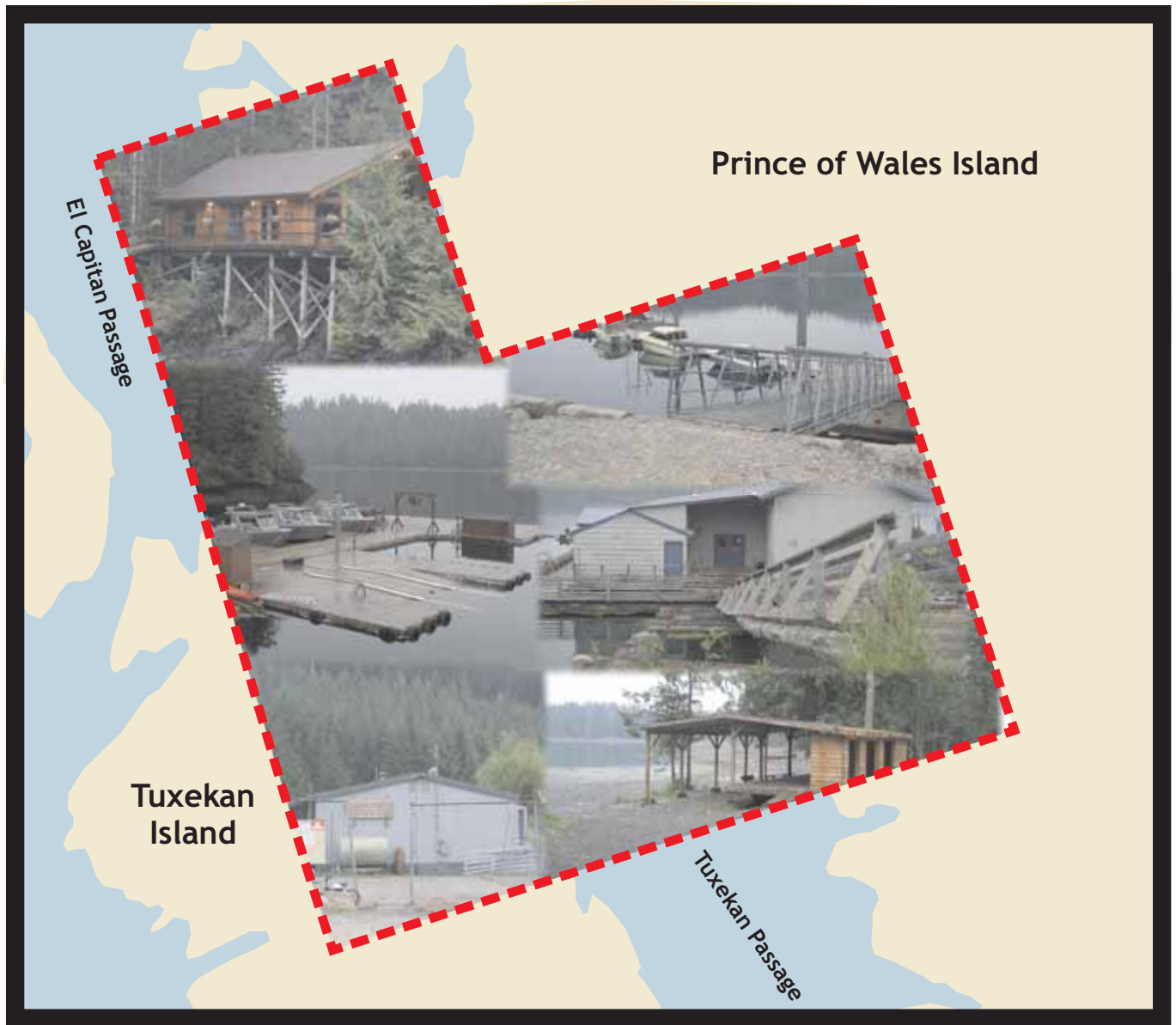


Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Naukati

August 2005



William C. Noll, Commissioner

Mike Black, Director
Division of Community Advocacy

This is the Department of Commerce, Community, and Economic Development's Preliminary Report regarding the petition to incorporate the second class City of Naukati. The report can also be found on the Internet at the following address:

http://www.commerce.state.ak.us/dca/lbc/naukati_bay.htm

The report is preliminary in the sense that it is issued as a draft for public review and comment in accordance with 3 AAC 110.530(b), which also requires Commerce to issue a final report after considering written comments regarding the preliminary report.

Commerce 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.

Acknowledgement

This report reflects the work and significant contributions of many individuals. A core group of four staff in the Alaska Department of Commerce, Community, and Economic Development (Commerce) evaluated the evidence in this proceeding and applied that evidence to applicable standards to formulate the agency's preliminary recommendation to the Local Boundary Commission (LBC). Commerce's core group consisted of the following individuals:

- ◆ Dan Bockhorst, LBC Staff Supervisor;
- ◆ Nicole Grewe, Development Specialist;
- ◆ Peter McKay, Planner; and
- ◆ Bill Rolfzen, Local Government Specialist.

The principal authors of this report are Nicole Grewe and Dan Bockhorst. Many other staff from Commerce and other agencies also made significant contributions to this report, including the following individuals:

- ◆ Indra Arriaga, Research Analyst, Commerce;
- ◆ Cindy Christian, Environmental Program Manager, Department of Natural Resources;
- ◆ Michael Curran, Forester, Department of Natural Resources;
- ◆ Kathleen Seehan Dugan, Public Information Center Manager, Department of Natural Resources;
- ◆ Rick Fredrickson, Natural Resource Manager, Department of Natural Resources;
- ◆ Joan Gilbertson, Natural Resource Manager, Department of Natural Resources;
- ◆ Judy Hargis, Publication Technician, Commerce;
- ◆ Wayne Haerer, Assessor, Office of the State Assessor, Commerce;
- ◆ Katharine Heumann, Local Government Specialist, Commerce;
- ◆ Denise Jausoro, Recorder, Department of Natural Resources;
- ◆ Keith Jost, Natural Resource Specialist, Commerce;
- ◆ Kathryn Lizik, Research Analyst, Department of Labor and Workforce Development;
- ◆ Naomi Nelson, Election Supervisor, Office of the Governor;
- ◆ Bruce Phelps, Natural Resource Manager, Department of Natural Resources;
- ◆ Bruce Pitrof, Recorder, Department of Natural Resources;
- ◆ George Plumley, Cartographer, Commerce;
- ◆ Casey Reeves, Natural Resource Technician, Department of Natural Resources;
- ◆ Melanie Slayton, USDA Forest Service, Thorne Bay Ranger District;
- ◆ Jennie Starkey, Publication Technician, Commerce;
- ◆ Steve Van Sant, State Assessor, Commerce;
- ◆ Darlene Watchman, Paralegal, Commerce; and
- ◆ Ingrid Zaruba, Research Analyst, Department of Labor and Workforce Development.

Table of Contents

Preface	1
Chapter 1 - Background on Local Government, the LBC, and Commerce	3
A. Introduction	3
B. General Background on Local Government in Alaska	3
1. Alaska has only Two Types of Municipal Government Units - Cities and Organized Boroughs.	3
2. A City is a Community-Level Municipal Government; a Borough is a Regional-Level Municipal Government.	4
3. State Law Provides for Different Classes of City and Borough Governments.	4
4. All City and Borough Governments in Alaska Possess Broad Discretionary Powers.	5
5. A Second-class City has no Duty under State Law to Provide a Particular Service or Facility.	8
6. The Powers of Second-class Cities in the Unorganized Borough have Certain Limitations.....	9
7. Characteristics of Existing City and Borough Governments in Alaska...	11
C. Background on Second-class Cities in the Unorganized Borough.....	13
1. Population.	13
2. Size of Jurisdictional Territory.	13
3. City Taxes.	14
4. Other Local Revenues.	15
5. Federal Revenues.	17
6. State Revenues.....	17
7. Expenditures.	17
D. Background on the Local Boundary Commission	19
1. Constitutional Origin of the LBC.....	19
2. Duties and Functions of the LBC.....	20
3. LBC Decisions Must have a Reasonable Basis and Must be Arrived at Properly.	21
4. Communications with the LBC.....	21
5. LBC Membership.	22

E. Background on the Alaska Department Commerce, Community, and Economic Development	25
1. Constitutional Origin of the Local Government Agency.	25
2. Commerce Serves as Staff to the LBC.	25
Chapter 2 - Proceedings Related to the Pending Proposal	27
A. Introduction	27
B. Prior Incorporation Efforts	27
C. Local Option City Incorporation Procedures.....	27
D. Past, Ongoing, and Future Proceedings Related to the Pending Proposal	28
1. Petition Submitted.	28
2. Petition Accepted for Filing.	28
3. Notice of Filing of the Petition.	28
4. Deposit and Service of Petition.....	30
5. Responsive Briefs and Comments.	30
6. Reply Brief.	32
7. Commerce’s Preliminary Report.....	32
8. Public Informational Meeting.	32
9. Commerce’s Final Report.....	33
10. Pre-Hearing Requirements.	33
11. LBC Tour and Public Hearing.	33
12. LBC Decisional Meeting.....	35
13. Reconsideration.	36
14. Election.....	37
15. Judicial Appeal.	38
Chapter 3 - Application of Standards to the Naukati Petition.....	39
A. Standard Regarding Existence of a Community.	40
1. The Standard Established in Law.	40
2. Application of the First Factor - Whether the Settlement is Inhabited by at Least 25 Individuals.	41
(a) Views of the Petitioner.....	41
(b) Respondent’s Brief.	41
(c) Public Comments.	41
(d) Analysis by Commerce.	41

3. Application of the Second Factor - Whether Inhabitants Reside Permanently in a Close Geographical Proximity that Allows Frequent Personal Contacts and Comprise a Population Density that is Characteristic of Neighborhood Living.	45
(a) Views of the Petitioner.....	45
(b) Respondent’s Brief and Petitioner’s Reply.	45
(c) Public Comments and Petitioner’s Response.	48
(d) Analysis by Commerce.	50
4. Application of the Third Factor - Whether 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	51
(a) Views of the Petitioner.....	51
(b) Respondent’s Brief and Petitioner’s Reply.	52
(c) Public Comments and Petitioner’s Response.	54
(d) Analysis by Commerce.	57
5. Conclusion by Commerce.....	67
B. Standards Regarding Boundaries	68
1. The Standards Established in Law.	68
2. Application of the First Boundaries Standard - The Boundaries Must Include All Areas Necessary to Provide Essential City Services on an Efficient, Cost-Effective Level.....	70
(a) Views of the Petitioner.....	70
(b) Respondent’s Brief.	71
(c) Public Comments and Petitioner’s Response.	71
(d) Analysis by Commerce.	73
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	86
(a) Views of the Petitioner.....	86

(b) Respondent's Brief and Petitioner's Reply.	86
(c) Public Comments.	88
(d) Analysis by Commerce.	88
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.	92
(a) Views of the Petitioner.....	92
(b) Respondent's Brief and Petitioner's Reply.	93
(c) Public Comments and Petitioner's Response.	93
(d) Analysis by Commerce.	94
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.	94
(a) Views of the Petitioner.....	94
(b) Respondent's Brief and Petitioner's Reply.	94
(c) Public Comments and Petitioner's Response.	94
(d) Analysis by Commerce.	95
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.....	95
(a) Views of the Petitioner.....	95
(b) Respondent's Brief.	95
(c) Public Comments.	95
(d) Analysis by Commerce.	95
7. Conclusion by Commerce.....	95
C. Standard Regarding Resources.....	97
1. The Standard Established in Law.	97
2. Views of the Petitioner.....	98
3. Respondent's Brief and the Petitioner's Response.....	99
4. Public Comments and the Petitioner's Response.	102
5. Analysis by Commerce.	103
(a) The Reasonably Anticipated Functions of the Proposed City.....	103
(b) The Reasonably Anticipated Expenses of the Proposed City. ..	104

(c) The Ability of the Proposed City to Generate and Collect Local Revenue, and the Reasonably Anticipated Income of the Proposed City.	106
(d) The Feasibility and Plausibility of the Anticipated Operating and Capital Budgets Through the Third Full Fiscal Year of Operation.	110
(e) The Economic Base of the Proposed City.	111
(f) Property Valuations of the Proposed City.	112
(g) Existing and Reasonably Anticipated Industrial, Commercial, and Resource Development for the Proposed City.	122
(h) Personal Income of Residents of the Proposed City.	122
(i) Land Use for the Proposed City.	122
(j) The Need for and Availability of Employable Skilled and Unskilled Persons to Serve the Proposed City.	122
(k) A Reasonably Predictable Level of Commitment and Interest of the Residents in Sustaining a City.	123
(l) Other Considerations.	124
6. Conclusion by Commerce.	128
D. Standard Regarding Population Size and Stability	129
1. The Standard Established in Law.	129
2. Views of the Petitioner.	129
3. Responsive Brief and Petitioner’s Response.	130
4. Public Comments and Petitioner’s Response.	130
5. Analysis by Commerce.	130
(a) Total Census Enumerations.	130
(b) Durations of Residency.	131
(c) Historical Population Patterns.	131
(d) Seasonal Population Changes.	132
(e) Age Distributions.	132
6. Conclusion by Commerce.	132
E. Standards Regarding Need for City Government	134
1. The Standards Established in Law.	134
2. Views of the Petitioner.	134

(a) Demonstration of Need for City Government.	134
(b) Capacity for Existing City Governments to Serve Naukati.	137
3. Responsive Brief.	138
4. Public Comments.	138
5. Analysis by Commerce.	138
(a) The Need for City Government in Naukati.	138
(b) The Capacity for an Existing City Government to Serve the Needs of Naukati Residents.	142
6. Conclusion by Commerce.	142
F. Standard Regarding Best Interests of the State	143
1. The Standard Established in Law.	143
2. Views of the Petitioner.	143
3. Responsive Brief.	143
4. Public Comments and Petitioner’s Response.	144
5. Analysis by Commerce.	144
(a) Promotion of Maximum Local Self-Government with Minimum of Local Government Units.	144
(b) Relief from Providing Local Services.	145
(c) Risk in Event of Dissolution.	146
6. Conclusion by Commerce.	147
G. Standard Regarding Transition.	147
1. The Standard Established in Law.	147
2. Views of the Petitioner.	148
3. Responsive Brief.	148
4. Public Comments.	148
5. Analysis by Commerce.	148
6. Conclusion by Commerce.	149
H. Nondiscrimination	149
1. The Standard Established in Law.	149
2. Views of the Petitioner.	150
3. Responsive Brief.	150
4. Public Comments.	150
5. Analysis by Commerce.	150
6. Conclusion by Commerce.	151

Chapter 4 - Summary of Conclusions and Recommendation	153
Appendix A - Glossary	1
Appendix B - It's Time to Fully Implement the Local Government Provisions of Our Constitution	1
Appendix C Subdivision Plats	1
Naukati Bay Subdivison East	2
Naukati Bay Subdivison West	3
Naukati Bay Subdivison West Addition 1 - Index Sheet.....	4
Naukati Bay Subdivison West Addition 1 - Sheet 2 of 3	5
Naukati Bay Subdivison West Addition 1 - Sheet 3 of 3	6
Naukati Commercial Subdivision	7
Naukati Industrial Subdivision	8
Appendix D Communities At Risk	1

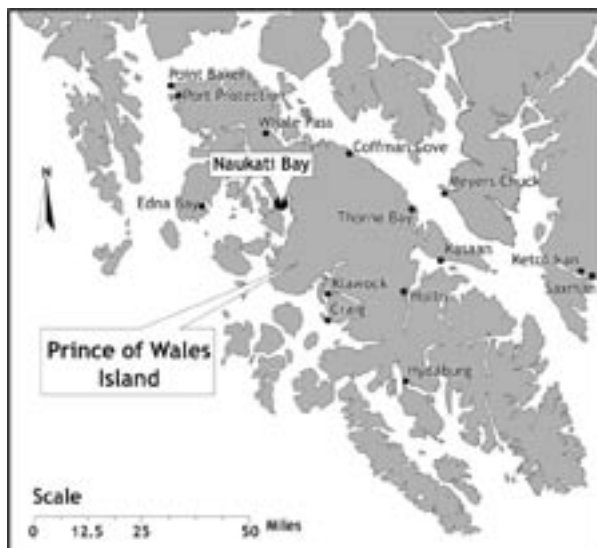
Preface

Thirty-six qualified voters residing in Naukati, a settlement on the northwest coast of Prince of Wales Island in southeast Alaska, have petitioned the Alaska Local Boundary Commission to incorporate a city government. Those voters, or their designated representative, are referred to in this report as the "Petitioner."¹ A summary of the Petitioner's city incorporation proposal is provided in the adjacent column.

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

The Naukati 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 Commerce, Community, and Economic Development (hereafter "Commerce" or "Department") serves as staff to the LBC.² Background



SUMMARY OF PETITIONER'S PROPOSAL

Name: City of Naukati

Classification: second-class

Population (2002): 110

Borough Affiliation: unorganized borough

Jurisdictional Area:

- 34.18 square miles of land
- 9.82 square miles of water
- 44.00 square miles of total area

Taxes:

- 4% bed tax/vacation package tax

Services and Facilities:

- road maintenance
- harbor maintenance
- emergency response
- water and sewer utilities
- shellfish nursery

Projected Annual Revenue:

- annual average over three years:
\$209,401

Projected Annual Expenditures:

- annual average over three years:
\$158,083

¹ The petition contained 44 signatures; however, only 36 were confirmed to meet the qualifications set out in AS 29.05.060(12).

² Commerce 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.

regarding Commerce's role as staff to the independent LBC is provided in Chapter 1.

The pending Petition is the first attempt to incorporate a city government to serve Naukati residents. There are a series of action steps based on State law by which the petition for incorporation proceeds through the review process. Chapter 2 provides the reader with an understanding of the activities that preceded the publication of this report. It also gives the reader a clear understanding of the proceedings to follow.

LBC action regarding the pending Naukati city incorporation petition is based on the application of standards established in law to the specific facts presented in these proceedings. Those standards are discussed in Chapter 3.

As staff to the LBC, Commerce is required by law to investigate the pending city incorporation proposal. (AS 29.05.080(a)

and 3 AAC 110.530(a).) Moreover, the Department must report its findings and recommendations on the matter to the LBC. Commerce conducts its analysis of matters pending before the LBC using the same standards that the LBC uses to judge the merits of the proposal. Chapter 3 presents Commerce's analyses and conclusions concerning whether the pending proposal meets the requisite standards.

Chapter 4 summarizes Commerce's conclusions and presents its recommendations regarding the matter for consideration by the LBC. Commerce's conclusions and recommendations are not binding on the LBC.

A glossary of technical terms used in this report is included in Appendix A. Supplemental reference materials are included in additional report appendices.

Chapter 1

Background on Local Government, the LBC, and Commerce

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 Commerce and the LBC.

B. General Background on Local Government in Alaska

1. Alaska has only Two Types of Municipal Government Units - Cities and Organized Boroughs.

Most states have complex structures for local government comprised of multiple governmental units with narrow functions.³ 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 characteristically has an independent elected governing body with authority to levy taxes.

When the framers of the Constitution of the State of Alaska (hereafter "Alaska's Constitution" or "Constitution") developed the foundation for state government, they endeavored to avoid the shortcomings of the existing 48 states. At the time, Alaska had only a rudimentary system of local government. Consequently,

the framers enjoyed greater capacity to be innovative when it came to formulating local government structure for the future of the State of Alaska.⁴

The framers of Alaska's Constitution rejected the complex and cumbersome arrangement of local government found in other states, favoring instead, a streamlined approach to local government focusing on efficiency and effectiveness. Alaska's Constitution recognizes just two types of municipal government - cities and boroughs.

³ For example, the State of Washington 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.

⁴ At the time of statehood, Alaska's local government 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.

2. A City is a Community-Level Municipal Government; a Borough is a Regional-Level 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.⁵ Similar limitations exist concerning territory that may be annexed to existing city governments.

⁵ See, in particular, 3 AAC 110.040(b) and, more generally, AS 29.05.011 and 3 AAC 110.005 - 3 AAC 110.042.

⁶ In 1961, the Alaska Legislature passed a law designating the entire area of Alaska outside organized boroughs as a single unorganized borough. At the time, there were no organized boroughs. Thus, initially, the unorganized borough encompassed the entire state. Today, the unorganized borough encompasses an estimated 374,843 square miles, 57 percent of the total area of Alaska. A single amorphous unorganized borough is considered by many experts to lack conformity with the requirements of Article X, Section 3 of the Constitution, which requires that each borough embrace a maximum area and population with common interests. Appendix B is a commentary on this circumstance by local government experts Victor Fischer and Arliss Sturgulewski.

In contrast to the limits of city government, an organized borough is a regional government. Borough governments are intended to encompass large natural regions. The Alaska Constitution requires that all of Alaska be divided into boroughs - organized or unorganized.⁶

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.

The particular city classification 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 government within an organized borough operates a school district because public education is a mandatory areawide function of organized boroughs.



Fire truck currently operated by the volunteer fire protection EMS provider \ Naukati Emergency Response. Fire protection and emergency response are powers proposed to be assumed by the prospective city.

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 those powers.

Five different classes of borough government are recognized in State law. Those are a unified home-rule borough (referred to as unified municipality) non-unified home-rule borough, first-class borough, second-class borough, and third-class borough.⁷

⁷ 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.

A home-rule borough is a municipal government that has adopted a charter (the equivalent of a municipal constitution). A home-rule borough has all legislative powers not prohibited by State or federal law or by the home-rule charter. (AS 29.04.010.)

First-class boroughs, second-class boroughs, and third class boroughs are general law boroughs. They

are unchartered municipal governments that have legislative powers conferred by law. (AS 29.04.020.)

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 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.”⁸ (*Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).)

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

⁸ Footnote 19 in original.

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 Hellenthal 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.

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.



The framers of Alaska's Constitution repudiated Dillion's rule, a common law principle providing for a narrow construction of local government powers.

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 although State statutes did not specifically authorize a sec-

ond-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 used 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 abol-

ished 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 pro-

hibited 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 language of Alaska’s Constitution does not lend itself easily to such an interpretation. Article X, Section 1 of the Constitution, coupled with the language of the previously noted grants in AS 29.35 (“any power not otherwise prohibited by law”), would make it difficult for a court

to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of AS 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 limitations in AS 29.10.200 that apply to general law municipalities.

5. A Second-class City has no Duty under State Law to Provide a Particular Service or Facility.

Duties to provide particular services are imposed by State law only on certain municipalities.⁹ However, second-class cities in the unorganized borough are not obligated by State law to provide any fundamental 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 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

⁹ 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 services. Additionally, organized boroughs are obligated to assess and collect property, sales, and use taxes levied within the boundaries of the borough. (AS 29.35.160-180 and AS 29.35.260(b)-(c).)

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) designate the borough seat; (9) 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 previously noted, 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.



Naukati Cabins, one of the commercial operations in Naukati, has three cabins for guests.

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 two 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 in-

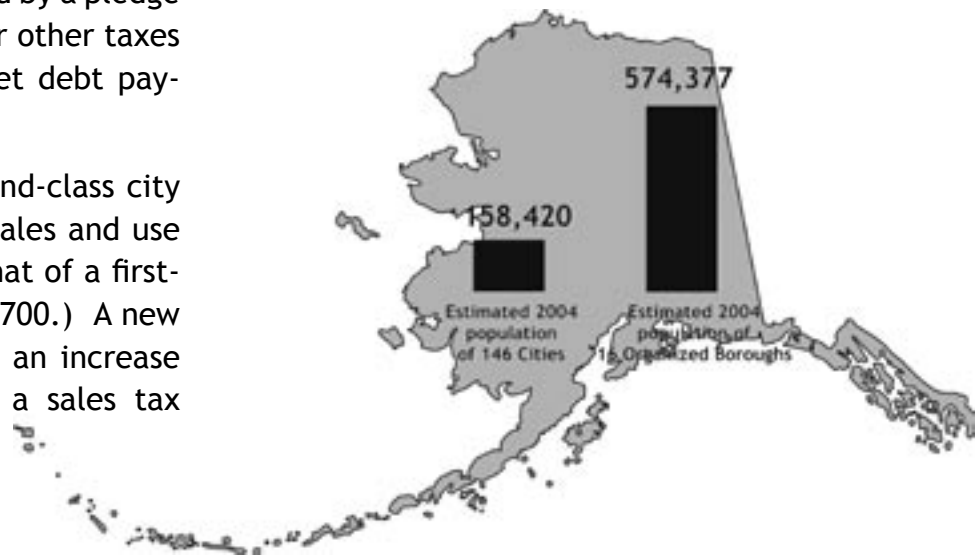
terest of bonded or other indebtedness that is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

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 levy rate 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.

As previously noted, State law expressly prohibits a second-class city in the unorganized borough 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 exercised only within city 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.)



Population of cities in Alaska versus organized boroughs.

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.)

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	3.4%	12	8.2%
First-Class Cities	7	4.8%	13	8.9%	20	13.7%
Second-Class Cities	34	23.3%	80	54.8%	114	78.1%
Total	48	32.9%	98	67.1%	146	100.0%

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

Presently, there are 146 city governments and 16 organized borough governments in Alaska.

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 (78.1 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. The 2004 estimated population of all 146 cities in Alaska was 158,420 (24.2 percent of the total population of Alaska). In comparison, the population of organized boroughs in 2004 was estimated to be 574,377 (87.6 percent of Alaska's population).

In 2004, fewer than 17 of every 100 Alaskans (16.7 percent) who lived within an organized borough also lived within a city government. In contrast, more than 77 of every 100 residents of the unorganized borough (77.4 percent) lived within

the boundaries of city governments in 2004.

The circumstances described above reflect the fact that Alaskans, in general, embrace Alaska's

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%
Total	16	100.0%

constitutional provision calling for “a minimum of local government units” (Art. X, sec. 1, Ak Const.). That is, 83.3 percent of organized borough residents receive local services exclusively from their borough government (the remaining 16.7 percent receive services from both a borough and a city). In the unorganized borough, the city is the only existing municipal service provider.

Table 1-3 lists the 2004 population of all cities in Alaska. During 2002, the median population of cities in Alaska was 383, while the average population of all cities was 1,092.

Figure 1-1 illustrates the 2004 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. However, the size of individual city and borough governments varies consid-

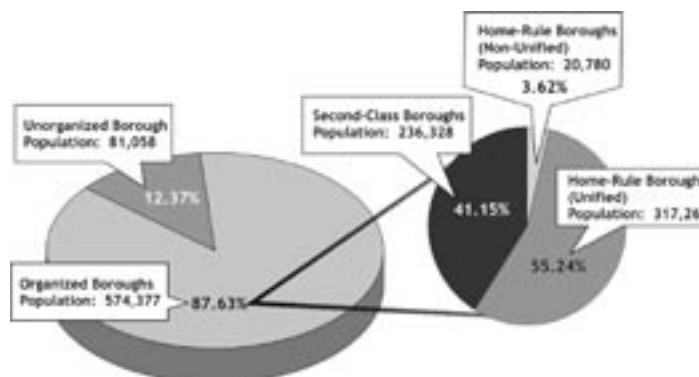


Figure 1-1. 2004 Population of Organized Boroughs in Alaska.

erably. The City of Kiana, located along the Kobuk River in the Northwest Arctic Borough, encompasses 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. As presently configured, the unorganized borough encompasses 374,843 square miles.

