed \$13 million. Personal property values add per-
27 haps another \$1 million to the tax base. Future sales of land by the Alaska Depart-
28 ment of Natural Resources, University of Alaska, and the City of Naukati will add to
29 those figures.

30
31 It is possible that taxable retail sales, including overnight accommoda-
32 tions, may reach one-million dollars per year, although the LBC has some reservation
33 about the accuracy of that projection.

1 If the shellfish nursery and recreational vehicle park are deleted from the
2 projected expenses, the new City of Naukati needs approximately \$150,000 per year
3 in operating expenses, plus the cost of capital improvements and heavy equipment
4 acquisition. Deleting the nursery, the recreational vehicle park, land sales, capital pro-
5 jects and organizational grants, and reducing the Forest Receipts and reliance on
6 Payments in Lieu of Taxes, the Petitioner has identified about \$58,000 as reliable in-
7 come for operating the new city. Hence, to make the operating budget feasible and
8 plausible, the Petitioner must generate another \$92,000 per year.

10 The LBC finds that the obvious source of the additional needed revenue
11 is local taxation. Assuming generously that a 5 percent sales tax generates \$50,000
12 per year, the City of Naukati must collect real and personal property taxes of \$42,000,
13 or approximately 3 mills on an assessed value of \$14 million. A property tax of 3.5
14 mills would allow for some margin of error. The LBC notes that a 3.5 mill levy on a
15 parcel of real property in Naukati valued at \$80,000 would result in a tax burden of
16 \$280 per year – less than \$25 per month.

18 **K. The Petitioner’s Transition Plan Lacks Certain Details, but Meets the**
19 **Standards Set in Law.**

20 Under 3 AAC 110.900, the Petitioner is required to provide a transition
21 plan addressing the incorporation proposal. The plan must demonstrate the capacity
22 of the proposed city government to extend essential city services in the shortest prac-
23 ticable time after incorporation. The plan must also address assumption of all relevant
24 and appropriate powers, duties, rights, and functions presently exercised by an exist-
25 ing entity serving the territory proposed for incorporation. The plan must be prepared
26 in consultation with the officials of each of the service providers and must be designed
27 to effect an orderly, efficient, and economical transfer within the shortest practicable
28 time, not to exceed two years after the effective date of incorporation. Each petition
29 must also include a practical plan for the transfer and integration of all relevant and
30 appropriate assets and liabilities of existing service providers. The plan must specifi-
31 cally address procedures that ensure that the transfer and integration occur without
32 loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.
33
34

1 The LBC concludes that although the Naukati transition plan is lacking in
2 detail, it meets the minimum standards set out in 3 AAC 110.900. The LBC recog-
3 nizes that details are lacking principally because the proposal involves the incorpora-
4 tion of a second class city in the unorganized borough. Therefore, the extent to which
5 existing services will be assumed from current service providers is minimal. The LBC
6 notes, however, that it would be helpful to local voters if, before the incorporation elec-
7 tion, the Petitioner provides detailed plans to provide local services.
8

9 **L. Incorporation of the City of Naukati will not Deny any Person the En-**
10 **joyment of any Civil or Political Right Because of Race, Color, Creed, Sex, or Na-**
11 **tional Origin.**

12 Under 3 AAC 110.910, a petition cannot be approved by the LBC if the
13 effect of the proposed change denies any person the enjoyment of any civil or political
14 right, including voting rights, because of race, color, creed, sex, or national origin.

15 The LBC concludes that incorporation of the City of Naukati will not deny
16 any person the enjoyment of any civil or political right, including voting rights, because
17 of race, color, creed, sex, or national origin. Thus, the standard set out in
18 3 AAC 110.910 is met.