Table 1-3. 2004 Population of Existing City Governments in Alaska.

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	2004 Population	Percentage of Entire State	2004 Population	Percentage of Entire State	2004 Population	Percentage of Entire State
Home-Rule Cities	59,922	9.14%	12,447	1.90%	72,369	11.04%
First-Class Cities	21,453	3.27%	16,637	2.54%	38,090	5.81%
Second-Class Cities	14,312	2.18%	33,649	5.13%	47,961	7.31%
Total	95,687	14.60%	62,733	9.57%	158,420	24.17%

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

The 80 second-class city governments in the unorganized borough comprise just under half of the 162 city and borough governments in Alaska. Although prolific in number, those city governments serve just 5.1 percent of the total population of Alaska. 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 provide a sense of the diversity and nature of second-class cities in the unorganized borough.

1. Population.

Among 80 second-class cities in the unorganized borough is the least populous and sixth most populous city governments in all of Alaska. During 2004, the 80 second-class cities in the unorganized borough were inhabited by a total of 33,649 individuals. During 2004, 61 percent of the

second-class cities in the unorganized borough had fewer than 400 residents. Only two of the 80 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. The proposed City of Naukati (2002 population of 110) would be among the 61.2% of second class cities in the unorganized borough with populations under 400.

2. Size of Jurisdictional Territory.

Similar to the diversity in second-class city populations, the size of the geographic area within the corporate boundaries of second-class cities in the unorganized borough varies significantly. Most second-class cities in the unorganized borough have boundaries encompassing less than ten square miles. A few have substantially larger boundaries. A comparison of

Table 1-4. Population Characteristics of Second-class Cities in the Unorganized Borough.

Least populous (City of Bettles)	31
Most populous (City of Bethel)	5,888
Median Population	305
Number of second-class cities in the unorganized borough with populations over 5,000	1 (1.3%)
Number with populations over 2,500, but less than 5,000	0 (0.0%)
Number with populations over 1,000, but less than 2,500	1 (1.3%)
Number with populations at least 400, but less than 1,000	29 (36.2%)
Number with populations under 400	49 (61.2%)

the jurisdictional boundaries of those cities is provided in Table 1-5. The boundaries proposed by the petitioner, which encompass 44 square miles, would – if approved – place Naukati in the top 15 percent of all second-class cities in the unorganized borough in terms of the size of its jurisdictional territory.

3. City Taxes.

Forty-three of the 80 second-class cities in the unorganized borough (53.75 percent) reported revenues from some type of local tax during 2004. One levied a property tax alone, 28 levied general sales taxes alone, two levied only excise taxes other than general sales taxes, 11

levied both general sales taxes and other excise taxes, and one levied a property tax, general sales tax, and other excise taxes.



Site of the future community hall in Naukati.

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 (6.25%)
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 (5.0%)
Number with jurisdictional territory equal to or greater than 30 square miles but less than 40 square miles	10 (12.5%)
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 (16.25%)
Number with jurisdictional territory less than 10 square miles	44 (55.0%)

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

Number that levy property taxes (one does so alone while the other also levies a general sales tax and other excise taxes)	2 (2.5%)
Number that levy a 5% general sales tax	5 (6.25%)
Number that levy a 4% general sales tax	4 (5.0%)
Number that levy a 3% general sales tax	16 (20.0%)
Number that levy a 2% general sales tax	13 (16.25%)
Number that levy a 1% general sales tax	2 (2.5%)
Number that Levy Specific Excise Taxes (2 levy only excise taxes, 11 levy general sales taxes and other excise taxes, and one levies property taxes, general sales taxes, and excise taxes).	14 (11.4%)

Source: *Alaska Taxable - 2004*, Commerce, State Assessor

Table 1-6 summarizes the types of taxes levied by second-class cities in the unorganized borough during 2004.

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.¹⁰ Table 1-7 provides details regarding local tax revenues in FY 2001, and is on the following page.

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, as shown on the following page, provides additional information regarding non-tax local revenue sources reported for FY 2001.¹¹

Based on the population and top figures in the Petition, the proposed City of Naukati would be among the 10.1 percent of sec-

ond-class cities that collects \$200 - \$500 in taxes per capita annually.

¹⁰ At the time this report was prepared, 2001 was the latest year for which complete statistical information was available. It is anticipated more current data will be available before the Department publishes its final report in this matter. If requested by the LBC, Petitioner, respondent, or others, Commerce will provide updated data on revenues and expenditures in its final report. Lastly, it is noted that in 2001, there were only 79 second-class cities in the unorganized borough.

¹¹ See footnote 10.

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%)

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%)

5. Federal Revenues.

Seventy-one of the second-class cities in the unorganized borough reported receiving federal funds for operating expenses during FY 2001.¹² 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 second-class cities in the unorganized borough reported receiving funds from the State of Alaska for operating expenses during FY 2001.¹³ The principal sources of State funds for second-class cities in the unorganized bor-

ough 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.

Of noteworthy importance is the discontinuation of State Revenue Sharing and Safe Communities funding programs starting in FY 2004. The elimination of these programs has left most second-class cities without a historically significant revenue source. To provide transitional compensation for the lost revenue, a Temporary Fiscal Relief program was implemented for FY 2004 that provided a one-time minimum payment of \$40,000 to incorporated communities.

The Petition anticipates that the City of Naukati would receive a modest amount (\$2,828) in annual State shared fish taxes.

7. Expenditures.

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

All municipal governments in Alaska, except second-class cities, are required to "provide for an annual independent audit of the accounts and financial transitions 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.) Furthermore,

¹² See footnote 10.

¹³ See footnote 10.

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

municipalities are required to submit a copy of the audit or financial statement to Commerce. (AS 29.20.640.) Thirteen of the 79 second-class cities in the unorganized borough completed 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 Commerce. Table 1-9 summarizes expenditures by second-class cities in the unorganized borough in four broad categories as reported to Commerce in FY 2001.¹⁴

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 prin-

cipal and interest on debt. Since only three of the 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 earlier noted, the Petitioners have proposed that the City of Naukati would provide five specific services including road maintenance, harbor maintenance, emergency response service, water/sewer utilities, and a shellfish nursery. The following summarizes reported expenditures for road maintenance, harbor maintenance, emergency response, and water/sewer utilities among second-class cities in the unorganized borough (figures are not available for shellfish nursery expenditures):

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

¹⁴ See footnote 10.

Harbor Maintenance: Twelve (15.2 percent) second-class cities in the unorganized borough provided harbor maintenance in FY 2001.

Emergency Response: Each of the communities in the unorganized borough that are served by second-class cities have some form of fire protection and/or emergency rescue service. In many cases, city governments provide facilities, equipment, and/or some form of financial aid. Twenty-four of the second-class cities reported expenditures for fire protection and/or ambulance services in FY 2001 (30.4 percent).

Water/Sewer Utilities: Fifty-nine of the second-class cities reported expenditures for water and/or sewer utilities (74.7 percent). Municipal water and/or sewer utilities are generally considered enterprise services because user fee revenue generally covers operating expenditures.

The Petition estimates that the City of Naukati will begin to provide water and sewer service in 2015.

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.¹⁵

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).¹⁶ 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

¹⁵ 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."

¹⁶ The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

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).

2. Duties and Functions of the LBC.

The LBC acts on proposals for seven different municipal boundary changes including:

- ◆ incorporation of municipalities;¹⁷
- ◆ reclassification of city governments;
- ◆ annexation to municipalities;
- ◆ dissolution of municipalities;
- ◆ detachment from municipalities;
- ◆ merger of municipalities; and
- ◆ consolidation of municipalities.

¹⁷ The term "municipalities" includes both city governments and borough governments.

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

- ◆ study 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.

Further, the LBC is routinely assigned duties by the Legislature. For example, in February 2003, the LBC produced the 216-page report entitled *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*. That report was prepared in response to the legislative directive in Section 3 Chapter 53 SLA 2002. In February 2004, the LBC and Department of Education and Early Development published a 330-page joint report entitled *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*. That report was prepared in response to the duty assigned in Section 1 Chapter 83 SLA 2003. The 2004 Legislature called for "a Local Boundary Commission project to consider options for forming a separate local government, independent of the Municipality of Anchorage, for the community of Eagle River" (Section 48 Chapter 159 SLA 2004).

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.¹⁸

The LBC must, of course, act within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has

¹⁸ 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 Commission*, 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).

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. 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
telephone: (907) 269-4559
fax: (907) 269-4539
e-mail: LBC@commerce.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. (See Figure 1-2.)

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 current LBC members.

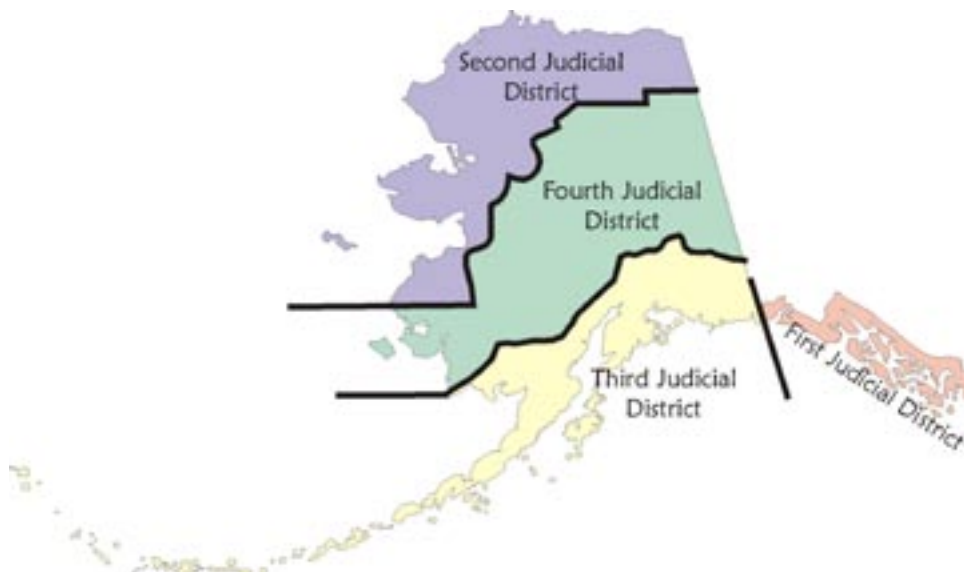


Figure 1-2. *State of Alaska Judicial Districts.*

Darroll Hargraves, Chair, At-Large Appointment, Wasilla

Governor Murkowski appointed Darroll Hargraves of Wasilla Chair of the LBC 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 nonprofit organizations. Commissioner Hargraves previously served as Chair of the LBC from 1992-1997 under Governors Hickel and Knowles. His current term on the LBC ends January 31, 2008.

Georgianna Zimmerle, First Judicial District, Ketchikan

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



is Tlingit and Haida. She is currently the General Manager for the 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 LBC ends January 31, 2006.

Dr. Robert Harcharek, Second Judicial District, Barrow

Robert Harcharek serves from the Second Judicial District. Then-Governor Knowles appointed him to the LBC on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. Mr. Harcharek has lived and worked on the North Slope for more than 25 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 currently the Community and Capital Improvement Projects (CIP) Planner for the recently created North Slope Borough Department of Public Works. 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 Senior Planner and Social Science Researcher, CIP 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. Commissioner Harcharek served for three 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 School Activities Association. His current term on the LBC ends January 31, 2009.

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

Governor Murkowski appointed Bob Hicks to the LBC from the Third Judicial District 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 fields in which he specialized as an attorney was the field of local government, including LBC matters. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. Commissioner Hicks' current term on the LBC ends January 31, 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 LBC ends January 31, 2010.

E. Background on the Alaska Department Commerce, 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.¹⁹ The constitutional duty to support local governments is entrusted to Commerce.²⁰ Within Commerce, the Division of Community Advocacy carries out the duty of advising and assisting local governments.

¹⁹ 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."

²⁰ AS 44.33.020 provides that Commerce "shall (1) 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 that the failure to implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

2. Commerce Serves as Staff to the LBC.

Commerce serves as staff to the LBC pursuant to AS 44.47.050(a)(2). Commerce's duties as LBC staff are carried out by the Local Boundary Commission staff component of Commerce's Division of Community Advocacy.

Commerce 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, Commerce adopts the same requirement for itself in developing recommendations regarding matters pending before the LBC. That is, Commerce's self-imposed requirement provides for 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. Commerce 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.

Commerce'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 Commerce's recommendations, it has, nonetheless, historically considered Commerce's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Furthermore, the LBC considers the entire record when it renders a decision.

Chapter 2

Proceedings Related to the Pending Proposal

A. Introduction

This chapter addresses, in detail, past, present, and future proceedings relating to the current proposal. It provides the reader with an understanding of the activities relating to the incorporation proposal that proceeded the publication of this report. It also gives the reader a clear understanding of the proceedings to follow.

B. Prior Incorporation Efforts

As noted in the preface, the pending Petition is the first attempt to incorporate a city government to serve Naukati residents.

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.

This report corresponds to Step 5 of the local option method for incorporation.

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. Commerce prepares preliminary report concerning the proposal;
6. Interested individuals and organizations may comment on preliminary report;
7. Commerce holds public informational meeting in Naukati;
8. Commerce prepares final report concerning the proposal;
9. LBC holds public hearing in Naukati;
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. Federal Voting Rights Act preclearance requested;
14. Division of Elections conducts election;
15. Election held; and
16. City is formed if majority of voters cast ballots in favor of incorporation.

D. Past, Ongoing, and Future Proceedings Related to the Pending Proposal

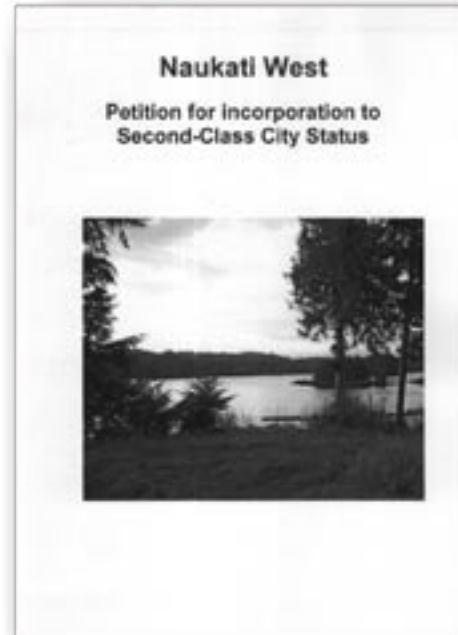
1. Petition Submitted.

As allowed by AS 29.05.060(7), Naukati voters petitioned the LBC for incorporation of a second-class city. The formal Petition was submitted to Commerce on January 22, 2004. Forty-four individuals signed the Petition.

2. Petition Accepted for Filing.

Commerce 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 the Petition contained a sufficient number of qualified signatures, but was incomplete.²¹ On March 8, 2004, Commerce notified the Petitioner's Representative (hereinafter "Petitioner") regarding necessary Petition corrections including an accurate legal description of the boundaries of the proposed City of Naukati and a dated signature on the petition form. On March 10 and 22, 2004, the Petitioner submitted documentation making the necessary corrections. On April 16, 2004, Commerce accepted the Petition for filing.

²¹ Thirty-six 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).



Cover of the Petition for Incorporation of a Second-Class City submitted by the voters of Naukati Bay.

3. Notice of Filing of the Petition.

Under 3 AAC 110.640, the Chair of the Commission set June 15, 2004 as the deadline for receipt of responsive briefs and comments on the Petition.

In accordance with 3 AAC 110.450, Commerce prepared the text and maps to be used in the public notice of the filing of the Petition. Commerce 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. The notice was published in a

display ad format (three columns by six-inches) three times in the *Island News* as follows:

- ◆ May 17, 2004;
- ◆ May 24, 2004; and
- ◆ May 31, 2004.

Beginning May 12, 2004, public notice of the filing of the Petition was published electronically by Commerce on the LBC Internet Web site.²² Public notice of the filing of the Petition was also electronically published by Commerce on the State of Alaska *Online Public Notice* system from May 11, 2004 through July 17, 2004.²³

On May 13, 2004, Commerce provided notice of the filing of the Petition in writing or electronically to fifty-six officials of the State of Alaska, including LBC members.

On May 14, 2004, the Petitioner submitted a request for public service announcements of the filing of the Petition to KRBD-FM, a Ketchikan-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.

²² <http://www.commerce.state.ak.us/dca/lbc/naukati_bay.htm>. The notice will remain posted throughout this proceeding.

²³ <<http://notes3.state.ak.us/pn/pubnotic.nsf>>



Naukati Church.

On May 14, 2004, 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:

- ◆ Naukati Connection Store and Post Office bulletin board;
- ◆ Naukati Church bulletin board;
- ◆ Naukati Cabins Laundromat bulletin board; and
- ◆ Naukati School bulletin board.

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



Former Naukati School.

On May 14, 2004, the Petitioner mailed a copy of the printed notice of the filing of the Petition to the City of Coffman Cove, City of Craig, City of Klawock, and City of Thorne Bay.

4. Deposit and Service of Petition.

On May 14, 2004, the Petitioner deposited a full set of the Petition documents for public review at the Naukati Connection Store and Post Office. The Petitioner also acknowledged its obligation to add all new future Petition documents (e.g., briefs, written comments, Commerce's reports, etc.) to the materials available for public review as those materials become available.

On May 14, 2004, the Petitioner provided one complete set of Petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for incorpora-

tion. Those municipalities included the City of Coffman Cove, City of Craig, City of Klawock, and City of Thorne Bay.

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.

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 Commerce's informational meeting (3 AAC 110.520(b));
- ◆ receive a copy of Commerce'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)).

One responsive brief was filed in regard to this proceeding:

1. Scott Van Valin by H. Clay Keene, Keene & Curral, Attorneys at Law and James A. Van Altvorst, Van Altvorst & Associates (hereafter "Respondent").

In addition to the Responsive Brief (or Respondent's Brief), five sets of written comments concerning the proposal were received by the June 15, 2004 deadline. Those comments were submitted by:



Scott Van Valin's responsive brief.

1. Al and Delores Donnelly, residents of Santa Rosa, California and property owners in Sarkar Subdivision;
2. Scott Van Valin, resident of Kailua-Kona, Hawaii and owner of El Capitan Lodge located in Sarkar Subdivision;
3. Vern and Sue Bauer, residents of Carlsborg, Washington and property owners in Sarkar Subdivision;
4. Roland Nehring, resident of Phoenix, Arizona and property owner in Sarkar Subdivision; and
5. Morris and Verna Ververs, residents of Simla, Colorado and property owners in Sarkar Subdivision.

Upon receipt, the responsive brief and comments were posted on the LBC Internet Web site. At the conclusion of the comment period, a copy of written comments was provided to the Petitioner.

6. Reply Brief.

The Petitioner's representative submitted the Petitioner's Reply Brief on August 23, 2004. A copy of the Reply Brief was posted on the LBC Internet Web site.

7. Commerce's Preliminary Report.

In accordance with 3 AAC 110.530, Commerce prepared this preliminary report examining the pending Petition. The preliminary report was provided to the Petitioner as required by law. Additionally, Commerce has distributed the report to other interested individuals and organiza-

tions, including the five interested parties 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 **October 12, 2005 at 9:00 a.m.**

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

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

Commerce stresses, again, that comments on the preliminary report must be received by Commerce before the deadline noted above.

8. Public Informational Meeting.

Commerce 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 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



Public comments received on the notice of filing petition.

Commerce to summarize the meeting in its final report to the LBC on the incorporation proposal.

9. Commerce's Final Report.

After Commerce has considered timely written comments on this preliminary report, it will issue its final report on the Naukati incorporation proposal. In accordance with 3 AAC 110.640, the final report will be mailed to the Petitioner at least three weeks before 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 next section, the Petitioner and Respondent will each be allowed to present sworn testimony to the LBC during public hearing on the incorporation proposed. Witnesses providing sworn testimony must have expertise in matters relevant to the pending proposal to incorporate the City of Naukati. 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.

At least 14 days before the hearing, the Petitioner and Respondent must 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 must provide a copy of its witness list to the Respondent by hand-delivery or postage-prepaid mail. On the same date that the Respondent submits its witness list to the Department, the Respondent must provide a copy of its witness list to the Petitioner by hand-delivery or postage-prepaid mail.

11. LBC Tour and Public Hearing.

The LBC will hold at least one public hearing on the proposal in Naukati. Before the hearing, the LBC will, if possible, tour the territory proposed for incorporation.



Territory that may be included in the LBC's tour of the area before the hearing.



LBC members listening to testimony at a recent incorporation hearing.

At this point, no date has yet been set for the hearing. Formal notice of the hearing will be published at least three times. The initial publication of the notice will occur at least 30 days before 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 Commerce staff of its conclusions and recommendations concerning the pending proposal. Following Commerce'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. The Respondent will then have an opportunity to make an opening statement, not to exceed ten minutes.

After opening statements by the Petitioner and Respondent, the LBC will receive sworn testimony from witnesses with expertise in matters relevant to the proposal. The Petitioner will first call its witnesses. The Respondent will then call its witnesses. The Petitioner may then call witnesses to provide responsive testimony. 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.

Following the testimony from witnesses called by the Petitioner and Respondent, 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 ten minutes, a closing statement by the Respondent, not to exceed ten minutes and a reply by the Petitioner not to exceed five minutes. A draft hearing agenda is shown on the following page as Figure 2-2.



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 Regarding Naukati City Incorporation Petition

- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- VI. Public hearing on Petition to Incorporate the Second-Class City of Naukati
 - A. Summary and presentation by Commerce of its conclusions and recommendations
 - B. Petitioner's opening statement (limited to 10 minutes)
 - C. Respondent's opening statement (limited to 10 minutes)
 - D. Sworn testimony of witnesses called by the Petitioner
 - E. Sworn testimony of witnesses called by the Respondent
 - F. Sworn responsive testimony of witnesses called by the Petitioner.
 - G. Period of public comment by interested persons (limited to 3 minutes per person)
 - H. Petitioner's closing statement (limited to 10 minutes)
 - I. Respondent's closing statement (limited to 10 minutes)
 - J. Petitioner's reply to Respondent's closing statement (limited to 5 minutes)
- VII. Decisional session (optional at this time)
- VIII. Comments from Commissioners and staff
- IX. Recess or Adjourn

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

Figure 2-2. Sample hearing agenda.

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

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 90 days of the hearing. (3 AAC 110.570.) If the

In compliance with Title II of the Americans with Disabilities Act of 1990, Commerce will make available reasonable auxiliary aids, services, and/or special modifications for individuals with disabilities who need such accommodations to participate at the hearing. Persons needing such accommodations should contact Commerce's staff to the Commission at (907) 269-4560 at least two weeks before the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow reasonable time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator. Upon request, and

Commission determines that it has sufficient information to judge the merits of the proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

The Commission may approve the Petition, with or without amendments and/or conditions, or the Commission may deny the Petition. Within 30 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, Respondent, and any other requesting parties.

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 Commerce with a copy of the request for reconsideration and supporting materials in an electronic format. Commerce 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. In addition, 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 or Respondent ten days after the date reconsideration is ordered, or the request for reconsideration is granted, to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The Petitioner or Respondent must provide Commerce with a copy of the responsive brief in an electronic format, unless Commerce waives this requirement because the Petitioner or Respondent lacks a readily accessible means or the capability to provide items in an electronic format.

Within 90 days after Commerce 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 30 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 30 days before the date of the election order may vote in the incorporation election.

The election must be conducted 30 to 90 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 Justice Department typically takes about 65 to 70 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 30 days after the last day on which the Commission may order reconsideration. (Alaska Rules of Appellate Procedure, Rule 601 *et seq.*)

Chapter 3

Application of Standards to the Naukati Petition

Chapter 3 presents Commerce’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 as submitted or to approve the Petition with amendments or conditions.

Historically, Commerce and the LBC have interpreted and applied city incorporation standards in a fashion that has generally promoted the creation of new city governments. While it has been common for the LBC to amend or impose conditions on city incorporation petitions, very few such petitions have ever been denied.

In these proceedings, Commerce continues to interpret and apply standards in a fashion that is consistent with the practice in the past. However, Commerce also recognizes that there are abundant accounts from news media, municipalities, and municipal advocacy groups regarding severe financial and managerial difficulties currently facing many city governments in Alaska. Among those accounts is *Alaska’s Small Cities in Crisis*, a “local government issue paper” by the Alaska Municipal League²⁴ published in January of this year. That paper states as follows:

In 2003, there were 94 cities with annual local government operating budgets under \$300,000 per year, and averaging \$164,000, to provide public servic-

es for an entire community (according to State figures, DCED). From 2003 to 2005, those 94 cities (out of a total of 146 cities in Alaska) lost an average of approximately 42% of the revenue required to provide basic public services. The crises are due to massive State cuts to cities at a time of skyrocketing local costs and economic downturns. In 2004, Alaska became one of two states that eliminated its local government revenue sharing programs. Most small rural cities operate in a cost effective manner with many part-time or volunteer positions. However, most of Alaska’s small rural communities have very little local tax base due to cash poor subsistence economies.

²⁴ The Alaska Municipal League (AML) describes itself as “a voluntary, nonprofit, nonpartisan, statewide organization of over 140 cities, boroughs and unified municipalities in Alaska, representing over 97 percent of Alaska’s residents.” AML states that it “is committed to maintaining and supporting Alaska’s local governments and local government leaders.” AML indicates that it “provides technical assistance, training, legislative advocacy and information to its members.” AML reports that its mission is to:

1. Represent the unified voice of Alaska’s local governments to successfully influence state and federal decision making;
2. Build consensus and partnerships to address Alaska’s challenges; and
3. Provide training and joint services to strengthen Alaskan local governments.

The increased frequency and severity of municipal difficulties may lead the LBC to refine past policies concerning the establishment and alteration of city governments, especially those with relatively small populations. Further elaboration regarding the current status of municipalities and subsequent relevance to LBC proceedings is provided throughout this chapter.



Community residents gather for the Fourth of July celebration.

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. AS 29.05.011(a) states that “a community” meeting the city incorporation standards may incorporate as a city. Furthermore, 3 AAC 110.005 provides that “an area proposed for incorporation as a city must encompass a community.”

State law applicable to these proceedings (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.” The law providing for the determination of a community (3 AAC 110.920) lists several relevant factors that the Commission may consider in judging whether the locality proposed for incorporation comprises a community. Specifically, it states:

3 AAC 110.920. DETERMINATION OF COMMUNITY. (a) In determining whether a settlement compris-

es 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.

2. Application of the First Factor - Whether the Settlement is Inhabited by at Least 25 Individuals.

(a) Views of the Petitioner.

The Petition states that the "census population history [of Naukati] shows 123 residents in 1980, 193 in 1990 and 135 in 2000." (Petition, p. 22.)

(b) Respondent's Brief.

One Responsive Brief was filed in opposition to the Naukati city incorporation Petition on behalf of Scott Van Valin by H. Clay Keene, Keene & Curral, Attorneys at Law and James A. Van Altvorst, Van Altvorst & Associates. The Responsive Brief did not challenge the population figures offered by the Petitioner.

(c) Public Comments.

Five written comments were received from Sarkar area property owners in opposition to the Naukati city incorporation proposal. At the minimum, all written comments oppose the boundar-

ies of the territory proposed for city incorporation. Some written comments oppose the proposed incorporation of the City of Naukati altogether. All written comments steadfastly oppose the inclusion of the Sarkar area within the proposed municipal boundaries. Consequently, rationale for public comment opposition largely focuses on building support for the exclusion of the Sarkar area from the proposed City of Naukati. All written comments suggest the standard regarding the existence of a community has not been satisfied due to geography, communication, interest, and residency factors.

Public comments did not challenge the population figures offered by the Petitioner.

(d) Analysis by Commerce.

The Petitioner indicates that Naukati was initially developed as a logging camp in the 1960s and that in the 1980s the State of Alaska acquired lands in and around



Children participating in an afterschool program at the Naukati School.

Naukati from the federal government. The land acquisitions were carried out under the State of Alaska's entitlement to 104 million acres of federal land under the Alaska Statehood Act.

Portions of the lands acquired by the State in and around Naukati were subsequently subdivided and sold for residential, commercial, and industrial purposes. Within the Petitioner's proposed city boundaries, those include the subdivisions listed in Table 3-1 below.

"Naukati Bay" was first recognized as a settlement ("census designated place" or "CDP") for the 1990 Federal Decennial Census. CDPs were considered to be the unincorporated "statistical counterpart" to an incorporated city.²⁵

The Naukati Bay CDP boundaries used in the 1990 Census remained unchanged for the 2000 Census. It is noteworthy that the boundaries of the Naukati Bay CDP differ significantly from the Petitioner's proposed city boundaries.

Table 3-1. State Land Subdivisions within the Petitioner's Proposed City Boundaries. (Listed in Order of Date of Recording in the Ketchikan Recording District.)

Subdivision Name and Plat Number	Date of Recording of Subdivision Plat	Number of Lots and Tracts	Size, Excluding Rights-of-Way
Naukati Bay Subdivision East (Plat 87-18)	03/19/1987	32 lots and 3 tracts	80.22 acres
Naukati Bay Subdivision West (Plat 87-24)	04/27/1987	86 lots and 7 tracts	241.83 acres
Naukati Industrial Subdivision (Plat 2001-20)	08/17/2001	7 lots	25.37 acres
Naukati Commercial Subdivision (Plat 2001-33)	12/13/2001	17 lots and 3 tracts	48.04 acres
Naukati Bay Subdivision West Addition No. 1 (Plat 2005-14)	03/14/2005	54 lots and 1 tract	160.83 acres

²⁵ The 1990 Federal Census guidelines outlined in *Census of Population and Housing, 1990: Summary Tape File 1 on CD-ROM*, page A-7 (1991) stated:

Census designated places (CDP's) are delineated for the Decennial Census as the statistical counterparts of incorporated places. CDP's comprise densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. Their boundaries, which usually coincide with visible features or the boundary of an adjacent incorporated place, have no legal status. . . . CDP boundaries may change with changes in the settlement pattern. . . .

To qualify as a CDP for the 1990 Census, an unincorporated community must have met the following criteria:

. . . .
 . . . In Alaska, 25 or more persons if outside [an urbanized area], and 2,500 or more persons if inside a [urbanized area] delineated for the 1980 census or a subsequent special census. . . .

The territory proposed for incorporation by the Petitioner encompasses all or parts of seventeen census blocks delineated for the 2000 Census.²⁶ Only seven of those, however, were inhabited. Figure 3-1 on the following page is a map showing the Petitioner's boundaries compared to the 2000 Census blocks wholly or partially within the territory proposed for incorporation.

Data from the 2000 Census for inhabited blocks wholly or partially within the territory proposed for incorporation are summarized in Table 3-2 below.

Table 3-2. *Inhabited 2000 Census Blocks Wholly or Partially Within the Petitioner's Proposed City Boundaries.*

Block No.	2000 Population	Relationship Between Census Block and Naukati Bay CDP	Relationship Between Census Block and Petitioner's Boundaries
1092	119	Wholly within	Wholly within
1091	13	Wholly within	Wholly within
1060	3	Wholly within	Wholly within
1059	6	Wholly outside	Wholly within
1098	14	Wholly outside	Partially within
1063	6	Wholly outside	Partially within
1058	1	Wholly outside	Partially within

As reflected in Table 3-2, three of the inhabited census blocks were wholly within both the Naukati Bay CDP boundaries and Petitioner's proposed city boundaries. One hundred and thirty-five residents inhabited those blocks at the time of the 2000 Census.

One of the census blocks listed in Table 3-2 was outside the Naukati Bay CDP, but wholly within the Petitioner's proposed boundaries. Six individuals inhabited that block at the time of the 2000 Census.

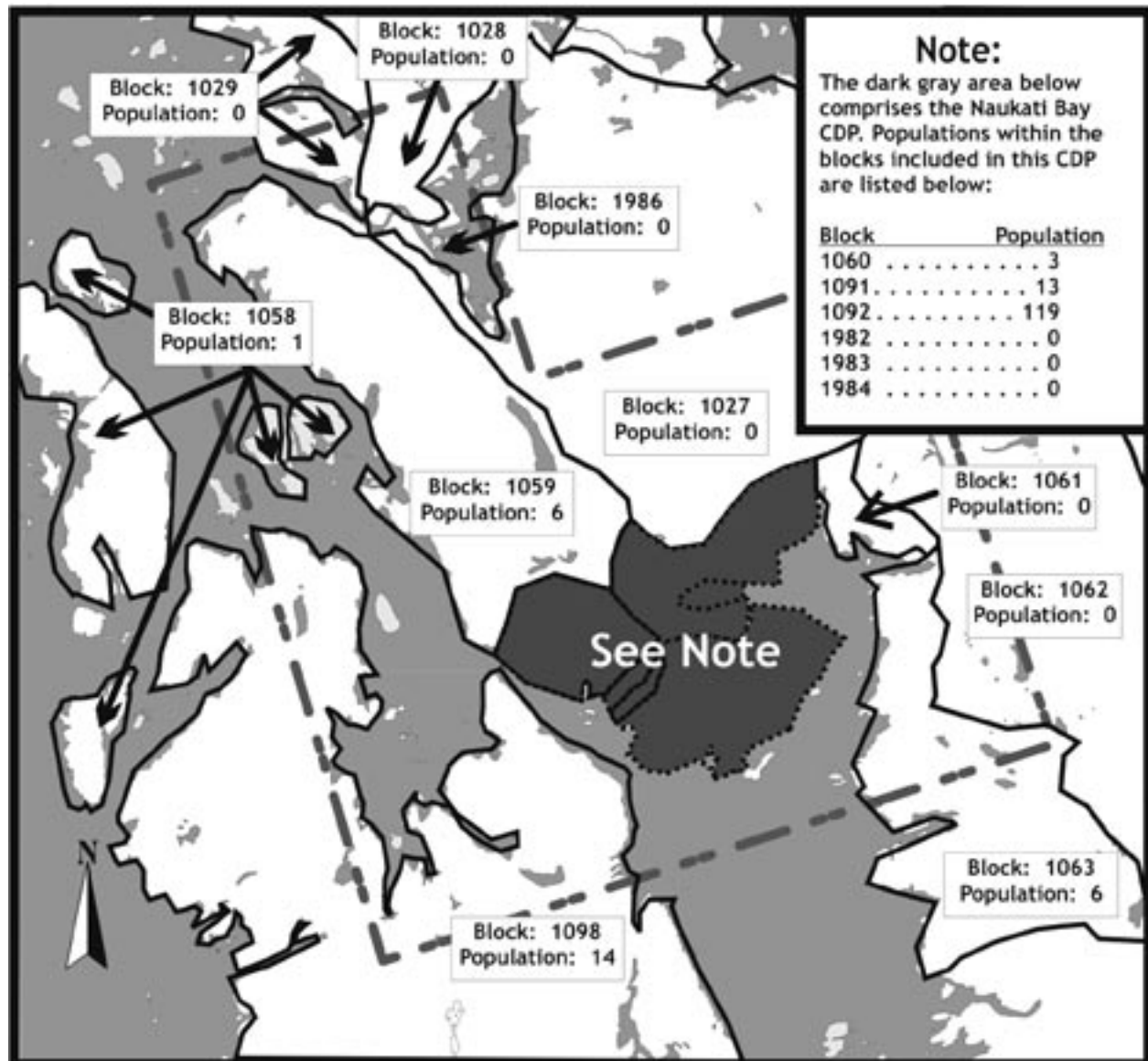
The remaining three census blocks listed in Table 3-2 are only partially within the Petitioner's proposed boundaries. In total, 21 individuals inhabited those blocks at the time of the 2000 Census. It cannot be determined from available records whether those 21 individuals lived within the Petitioner's proposed boundaries at the time of the 2000 Census. Thus, at

the time of the 2000 Census, the territory petitioned for incorporation was inhabited by at least 141 individuals and may have been inhabited by as many as 162 individuals.

The Naukati Bay CDP boundaries encompass an estimated five square miles (4.8 square miles of land and 0.2 square miles of water). The proposed city boundaries encompass 44

²⁶ A block is a subdivision of a census tract. It is the smallest geographic unit for which the Census Bureau tabulates 100-percent data. Many blocks correspond to individual city blocks bounded by streets, but blocks - especially in rural areas - may include many square miles and may have some boundaries that are not streets.

Figure 3-1. Census Blocks Wholly or Partially within the Territory Proposed for Incorporation.



square miles (34.18 square miles of land and non-tidal waters, along with 9.82 square miles of tidelands and submerged lands).

The Naukati Bay CDP boundaries include Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, and a relatively small portion of Naukati Commercial Subdivision. The territory

proposed for incorporation outside the Naukati Bay CDP includes the remainder of Naukati Commercial Subdivision, Naukati Industrial Subdivision, and Naukati Bay Subdivision East. Also included in the proposed city boundaries but outside Naukati Bay CDP are privately owned lands at the mouth of Naukati Creek (14.56 acres), the southern tip of the western island among

the Kassan Islands, and along the north and south shores of Sarkar Cove.²⁷ Figure 3-2 on the following page provides a map showing those features. Also shown on Figure 3-2 is "Forest Highway 43" (FH 43), known locally as the "20 road" or "North Prince of Wales Road."

Because the Naukati Bay CDP was first established for purposes of the 1990 Federal Census, there are no official population figures for the settlement prior to 1990. Naukati had a population of 93 at the time of the 1990 Census. Ten years later, the figure had increased to 135.

The State Demographer with the Alaska Department of Labor estimates that the 2004 population of the Naukati Bay CDP was 107. That most recent population estimate of the Naukati Bay CDP is slightly more than four times the 25-resident threshold set out in 3 AAC 110.920(a)(1). Thus, the most recent population estimate for Naukati satisfies the minimum population test under 3 AAC 110.920(a)(1).

²⁷ Sarkar Subdivision on the south shore of Sarkar Cove is former U.S. Mineral Survey (1577) comprising approximately 155 acres. The Respondent's Brief (p. 10) indicates that the "Sarkar settlement" consists of "300 acres of private land within the Sarkar Subdivision . . . surrounded on all sides entirely by water and National Forest . . . There are ten waterfront parcels and 30 upland parcels within the subdivision."

3. Application of the Second Factor - Whether Inhabitants Reside Permanently in a Close Geographical Proximity that Allows Frequent Personal Contacts and Comprise a Population Density that is Characteristic of Neighborhood Living.

(a) Views of the Petitioner.

The Petitioner generally addressed the settlement proximity and population density in the following terms (Petition, pp. 23-24):

In 1990, the State of Alaska made available for purchase 1,837 acres in what is now known as the Naukati West subdivision in a land disposal program. All of the lots have been purchased. In addition, a few of the lots were reserved for a future school site (tract A), and other community development (block 4). In 1990 the State of Alaska made available 555 acres in what is now known as the Naukati East subdivision. To date, 33 lots have been developed.

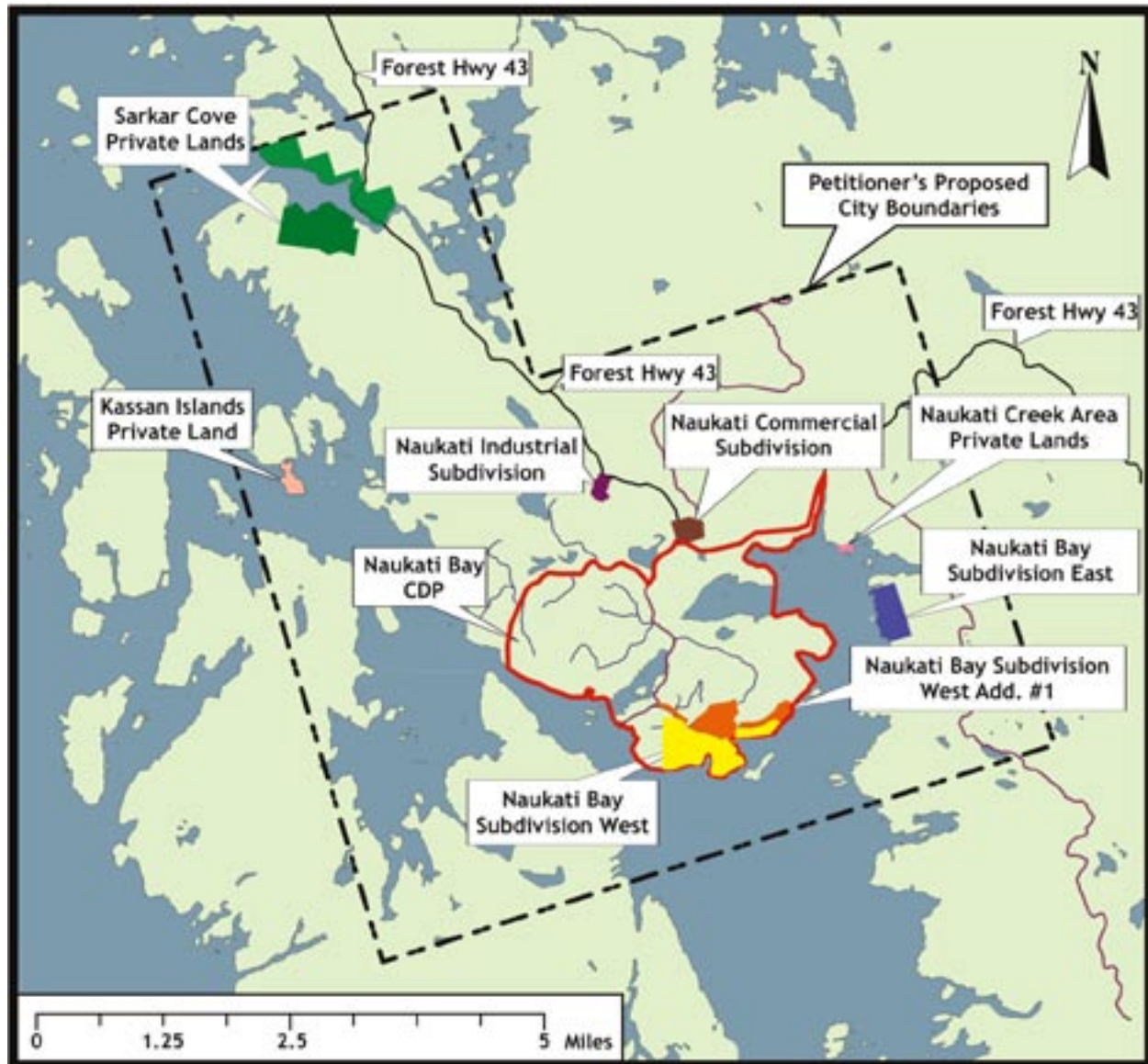
. . . .

Naukati and the D.N.R. are proposing another land sale of 56 more lots by July of 2005, Naukati predicts the sale of all of these lots as soon as the bid goes out, since tourists ask weekly if there is any property for sale in the area.

(b) Respondent's Brief and Petitioner's Reply.

Addressing the factor at issue, the Respondent stated as follows (footnotes excluded) (Responsive Brief, pp. 3-5):

Figure 3-2. Features of the Territory Proposed for Incorporation.



The relatively low density of the Naukati community suggests that Naukati does not yet meet the standards set forth in 3 AAC 110.920 (a)(2). This is particularly true when considered in light of other community characteristics.

....

The City of Naukati, as proposed, would obviously be at the low end of the range. This is a simple result of a small population occupying a relatively large land area.

Naukati's interest in including the Sarkar area in its petition is certainly one reason for this. Based only on a visual inspection, the area proposed for

incorporation is roughly twice the area envisioned for community or settlement purposes in the Alaska Department of Natural Resources *Prince of Wales Island Area Plan*. Reducing the land area proposed for the new city to approximate the community envisioned in that *Plan* would, of course, result in two important outcomes:

First, the population density would double to approximately 7.9 persons per square mile. While that would still be relatively low compared to other Alaska cities, it would represent a somewhat more reasonable density more reflective of a community meeting the standard for incorporating a city wherein “inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living.”

Second, reducing the boundaries could improve the viability of the new city government. The cost of delivering many local government services is directly related to the area in which the service is provided. Therefore, reducing the area in which Naukati would be responsible for providing municipal services to the maximum extent possible while remaining consistent with the requirements of 3 AAC 110.040(b) and (d) could prove to be beneficial to the new city if incorporation is ultimately successful.



El Capitan Lodge along Sarkar Cove.

The Petitioner responded to the Responsive Brief by providing comparative analysis of other incorporated municipalities with relatively low population densities. Excerpts from the Petitioner’s response follow (Reply Brief, p. 17):

In the petition for second-class city, Naukati has stated that the population is 135. Naukati has requested 34.18 sq. miles “excluding water”. This in according to the respondents brief is 4.24 people per square mile. An existing city in Alaska that is incorporated, with a population about the same as Naukati’s is “Saint George” with a population of 149 people with 34.8 sq. miles of land exclusive of water. The population density of Saint George is very close to that of Naukati. Saint George has second-class city status. Respondent used Platinum as an example. Platinum has a population base of 40 people with 44.6 sq. miles of

land; they are a second-class city. This is less [than] one person per square mile. . . .

The City of Thorne Bay, which is about 40 miles from Naukati, has only about 18.8 persons per square miles. Of the other Prince of Wales Island communities (POW), Kasaan has about 10.3 persons per square mile. Hollis, while not incorporated, has about 2.8 persons per square mile. The figure for Coffman Cove is 15.7. Craig is the exception to this rule on POW; they have 175 persons per square mile. In other words, POW is a rural area, and you have to expect low persons per square mile number. The fact that Naukati's person per square mile number is 4.24 should come as no surprise.

(c) Public Comments and Petitioner's Response.

All five submitted written comments focused attention on the geographic distance of the area proposed for incorporation. Specifically, all written comments suggest the geographic distance between Naukati West and the Sarkar area is too great to defensibly establish the existence of a single community. As El Capitan's Lodge owner, Scott Van Valin, wrote (07/14/04 e-mail, p. 2):

Sarkar Subdivision is over eight miles from Naukati by road and is separated by USFS Land which will not be available for residential or commercial development. Further, there is no public road that connects Naukati to Sarkar subdivision.

Sarkar area property owners Vern and Sue Bauer provide supporting discussion by noting (07/15/04 e-mail, p. 1):

. . . We are 40 minutes by logging road to Naukati. . . .

. . . .

Because we are basically remote from Naukati and go there on a very sporadic basis, we do not feel that we are a part of their community and as full-time residents they have different goals and concerns than we, as retired part-time residents, do.

Morris and Verna Ververs, Sarkar area property owners further note (07/15/04 fax, p. 1):

Because of paved roads, we generally drive to Craig or Klawock for groceries and other supplies. On several occasions we have driven to Naukati, a 30-45 minute drive, for fuel or supplies but that is rare.



Road at Sarkar Rapids.

Roland Nehring, Sarkar area property owner, provided the most extensive commentary regarding geographic proximity of Naukati and Sarkar residents by noting the following (07/15/04 fax, p. 2):

There may be only 3 airline miles of Forest Service land separating Naukati from Sarkar, but more importantly, from the provision of services standpoint, is the roadway distance between the two sites. The distance from our waterfront lots to Naukati is more than 8 miles via a very limited road system for much of that distance. From Naukati, after turning off northbound Hwy 20, a 1-1/4 mile one lane USFS road exists to our locked Subdivision gate. Thence, another unimproved one lane road of about one mile must be traveled to reach the Lodge and our other waterfront lots. Neither the Lodge or our other waterfront properties are part of the upland Sarkar Subdivision nor have any ownership in the Subdivision road - only

a limited vehicle easement. It takes about 35 minutes to drive between the two locations since average speed is only about 25 MPH, and is much slower on the Subdivision road. . . . The only other access from Naukati is by boat to Sarkar - a trip typically of 25 minutes with a fairly fast boat.

Responding to public comments, the Petitioner provided the following summary narrative regarding the factor at issue (Reply Brief, pp.12-13):

Naukati does reside permanently in close proximity that allows frequent personal contact with the people of Sarkar. Sarkar summer time residents do business in Naukati, some of the residents come to Church occasionally and they do purchase fuel and have car and boat repair done locally, they use our boat ramps, [and] have their boat repairs done locally.

The Unorganized second-class city of Platinum encompasses 44.6 sq. miles of land with a population of 40 people. The Unorganized second-class city of Saint George encompasses 34.8 sq. miles of land with a population of 149 people. (Both are exclusive of water areas). Naukati has requested 34.18 sq. miles of land, which would embrace the Sarkar and Naukati East Communities.

The land that Naukati has encompassed in the second-class city petition is not an unreasonable request. Naukati as well has stated that providing municipal



Road to West Naukati.

services to the maximum extent possible has been well thought out, and we ascertained that Sarkar residents need these services (See appendix H City's of Platinum and Saint George).

(d) Analysis by Commerce.

Based on the Petitioner's figures (Petition, p. 3), the population density of the entire territory proposed for incorporation (excluding tidelands and submerged lands) is 3.2 persons per square mile (110 residents/34.18 square miles). As noted earlier, official population figures for "Naukati" are limited to the Naukati Bay CDP.

Existing city governments in Alaska have population densities ranging from approximately 2,300 people per square mile of land (City of Ketchikan) to approximately 0.8 residents per square mile of land (City of Platinum).

The average population density of all 146 cities in Alaska is approximately 53 residents per square mile of land; the median figure is about 47 persons per square mile. The population density of the proposed City of Naukati is a small proportion of average and median figures for cities in Alaska (6.0 percent of the average and 6.8 percent of the median figures of all cities).

Although the Petitioner defends its proposal by identifying municipalities with similarly low population densities, it fails to defend the qualitative component of the community standard that requires a population density that is characteristic of neighborhood living.



Sarkar Lake.

The population density of the land within the proposed City of Naukati is relatively low because substantial undeveloped and uninhabited lands are included within the Petitioner's proposed boundaries. Given the land ownership status reflected in Table 3-2 and Figure 3-2 at the time of the 2000 Census, it is reasonable to assume that virtually all 119 recorded inhabitants of Census Block 1092 in the Naukati Bay CDP lived in Naukati Bay Subdivision West.

As indicated in Table 3-1, Naukati Bay Subdivision West encompasses approximately 242 acres (0.38 square miles).²⁸ Based on the assumption that all 119 individuals lived in that subdivision at the time of the last federal census, the population density of that relatively small portion of the territory proposed for

²⁸ With the recent sale of lots in Naukati Bay Subdivision West Addition No. 1, which also lies within the Naukati Bay CDP, residents of that subdivision will be included in future population estimates.

incorporation would have been approximately 313 persons per square mile in 2000. The remainder of the territory proposed for incorporation, comprised of 33.8 square miles of land, was inhabited by anywhere between 22 to 43 individuals at the time of the 2000 Census. Thus, the population density of the remainder of the land within the territory proposed for incorporation was somewhere between 0.65 persons per square mile to 1.27 persons per square mile.

Census Block 1059, which extends from the northern boundary of the Naukati Bay CDP (near the northern end of Tuxekan Narrows) to the southern shore of Sarkar Cove, was inhabited by six individuals at the time of the 2000 Census. That block includes Naukati Industrial Subdivision, a portion of Naukati Commercial Subdivision, the Sarkar Subdivision along the south shore of Sarkar Cove. The private lands along the north shore of Sarkar Cove are not included in that block. The record in these proceedings suggests that there are no year-round residents of the Sarkar Subdivision.



Former school and dock area in Naukati.

Naukati Bay Subdivision East is located in Census Block 1063. Six individuals inhabited that census block at the time of the 2000 Census. Census Block 1063 extends beyond the Petitioner's proposed city boundaries.

Future population growth will likely be concentrated within Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Bay Subdivision East, and adjoining lands. However, this is assuming a reversal in the current trend of population decline from 2000 to 2004 (135 to 107).

Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Bay Subdivision East, Naukati Commercial Subdivision, and Naukati Industrial Subdivision are particularly representative of neighborhood living due to close geographic proximity, population densities, and commercial and industrial activities.

4. Application of the Third Factor - Whether 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.

(a) Views of the Petitioner.

The Petitioner generally addresses this factor as follows (Petitioner's Brief, p. 22):

. . . In 1990 the state-selected area was offered for sale. Of the approximately 104 lots offered in Naukati, an estimated 95% had been sold. The Community Homeowners Association was formed with seven board members, and meetings were held once a month. The population of the area changed when the logging was stopped. Census population history shows 123 residents in 1980, 193 in 1990 and 135 in 2000. In 2001 the State also put up for sale Industrial lots (Commercial) with 24 lots. There are only four left. In the past five to seven years there have been several business started in the Naukati area, which bring in many visitors that enjoy fishing, hunting, and site seeing.

(b) Respondent's Brief and Petitioner's Reply.

Addressing the third factor, relevant excerpts from the Responsive Brief assert that the territory proposed for incorporation does not yet typify a discrete and identifiable social unit. Specific elements of the Responsive Brief expressing that position include the following (footnotes excluded) (Responsive Brief, p. 2):

Respondent believes Naukati does not yet meet the standard ... that the area proposed for incorporation must encompass a community. Naukati is still a relatively new and as of yet under-developed community. It lacks

sufficient density, a well-defined and well-established business community, and other factors typical of a distinct social unit and of a community ready to assume the duties and responsibilities of a new city government.