19
20 **M. With the Condition that the City have Authority to Levy a 5 Percent**
21 **Sales Tax and a 3.5 Mill Property Tax, Incorporation of the Proposed City Serves**
22 **the Best Interests of the State**

23 AS 29.05.100 provides that the LBC may approve a city incorporation
24 proposal only if the Commission concludes that such incorporation will serve the best
25 interests of the state. Further, 3 AAC 110.042 provides that in determining whether
26 incorporation of a city is in the best interests of the state under AS 29.05.100 (a), the
27 Commission may consider any relevant factors. Those include whether incorporation
28 promotes maximum local self-government; promotes a minimum number of local gov-
29 ernment units; will relieve the state government of the responsibility of providing local
30 services; and is reasonably likely to expose the state government to unusual and sub-
31 stantial risks as the prospective successor to the city in the event of the city's dissolu-
32 tion.
33

34 In terms of the standard at issue, the LBC expressed particular concern
about the fiscal viability of the proposed city. In doing so, the Commission noted that a

1 number of city governments in Alaska have experienced financial difficulties. Those
2 difficulties have manifested themselves, in limited instances, in the abandonment of
3 small city governments. The LBC is concerned that incorporating the City of Naukati
4 without ensuring that it has authority to levy local taxes will significantly increase the
5 likelihood that the State government will be exposed to unusual and substantial risks
6 as the prospective successor to the city in the event of its dissolution. However, by
7 making incorporation conditioned on voter approval of a proposition authorizing the
8 levy of a sales tax of five percent and a proposition authorizing the levy of a real and
9 personal property tax of 3.5 mills, the LBC concludes that the best interest of the State
10 would be served.

11 Under the human and financial resources standard addressed in part J of
12 this section of the decisional statement, the LBC found that the level of commitment
13 and interest in sustaining a city government among Naukati residents was question-
14 able given their widespread objection to the prospect of local taxes. The Commission
15 finds here that it is in the State's best interest to ensure that Naukati citizens demon-
16 strate their commitment and interest in the sustaining the proposed city. The citizen
17 commitment and interest can be determined through imposition of the condition for
18 voter approval of the propositions authorizing the proposed city to levy a 5 percent
19 sales tax and a 3.5 mill property tax.

20
21 Based on the foregoing, the LBC concludes that incorporation of the City
22 of Naukati, as amended and conditioned by the LBC, serves the best interests of the
23 state. Thus, the requirements of AS 29.05.100 and 3 AAC 110.042 are met.
24

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27 *SECTION III*
ORDER OF THE COMMISSION

28
29 For the reasons set out herein, the LBC amends boundaries of the terri-
30 tory proposed for incorporation to read as follows:

31
32 The territory approved by the Local Boundary Commission for incorpora-
33 tion as the City of Naukati, State of Alaska, includes all lands, tidelands, and
34 submerged lands within the following boundaries:

Beginning at the section corner common to Sections 18 and 19, T. 69 S.,
R. 80 E., Copper River Meridian (C.R.M.) and Sections 13 and 24, T. 69 S., R.
79 E., C.R.M., monumented pursuant to the United States Rectangular Surveys
of record for T. 69 S., R. 80 E., C.R.M., and T. 69 S., R. 79 E., C.R.M., ap-

1 proved individually by the United States Department of the Interior, Bureau of
2 Land Management, in Anchorage, Alaska on June 1, 1999, and being the
TRUE POINT OF BEGINNING hereof;

3 Thence NORTH a distance of 10168.62 feet along the township line to a
4 meander corner of record on an unnamed lake;

5 Thence NORTH to the point of intersection of the north and west
6 boundaries of Section 7, T. 69 S., R. 80 E., C.R.M.;

7 Thence EAST to a meander corner of record on an unnamed lake;

8 Thence EAST a distance of 7084.44 feet along section lines of record to
9 the 1/4 Corner common to Sections 5 and 8, T. 69 S., R. 80 E., C.R.M.;

10 Thence South 0° 06' East a distance of 3960.00 feet along the north-
11 south 1/4 line of Section 8, T. 69 S., R. 80 E., C.R.M., to the C-S 1/16 Corner of
12 said section;

13 Thence EAST a distance of 2640.00 feet along the south 1/16 line of
14 Section 8, T. 69 S., R. 80 E., C.R.M., to the S 1/16 Corner common to Sections
15 8 and 9, T. 69 S., R. 80 E., C.R.M.;

16 Thence southerly a distance of 2640.00 feet to the N 1/16 Corner com-
17 mon to protracted Sections 16 and 17, T. 69 S., R. 80 E., C.R.M.;

18 Thence easterly a distance of 1320.00 feet to the N-W1/16 Corner of
19 protracted Section 16, T. 69 S., R. 80 E., C.R.M.;