The Responsive Brief also specifically addresses the current status of the Naukati business community by citing data related to the quantity and tenure of local businesses as reported by Commerce's data resources. Specifically, Responsive Brief excerpts suggest the following (Responsive Brief, pp. 5-7):

The number and tenure of the local businesses located in Naukati also raise serious doubt as to whether Naukati has yet developed to the point that it has become a "discrete social unit" and therefore whether Naukati now satisfies the standard set forth in 3 AAC 110.920 (a)(3). . . .

. . . .



Business in Naukati Bay Subdivision East.

Therefore, available data clearly suggests that, while Naukati is gradually developing a local business community, it has not, by any stretch of imagination, yet achieved reasonable depth, stability or maturity. This raises two significant questions: (1) Does the community have the resources at this point to support a viable city government? (2) Can one reasonably view Naukati as a "discrete social unit?" A fair answer to both questions at this juncture would be "no."

When comparing the Naukati business community to other Prince of Wales Island business communities in Coffman Cove, Kasaan, and Thorne Bay, the Responsive Brief also suggests (Responsive Brief, p. 8):

. . . In comparison, the current Naukati business community appears underdeveloped. It does not appear sufficiently robust to provide the resources reasonably necessary to support a viable local government. While the community may well overcome this deficiency in time, the Local Boundary Commission must give careful consideration to this point as it evaluates the subject petition. With declining federal and state grants and shared revenues, it is increasingly important that communities be demonstrably capable of generating and collecting sufficient revenues to meet local service and facility needs. Available data regarding Naukati does not support such a conclusion at this time.

The Responsive Brief also draws attention to the Naukati community itself acknowledging the limited nature of their existing business community within their *Community Action Plan* (Naukati West, Inc., 1988), which notes the following (Responsive Brief, p. 7; [Naukati West Action Plan, pp. 4 - 7]):

As a community, Naukati West is too young to have what can be properly called a traditional economy. . . .

The community [of Naukati] exists because of a decision by the State of Alaska to sell residential lots. . . .

. . . .

. . . While the Naukati logging camp originated as an answer to an industrial need, like many Alaska communities Naukati West did not originate because of some economic need or advantage. . . .



Housing in Naukati Bay Subdivision West.

The Petitioner replied to the Responsive Brief points by detailing the growth of the local business community, quality of local workforce, and the interactions between Naukati and Sarkar residents. Specifically, the Petitioner noted the following (Reply Brief, pp. 18-19, 21):

Naukati is obviously a “discrete social unit.” Mr. Van Valin claims that because of the alleged lack of commerce in Naukati that Naukati is too young to be a social unit. Naukati has grown and prospered since becoming a Homeowners Association. Naukati started out in the 1960’s as a logging camp. At that time there were 2 businesses in Naukati, a small store and a gift shop.

To illustrate how Naukati is indeed a discrete social unit continuing to develop, look at our economic and business growth since 1998, as well as those business that will share and contribute to the bed tax. . . .

. . . .

Naukati’s workforce is also proven highly skilled as evidenced by the following business and the list of those highly skilled commuters that are sought after and employed island wide: . . .

. . . .

Sarkar residents frequent the grocery/liquor store. They also have mail that arrives at the Naukati post office. It



Naukati Connection.

is obvious that Sarkar residents depend on Naukati Connection for part of their supplies. Naukati Connection Auto and Boat repair have had Sarkar residents frequent their establishment to have both auto and boat work done, along with purchasing some of their fuel. Sarkar residents built commercial relationships with property owners in Naukati. Sarkar residents also use Naukati boat ramp to launch their boats and pull them out in the fall.

El Cap Lodge has had an account with Naukati Connection store for their supplies. Many friends were made with the staff and owners of El Cap lodge within the community of Naukati. . . .

(c) Public Comments and Petitioner’s Response.

All five submitted public comments from Sarkar area property owners directly and indirectly suggest the Naukati community and Sarkar area do not represent one discrete and identifiable social unit.

Al and Delores Donnelly note (07/14/04 e-mail, p. 2):

Basically, there is not a community of interests between Naukati and Sarkar residents.

. . . .

Sarkar residents are part-time summer residents and are not Alaska residents, . . .

Scott Van Valin similarly suggests (07/14/04 e-mail, p. 2):

There is not a community of interests between Naukati and Sarkar residences. Sarkar residents have no need to go to Naukati to shop, for business, school or church. There are few friendships between the two places. . . .

. . . .

Most of the property in Sarkar is used as vacation or second homes. There is no permanent resident of Sarkar. Many homeowners are retired and over 65. Few vote in Alaska.

Vern and Sue Bauer note (07/14/04 e-mail, p. 1):

Because we are basically remote from Naukati and go there on a very sporadic basis, we do not feel that we are a part of their community and as full-time residents they have different goals and concerns than we, as retired part-time residents, do.

Roland Nehring provides a comprehensive summary of the general content of public comments by noting the following (07/15/04 fax, pp. 3-4):



Sarkar Cove.

The Sarkar Area does not meet the Determination of Community under 3 AAC 110.920. We as inhabitants do not "reside permanently" at a location as 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 - all as required under subsection (a)(3). Under (b)(1), there is no public access to our Sarkar Area as explained by the roadway status above. My wife and I are probably the only registered voters in that voting precinct, no children from Sarkar attend school at Naukati, no one is employed at Naukati, there is only one commercial establishment at Sarkar and their employees do not reside in the area nor are their fishing customers locals.

We are not adjacent to Naukati nor are we dependent on that community for our existence since our communi-

ty of interest is the Craig/Klawock area for food, hardware, services, and government interface.

Further illustrating the lack of cohesiveness between the Naukati community and Sarkar area, four out of five written comments directly report that the Petitioner did not involve Sarkar residents in the design or submission of the Petition. Representative of the general content of public comments regarding the lack of inclusion of Sarkar residents in Naukati community activities, Roland Nehring notes (07/15/04 fax, p. 3):

The officers of Naukati West, Inc. have not been forthright in including residents of Sarkar in any consultation on the Petition for Incorporation of the City of Naukati as a Second Class City over their three (3) years of planning. I had heard an application had been finally prepared and contacted the Local Boundary Commission staff on December 1, 2003. Mr. Bill Rolfzen advised that they had in fact received the Naukati Petition draft for initial review. This was the first indication that I or anyone else from Sarkar knew that the plan had been prepared and submitted and that the territory included the Sarkar area. . . .



Property near El Capitan Lodge.

Responding to public comments, the Petitioner noted the following (Reply Brief, p. 13):

. . . Naukati has 22 business licenses listed in the Alaska Division of Occupational Licensing, as Naukati is not considered a city they do not have a "Post Office Status" many of the businesses in Naukati have a Ketchikan address and some have elected to use NKL Box Ketchikan for their business licenses. Therefore, the data in the brief is incorrect and not researched very thoroughly.

As well as referring to an obsolete Community Action Plan. The respondents information on the number of business license is in error. The Local Boundary Commission should give careful thought to this point as they evaluate the subject of the brief and the information it contains. This is an excellent point why Naukati should



Commercial development in West Naukati.

(d) Analysis by Commerce.

The various considerations listed in 3 AAC 110.920(a)(3) (i.e., 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) are individually addressed below.

become a second-class city; Naukati is well accomplished and has sufficient resources to establish its goals. The option of Naukati filing for second-class city status was well thought out and is not taken lightly.

Naukati does meet the standard set forth in 3 AAC 110.005 and 3 AAC 110.920. Naukati is a well-developed Community and had sufficient density and also a well-establish business community ready to take on the responsibility and duties of becoming a second-class city.

Naukati community belongs to Southeast Conference. And regularly attends their meetings. Naukati is also a member of Prince of Wales Community Advisory Council (POWCAC). . . .

(1) School Enrollment.

The Southeast Island Regional Educational Attendance Area (Southeast Island REAA) provides public educational service to Naukati. The Southeast Island REAA school district currently operates nine schools, seven of which are on Prince of Wales Island. Additionally, the Southeast Island REAA operates a correspondence program, which served four students in 2004. Enrollment in the Southeast Island REAA (including the four correspondence students and those enrolled in the two schools beyond Prince of Wales Island) totaled 217 students in the most recent year on record. In addition to the Southeast Island REAA, the three first-class city governments on Prince of Wales Island operate school districts.

The settlements on Prince of Wales Island in which schools are operated are listed in Table 3-3 below. Included in that table is information about the 2004 enrollment, 2004 population, whether a city government serves the settlement, and the distance of the settlement to Naukati.

The two nearest public schools linked by road to Naukati are those at Whale Pass (27 miles by road from Naukati) and Coffman Cove (32 miles by road from Naukati). Port Protection, which is not linked to Naukati by road, is located on the northern tip of Prince of Wales Island. Thus, it

is reasonable to assume that all students residing within the Petitioner's proposed city boundaries who attend public school, do so at Naukati.

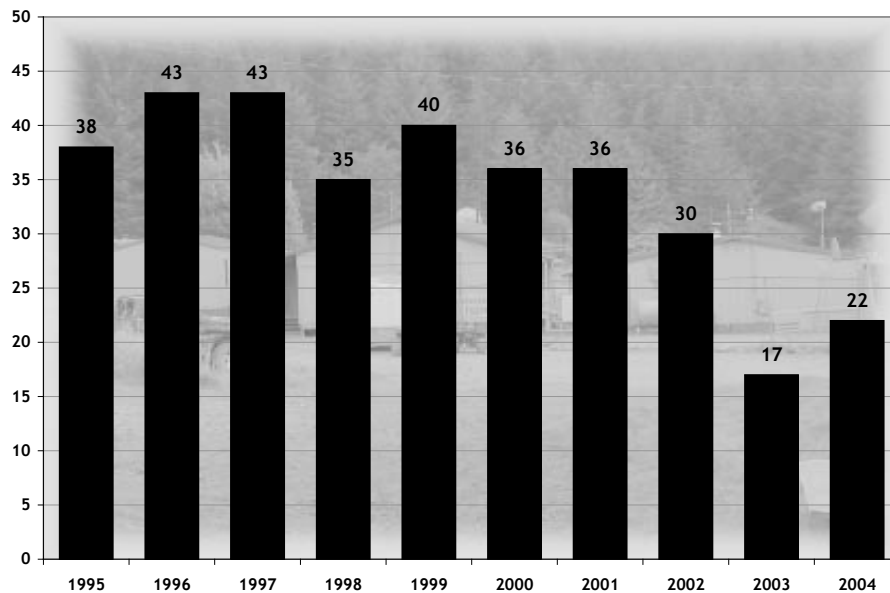
Figure 3-3 on the next page shows the history of enrollment in the Naukati school over the past ten years.

(2) Number of Sources of Employment.

The 2000 Federal Census reported that 39 residents of Naukati Bay CDP were employed civilians 16 years of age and older. Slightly more than one-quarter of those were engaged in management, profes-

Table 3-3. Settlements on Prince of Wales Island in which Public Schools are Operated (Ranked in Descending Order of Population).

Settlement	2004 Population	2004 Enrollment	Municipal Corporate Status	Distance from Naukati by Road
Craig	1,127	743 (including 383 correspondence students)	First-Class City (1922)	51 miles
Klawock	848	161	First-Class City (1929)	44 miles
Thorne Bay	497	83	Second-Class City (1982)	44 miles
Hydaburg	349	73	First-Class City (1927)	79 miles
Coffman Cove	177	23	Second-Class City (1989)	32 miles
Hollis	165	13	Unincorporated	67 miles
Naukati	107	22	Unincorporated	0 miles
Whale Pass	81	9	Unincorporated	27 miles
Kasaan	60	12	Second-Class City (1976)	55 miles
Port Protection	47	15	Unincorporated	Not linked by road

Figure 3-3. Naukati School Enrollment 1995 - 2004.

sional, and related occupations. Slightly fewer were engaged in farming, fishing, and forestry occupations. Table 3-4 provides details of employment by occupation.

industry are provided in Table 3-5 on the following page.

More than 60 percent of the 39 employed civilians 16 years of age and older were private sector wage and salary workers.

The biggest industry in terms of employment in Naukati during the 2000 Census was the agriculture, forestry, fishing and hunting, and mining industry. More than 40 percent of the 39 employed civilians who were 16 years of age and older worked in that industry. The educational, health and social services industry ranked a distant second. Details of employment by

Table 3-4. Occupations of Naukati Bay Civilian Employees 16 Years of Age and Over (2000 Census Data).

Occupation	Number	Percentage
Management, professional, and related occupations	11	28.2
Service occupations	2	5.1
Sales and office occupations	5	12.8
Farming, fishing, and forestry occupations	10	25.6
Construction, extraction, and maintenance occupations	2	5.1
Production, transportation, and material moving occupations	9	23.2
Total	39	100.0

Table 3-5. Employment by Industry Naukati Bay Civilian Employees 16 Years of Age and Over (2000 Census Data).

Industry	Number	Percentage
Agriculture, forestry, fishing and hunting, and mining	17	43.6
Construction	2	5.1
Manufacturing	0	0.0
Wholesale trade	0	0.0
Retail trade	2	5.1
Transportation and warehousing, and utilities	0	0.0
Information	2	5.1
Finance, insurance, real estate, and rental and leasing	0	0.0
Professional, scientific, management, administrative, and waste management services	2	5.1
Educational, health and social services	9	23.2
Arts, entertainment, recreation, accommodation and food services	3	7.7
Other services (except public administration)	0	0.0
Public administration	2	5.1
Total	39	100.0

Less than 30 percent were government workers. Census data on worker classifications are provided in Table 3-6.

(3) Voter Registration.

At the time that this report was written, there were 122 registered voters who claimed Naukati as their place of residence. Of those, 92 had a Naukati mailing

address. The remaining 30 had mailing addresses in Auke Bay (1), Coffman Cove (1), Craig (16), FPO/AE - Military (1), Klawock (2), Ketchikan (2) and Thorne Bay (7).

Of the 122 Naukati registered voters, 83 participated in the last State general election.

Table 3-6. Class of Worker Naukati Bay Civilian Employees 16 Years of Age and Over (2000 Census Data).

Industry	Number	Percentage
Private wage and salary workers	24	61.5
Government workers	11	28.2
Self-employed workers in own non-incorporated business	4	10.3
Unpaid family workers	0	0.0
Total	39	100.0

(4) Precinct Boundaries.

For voting purposes, Naukati is part of the Northern Prince of Wales Island Precinct established under 6 AAC 105.545. In addition to Naukati, that precinct includes the settlements of Edna Bay, Port Protection, and Whale Pass. A map of the Northern Prince of Wales Island Precinct appears below as Figure 3-4.

(5) Permanency of Dwelling Units.

In 2000, according to US Census data, the Naukati Bay CDP had 78 total housing units. Of those, 60 were occupied and the remaining 18 were vacant. The 60 occupied units represented 76.9 per-

cent of the total number of housing units in Naukati Bay CDP. That figure is eight percentage points lower than the comparable measure for all of Alaska.

Of the 60 occupied housing units, 41 were owner-occupied and 19 were renter-occupied. Thus, the owners occupied 68.3 percent of the occupied housing units in the Naukati Bay CDP. That figure is 5.8 percentage points greater than the comparable measure for the entire state.

Comparing Naukati to the entire state, a greater percentage of homes in Naukati were vacant, but owners occupied a greater portion of the occupied housing

units in Naukati. The single digit differences in those two comparisons do not constitute significant disparities. Other comparisons between Naukati and the entire state regarding housing occupancy and tenure are provided in Table 3-7 on the following page.

2000 U.S. Census data indicates families occupied 34 of the 60 occupied housing units in Naukati Bay. That represents 56.7 percent of the total number of occupied housing units. The comparable measure for the entire state was 12 percentage points higher.

Figure 3-4. North Prince of Wales Island Election Precinct.

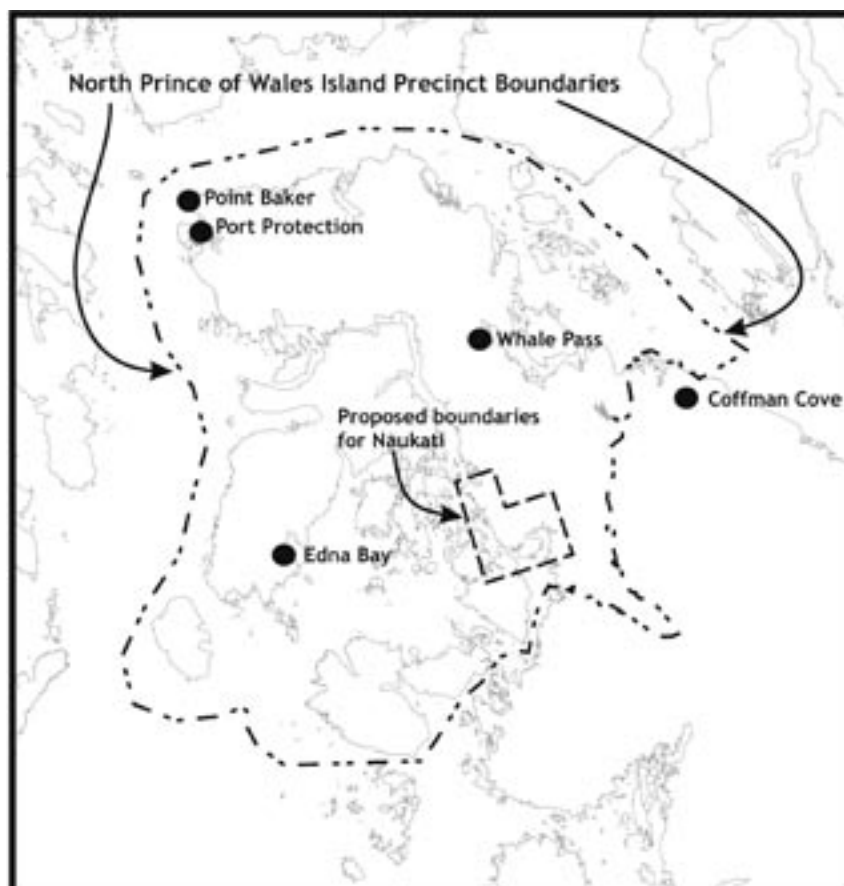


Table 3-7. Housing Occupancy and Tenure Comparisons Naukati Bay CDP and Alaska (2000 Census Data).

Measure	Naukati Bay CDP		Alaska	Comparison (Naukati Bay CDP percentage minus Alaska percentage)
	Number	Percent	Percent	
Total housing units	78	100.0	100.0	0.0
Occupied housing units	60	76.9	84.9	-8.0
Vacant housing units	18	23.1	15.1	8.0
For seasonal, recreational, or occasional use	0	0.0	8.2	8.2
Homeowner vacancy rate (percent)	NA	4.7	1.9	2.8
Rental vacancy rate (percent)	NA	5.0	7.8	-2.8
Owner-occupied housing units	41	68.3	62.5	5.8
Renter-occupied housing units	19	31.7	37.5	-5.8

The double-digit disparities in those two comparisons are substantial. Other comparisons between Naukati and the entire state regarding households by type are provided in Table 3-8 on the following page.

(6) Number of Commercial Establishments and Other Service Centers.

At the time that this report was written, Commerce's business license database reported ten current State business licenses with Naukati mailing addresses. (See <http://www.commerce.state.ak.us/occ/bussearch/BusMain.cfm>.) Those are listed in Table 3-9 on page 64. Included in the information in Table 3-9 is the "line of

business," "primary activity," and "secondary activity" of each business as reflected in Commerce's database.

The Petition listed four additional Naukati current business licenses for including Claire's Fly's, Mary Kay, Sea Otter Sound Fish Camp, and Wilson Excavating. However, further research by LBC staff determined that the business licenses for those firms have expired.

Commerce's database also listed three holders of State occupational or professional licenses with Naukati mailing addresses. One individual holds two of those licenses and is doing business as Alaskan Dreams Fishing Camp. The other is a licensed physician. The license holders are listed below:

Table 3-8. Comparison of Households by Type Naukati Bay CDP and Alaska (2000 Census Data).

Component	Naukati Bay CDP		Alaska Percent	Comparison (Naukati Bay CDP percentage minus Alaska percentage)
	Number	Percent		
Total households	60	100.0	100.0	0.0
Family households	34	56.7	68.7	-12.0
Family households with own children under 18 years	22	36.7	39.9	-3.2
Married-couple family	22	36.7	52.5	-15.8
Married-couple family with own children under 18 years	13	21.7	28.5	-6.8
Female householder, no husband present	4	6.7	10.8	-4.1
Female householder, no husband present with own children under 18 years	3	5.0	7.8	-2.8
Nonfamily households	26	43.3	31.3	12.0
Nonfamily households Householder living alone	25	41.7	23.5	18.2
Nonfamily households Householder 65 years and over	3	5.0	4.1	0.9

- ◆ Charles Ellis, licensed physician
- ◆ Rick Hufstader, licensed transporter
- ◆ Rick Hufstader, licensed assistant guide

As the Petitioner stated in its Reply Brief, Naukati businesses that have mailing addresses other than Naukati are not shown in a search of the license database where Naukati is noted in the community field. The Petitioner indicates that “many of

the businesses in Naukati have a Ketchikan address and some have elected to use NKL Box Ketchikan for their business licenses.”

The Petitioner provided a list of 17 Naukati business licenses with Ketchikan addresses. Upon review, LBC staff determined that five of the business licenses on the list had expired including Fern Ridge Enterprises, Kahli Cove Shellfish LLC, Sea Otter Travel, and two expired business licenses for Naukati Adventures.

Table 3-9. Business Licenses Issued by the State of Alaska to Businesses with Naukati Mailing Addresses.

Name of Business	Line of Business	Primary Activity	Secondary Activity
Alaska Wood Products	Trade	Other Miscellaneous Store Retailers	Not Specified
Alaskan Dreams Fishing Camp	Arts, Entertainment and Recreation	Fishing Guides	Fishing Guides
Blue Starr Alaskan Oysters	Agriculture, Forestry, Fishing and Hunting	Animal Aquaculture	Animal Aquaculture
Bushels Engine Repair	Services	Automotive Repair & Maintenance	Not Specified
Fisherman's Cove Fish Camp	Accommodation and Food Services	RV Parks & Recreational Camps	Not Specified
Naukati Cabins	Accommodation and Food Services	Traveler Accommodation (hotels, motels, bed & breakfast, etc.)	Traveler Accommodation (hotels, motels, bed & breakfast, etc.)
Naukati Connection	Trade	Grocery & Related Products (wholesale)	Beer/Wine & Liquor Stores (retail)
Naukati West Shellfish Nursery	Agriculture, Forestry, Fishing and Hunting	Animal Aquaculture	Animal Aquaculture
Starr Fisheries	Agriculture, Forestry, Fishing and Hunting	Fishing (Commercial - not guides)	Animal Aquaculture
Yakw Laanaas Healing Lodge	Health Care and Social Assistance	Other Specialty Hospitals	Not Specified

Without knowing the names of all Naukati business licenses with Ketchikan addresses, there is no practical means for Commerce to provide a complete listing of such businesses. A search of the database for businesses whose names include "Naukati" identified two such businesses with Ketchikan mailing addresses. Those are Naukati Bay Timber and Naukati Outback. Both businesses hold current licenses, but only Naukati Outback was on the list provided by the Petitioner. Additionally, a search of Commerce's cor-

poration database listed one corporation whose name includes "Naukati" that is not listed above. That is Naukati Bay Woods LLC, which has the same Ketchikan mailing address as Naukati Bay Timber.

Commerce is also aware of businesses operating within the Petitioner's proposed boundaries that have Craig mailing addresses including the El Capitan Lodge LLC and Scott Air LLC. Both of those businesses are based in the Sarkar Subdivision.

Table 3-10. *Business Licenses Issued by the State of Alaska to Businesses Operating within the Proposed City but with Mailing Addresses Other than Naukati.*

Name of Business (Mailing Address)	Line of Business	Primary Activity	Secondary Activity
Naukati Bay Timber (Ketchikan)	Manufacturing	Other Wood Product Manufacturing	Not Specified
Naukati Outback (NKI Ketchikan)	Accommodation and Food Services	Limited-Service Eating Places (snack bars, cafeterias)	Rooming & Boarding Houses
El Capitan Lodge LLC (Craig)	Accommodation and Food Services	Traveler Accommodation (hotels, motels, bed & breakfast, etc.)	Not Specified
Scott Air LLC (Craig)	Transportation and Warehousing	Nonscheduled Air Transportation	Air Transportation Support Activities

Information about those additional business license holders is provided in Table 3-10.

The Alaska Department of Labor and Workforce Development advised Commerce that during 2004, twelve firms reported paying wages to employees with Naukati

addresses. The reported employees were workers covered by Alaska unemployment insurance. That data is presented on the following page in Table 3-11. Self-employed, military, and federal government workers were not reported.

Table 3-11. *Firms Reporting 2004 Wages Paid to Employees with Naukati Addresses.*

Employer	Employer's Location
3-D Logging	unknown
Alaska Cutting, Inc.	Craig
Beaver Creek Logging, Inc.	Inactive
Byron Brothers Cutting	Ward Cove, Kake
Center for Community	Klawock, Thorne Bay
Channel Construction, Inc.	Juneau
HB Cutting, Inc.	Ketchikan
Naukati Connection Liquor Store	Naukati
Southeast Alaska Regional Health Consortium	Craig, Klawock, Thorne Bay
Southeast Island School District	Thorne Bay
Sweet Lisa Seafoods	Craig
Viking Lumber Company Inc.	Craig

Source: Alaska Department of Labor and Workforce Development

(7) Other Considerations.

On December 3, 1992, Naukati West, Inc., was formed as a non-profit corporation under the laws of the State of Alaska. The purpose of the corporation as stated in its 1994 biennial report was to "[f]urther the common good and general welfare of all of the people of Naukati West."

On January 28, 1993, less than two months after the formation of Naukati West, Inc., Naukati Bay East Community Association, Inc., was formed as a separate non-profit corporation under the laws of the State of Alaska.

Beginning in Fiscal Year 1995, Naukati West, Inc., received State Revenue Sharing funds to serve the unincorporated community of Naukati. (As noted previously, funding for the program was discontinued at the end of Fiscal Year 2003.) To qualify for such funding, Naukati had to meet the standards set out in 3 AAC 130.093. That law provides as follows:

Determination of social unit

(a) Persons residing in a place in the unorganized borough are considered to be a social unit for the purposes of state aid to unincorporated communities under AS 29.60.140 if the following criteria are met:

(1) the geographic area in which the persons reside is not disproportionate in size to that number of persons; in determining whether this standard has been met the director will consider the physical topography of the area, the use of the land, land ownership patterns, and other factors that could af-

fect population density; an area with a population density of at least 14 persons per square mile is considered to have met this standard;

(2) persons residing in that area are a discrete and identifiable unit in determining whether this standard has been met, the director will consider school enrollment, sources of employment, voter registration, and the permanency of dwelling units; if the area has at least one commercial establishment, and if persons residing in the area do so in permanent dwelling units and their children are enrolled in an operating school in or near the area, this standard is considered to have been met.

(b) Persons residing in the following places in the unorganized borough are not considered to be a social unit for purposes of eligibility for an entitlement under AS 29.60.140:

(1) a place where public access is restricted, including restrictions on the right to move to the place and reside there;

(2) a place that is contiguous to a municipality and is dependent upon the municipality to the extent that it exists only because the municipality exists;

(3) a place provided by an employer which is populated totally by persons who are required to reside there as a condition of their employment and who do not consider the place to be their permanent place of residence.

In addition to State Revenue Sharing, Naukati West, Inc., has received a number of grants from the State of Alaska since 1995. Table 3-12 lists grants that appear in Commerce's database. The total of those grants is \$272,235.

The Naukati Volunteer Fire Department also received funding under the State Revenue Sharing Program up to Fiscal Year 2003.

5. Conclusion by Commerce.

At the time of the last decennial census, 141 to 162 individuals inhabited the territory proposed for incorporation. The

2000 population of the territory was at least 5.6 times the minimum 25-resident threshold set out in 3 AAC 110.920(a)(1).

Residents of the Naukati Bay Subdivision West, who are reasonably assumed to have totaled 119 at the time of the 2000 Census, live permanently in a close geographical proximity that allows frequent personal contacts. Adjoining or nearby that subdivision are Naukati Bay Subdivision West Addition No. 1 (plat recorded March 14, 2005), Naukati Commercial Subdivision (plat recorded December 13, 2001), and Naukati Industrial Subdivision (plat recorded August 17, 2001). Residents of Naukati Bay Subdivision West and close-

ly adjoining territory comprise a population density that is characteristic of neighborhood living. Those portions of the territory also reasonably exhibit characteristics of a community in terms of limited commercial and industrial development.

The residual territory proposed for incorporation was home to only 22 to 43 individuals at the time of the last federal census. Those individuals generally live in more sparsely settled parts of the territory proposed for incorporation. The population density in the residual territory ranged between 0.65 persons per square mile to 1.27 persons per square mile. Included in the residual territory is Naukati Bay Subdivision East, an 80-acre subdivision that was inhabited, at most, by six

Table 3-12. *State Grants (Excluding State Revenue Sharing) to Naukati West, Inc. Since Fiscal Year 1995.*

Fiscal Year	Project Description	Amount
2005	Construction of a Fire Hall/ Public Safety Building	\$20,000
2005	Purchase refrigeration truck for shellfish nursery at Naukati - Phase II	\$26,852
2003	Road Reconstruction	\$25,000
2002	Road Construction & Pit Development	\$25,000
2001	Road Upgrade	\$25,361
2000	Road Construction & Pit Development	\$25,022
1999	Road Construction	\$25,000
1998	Road Construction	\$25,000
1997	Road Construction & Pit Development	\$25,000
1996	Road Construction & Pit Development	\$25,000
1995	Road Construction and Rock Pit Development	\$25,000
Total		\$272,235

individuals at the time of the 2000 Census. The population density of that subdivision was no more than 48 persons per square mile.

Residents of Naukati Bay Subdivision West have at least minimally functioned as a community since the mid-1990s. "Naukati Bay West, Inc.," has qualified for State Revenue Sharing and other financial assistance programs as a community since that time.

The public's right to reside on private lands within the territory proposed for incorporation is not restricted. The population in the Naukati Bay CDP and other parts of the territory proposed for incorporation is not adjacent to another community of which those residents might be considered part nor is the employment in Naukati provided by an employer that requires occupancy in the community as a condition of employment. Therefore, Commerce concludes that a community, as determined under 3 AAC 110.920, does indeed exist within the territory proposed for incorporation.

That is not to suggest, however, that Commerce has deduced from the evidence in these proceedings that all 44 square miles proposed for incorporation by the Petitioner can be reasonably characterized as part of the community of Naukati as such is legally determined under 3 AAC.110.920. Indeed, geographic distances involved, rudimentary transportation links, sparse habitation, seasonal residency, limited private land owner-



Sarkar Rapids.

ship, relationships of residents with other communities, and lack of quality community-like social networks in the portion of the territory beyond the Naukati core area (i.e. Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Bay Subdivision East, Naukati Industrial Subdivision, Naukati Commercial Subdivision) render it difficult to conclude that such territory is part of the community of Naukati.

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.



Residential property in Naukati Bay Subdivision East.



El Capitan Lodge and surrounding forest.

Naukati Emergency Response and the Fire Dept. The 44.0 square miles of the Naukati 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 all of the State land in and around Naukati, including waters, named and unnamed islands.

....

2. Application of the First Boundaries Standard - The Boundaries Must Include All Areas Necessary to Provide Essential City Services on an Efficient, Cost-Effective Level.

(a) Views of the Petitioner.

This particular boundary standard is addressed under Exhibit H of the Petition, which provides a general discussion of proposed municipal boundaries, local geology, and subsequent implications for municipal service delivery. Specifically, the Petitioner notes the following (Petitioner's Brief, pp. 23-24):

The proposed area for incorporation is large enough to provide the full development of essential city services in an efficient and cost-effective manner. Most of the inhabited area is accessible by vehicle and will be served by the

The growing coastal community of Naukati is located on North Prince of Wales Island on a small peninsula consisting of approximately 4 square miles of Heceta Limestone of Devonian/Silurian age that reach up from the coast line to about 600 feet elevation. Karst features are highly evident in this area and are characterized by many solution channels and caves overlain with shallow soils and organic layers. Due to the natural ability of Karst to hold and transport water, the water table is high. Heceta Limestone is also characterized by deposits of breccia, sandstone, mudstone, and conglomerate. This area was shaped by the late quaternary glaciers with several glacial-marine deposits mantling the bedrock at the lower elevations. Vegetation of the area is dependent upon the composition of the soil and the underlying strata and by the proximity of streams

and ditches. Areas that consist of lenses of clay may have a perched water table restricting the types of plant life that can exist there. In other locations where the underlying strata consist of sand or gravel; the vegetation is lush with mature stands of spruce and hemlock forests. Some of this land belongs to the State of Alaska while other areas now belong to residents who bought property in the land disposal program.



Commercial development in Naukati Bay Subdivision West.

The conditions stated above present Naukati with benefits and obstacles to overcome.

The lush forest in the area provides the raw materials for several small businesses with saw mills, as well as businesses that depend upon tourists who desire to hike trails and fish the area streams. Where the drainage is good, the flat land makes construction of houses easy. There are, however, shortcomings of this wet 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. The road surfaces, unless paved, are constructed of the native material, mainly shot rock.

These materials do not retain a satisfactory surface for very long in this wet climate, raising the demand for better road maintenance and ditch-

ing. Many old roads are actually below the level of the surrounding landscape resulting in a submerged road in times of heavy rain. It should be clear that this landscape on which Naukati finds itself, is both a boon and a threat and a liability that demands the attention of an organized city.

(b) Respondent's Brief.

The Responsive Brief did not specifically address this particular standard, but provides related discussion regarding the second and fourth boundary standards.

(c) Public Comments and Petitioner's Response.

Commerce received several written comments concerning the boundaries of the territory proposed for city incorporation and subsequent implications for local municipal service delivery. In general, public comments submitted regarding this particular standard suggest the distance between the Sarkar Subdivision and the



Road in Naukati Bay Subdivision East.

Naukati community is too great to efficiently and cost-effectively provide municipal services to Sarkar area residents. Furthermore, public comments also note current Sarkar area residents are not interested in obtaining municipal services and are largely self-sufficient in meeting essential needs. As Sarkar residents Al and Delores Donnelly note (07/16/04 e-mail, p. 2): "Fire and security benefits proposed by Naukati would not be practical because of the distance separating the two areas." Vern and Sue Bauer similarly suggest (07/15/04 e-mail, p. 1):

. . . The access in and out of our waterfront area is difficult and we would not be able to use their emergency services. In regard to road maintenance, their concern for our small group of houses, at a distance from city and used by none of their residents, would be minimal. We have our own road association for road maintenance.

Scott Van Valin, El Capitan Lodge owner, similarly notes (07/14/04 e-mail, p. 2):

There is not a community of interest between Naukati and Sarkar residences. . . . There are few friendships between the two places. . . . Sarkar does not need road maintenance in the summer or winter. We have not requested emergency medical/fire services and see no future need for those that Naukati is offering.

Roland Nehring provides further supportive commentary by suggesting the following (07/15/04 fax, p. 4):

The Petition should be denied, or at the minimum the Sarkar Area deleted from the boundary. The boundary description violates regulation 3 AAC 110.040 since full development of essential city services cannot be provided to Sarkar in an efficient, cost-effective manner. The current boundary has been "stretched" to include entire geographical regions and unpopulated areas of U.S. Forest Service lands to simply obtain bed tax from the El Capitan Lodge. Sarkar is non-contiguous and does not fit with the community of Naukati nor would there be any broad policy benefit to the public statewide.

Responding to public comments submitted by Sarkar area residents, the Petitioner detailed future plans for providing municipal services in the Sarkar area. Specifically, the Petitioner noted the following (Reply Brief, p. 8):

In Naukati's petition for second-class city we stated that a Satellite Fire/EMS station would be put into Naukati East and Sarkar Subdivision. This would be a benefit to all households living in both communities. With the 150 acres on the market in Sarkar it would be

fair to surmise that the people who buy property would want fire and EMS protection.

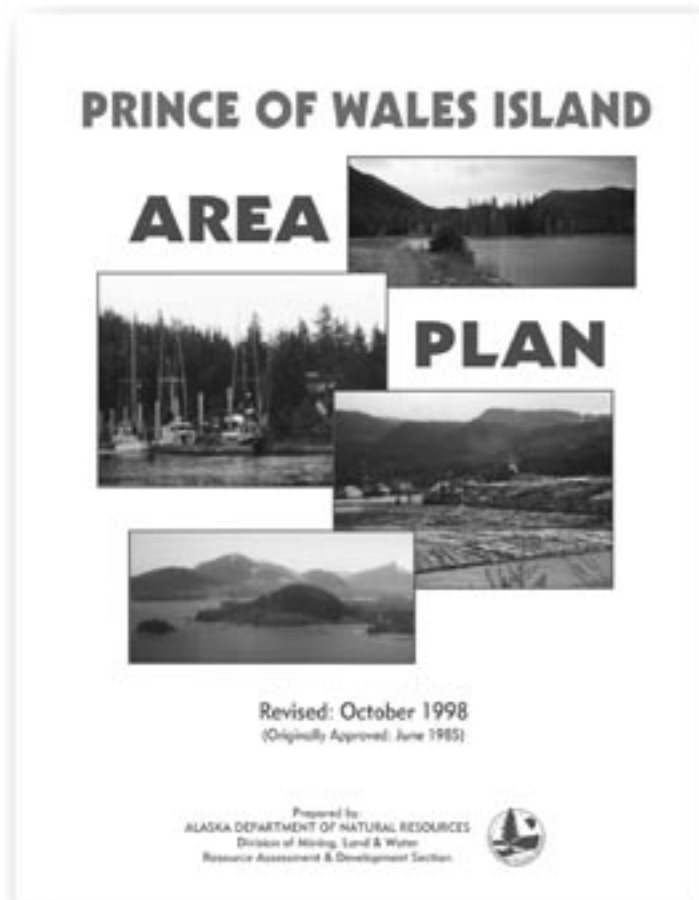
With the projected road improvements of the (F.S.) 20 road and the 2060 road into Naukati it will reduce the response time [considerably]. Naukati has been planning on purchasing a fast response boat for fire and EMS; this is still in the early stages but will benefit all of the surrounding areas.

(d) Analysis by Commerce.

Five specific factors are set out in 3 AAC 110.040(a) with regard to the determination whether the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. Relevant factors include land use and ownership patterns, population density, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors, and extraterritorial powers of cities. Each of these factors is individually addressed below.

(1) Land Use and Ownership Patterns.

Land use and ownership patterns were examined to a certain extent in the review of the standard regarding the existence of a community. For example, Table 3-1 provided in the earlier review identifies lands that have been subdivided by the State within the territory proposed for incorpo-



ration. Those subdivisions and other information are depicted in the map presented earlier as Figure 3-2. A copy of each of the subdivision plats listed in Table 3-1 is included in this report as Appendix C.

Further details concerning land ownership and land use in the territory proposed for incorporation are provided in the *Prince of Wales Island Area Plan*, Alaska Department of Natural Resources (revised October 1998; originally approved June 1985). The 331-page *Prince of Wales Island Area Plan* (hereinafter "Area Plan") divides the land and water within the "Prince of Wales Island Area Plan Boundary" into 15 planning units and 37 subunits.

The territory proposed for incorporation falls within two of the planning units - El Capitan (Unit 4) and Sea Otter Sound (Unit 7). The following general characterizations about land ownership in El Capitan (Unit 4) are provided in the Area Plan (Chapter 3 - p. 49).

Private patented mining claims are located at the north end of El Capitan Passage and around Sarkar Cove in the southern part of the unit. The state owns land at El Capitan Passage and on El Capitan Island.

The U.S. Forest Service manages all other uplands in the unit. The state manages the tidelands and submerged lands, the lake bed shorelands of Twin Island Lake, and the beds of the large lakes in the Sarkar Lake system (a navigability determination by BLM has not been made).

The following general characterizations about land ownership in the Sea Otter Sound (Unit 7) are provided in the Area Plan (Chapter 3 - p. 101):

Private patented mining claims are located on the northwest corner of Marble Island. The state owns land at Naukati, and has subdivided portions of the subunit. The U.S. Forest Service manages the remaining uplands. The state owns all tidelands and submerged lands in the unit.



Development at El Capitan Lodge.

The following general characterizations about land use in El Capitan (Unit 4) are provided in the Area Plan (Chapter 3 - pp. 49 - 50).

Development activities in the northern part of the unit have focused on resource development. Large blocks of mining claims are located northwest of El Capitan Passage, near Dry Pass.

The U.S. Forest Service maintains a seasonal field camp at the north end of El Capitan Passage to provide housing for crews working in the area. A log transfer site exists near the field camp. These forestry support facilities are located west of the state land.

In the southern part of the unit, recreation, hunting and fishing uses are more prevalent. A former cannery on El Capitan Island now operates as a supply and service site for commercial fishing boats, Sea Otter Sound residents, and recreational users of the area. A commercial recreation lodge exists on private lands at Sarkar Cove.

Subunits in this Management Unit

- Subunit 4a - El Cap North
- Subunit 4b - El Cap South

The following general characterizations about land use in Sea Otter Sound (Unit 7) are provided in the Area Plan (Chapter 3 - pp. 101 - 102).

Archaeological investigations indicate that Native people inhabited the area prior to 1000 B.C. Sea Otter Sound is important for fish and wildlife harvest for local residents and the communities of Edna Bay, Port Protection, and Point Baker. Commercial fishing and crabbing occur within the unit. The protected waters of Sea Otter Sound are popular for community and commercial recreation. Marble Passage, Tenass Pass, and Brockman Pass are used for recreational boating. The U.S. Forest Service cabin at Staney Creek is popular with southern southeast residents for fish and wildlife harvest. Cyrus Cove is the first protected anchorage for commercial fishing boats from the outside waters west of Sea Otter Sound.

The primary development activity in the unit is timber harvest on several islands in Sea Otter Sound and on Prince of Wales Island. Workers often live in floating camps that move between timber harvest locations.

Mineral extraction has occurred on Marble Island. Part of a patented mining claim has recently been subdivided and sold as private recreation lots. The aquatic farming industry is interested in locating in the rich and protected waters of Sea Otter Sound.

Subunits in this Management Unit

- Subunit 7a - Marble/Orr
- Subunit 7b - Tuxekan
- Subunit 7c - Naukati

The territory proposed for incorporation is limited to three of the five subunits in the El Capitan and Otter Sound Units. Those are El Capitan South (Subunit 4b), Tuxekan (Subunit 7b), and Naukati (Subunit 7a).

Using two maps from the Area Plan, Commerce prepared a composite map showing the land status in portions of those three subunits in and adjoining the territory proposed for incorporation. The boundaries of the territory proposed for incorporation were added to that map, which is included here as Figure 3-5. Another map has been taken from the Area Plan showing Naukati in more detail. That map is included in this report as Figure 3-6.

The maps included as Figures 3-5 and 3-6 indicate that privately owned lands within the territory proposed for incorporation exist in Naukati Subdivision West, Naukati Subdivision East, at the mouth of Naukati Creek, the southern tip of western island among the Kassan Islands, and the north and south shores of Sarkar Cove. Since those maps were prepared, the State has subdivided and disposed of additional lands in the Naukati core area. Those include Naukati Industrial Subdivision, Naukati Commercial Subdivision, and Naukati Bay Subdivision West Addition No. 1 listed in Table 3-1 and shown in Figure 3-2.

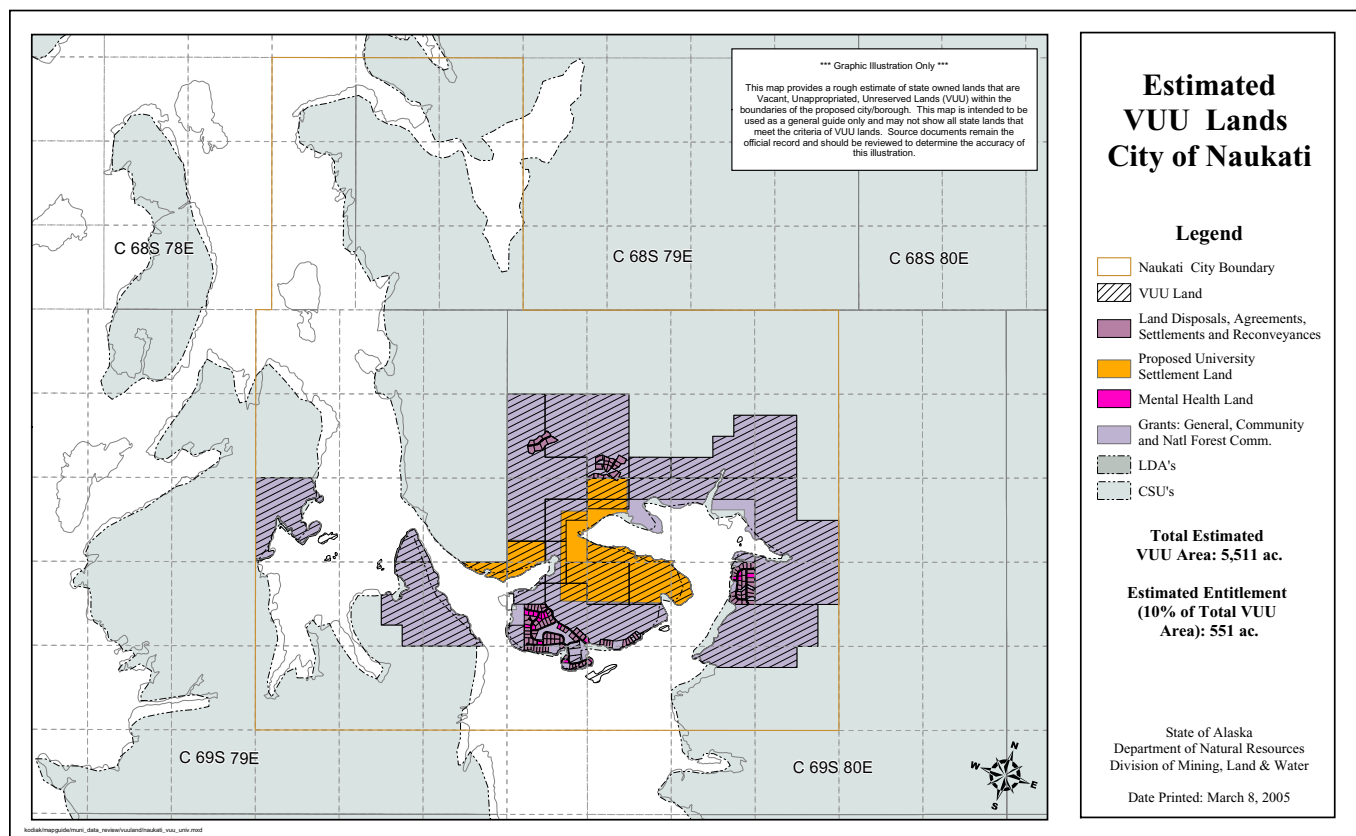
It is also noteworthy that 937 acres of State land in the Naukati core area will be conveyed to the University of Alaska as part of a 250,000 acre land grant under a bill recently passed by the Legislature and signed into law by Governor Murkowski on July 25, 2005 as Chapter 8 FSSLA 2005. Those lands are shown on the map included as Figure 3-7.

Also shown on Figure 3-7 are estimated "vacant, unappropriated, unreserved" (VUU) State lands within the Petitioner's proposed city boundaries. Under AS 29.65.030(a), newly formed city governments are given a "general grant land entitlement [of] 10 percent of the maximum total acreage of vacant, unappropriated,

unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date." (Note: Figure 3-7 does not show Naukati Bay Subdivision West Addition No. 1. Lands in that subdivision are no longer VUU.)

Under the terms of Section 7, Chapter 8 FSSLA 2005, lands to be conveyed to the University will be included for the purpose of determining the general grant land entitlement of a municipality under AS 29.65.030(a). University lands, however, will not be available for selection to fulfill general grant land entitlements.

Figure 3-7. Estimated Vacant, Unappropriated, and Unreserved Land in the Naukati Area.



The Alaska Department of Natural Resources estimates that the VUU lands within the Petitioner's proposed city boundaries total 4,403 acres. Based on the Petitioner's boundaries, the estimated 4,403 acres of VUU lands, coupled with the 937 acres of lands to be conveyed to the University, would entitle the prospective city to 534 acres $([4,403 + 937] \times 0.1)$ of general grant lands to be selected from among the estimated 4,403 acres of VUU lands.

Additional information concerning land use characteristics of the State-owned lands within the territory proposed for incorporation is provided in Table 3-13 in the following section of this report under Commerce's analysis of the second boundaries standard.

Using a map on the adjacent page from the *Tongass National Forest Land and Resource Management Plan*, USDA Forest Service (May 1997), Commerce prepared Figure 3-8 on the following page, showing USDA Forest Service land status in the



Forest Highway 43, also known as North Prince of Wales Road.

territory proposed for incorporation. The boundaries of the territory proposed for incorporation were added by Commerce.

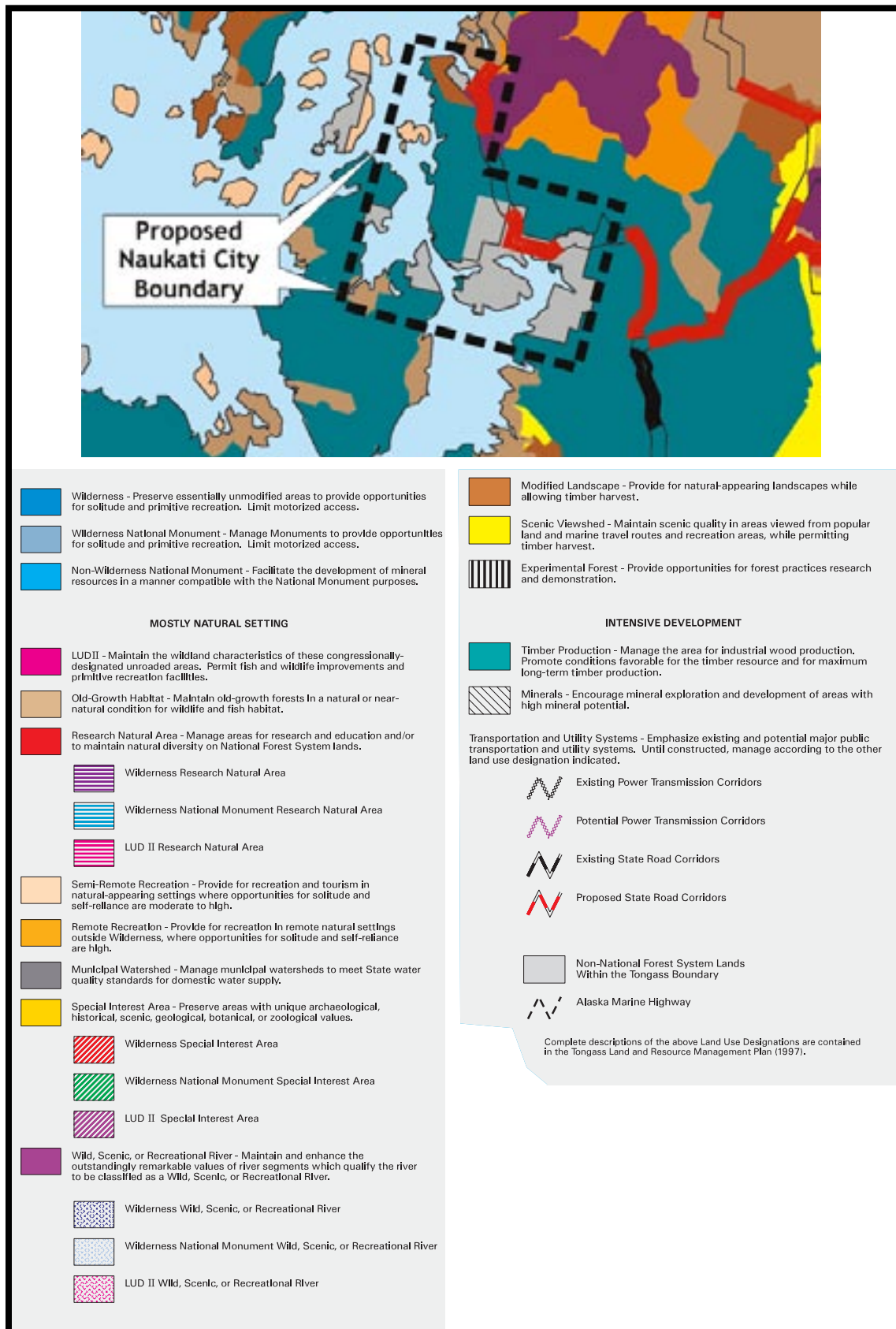
Further details concerning land use characteristics of the USDA Forest Service lands within the territory proposed for incorporation are provided in Table 3-14 in the next section of this report under Commerce's analysis of the second boundaries standard.

(2) Population Density.

The fact that population density is used as a factor both here and with regard to determination of a community reflects the importance of population density thresholds in defining appropriate corporate boundaries of prospective city governments.

The issue of population density was previously dealt with extensively in the examination of the standard regarding the existence of a community. That information will not be repeated here except to note that the prior analysis concluded that the 242-acre Naukati Bay Subdivision West had a population density of 313 persons per square mile in 2000 and that the remainder of the territory proposed for incorporation had a population density of somewhere between 0.65 persons per square mile to 1.27 persons per square mile.