20 Thence southerly a distance of 1320.00 feet to the C-W 1/16 Corner of
21 protracted Section 16, T. 69 S., R. 80 E., C.R.M., falling in Naukati Bay;

22 Thence easterly a distance of 1320.00 feet to the C1/4 Corner of pro-
23 tracted Section 16, T. 69 S., R. 80 E., C.R.M.;

24 Thence southerly a distance of 6600.00 feet to the C-S 1/16 Corner of
25 protracted Section 21, T. 69 S., R. 80 E., C.R.M. falling in Naukati Bay;

26 Thence westerly a distance of 1320.00 feet to the S-W 1/16 Corner of
27 protracted Section 21, T. 69 S., R. 80 E., C.R.M., falling in Naukati Bay;

28 Thence southwesterly a distance of 4172.41 feet to the 1/4 Corner
29 common to protracted Sections 28 and 29, T. 69 S., R. 80 E., C.R.M., falling in
30 Tuxekan Passage;

31 Thence westerly a distance of 10332.75 feet to the 1/4 Corner common
32 to protracted Section 30, T. 69 S., R. 80 E., C.R.M., and protracted Section 25,
33 T. 69 S., R. 79 E., C.R.M.;

34 Thence westerly a distance of 2640.00 feet to the C 1/4 Corner of pro-
tracted Section 25, T. 69 S., R. 79 E., C.R.M.;

Thence northerly a distance of 2640.00 feet to the 1/4 Corner common
to protracted Sections 25 and 24, T. 69 S., R. 79 E., C.R.M.;

Thence westerly a distance of 2640.00 feet to the section corner com-
mon to Sections 23, 24, 25, and 26, T. 69 S., R. 79 E., C.R.M.;

Thence WEST a distance of 1320.00 feet along the section line common
to Sections 23 and 26, T. 69 S., R. 79 E., C.R.M., to the E 1/16 corner common
to Sections 23 and 26, T. 69 S., R. 79 E., C.R.M.;

Thence North 0° 02' West a distance of 1320.00 feet along the East 1/16
line of Section 23, T. 69 S., R. 79 E., C.R.M., to the SE 1/16 Corner of said sec-
tion;

Thence WEST a distance of 1320.00 feet along the south 1/16 line of
Section 23, T. 69 S., R. 79 E., C.R.M., to the C-S 1/16 Corner of said section;

1 Thence N 0° 02' W a distance of 1320.00 feet to the C 1/4 Corner of
2 Section 23, T. 69 S., R. 79 E., C.R.M.;

3 Thence westerly a distance of 7920.00 feet to the 1/4 Corner common to
4 protracted Sections 21 and 22, T. 69 S., R. 79 E., C.R.M.;

5 Thence northerly a distance of 2640.00 feet to the section corner com-
6 mon to protracted Sections 15, 16, 21 and 22, T. 69 S., R. 79 E., C.R.M.;

7 Thence northerly to a meander corner of record on Jinhi Bay;

8 Thence North 0° 04' West a distance of 5235.12 feet along the section
9 line common to Sections 15 and 16, T. 69 S., R. 79 E., C.R.M., to the section
10 corner common to Sections 9, 10, 15 and 16, T. 69 S., R. 79 E., C.R.M.;

11 Thence EAST a distance of 3492.72 feet along the section line common
12 to Sections 10 and 15, T. 69 S., R.79E., C.R.M., to a meander corner of record
13 on Jinhi Bay;

14 Thence easterly a distance of 1787.28 feet along the extension of said
15 section line common to Sections 10 and 15, T. 69 S., R.79E., C.R.M., to the
16 section corner common to protracted Sections 10, 11, 14, and 15, T. 69 S.,
17 R.79E., C.R.M.;