Figure 3-8. USDA Forest Service land status in the Naukati area.



(3) Existing and Reasonably Anticipated Transportation Patterns and Facilities.

According to the USDA Forest Service, Prince of Wales Island has about 105 miles of paved roads, nearly 155 miles of improved gravel roads, and over 2,000 miles of shot-rock logging roads.

Forest Highway (FH) 43 (also known as the “North Prince of Wales Road” or “20 road”) traverses the territory proposed for incorporation. FH 43 extends from Control Lake Junction (23.3 miles southeast of its intersection with FH 2060, the turnoff to Naukati) and continues to Labouchere Bay (56.2 miles northwest of its junction with FH 2060).

FH 43 is characterized as a narrow, winding, gravel road with steep grades. The Forest Service indicates that the “Alaska Region is preparing to reconstruct the El Capitan-North Prince of Wales Road.” (See <http://www.fs.fed.us/r10/tongass/forest_facts/faqs/pubroads.shtml>.)

Naukati Road, FH 2060, is the only surface connection between the community of Naukati and the rest of Prince of Wales Island. FH 2060 is approximately 2.6 miles long from its intersection with FH 43 to the Naukati waterfront.

In March 2003, USDA Forest Service prepared a document entitled *Proposed Public Road and Ferry Projects*. The document was prepared at the request of the Southeast Conference to identify and catalog various roads and ferry projects, and to determine which projects deserve more scrutiny and potential funding.²⁹ The document

(*Proposed Public Road and Ferry Projects*, p. 12) describes needed improvements to the Naukati Road (FH 2060) as follows:

This project proposes to upgrade the existing gravel-surfaced single lane road to an asphalt-surfaced two-lane facility. The project includes changes to the roadway alignment to reduce or eliminate hazardous curves and to smooth abrupt vertical changes. The project also includes upgrades to the Naukati waterfront with the addition of a parking lot, a shore access trestle, mooring floats, and a launch ramp. Upgrades would improve 2.6 miles of road from the intersection with FH 43 (North Prince of Wales Road) to the Naukati waterfront.

The estimated cost for planning, design, construction, and overhead for the Naukati Road project is \$11,000,000; this figure includes waterfront development. The project is included in the Forest Highway Program. Intermodal funding is needed for harbor improvements. The project is listed as a priority by the Southeast Alaska Community Economic Revitalization Team and is part of the regional Community Economic Development Strategy; the upgraded road is a critical component of the Naukati West Incorporated Community Action Plan.

In addition to FH 43 (classed as an “arterial” road) and FH 2060 (classed as a “collector” road), there are other collector (second-

²⁹ Southeast Conference is a regional, non-profit corporation that advances the collective interests of the people, communities and businesses in southeast Alaska. Members include municipalities, Native corporations and village councils, regional and local businesses, civic organizations and individuals from throughout the region.

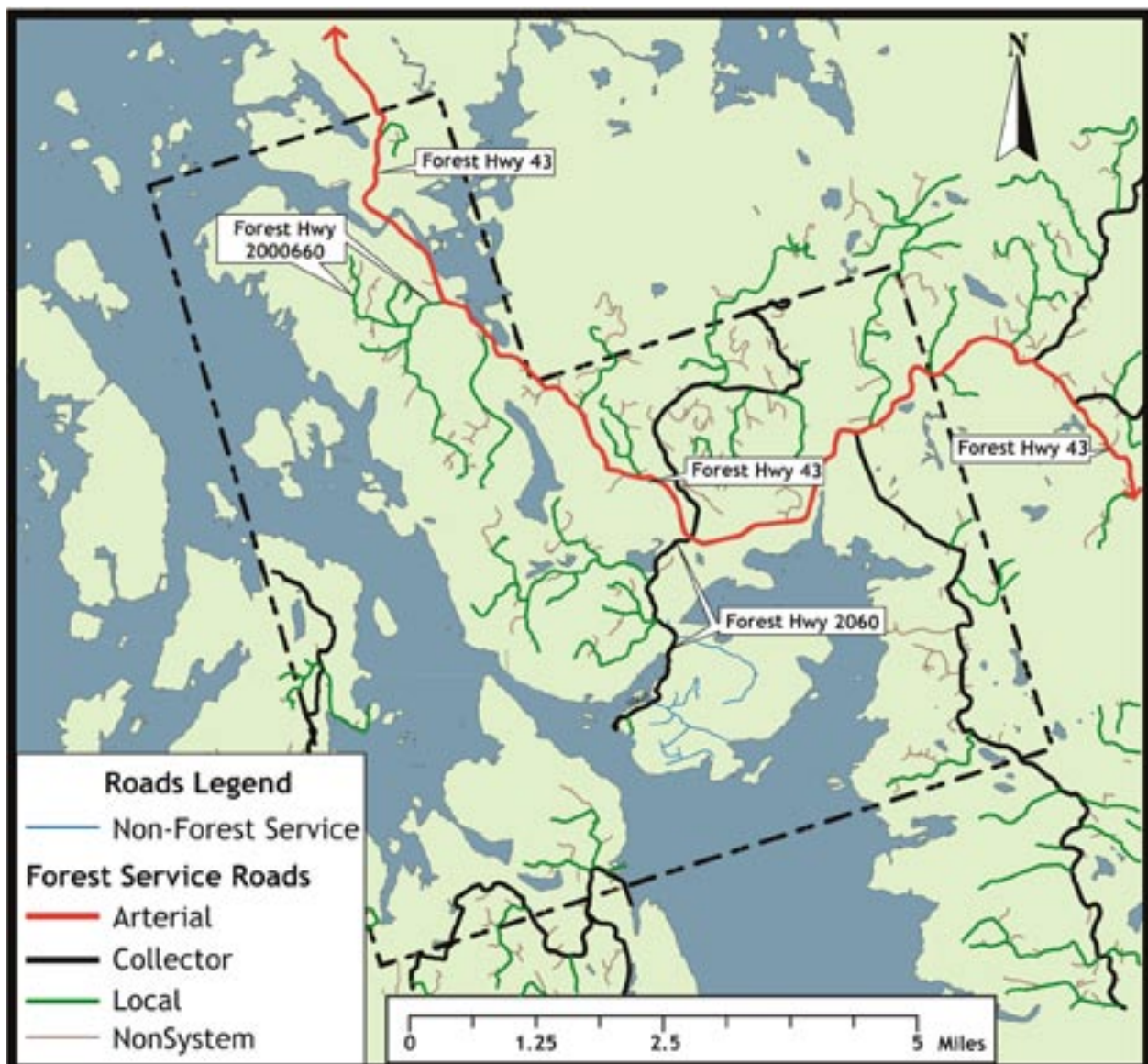
ary) roads, many tertiary and quaternary roads, and non-Forest Service roads within the territory proposed for incorporation.

Notable among the other roads is FH 2000660, which leads partway to private lands on the south shore of Sarkar Cove. FH 2000660 intersects FH 43 approximately 1.1 miles south of the point where FH 43 crosses Sarkar Creek. Although FH 2000660 leads partway to Sarkar Cove, the legal right-of-way ends well before the road reaches the private lands at Sarkar Cove. The end of the road is marked with

a gate. There is no general legal public access beyond the end of FH 2000660. Sarkar Subdivision property owners, however, have an easement from the USDA Forest Service that allows them to legally travel beyond the end of FH 2000660 to their properties.

Figure 3-9 is a map showing the various roads within the territory proposed for incorporation. FH 43, FH 2060, and FH 2000660 are marked on Figure 3-9. The different classifications of the roads are also marked.

Figure 3-9. Roads in the territory proposed for incorporation.



(4) Natural Geographical Features and Environmental Factors.

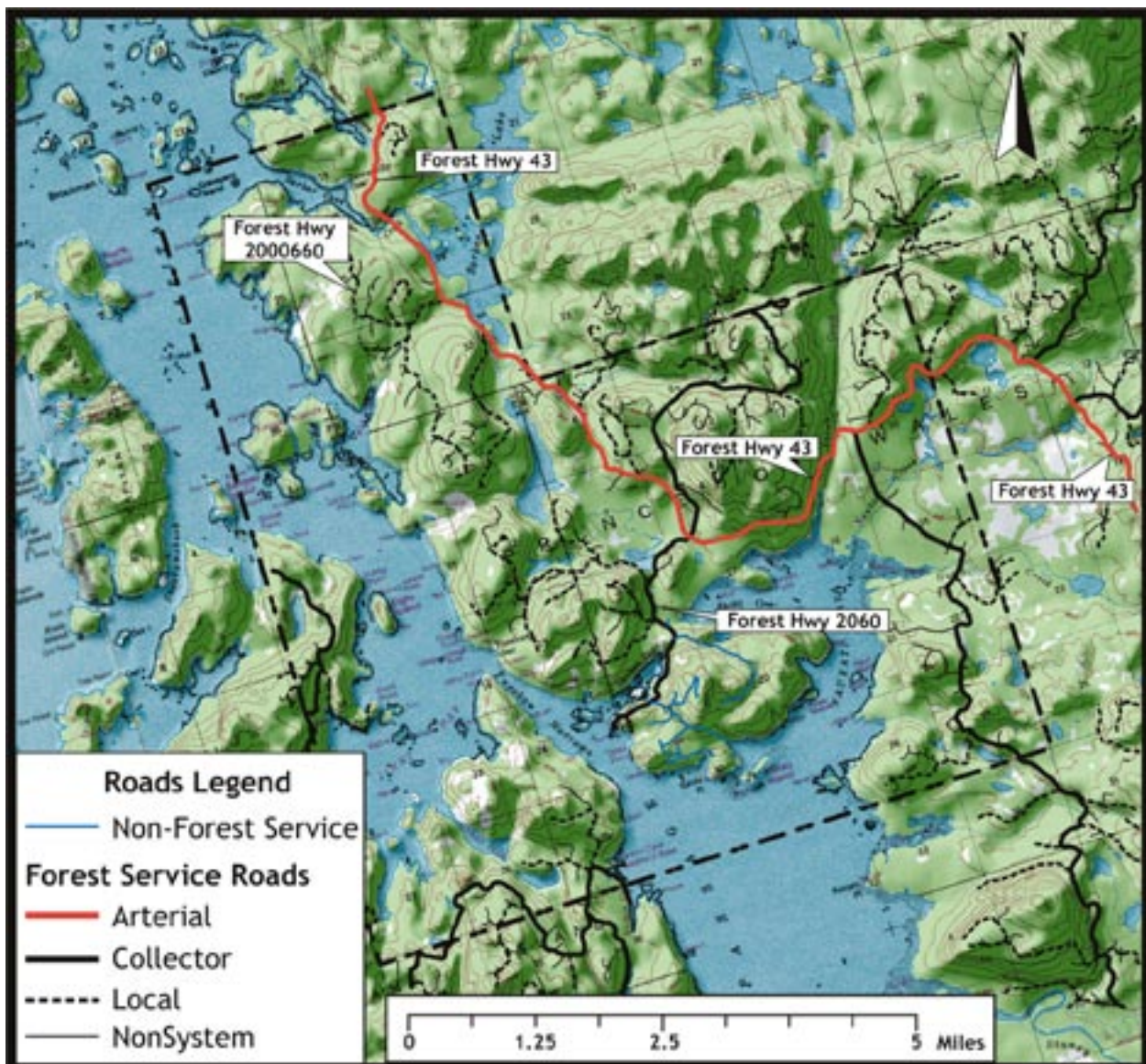
Just over three-quarters (77.7 percent) of the jurisdictional territory proposed by the Petitioner consists of land and non-tidal waters. The land ranges in elevation from sea level to 881 feet above sea level. The Petitioner's proposed city boundaries includes portions of Prince of Wales Island and Tuxekan Island and all of the Kassan Islands, Eight Island, and several other

smaller islands. Non-tidal waters include a number of lakes, including a portion of Sarkar Lake, and a number of creeks.

Just under one-quarter of the territory proposed for incorporation consists of tidelands and submerged lands. It includes a number of coves, bays, inlets, passages, and narrows.

Figure 3-10 is a map showing natural geographic features of the territory proposed for incorporation.

Figure 3-10. Geographic features of the territory proposed for incorporation.



(5) Extraterritorial Powers of Cities.

State law (AS 29.35.020) allows municipal governments to exercise certain powers outside their corporate boundaries. The law provides as follows:

Sec. 29.35.020. Extraterritorial jurisdiction. (a) To the extent a municipality is otherwise authorized by law to exercise the power necessary to provide the facility or service, the municipality may provide facilities for the confinement and care of prisoners, parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports, streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities outside its boundaries and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt an ordinance to exercise a power authorized by this subsection and may enforce the ordinance outside its boundaries. Before a power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance, and before a power authorized by this subsection may be exercised inside a village, as that term is defined by AS 46.08.900, the approval of the village must be given by resolution. A municipality intending to exercise its authority under this subsection shall act by ordinance, and may adopt an ordinance under this subsection to

(1) protect its water supply and watershed; or

(2) contain, clean up, or prevent the release or threatened release of oil or a hazardous substance that may pose an imminent or substantial threat to persons, property, or natural resources within the municipality's boundaries; however, this paragraph does not authorize a municipality to enforce an ordinance outside its boundaries to regulate exploration, development, production, or transportation of oil, gas, or minerals in a manner inconsistent with the state's management of those resources, and enforcement of the ordinance must be consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210; in this paragraph, "natural resources" has the meaning given in AS 46.03.826.

(c) A municipality may enter into agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons relating to development and enforcement of vessel traffic control and monitoring systems for oil barges and tank vessels carrying oil operating in or near the waters of the state.

...

The Petitioner proposes that the City would provide several essential services including road maintenance, harbor maintenance, and emergency response. The Petitioner also proposes that the City would provide a shellfish nursery and, in the long-term, water and sewer utilities. The Petitioner does not propose that the City would exercise any of those powers



Dock facilities in Naukati.

extraterritorially. It is possible, of course, that the proposed city could find the need to exercise certain of those services, particularly emergency response, outside its corporate boundaries. It is noted in that regard that AS 09.65.070(d)(4) provides that an action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis.

Permanent residents, seasonal residents, visitors, tourists, businesses, and government agencies will all be beneficiaries of the bulk of those prospective services. Beneficiaries will be asked accordingly to support the City financially through various means.

The territory generally identified as West Naukati is where the majority of the population resides and commercial activity occurs. The territory known as East Naukati also has some permanent residents and limited commercial development, but far less than West Naukati. Consequently, West Naukati is a particularly integral part of the proposed City's development of essential services and will significantly

benefit from the provision of municipal services. However, both areas will benefit from most, if not all, of the services proposed by the Petitioner to be provided by the City.

In contrast, the privately owned lands along the north and south shores of Sarkar Cove are separated from the Naukati community by geography (e.g., undeveloped Forest Service lands) and current population characteristics. In addition, population growth within the Sarkar area remains largely unpredictable. Therefore, concerns raised regarding the inclusion of the Sarkar area in the Petitioner's proposed boundaries are shared by Commerce.

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's limited discussion regarding this particular standard is contained within the discussion of the first boundaries standard. Further commentary regarding future prospects for growth and development are framed within the context of Naukati's history of land development and future prospects for continued growth. Specifically, the Petitioner reports the following:

In 1990, the State of Alaska made available for purchase 1,837 acres in what is now known as the Naukati West subdivision in a land disposal program. All of the lots have been purchased. In addition, a few of the lots were reserved for a future school site (tract A) and other community development (block 4). In 1990, the State of Alaska made available 555 acres in what is now known as the Naukati East subdivision. To date, 33 lots have been developed.

Southeast Island School District has begun the process of clearing the land to build a new school, which has already been approved. The school will be finished by November

of 2005. The new school will be a boost to the community; it will cost \$4.1 million, and will bring in new families, new businesses, and new homes.

Naukati and the D.N.R. are proposing another land sale of 56 more lots by July of 2005, Naukati predicts the sale of all of these lots as soon as the bid goes out, since tourists ask weekly if there is any property for sale in the area.

(b) Respondent's Brief and Petitioner's Reply.

Similar to prior commentary, the Responsive Brief suggests that a single homogenous Naukati community does not exist. In particular, the existing Naukati community is distinct from the Sarkar Subdivision by means of geographic distance, resident characteristics, and common interests. Consequently, the Responsive Brief recommends Sarkar Subdivision be removed



The new Naukati school, shown here under construction, is now complete.

from the proposed boundaries by providing the following defense (Responsive Brief, p. 11-15):

The boundaries as proposed for incorporation exceed the needs of the proposed City of Naukati. ... the community of Naukati is separated by approximately three miles of National Forest from the settlement of Sarkar. The citizens of Naukati and the part-time residents of Sarkar are further distanced by their distinctly different lifestyles and demographics. The residents of Sarkar number less than twelve part-time residents, who reside only during the summer at Sarkar. The absence of association and dependence between these populations precludes the appearance or fact of community. The settlement of Sarkar has little in common with the people or community of Naukati. This alone questions the propriety of making the Sarkar area part of the proposed city of Naukati.

. . . .

The people that own property in the Sarkar Subdivision value their privacy. The only road access through the Subdivision is gated and locked. More than three miles of federal land and eight miles of road separate the Subdivision from Naukati. There is no "discrete and identifiable social unit" common to the residents of the Subdivision other than their ownership of land. . . .

The Sarkar property owners have not solicited or asked for services from the community of Naukati. They have interests and needs distinctly different from those of the residents of Naukati. Petitioner has not, nor is it practi-

cal, for Petitioner to identify a common thread that joins the citizens of Naukati with the residents of Sarkar as a single community. Adopting the proposed boundaries will do nothing to change the separateness and distinctions that set these areas and their people apart.

Absent from the Petition is discussion that satisfies 3 AAC 110.040(b). The residents of Sarkar are not now, nor have they been, part of the Naukati community. They are not socially, religiously, or emotionally linked to the community of Naukati. The residents of Sarkar have never shown a desire or need to be part of the Naukati community. Similarly, Naukati has never demonstrated a need or desire to make the residents of Sarkar part of the Naukati community.

The Petitioner's reply to the Responsive Brief provides example of a prior municipal incorporation under similar geographic circumstances by describing Thorne Bay's municipal boundaries. The Petitioner also outlines future plans for providing services to currently undeveloped lands included within proposed municipal boundaries. Specifically, the Petitioner notes the following (Reply Brief, pp.16, 25):

The proposed Naukati incorporation, in which Sarkar is included in Naukati, is not unlike the situation, which exists in Thorne Bay. There you have Thorne Bay proper separated from the South Thorne Bay subdivision by a road distance about the same length as the one that separates Sarkar from Naukati. Therefore the fact that one part of the city of Naukati might be physically separated from another is neither unique nor noteworthy.

. . . .

The inclusion of the Sarkar subdivision along with Naukati East would be very beneficial to all areas within the second class city petition. Naukati East and Sarkar would have an active Satellite Fire/EMS substation with trained and qualified personal. This would enable them to start fighting fires in their subdivision. Naukati would send their (16) trained volunteers and equipment in a fast response unit to help fight a fire. Naukati is prepared to provide training for EMT's in Sarkar and Naukati East, this would give both a qualified EMT's with full supplies needed for public safety. Naukati as a second-class city would be accountable for their road upgrades, which on this end of (POW) is needed significantly.

El Cap Lodge and the Sarkar residents have a huge investment in their homes and business as does Naukati residents. Fire/EMS protection is a benefit to all and surely needed by all. We will all be able to receive lowered fire insurance, and if there was an active Fire substation in the subdivision they would too. With the anticipated 150 acres for sale in Sarkar subdivision the Fire/EMS squad would be of great benefit to Sarkar at present and in the future.

(c) Public Comments.

Public comments regarding this particular standard are summarized under the first boundaries standard of this chapter.

(d) Analysis by Commerce.

The legal standard at issue here limits the corporate boundaries of a proposed city to just that territory comprising a pres-

ent local community, plus reasonably predictable growth, development, and public safety needs during the ten years following incorporation.

This particular standard, and the one that follows, reflects the "limitation-of-community doctrine." That doctrine restricts the geographic size of city governments. In *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974), the court recognized that cities may not encompass lands that receive no benefit from the city government.³⁰

The "limitation-of-community doctrine" is formally reflected in the State laws governing city boundaries which, subject to narrow exceptions, are limited to a "local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following . . . incorporation," and may not include "entire geographical regions or large unpopulated areas."

In the examination of the community standard earlier in this chapter, Commerce concluded that characteristics of the territory proposed for incorporation outside the Naukati core area render it difficult to conclude that such territory is part of the community of Naukati as defined under the applicable legal standard. The Naukati core area includes Naukati Bay

³⁰ The limitation does not apply to borough governments. Alaska's Constitution requires all of Alaska to be divided into boroughs, with each borough embracing a maximum region with common interests.

Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Industrial Subdivision, Naukati Commercial Subdivision, and Naukati Bay Subdivision East.

Certain lands adjoining those subdivisions can reasonably be predicted to undergo growth and development or to exhibit public safety needs during the ten years following incorporation. Those include much of the previously noted 937 acres to be conveyed to the University of Alaska. Much of the land to be transferred to the University is designated by the Area Plan for settlement.

However, other lands destined for the University around Naukati are not currently designated for development. Those include, for example, lands designated for general use. General use lands are those for which the "lack of adequate resource, economic, or other information, and the

lack of current demand indicates development is unlikely during the 20-year life of the plan."

The classifications of remaining State lands within the Petitioner's proposed boundaries shown in Figures 3-5 and 3-6 suggest they, too, might reasonably be expected to undergo growth and development over the next decade. A notable exception, again, would be the lands designated as general use.

The designation of State lands shown in Figures 3-5 and 3-6 and a description of each such designation is provided on the following page in Table 3-13.

Virtually all of the State lands within the territory proposed for incorporation are estimated to be VUU lands.

The territory proposed for incorporation lying outside the Naukati core area and surrounding territory (Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Industrial Subdivision, Naukati Commercial Subdivision, Naukati Bay Subdivision East, the University lands, and remaining State lands) is referred to here as the "remnant territory."

Much of the remnant territory is comprised of federal lands managed by the USDA Forest Service. Much of the Forest Service land surrounding the State and privately owned lands in the Naukati core area is designated for industrial wood production. Forest Service lands adjoining



Naukati Cabins and Laundromat.

Table 3-13. Designations of State Lands in and Around Naukati.

Designation (Code Used in Figures 3-5 and 3-6)	Description of Designation
Crucial Habitat (Ha)	Areas that 1) serve as a limited, concentrated use area for fish and wildlife species during a sensitive life history stage where alteration of the habitat and or human disturbance could result in a permanent loss of a population or species' sustained yield, or 2) localized traditional harvest areas of limited size where alteration of habitat could permanently limit sustained yield to traditional users.
Cultural Resources (C)	Areas containing important archaeological or historical resources.
Forestry Development - Commercial/Industrial (F)	On tidelands: any activity or structure for timber harvesting or for transfer of logs from uplands to tidelands, including, but not limited to felling, yarding and hauling of logs, roads, log transfer facilities, floating A-frame logging, upland and marine log storage areas, and camps and other support facilities associated with timber resource development. On uplands: any activity or structure for the harvest or management of timber resources.
General Use (Gu)	Tidelands, submerged lands, or uplands designated general use provide some combination of settlement, recreation, forestry, habitat or other values. On tidelands and submerged lands, the lack of resource information prevents a specific resource allocation at this time. On uplands, lack of adequate resource, economic, or other information, and the lack of current demand indicates development is unlikely during the 20-year life of the plan. Other uses may be authorized in the management intent statements of specific parcels. For additional management intent for specific general use areas, see the management intent statement of the individual management units in Chapter 3 of the Area Plan.
Material Site (+)	Sites that include but are not limited to common varieties of sand, gravel, rock, peat, pumice, pumicite, cinders, clay, and sod.
Public Facilities (P)	Areas reserved for public facilities.
Public Recreation - Anchorage (Ra)	Any activity or structure for recreational purposes relating to boat anchorage.
Public Recreation - Developed (Rd)	Areas where public recreation facilities have been or may be developed; or state lands that serve as access to these areas.
Public Recreation - Dispersed (r)	Provides for dispersed recreation uses, which require no developed facilities and are not necessarily concentrated at a specific site, such as wildlife viewing or berry picking.
Public Recreation - Undeveloped (Ru)	Areas identified as having public recreation values, but where no facilities have been developed or are planned for development; or state lands that serve as access to these areas.
Recreation - Commercial (Rc)	Any activity or structure for recreational purposes, including but not limited to hiking, camping, boating, anchorage, access points to hunting and fishing areas, and sightseeing. "Recreation" does not refer to subsistence or sport hunting and fishing.
Settlement (S)	The sale, leasing, or permitting of state lands to allow private recreational, residential, commercial, industrial, or community use. On tidelands and submerged lands "settlement" includes the use of state tidelands for floathomes.
Shoreline Development - Commercial/Industrial (D)	Tidelands and submerged lands where commercial or industrial facilities may be located. It includes any water-dependent or water-related structure or facility that is permanent and or used for commercial or industrial purposes. "Shoreline Development" excludes log or resource transfer facilities, log storage, floating A-frame logging, or camps and other resource development support facilities associated with forestry or mineral development.
Shoreline Development - Personal (d)	Tidelands and submerged lands where small docks or floats for personal use and access to the uplands may be located.
Water Resources (W)	Areas of important water sources, or watersheds.

the southern portion of Jinhi Bay (in the southwest corner of the territory proposed for incorporation) and along the north shore of Sarkar Cove are designated to be maintained as old-growth forests for wildlife and fish habitat. Lands on the Kassan Islands under the jurisdiction of the Forest Service are designated for remote recreation. Forest Service lands adjoining private lands along the south shore of Sarkar Cove are designated to be maintained as natural-appearing landscapes while allowing timber harvest.

Table 3-14 describes in more detail the designations of the Forest Service lands within the territory proposed for incorporation as shown earlier on Figure 3-8.

The extent to which the remnant territory exhibits the characteristics that legally define a community under 3 AAC 110.920 are noticeably more tenuous compared to the Naukati core area.

Again, even some properties within the Naukati core area seem, at best, to marginally meet the standard set out in 3 AAC 110.920. Those include the State lands designated for general use and certain other State and private lands. There is even room for debate whether Naukati Bay Subdivision East can, in certain respects, be reasonably considered to be part of the community of Naukati as determined under the somewhat narrow legal standards set out in 3 AAC 110.920.