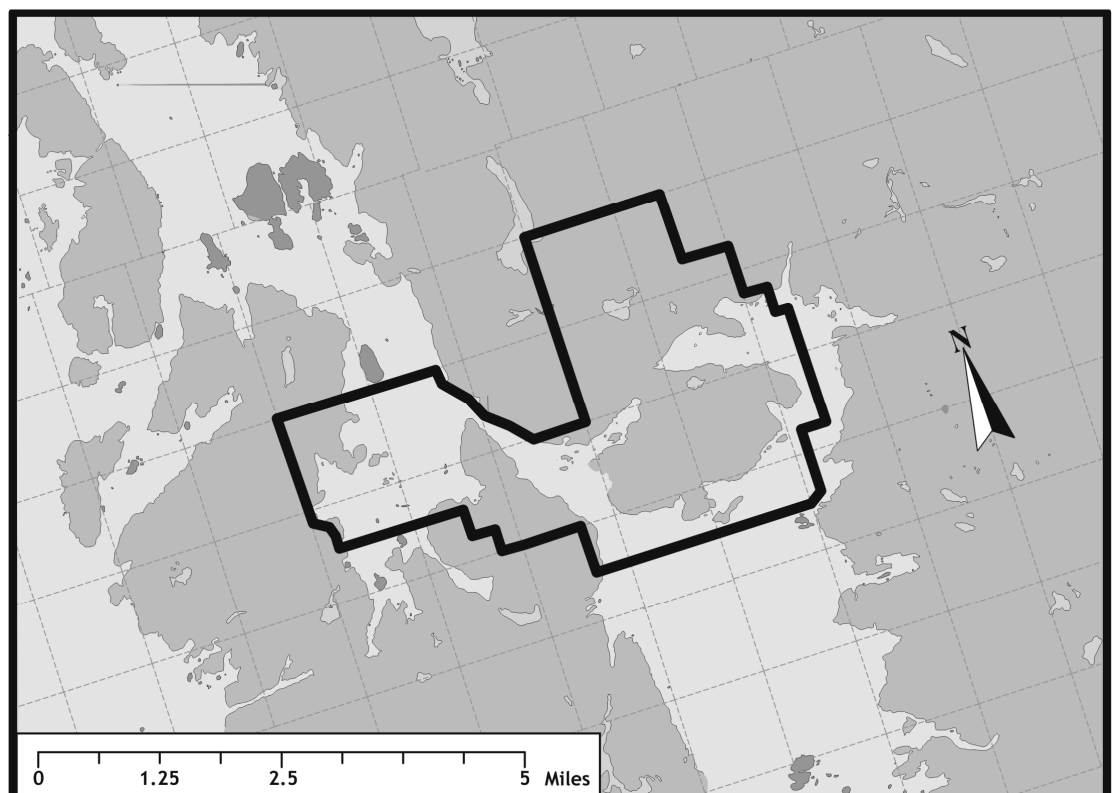
18 Thence easterly along the section line common to protracted Sections
19 11 and 14, T. 69 S., R 79 E., C.R.M., to the point of intersection with the line of
20 mean high tide on the westerly shore of Prince of Wales Island ;

21 Thence meandering southeasterly within Sections 14 and 13, T. 69 S.,
22 R. 79 E., C.R.M., along the westerly shore of Prince of Wales Island at the line
23 of mean high tide, to a meander corner at the point of intersection with the sec-
24 tion line common to Sections 13 and 24, T. 69 S., R. 79 E., C.R.M.;

25 Thence EAST a distance of 2934.36 feet along the section line common
26 to Sections 13 and 24, T. 69 S., R. 79 E., C.R.M., to the section corner com-
27 mon to Sections 13 and 24, T. 69 S., R. 79 E., C.R.M, and Sections 18 and 19,
28 T. 69 S., R. 80 E., C.R.M, being the TRUE POINT OF BEGINNING;

29 Containing 11.7 square miles more or less, all in the First Judicial Dis-
30 trict, State of Alaska.

31 The following map reflects the boundaries described above.




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Additionally, for the reasons set out herein, the LBC makes incorporation subject to the condition that the voters of Naukati approve two propositions in the incorporation election. The first is a proposition authorizing the city to levy a 5 percent general sales tax. The second is a proposition authorizing the city to levy a real and personal property tax of 3.5 mills.

Approved in writing January 4, 2006.

LOCAL BOUNDARY COMMISSION
(Commissioner Tony Nakazawa, not participating.)



By: **Darroll Hargraves, Chairman**

Attest:



Dan Bockhorst, LBC Staff

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RECONSIDERATION BY THE COMMISSION

Within eighteen days after this decision becomes final under 3 AAC 110.570(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 thirty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

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

JUDICIAL APPEAL

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