For example, Naukati Bay Subdivision East is, to some extent, distant and removed from the more developed territory to the west. The population of Naukati Bay Subdivision East is moderate at best. Further, Naukati Bay Subdivision East has little or no commercial and industrial development. Moreover, residents of Naukati Bay Subdivision East and Naukati Bay Subdivision West are represented by different incorporated community associ-

Table 3-14. *Designations of USDA Forest Service Lands in and Around Naukati.*

Designation (Color Used in Figure 3-8)	Description of Designation
Dark Blue	Intensive development: Timber production - manage the area for industrial wood production. Promote conditions favorable for the timber resource and for maximum long-term timber production.
Brown	Moderate Development: Modified Landscape - Provide for natural-appearing landscapes while allowing timber harvest.
Light Brown	Mostly Natural Setting: Old-Growth Habitat - Maintain old-growth forests in a natural or near natural condition for wildlife and fish habitat.
Tan	Mostly Natural Setting: Semi-Remote Recreation - Provide for recreation and tourism in natural-appearing settings where opportunities for solitude and self-reliance are moderate to high.
Dashed red line	Proposed State Road Corridors

ations. As noted previously, Naukati Bay West, Inc., was founded to “further the common good and general welfare of all of the people of Naukati West.”

What is clear is that the prospect for growth and development and the need for services in the remnant territory is markedly more limited compared to the Naukati core area. With the exception of Sarkar Cove and the tip of western island among the Kassan Islands, the land in the remnant territory is publicly owned and likely to remain such for the foreseeable future.

The Sarkar Cove area includes approximately 30 vacant lots. However, during the past seven years, fewer than five vacant lots have reportedly been sold in that part of the territory.



Flying into Sarkar Cove.

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 addresses this particular standard under Exhibit H of the Petition by focusing on future prospects for growth within the largely unpopulated geographic regions. Specifically, the Petitioner notes the following (Petition, p. 25):

There are 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. The Northern most boundaries include the privately owned Sarkar subdivision. This area has several large new homes and El Capitan Lodge. Seventy-five acres are now developed for home sites and currently being offered on the Real Estate market.

With this growth in the Sarkar Subdivision Naukati feels that it is only a matter of time until Sarkar residents will want services providing quality of life and emergency response. Naukati can provide these services much more efficiently



On the road to Naukati.

than a proposed Island Borough government located in Craig or Klawock fifty miles from the Sarkar subdivision[.] Naukati is only three miles from the subdivision. . . . Naukati would provide fire protection by establishing a satellite fire station with a fast response unit funded by grants. This fast response unit which Naukati already has would give immediate fire fighting capability in the subdivision and also give the Naukati fire unit critical time response extension that could save a home or lodge in the area. EMS would be provided by a well trained and equipped five-person squad led by an EMT 1[.] Naukati EMS will receive an ambulance in 2004, and also was just awarded a \$15,000.00 grant from FEMA which includes defibrillators, additional training and updated supplies, one defibrillator would be on site in the Sarkar subdivision[.] Sarkar subdivision growth will most likely have residents who will become EMS qualified personnel, coupled with the Naukati squad they could provide ex-

cellent emergency medical protection. Naukati would provide maintenance on the FS 20 660 road to the Sarkar subdivision, which is now maintained on a very limited schedule and funded by local residents. . . . Naukati East is on our eastern boundary and is connected to the main FS 20 road by the FS 2058 road; Naukati would also maintain the FS 2058 road and roads connecting the Naukati East subdivision. Naukati East would be provided the same emer-

gency services as the Sarkar subdivision. The proposed western boundary includes many bays and coves with several being under lease for shellfish farming. . . . The State land in Jinhi Bay could become remote home sites or a possible lodge operation that has been mentioned.

(b) Respondent's Brief and Petitioner's Reply.

Responsive Brief comments relevant to this particular boundary standard are summarized under the second boundaries standard of this chapter.

(c) Public Comments and Petitioner's Response.

Public comments related to this particular standard are summarized under the first boundaries standard.

(d) Analysis by Commerce.

The third boundaries standard addressed here requires the exclusion of entire geographic regions and large unpopulated areas, except where justified by other city incorporation standards. This legal standard also reflects the “limitation-of-community doctrine” discussed with regard to the second boundaries standard.

Given this standard, the analysis presented to this point, and the conclusions reached regarding the standards addressed previously, a compelling reason does not seem to exist to extend the proposed city boundaries beyond the Naukati core area described previously including Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Industrial Subdivision, Naukati Commercial Subdivision, and Naukati Bay Subdivision East.

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 Exhibits 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.

(b) Respondent’s Brief and Petitioner’s Reply.

The Responsive Brief largely focuses on the assertion that Sarkar Subdivision and the Naukati community are not to be considered contiguous due to the undeveloped Forest Service lands between the two geographic regions. Specifically, the Responsive Brief notes the following (Responsive Brief, p. 13, footnotes excluded):

The petition provides no facts upon which the Commission can find that the presumption of 3 AAC 110.040(d) is rebutted in favor of the Petitioner. The Sarkar settlement is not contiguous to the community of Naukati because of three miles of National Forest that separates them. Accordingly, the Petitioner has the burden, under 3 AAC 110.040(b), to give persuasive justification for making Sarkar part of the city of Naukati. This burden requires the Petitioner to explain in clear, concise and persuasive language why, in the face of the noncontiguous status of these areas, it is necessary to include the Sarkar settlement into the boundaries of the city of Naukati. This, the Petitioner has failed to do.

(c) Public Comments and Petitioner’s Response.

Public comments related to this particular boundary standard are noted in prior boundary standard discussion and generally provide that Sarkar Subdivision and the Naukati community should not be considered contiguous geographic areas considering distance and unpopulated nature between the geographic territories.

(d) Analysis by Commerce.

This standard lacks the subjective character reflected in many of the other city incorporation standards. Satisfaction of the standard is readily determined on the basis of simple facts. The territory proposed for incorporation is contiguous and without enclaves. In this case, the standard is met.

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 Exhibit H of the Petition, which states (Petition, p. 25):

The boundaries of the newly proposed city do not overlap any other local government entity. U.S. Forest Service retain approximately 2 acres of land within the Naukati boundaries. No other government entities exist along any boundary of the proposed city.

(b) Respondent's Brief.

The Responsive Brief did not address this particular boundary standard.

(c) Public Comments.

No public comments were received regarding this particular boundary standard.

(d) Analysis by Commerce.

Like the previous standard, this standard lacks the abstract nature present in many of the other city incorporation standards. Again, compliance with the standard is easily determined on the basis of straightforward facts. The boundaries of the proposed City of Naukati do not overlap any other local government entity.

7. Conclusion by Commerce.

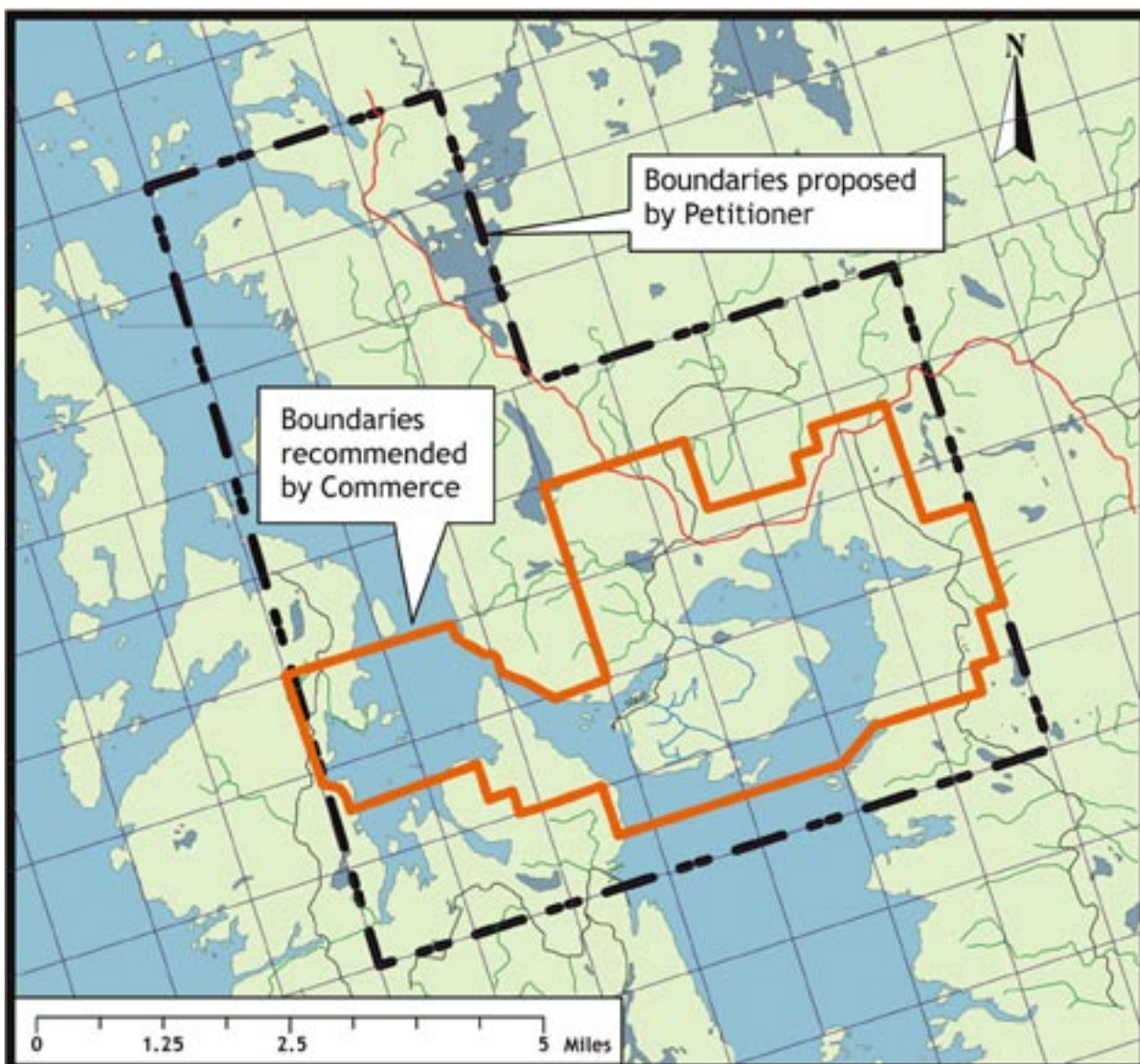
Based upon a review of the Petition, Responsive Brief, written public comments, Petitioner's Reply Brief, and other relevant materials examined independently, Commerce concludes that a reasonable basis exists to include the Naukati core territory within the boundaries of the proposed City of Naukati. That core territory includes Naukati Bay Subdivision West, Naukati Bay Subdivision West Addition No. 1, Naukati Industrial Subdivision, Naukati Commercial Subdivision, Naukati Bay Subdivision East, the 937 acres to be conveyed to the University of Alaska, and adjoining State lands. As noted, Commerce recognizes that certain properties within the core territory exhibit greater characteristics suitable for city government jurisdiction compared to other properties within that core area. The parts of the territory that currently exhibit such characteristics to the greatest degree are the Naukati Bay CDP (the "statistical counterpart" to an incorporated city) and the nearby subdivisions developed for commercial and industrial purposes.

In contrast, Commerce concludes that the remnant territory does not exhibit characteristics that support the inclusion of that territory within the proposed city boundaries. That conclusion is based on factors relating to geographic distance, lack of single community of interest, inability to provide essential city services on an efficient scale, unknown future growth rates, rudimentary transportation links, lack of

legal access to privately owned lands, sparse habitation, seasonal residency, and limited private land ownership.

Given that conclusion, Commerce recommends boundaries of the proposed City of Naukati as shown in Figure 3-11. Based on Commerce's analysis and conclusions, the recommended boundaries are, in the view of this agency, most suitable for a prospective city government serving Naukati residents.

Figure 3-11. City of Naukati Boundaries as Recommended by the Department of Commerce, Community, & Economic Development.



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. The 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.³¹

³¹ As discussed previously, Naukati requests incorporation as a second-class city.

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;

(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



Grocery store in Naukati.

(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, specifically in Exhibit H of the Petition (Ex. H, p. 21). In addition, budget information about the proposed City of Naukati is provided in Exhibit E of the Petition (Ex. E, p. 16).

The Petition states that the economy of the proposed City of Naukati 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 Naukati 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 provided in the Petition.

The Petition indicates Naukati has a substantial property tax base. However, the Petition proposes that the prospective City will levy only a bed tax/vacation package tax of four-per-

cent (4%) at this time. It sets out the estimated value of bed and vacation retail sales in the community and the methodologies for calculating corresponding tax revenues. It also points out the number of tourists who visit Naukati each year and the strain that such tourism places on the physical infrastructure and human services currently provided in the community, which are mostly on a volunteer basis.

The Petitioner addresses the functions, income, and expenses of the proposed City of Naukati. It also provides details concerning the economic base of the community, which is mainly comprised of tourism, shellfish nurseries, and timber industry enterprises. Naukati's tourism industry is largely seasonal, peaking during the months of May through September.

The services and facilities to be provided by the proposed City of Naukati are discussed in the Petition. They include road

maintenance, harbor maintenance, emergency response, and a shellfish nursery. In the long-term, the Petitioner anticipates that the City will provide water and sewer utility service beginning in 2015. Some of these services are now provided by Naukati West, Inc., volunteers, grants, or local donation. The Petition also describes a transition plan for the City to assume the duties, assets, and liabilities for the operation of these services and facilities.

The reasons that the Petitioner cited for becoming a second-class city include the need to provide: 1) effective service delivery for all area residents; 2) an equitable avenue to fund community services; 3) a means to obtain grant monies and generate revenue to support services; 4) means to make binding decisions and enter into agreements with other government entities through a sanctioned form of government; and 5) a means to maintain a quality of life fundamental to the residents. The Petitioner stated that the method in which various Naukati services have been provided, mainly through volun-

teer effort, has led to an unfair burden on residents and an increasingly inadequate provision of services. The Petitioner asserts the need for incorporation is long overdue.

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

3. Respondent's Brief and the Petitioner's Response.

The Respondent's Brief provided lengthy discussion regarding the capacity of current local resources to support a newly incorporated municipality. In summary, the Respondent's Brief at p. 2 suggests:

Naukati does not yet meet the standard set forth in 3 AAC 110.005 and 3 AAC 110.920, . . . Naukati is still a relatively new and as of yet under-developed community... 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. . . .

Supporting the assertion that Naukati does not yet have the local financial and human resources to support a new municipality, the Respondent's Brief notes that following specific observations: 1) Naukati income and employment levels are less than other Prince of Wales Island cities includ-



The Trading Post in Naukati.

ing Kasaan, Coffman Cove, and Thorne Bay; 2) interest in forming a local government is a relatively recent phenomenon; 3) limited local businesses and commercial enterprises; and 4) prior documentation that illustrates the fledging status of the Naukati community including the Naukati West Inc., Inc. *Community Action Plan* and the *Prince of Wales Island Area Plan*.



Red Cedar Nursery in Naukati.

While evaluating the Petitioner's specific estimates of anticipated expenses and revenues, the Respondent's Brief offered the following points of technical critique (Responsive Brief, pp. 14-18):

Petitioners propose a significant, perhaps unreasonable, reserve fund. . . .

Petitioners propose a significant share (45%) of the total municipal expenditures for administrative functions only indirectly related to provision of actual services, such as public safety or public works services, to the general public. . . .

Municipal enterprises comprise nearly one-quarter (24%) of the proposed city's expenditures. The shellfish nursery represents the lions' share (68%) of projected enterprise expenditures. . . .

Petitioners do not make any provision for legal services in the proposed budget in spite of the fact that the petition includes numerous issues, which are fraught with legal complexities. . . .

Grants and shared revenues are generally declining. . . . Naukati . . . would not have substantial resources readily available as it wrestles with gradually declining federal- and state-shared revenues. Naukati's economic base appears weak and generally under-developed. Further, judging from the tone of the petition and the Community Action Plan, the community seems less tolerant of broad-based sales or property taxes. This could seriously constrain the municipality's ability to perform necessary services or provide essential or desired facilities. In the extreme, this could jeopardize the viability of the city. . . .

If the Commission redraws the boundary of the proposed municipality . . . the reduced area would likely exclude the major source (El Capitan Lodge) of the package bed tax proposed in the petition.

The Petitioner replied to substantive Responsive Brief observations by providing the following comments at p. 15:

The information given in the brief is outdated and incorrect. The community of Naukati has written a comprehensive strategic action plan as well as a coordinated response plan since the 1998 one was drafted. The statements made [in the Responsive Brief] referring to the 1998 Community Action Plan are not pertinent to the current status. . . .

As stated in respondent's brief Naukati, has 22 business licenses. For a community of 160 residents this amount of

business licenses is pretty much standard compared with other communities of this size. . . .

In Naukati West's 1998 action plan, the brief states that Naukati has been considering its expectations of becoming a second-class city for some time. Naukati has not taken this step lightly, the incorporation petition has been a well thought out decision that we have discussed for years and are now ready to assume the full duties and responsibilities of city government. . . .

And at the bottom of p. 25:

The Boundary Commission Staff has reviewed the petition budget twice and suggested changes, which have been adopted by the Homeowners and are in the submitted petition. Naukati has proposed a very conservative budget; we stand by our proposed budget, and believe it is a very reasonable and

sound budget. The budget that the respondent gives is in a different format and to our research, incomprehensible. Our economic base is sound and stable. We believe with the first phase of the land sale six Mental Health land auction that Naukati will have an even deeper economic base. With these land sales coming on line, and the private sale of land in Naukati it has brought the land prices up consid-



Bunk Houses in Naukati.



Brandy's Botanical Gardens, a small business in Naukati.

erable. In the past four years land value in Naukati has increased by over \$3000.00 an acre.

4. Public Comments and the Petitioner's Response.

Public comments regarding local human and financial resources available to support municipal services were rendered by Sarkar Subdivision property owners Scott Van Valin and Roland Nehring. El Capitan Lodge owner, Scott Van Valin, focused on concerns regarding the financial burden placed on El Capitan Lodge to provide a significant amount of revenue for the proposed city.

Specifically, Scott Van Valin notes the following (07/14/2004 e-mail):

It appears the only viable economic base in the area is my lodge as Naukati has little in the way of a developed

economy. El Capitan Lodge makes up about 80% of the tax revenue projected by the petition, but the petition gives no assurance of any services that would be a benefit to me now or in the future. The bed tax project will unfairly tax El Capitan Lodge; services including charters, guiding, flight seeing, food, fuel and transportation will not be taxed

on businesses in Naukati not having overnight accommodations. I did not provide any financial information to Naukati as stated in their petition for second class city . . . Today there is not enough business or economy in Naukati to support a city.

The Petitioner replied to Mr. Van Valin's concern with the following rebuttal (Reply Brief, p. 6):

Naukati will provide a satellite Fire/EMS station with a fast response unit to be funded by grants. The services of a well-trained and equipped Fire/EMS squad of 16 firefighters and 5 EMS personnel. Road maintenance on the (FS) 20 660 road to the subdivision [Sarkar Subdivision] from the main North Island road (FS) 20.

Similarly, Roland Nehring asserts the following (7/15/2004 fax letter):

The Naukati Plan cannot succeed because they have applied for only bed tax authority and have omitted for some reason to provide for property and sales taxes as additional revenue sources. They simply do not possess sufficient economic base or personal income resource and commercial development. From a Sarkar Area standpoint, provision of municipal utility services that we already possess, at such a distance, is not feasible nor are those services required - although if we are included in the territory, we would have every right to insist that such distance municipal services be provided to Sarkar in fairness to all residents.

Regarding the ability to deliver services to distinct settlements separated by large areas of undeveloped land, the Petitioner noted the following (Reply Brief, p. 8):

In Naukati's petition for second-class city we stated that a Satellite Fire/EMS station would be put into Naukati East and Sarkar subdivision. This would be a benefit to all households living in both communities. With the 150 acres on the market in Sarkar it would be fair to surmise that the people who buy property would want fire and EMS protection.

With the projected road improvements of the (F.S.) 20 road and the 2060 road into Naukati it will reduce the response time considerable. Naukati has been planning on purchasing a fast response boat for fire and EMS; this is still in the early stages but will benefit all of the surrounding areas.

The Petitioner also directly replied to the accusation regarding the limited nature of their local economic base by providing the following written statement (Reply Brief, p. 7):

Yes, Naukati can support a city. Naukati West has been working hard on becoming a larger and more prosperous community for quite some time. Several new businesses opened in the last few years. Naukati has worked hard to provide revenue for the community.

Some of our business here have a Ketchikan address and some have NKL address because Naukati does not have it's own zip code. There are 9 business licenses filed in Ketchikan with a Naukati address. There are 8 business licenses filed with a Naukati address.

5. Analysis by Commerce.

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

The Petition outlines eight specific functions of the proposed city including:

- ◆ fire protection;
- ◆ emergency medical service;
- ◆ road maintenance;
- ◆ harbor maintenance;
- ◆ water utility service (to begin approximately 10 years after incorporation);
- ◆ sewer utility service (to begin approximately 10 years after incorporation);
- ◆ shellfish nursery; and
- ◆ recreational vehicle park.

Additionally, the prospective city would be responsible for mandatory municipal functions such as annual elections, meetings of the city council, and day-to-day administrative functions.

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

The Petitioner's three-year operating budget, presented below as Table 3-15, projects that operating expenditures of the

proposed City of Naukati would range from \$160,750 during the first year to \$155,250 during the third year. The average for each of the three years is \$158,083.

Commerce concurs with the Respondent in these proceedings (Responsive Brief, p. 15) that the budget of the proposed city should include funding for legal services. Based on a review of other small city governments, and recognizing that legal services costs may be somewhat

Table 3-15. *Expenditure Component of Petitioner's Three-Year Operating Budget (Ranked in descending order of expenditures in the third year).*

Expense	Year 1	Year 2	Year 3
Road Maintenance	\$35,000	\$35,000	\$35,000
City Clerk	\$13,000	\$13,000	\$26,000
Shellfish Nursery	\$25,350	\$25,350	\$25,350
Insurance	\$10,000	\$10,000	\$10,000
Contractual (Surveying and Engineering for Capital Projects)	\$7,500	\$7,500	\$7,500
Harbor Maintenance	\$7,000	\$7,000	\$7,000
Maintenance of Fire Trucks, Ambulance, and Grader	\$7,000	\$7,000	\$7,000
Municipal Reserve	\$7,000	\$7,000	\$7,000
Land Surveying	\$6,000	\$6,000	\$6,000
Office Expenses	\$6,000	\$6,000	\$6,000
Travel	\$6,000	\$6,000	\$6,000
Naukati Emergency Response	\$5,000	\$5,000	\$5,000
Recreational Vehicle Park	\$4,900	\$4,900	\$4,900
CPA fees	\$4,000	\$1,500	\$1,500
Elections costs	\$1,000	\$1,000	\$1,000
"Planning" (Surveying and Engineering for Capital Projects)	\$16,000	\$16,000	\$0
Total	\$160,750	\$158,250	\$155,250

higher initially for a newly formed city, Commerce concludes that a minimum of \$5,000 should be allocated for legal services annually during each of the first three years.

Commerce presumes that the Petitioner's projection for "land surveying" is related to the prospective city's entitlement to general grant lands from the State. As a condition for receipt of those lands, the newly formed city must pay the survey costs. Commerce is unable to determine whether the Petitioner's figure for such costs is reasonable. The actual cost will

depend on a number of variables such as size and location of the selected parcels and existing survey monumentation.

Although the Petitioner's budget is quite limited, the proposed operating expenses, with the addition of funding for legal services and the question about the survey costs, otherwise seem "reasonable" in terms of the limited functions of the prospective city government. Legal services funding could be funded from the \$7,000 annual reserve included in the budget.

Although Commerce views the Petitioner's other projected expenses as reasonable, there are technical constraints associated with funding for road maintenance that affect the plausibility of the budget. Specific funding constraints are addressed immediately following the discussion in the following subsection regarding revenues.

In terms of the overall character of the Petitioner's budget, Commerce notes that 17 of 109 (15.6 percent) second-class cities for which financial data have been compiled had total annual operating expenditures under \$160,000.³² Table 3-16 lists numbers of second-class cities by range of total operating expenditures for Fiscal Year 2002.

Table 3-16. *Fiscal Year 2002 Total Operating Expenditures of Second-Class Cities.*

Total Operating Expenditures	Number of Second-Class Cities	Proportion of 109 Second-Class Cities for Which Data is Available
Under \$100,000	7	6.42 percent
\$100,000 to \$199,999	18	16.51 percent
\$200,000 to \$299,999	29	26.61 percent
\$300,000 to \$399,999	12	11.01 percent
\$400,000 to \$499,999	11	10.09 percent
\$500,000 to \$599,999	8	7.34 percent
\$600,000 to \$699,999	7	6.42 percent
\$700,000 to \$799,999	2	1.84 percent
\$800,000 to \$899,999	2	1.84 percent
\$900,000 to \$999,999	2	1.84 percent
\$1,000,000 or more	11	10.08 percent

³² AS 29.20.640(a)(2) requires every municipality to file with Commerce "a copy of the annual audit, or, for a second class city, an audit or statement of annual income and expenditures." As part of its duty under Article X, Section 14 of Alaska's Constitution to "review [local government] activities, collect and publish local government information," Commerce compiles and reports that financial data. The most recent year for which nearly complete financial data have been received and compiled is for the 12-month period ending June 30, 2002. Data are available for 109 of the 113 second-class cities that existed during the period in question.

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

The Petitioner's three-year operating budget, presented here as Table 3-17, projects that revenues would be \$181,087 during the first year, \$232,087 during the second year, and \$215,029 during the third year.

Table 3-17. Revenue and Income Components of Petitioner's Three-Year Operating Budget (Ranked in descending order of income for the third year).

Income	Year 1	Year 2	Year 3
Forest Receipts	\$57,000	\$57,000	\$57,000
4% bed tax	\$35,960	\$35,960	\$35,960
Shellfish Nursery	\$32,375	\$32,375	\$32,375
Organizational grant	\$0	\$50,000	\$25,000
Land Sale	\$0	\$0	\$20,000
Payment in Lieu of Taxes	\$17,000	\$17,000	\$17,000
R.V. Park	\$12,000	\$13,000	\$14,000
Harbor fees	\$3,000	\$3,000	\$3,000
Donations, Naukati Functions	\$2,950	\$2,950	\$2,950
Fish tax	\$2,828	\$2,828	\$2,828
Mobile Home	\$2,400	\$2,400	\$2,500
Forestry Grant	\$1,250	\$1,250	\$1,250
S.E.R.E.M.S.	\$1,166	\$1,166	\$1,166
Capital Projects Matching Grant	\$13,158	\$13,158	\$0
Total	\$181,087	\$232,087	\$215,029

The Petitioner lists 14 sources of revenue in its proposed city budget. Commerce has examined each of the Petitioner's revenue projections and offers the following comments.

(1) Forest Receipts.

Based on current funding levels and the Petitioner's projection that the City of Naukati would maintain 16 miles of roads, Commerce estimates that the annual national forest receipts payment to the prospective City of Naukati would be \$55,968. However, if the proposed city boundaries are reduced as recommended

by Commerce, the 1.6-mile long Forest Service road 2000660, which was included in the Petitioner's figure of 16 miles of roads, would no longer be in the city. That would reduce the projected payment to \$50,371 based on current data.

It is also noted that the current law providing for funding expires next year. Proposals to extend the program are pending in Congress. Media accounts indicate that the Bush Administration would support reauthorization of the program on the condition that the \$350 million annual cost can be covered in the federal budget through equivalent cuts elsewhere.

If the current program is not reauthorized, Commerce estimates that funding for recipients would likely be reduced by 80 to 90 percent beginning in Fiscal Year 2008.

(2) 4% bed tax.

What is informally referred to by the Petitioner as a four-percent “bed tax” is actually a four-percent bed tax/vacation package tax. The Petitioner estimates that the proposed four-percent tax would generate \$35,960 annually. Of that, the Petitioner projects that the El Capitan Lodge in the Sarkar Cove area would generate \$32,000, or 89 percent of the total anticipated proceeds from the tax. As reflected in the previous examination of standards, Commerce recommends smaller boundaries for the proposed city. Those recommended boundaries do not include the El Capitan Lodge.

In the event that the Commission reaches a different conclusion regarding the need to reduce the Petitioner’s proposed boundaries, Commerce offers the following comments regarding the Petitioner’s assumptions with respect to the taxes that might be generated by the El Capitan Lodge. First, the Petition (Petition, p. 5) indicates that the projections were based on information “obtained from the owner of the El Cap Lodge.” In a sworn affidavit included in the Respondent’s Responsive Brief, the owner of the El Capitan Lodge states:

Contrary to the comments in the Petition, I did not provide any petitioner with financial information concerning the lodge business. At no time prior to the filing of the Petition was I advised that the community

of Naukati was looking to El Capitan Lodge to provide tax revenue for the proposed city of Naukati.

Based on information allegedly provided by the owner of the Lodge, the Petitioner projects that the El Capitan Lodge generates \$800,000 in business that would be subject to the tax. The Petitioner indicates that the figure is “conservative.”

To raise the tax revenues projected by the Petitioner during the 153-day tourist season noted in the Petition, the El Capitan Lodge would have to generate \$5,229 in taxable business daily. Current rates charged by El Capitan Lodge are as follows:

7 days of fishing, 7 nights - \$4,800
(\$686 per night);

4 days of fishing, 4 nights - \$3,400
(\$850 per night);

3 days of fishing, 3 nights - \$2,800
(\$933 per night).



El Capitan Lodge signage.

The average daily cost for the three options is \$823. Discounts are available for groups. As noted previously, the Lodge accommodates 16 individuals, but more could be served if booked as a group.

The package rates include round-trip transportation from Ketchikan to El Capitan Lodge (a 40-minute trip by seaplane each way); all meals and beverages (except liquor); accommodations, use of boots, rain gear, and fishing equipment; nine hours of guided fishing each day; vacuum packaging and freezing of each guest's catch; and fishing licenses for each guest. Commerce anticipates that any attempt to levy a tax on that portion of the vacation package that relates to services provided outside the boundaries of the taxing jurisdiction would likely result in a successful challenge.

At a minimum, the value of the flight to and from Ketchikan, nine hours of fishing each day (which presumably occurs outside the boundaries of the proposed city), and the use of boots and rain gear would likely have to be excluded from the proposed tax.

Commerce is aware that other local governments face these same types of issues. For example, lodges in the Lake and Peninsula Borough that offer weekly packages ranging from \$3,000 to \$5,000 or more generally assert that the portion of the package that is subject to the Borough's bed tax is on the order of \$100 per day.

The El Capitan Lodge typically accommodates up to 16 individuals. If the lodge was full each night for the 153-day season, each of the 16 nightly guests would have to spend an average of approximately \$327 per night for accommodations and food. Those assumptions may not be reasonable.

If the LBC concurs with Commerce's recommendation regarding the boundaries, the Petitioner's projected local tax revenues decrease by \$32,000 annually.

(3) Shellfish Nursery.

Commerce's Fisheries Development Specialist recently visited Naukati. He was consulted in terms of the Petitioner's projected expenses and revenues relating to the shellfish nursery. The Fisheries Development Specialist concluded that the estimated revenues and expenditures were reasonable.



Oyster floating upweller system (FLUPSY) in Naukati.

(4) Organizational grant.

AS 29.05.180 provides that each newly formed city is entitled to an organization grant of \$50,000 for the first year after incorporation and an additional grant of \$25,000 for the second year. The funds are administered by Commerce. The Petitioner's projections for funding are equal to the entitlement that would be granted to the city.

(5) Land Sale.

It is not unreasonable to anticipate that, with full cooperation from the prospective city, some of the general grant lands could be conveyed to the City by the third year of operation. The Petitioner's projected revenues from land sales appears reasonable. The examination of recent land sales in Naukati demonstrates that there is a reasonably strong demand for land in Naukati.

(6) Payment in Lieu of Taxes (PILT).

The federal government provides payments in lieu of taxes to local governments that contain certain federally-owned lands. Payments are intended to help offset losses in property taxes due to nontaxable federal lands within municipal boundaries. The U.S. Department of Interior administers the payments to boroughs and Commerce administers federal PILT payments to cities within the unorganized borough. Commerce projects the prospective City of Naukati would be entitled to \$18,137 in PILT funds. That figure is based on a population of 107 (the 2004 population estimate for the Naukati Bay CDP) and FY 2006 funding levels.

The projected level of funding is \$1,137 higher than the Petitioner's projection of \$17,000.

Future payments will vary and would be affected by various things including the city's population, the census area's population, PILT funding levels, changes to the amount of acreage of federal lands within the census area, and whether the Ketchikan Gateway Borough's (KGB) proposed annexation is approved.

(7) R.V. Park.

The Petitioner projects that the new city would generate \$12,000 in revenues from the R.V. Park during the first year. That figure is projected to climb by \$1,000 in each of the two following years.³³ Commerce considers the Petitioner's projections to be reasonable.

(8) Harbor fees.

The Petitioner projects that a \$10 monthly moorage fee will be paid for each of 25 boats. The Petitioner's projection of \$3,000 annually from that source appears to be reasonable.

(9) Donations, Naukati Functions.

The Petitioner projects that the City would generate just under \$3,000 in donation and for "Naukati Functions." The

³³ The revenue projections noted here are listed on page 16 of the Petition. Commerce notes, however, that the Petition projects on page 6 that R.V. Park revenues would only be \$7,100. Commerce understands that figure to be a net revenue projection (R.V. Park expenses are projected to be \$4,900 on page 16).

Petitioner notes that services provided by Naukati West, Inc., are funded in part by income and revenues from such. Given that circumstance, Commerce accepts the figure as reasonable.

(10) Fish tax.

Commerce administers a program that provides for annual sharing of State fisheries business license fees and taxes collected outside of municipal boundaries by Department of Revenue to municipalities that can demonstrate they suffered significant effects from fisheries business activities. Based on a review of prior funding, Commerce considers the Petitioner's projection to be accurate.

(11) Mobile Home Rental.

According to the Petitioner, the projected income is based on current rental rates. The figure appears to be reasonable.

(12) Forestry Grant.

Public Law 95-313, Sec. 7 provides for a 50-50 matching grant. Funding is limited to \$7,500 per fire department. Officials of the Department of Natural Resources indicate that the Naukati Volunteer Fire Department has requested and received grants for the last several years in amounts similar to \$1,250 projected in the Petition. Funding levels depend on federal funding determined on an annual basis. The Petitioner's projected level of funding is considered to be reasonable.

(13) S.E.R.E.M.S.

The Southeast Region EMS Council, Inc., provides "mini-grants" for emergency medical services training and supplies.



Former VPSO housing in Naukati.

Naukati has received the grant funding from SEREMS for the past 5 years. There is a 75-25% match for supplies. For training, the mini-grant pays 100% (no match required). Actual grant amounts vary depending on the number of communities that receive funding. The \$1,166 listed in the Petition is the same that was granted last year. SEREMS officials consider the projection to be reasonable.

(14) Capital Projects Matching Grant.

Funding for this program was eliminated beginning in Fiscal Year 2004. Program funds appropriated prior to the termination of funding remained available to communities for a limited period. However, at this time, no capital matching grant funds are available for Naukati.

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

In terms of the feasibility and plausibility of the budget, Commerce notes that federal and State law would limit the expenditure of national forest funding

in this case to road maintenance alone. The Petitioner budgeted \$35,000 for road maintenance, yet the Petitioner anticipated receiving \$57,000 in funding from that program. That creates a \$22,000 disparity in the Petitioner's budget.

Based on the boundaries proposed by the Petitioner, Commerce estimates that national forest funding would amount to \$55,968. If the proposed city boundaries are reduced as recommended by Commerce, the estimated national forest funding would drop to \$50,371. Given the limitations on the expenditure of funds, the projected road maintenance costs must match the level of revenue from that source.

Adoption of Commerce's recommended boundaries would also eliminate nearly 90 percent of the Petitioner's projected bed tax revenues. As noted below, Commerce concludes that a property tax appears to

be a viable option to replace the proposed bed tax as a significant source of locally generated revenue.

Commerce also notes that the Petitioner included one-time sources of revenue in its budget. In particular, such sources include \$75,000 in organization grants, and \$26,316 in capital matching grants (as noted earlier, the latter is no longer available).

(e) The Economic Base of the Proposed City.

Principal components of Naukati's economic base include aquaculture, tourism, forestry, and heavy construction. Census data concerning occupations of Naukati civilian employees is provided in Table 3-4 in the prior analysis of the community standard. Tables 3-5 and 3-6, also provided with respect to the analysis of the community standard, address Naukati employment and worker classifications. That same section of the report includes Tables 3-9 through 3-11, which provide information regarding businesses operating in Naukati.

Although a number of businesses operate in the community, the Petitioner states on page seven of the Petition, "The annual value of retail sales of goods and services in the territory proposed for incorporation that could be subject to a sales tax levied by the prospective city is estimated



Liquor store in Naukati.

to be \$300,300.00.” Commerce assumes despite inclusive language, the figure does not include sales relating to overnight accommodations and vacation packages, which the Petitioner estimates total \$899,000 annually. (Petition, p. 5.)

As noted above, the Petitioner estimates that the El Capitan Lodge generates \$800,000 in transactions that would be taxable. If the El Capitan Lodge is excluded as recommended by Commerce, the residual level of taxable trade estimated by the Petitioner would be \$399,300 (\$899,000 - \$800,000 + \$300,300). A five percent general sales tax on that level of business activity would generate just under \$20,000 annually.

(f) Property Valuations of the Proposed City.

The Petitioner estimates that the value of taxable property within the territory proposed for incorporation is nearly \$14.4 million. Table 3-18, summarizes the Petitioner’s estimate of that value.

Because Commerce views a property tax as an option to generate local revenues for the prospective Naukati city government, detailed observations about the reasonableness of the Petitioner’s estimate are provided in the following subsections.

Table 3-18. Petitioner’s Estimate of the Value of Taxable Property.

Component	Petitioner’s Estimated Value	Basis for the Estimate
Inland Lots	\$1,993,670	284.81 acres @ \$ 7,000/acre.
Waterfront Lots	\$2,357,500	94.3 acres @ \$ 25,000/acre.
Industrial Sites	\$507,040	63.38 acres @ \$ 8,000/acre.
Housing Units	\$6,160,000	77 x 1000 square feet @ \$80/square foot.
Commercial Development	\$2,180,310	9,959 square feet of non-lodging buildings at \$90/square foot = \$896,310. Lodge and accommodations are estimated to be 10,700/ square feet at \$120/square foot = \$1,284,000.
Boats	\$441,000	Commercial fishing boats, charter, sport fishing boats and skiffs
Vehicles	\$66,500	133 vehicles @ \$500 each
Equipment	\$470,000	Construction equipment
Aircraft	\$180,000	Aircraft
Total	\$14,356,020	

(1) Value of Land.

As reflected in Table 3-18, the Petitioner's projection for the value of taxable property was partially based on the estimate that there are 442.49 acres of taxable land within the proposed city boundaries. Commerce considers that figure to be understated.

The Respondent's brief (Responsive Brief, p. 10) indicates that the Sarkar Cove area alone encompasses 300 acres of private land. Moreover, according to the *Prince of Wales Area Plan*, small amounts of private land also exist on the southern tip of the western island in the Kassin Islands and either side of Naukati Creek.³⁴ Further, the Naukati core area encompasses 556.29 acres of subdivided properties (excluding rights-of-way) listed in Table 3-1.³⁵

Of course, at the time that the Petition was filed, Naukati Bay Subdivision West Addition No. 1 had not been platted and lands in that subdivision remained in State ownership. According to the Petitioner, however, nearly all properties in the remaining subdivisions in the Naukati core area were in private ownership at the time the Petition was filed. The Petitioner indicated that all of the lots in the Naukati

Bay Subdivision West had been sold, 33 of 35 parcels in the Naukati Bay Subdivision East had been sold, and 20 of the 24 lots in the Naukati Commercial and Naukati Industrial Subdivisions had been sold. (Petition, pp. 22 - 23.) Thus, nearly all of the 395.46 acres in those four subdivisions had reportedly been conveyed at the time that the Petition was filed.

Since then, the State of Alaska has subdivided and sold additional lands in the Naukati core area. In the spring of this year, the Alaska Department of Natural Resources held a land auction in which it offered for sale 18 parcels in Naukati Bay Subdivision West Addition Number 1. Those 18 parcels comprised 48.31 acres. Qualifying bids were received for 12 of the 18 parcels. The 12 parcels that sold at auction comprised 32.75 acres.

While understated for the 44 square miles within the Petitioner's proposed boundaries, the Petitioner's estimate of 442.49 acres of taxable property appears to be reasonably close to the amount of such property within Commerce's recommended boundaries. It is conceivable that the Petitioner's figure inadvertently excluded the Sarkar lands and other privately owned lands outside the Naukati core area. Given the additional land sales that occurred in the spring of this year, Commerce estimates that 450 acres of taxable land exist within the agency's recommended boundaries.

In terms of value, the Petitioner estimated that waterfront lots were valued at \$25,000 per acre. Six of the parcels sold in the spring auction noted above

³⁴ The property on either side of Naukati Creek consists of 14.56 acres conveyed to Sealaska Corporation under Sections 14(h)(1) and 14(h)(7) of the Alaska Native Claims Settlement Act, and would not be taxable unless developed.

³⁵ Not all of the subdivided land is privately owned. Relatively small portions of Naukati Bay Subdivision West are dedicated for public use such as the school.

were waterfront properties. On average, those six properties sold for \$24,131 per acre. That figure is within an acceptable value range (less than 3.5 percent) of the Petitioner's estimate that waterfront property in Naukati had a taxable value of \$25,000 per acre.

One Naukati waterfront parcel is currently listed for sale through Island Realty, a commercial realty located in Craig. That property is a 1.78-acre lot listed for \$85,000, which equates to nearly \$48,000 per acre.

The remaining six parcels that sold at the spring auction noted above were upland properties. On average, those parcels sold for \$15,418 per acre. That figure is substantially more than the Petitioner's esti-

mate that "inland" lots in Naukati had a taxable value of \$7,000 per acre. It is also substantially more than the Petitioner's estimate that commercial property had a value of \$8,000 per acre.

In addition to the 12 Naukati Bay Subdivision West Addition No. 1 properties, one 2.78-acre parcel in Naukati Bay Subdivision East was offered in the spring auction. The minimum bid on that parcel was \$15,000; it sold for \$20,550. The sale price was 37 percent above the minimum bid. The property sold for the equivalent of \$7,392 per acre.

The winning bids for the 13 parcels that sold at the auction totaled \$677,175. The results of the auction are summarized in Table 3-19.

Table 3-19. Listing of Naukati Parcels Sold at Spring 2005 DNR Auction.

Parcel No.	Subdivision	Lot	Block	Acres	Minimum Bid	Winning Bid
1005	NBE	7	4	2.78	\$15,000	\$20,550
1006	NBW-A#1	4	6	2.56	\$25,300	\$42,800
1007	NBW-A#1	5	6	2.54	\$25,100	\$37,200
1008	NBW-A#1	6	6	2.53	\$26,300	\$49,010
1009	NBW-A#1	9	7	2.7	\$53,200	\$55,105
1010	NBW-A#1	10	7	2.46	\$48,500	\$60,000
1011	NBW-A#1	11	7	2.43	\$47,900	\$69,010
1012	NBW-A#1	11	8	3.13	\$53,200	\$56,000
1013	NBW-A#1	12	8	3.28	\$53,000	\$90,000
1014	NBW-A#1	13	8	3.41	\$55,100	\$90,000
1015	NBW-A#1	1	9	2.09	\$21,900	None
1016	NBW-A#1	2	9	2.18	\$22,900	\$27,500
1017	NBW-A#1	3	9	2.15	\$22,600	None
1018	NBW-A#1	1	10	3.52	\$35,100	None
1019	NBW-A#1	2	10	2.6	\$27,300	None
1020	NBW-A#1	3	10	2.71	\$28,500	\$40,000
1021	NBW-A#1	4	10	2.82	\$29,600	\$40,000
1022	NBW-A#1	5	10	2.6	\$27,300	None
1023	NBW-A#1	6	10	2.6	\$27,300	None

"NBE" refers to Naukati Bay Subdivision East; NBW-A#1 refers to Naukati Bay Subdivision West Addition No. 1. The six waterfront parcels are numbered 1009 - 1014.

Six other upland properties in Naukati Bay Subdivision West Addition No. 1 that were offered in the spring auction did not receive qualifying bids at the time. On average, the minimum bid for those properties was \$10,379 per acre. Those properties were subsequently made available by the Department of Natural Resources for purchase “over-the-counter” at the minimum bid listed in the spring auction. Each of the six parcels sold over-the-counter within one month. At an average sale price of \$10,379 per acres, those six parcels sold for a price well above the Respondent’s general estimate of value.

A map showing the Naukati Bay Subdivision West Addition No. 1 properties offered in the spring auction is included in this report as Figure 3-12.

In 1998, 2003, and 2004, the Alaska Mental Health Trust Authority sold at auction 14 lots in Naukati Bay Subdivision West and Naukati Bay Subdivision East. Those 14 lots, comprising 27.53 acres, sold for nearly \$600,000. The sale price for those lots ranged from the equivalent of just under \$7,200 per acre to more than \$52,000 per acre. An overview of the sales data is provided in Table 3-19 on the following page.

Figure 3-12. Naukati Bay Subdivision West, Addition No. 1, ASLS 2004-3.

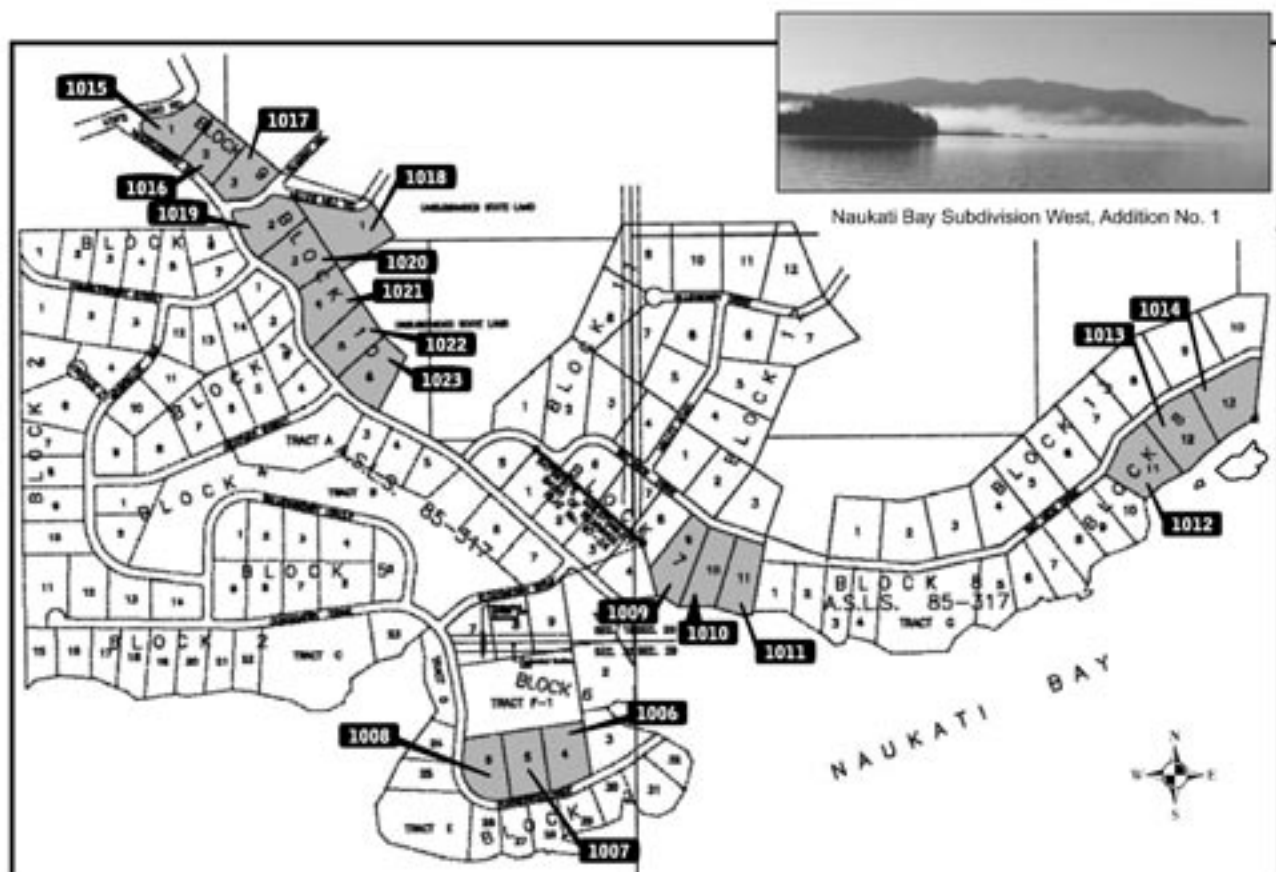


Table 3-19. Alaska Mental Health Trust Authority Land Sales in Naukati 1998 - 2004 (Ranked in Ascending Order of Price Per Acre).

Year	Subdivision	Lot	Block	Acres	Price	Price per Acre
1998	NBE	2	3	3.28	\$23,503	\$7,166
1998	NBW	11	3	1.8	\$16,750	\$9,306
1998	NBW	7	2	1.83	\$18,600	\$10,164
1998	NBW	14	2	1.88	\$21,951	\$11,676
2004	NBW	2	2	2.16	\$27,202	\$12,594
1998	NBW	9	3	1.97	\$26,280	\$13,340
1998	NBE	11	3	1.64	\$23,500	\$14,329
2003	NBW	8	8	2.11	\$32,890	\$15,588
2003	NBE	10	3	1.65	\$27,778	\$16,835
2003	NBW	10	8	1.87	\$36,500	\$19,519
2003	NBE	1	2	1.83	\$75,000	\$40,984
2004	NBW	4	7	2.4	\$110,000	\$45,833
2004	NBW	25	2	1.88	\$91,400	\$48,617
2004	NBW	32	2	1.23	\$64,133	\$52,141
Total				27.53	\$595,487	\$21,630

In conclusion with respect to the taxable value of land within Commerce's recommended boundaries, the Petitioner's estimate that waterfront property is worth approximately \$25,000 per acre appears reasonable. The Petitioner's estimate that inland residential lots are valued at \$7,000 per acre and that commercial and industrial lands are valued at \$8,000 per acre may be understated given land sales noted above. For purpose of this analysis, Commerce utilizes the Petitioner's figures as a low, but acceptable, value range.

(2) Value of Housing Units.

As reflected in Table 3-18, the Petitioner indicates that the territory proposed for incorporation encompasses 77 housing units, each averaging 1,000 square feet of living area.

The 2000 Census counted 78 housing units in the Naukati Bay CDP. According to the census data, those homes collectively comprised an estimated 298 rooms as listed in Table 3-7.

The Petitioner projects that the houses in the territory proposed for incorporation have an average value of \$80 per square foot. The Petitioner applied that unit value to the estimated 77,000 square feet to project

taxable value of the homes, excluding land, to be \$6,160,000.

Just over half of 76 homes in the Naukati Bay CDP (41) were occupied by owners at the time of the 2000 Census. Those homeowners were asked to estimate the value of their homes (including land). The results are shown in Table 3-20 on the following page.

It is stressed that the State Assessor in Commerce does not rely upon census data for models used to determine the taxable value of property. While the census data provides an indication of the number of housing units, self-reporting of values is not considered to be reliable.

As noted above, 41 of the 76 housing units in the Naukati Bay CDP were owner occupied at the time of the last census.

Table 3-20. Owners' Estimates of Value of Owner Occupied Homes.

Number of Owner-Occupied Units	Range in Census Data of Owner-Occupied Estimated Value	Minimum Total Value Extrapolated from the Census Data	Maximum Total Value Extrapolated from Census Data	Median Total Value Extrapolated from Census Data
13	Less than \$10,000	\$0	\$130,000	\$65,000
2	\$15,000 to \$19,999	\$30,000	\$39,998	\$34,999
2	\$20,000 to \$24,999	\$40,000	\$49,998	\$44,999
3	\$40,000 to \$49,999	\$120,000	\$149,997	\$134,999
2	\$50,000 to \$59,999	\$100,000	\$119,998	\$109,999
5	\$70,000 to \$79,999	\$350,000	\$399,995	\$374,998
3	\$80,000 to \$89,999	\$240,000	\$269,997	\$254,999
2	\$100,000 to \$124,999	\$200,000	\$249,998	\$224,999
6	\$150,000 to \$174,999	\$900,000	\$1,049,994	\$974,997
3	\$300,000 to \$399,999	\$900,000	\$1,199,997	\$1,049,999
Total 41		\$2,880,000	\$3,659,972	\$3,269,986

Source for the first two columns on the left: U.S. Census Bureau, 2000 Census of Population & Housing, Summary File 3.

Produced by: Alaska Dept. of Labor & Workforce Development, Research & Analysis, Census & Geographic Information Network.

Data from the first two columns were extrapolated by Commerce to produce the three columns to the right.

Twenty of the remaining 35 were occupied by renters. The median gross rent paid by renters in Naukati at the time of the last federal census was estimated to be \$450 per month.

In the absence of other more reliable data, that figure might offer some broad sense of the value of those 20 rented homes.³⁶

Using a gross rent multiplier in the range of 80 to 120 times the monthly gross rental income of the property to determine the value of income-producing property, produces an estimated value range for those homes of \$36,000 to \$54,000 each. Applying that range of values to the 20 rental units yields a total value range of \$720,000 to \$1,080,000.

³⁶ The income approach is an analysis based on the relationship of value as related to the market rent that a property can be expected to earn. It is stressed that Federal Housing Administration guidelines indicate that the income approach is rarely used to determine the value of a home that will be financed by an FHA insured loan unless it is an income producing property (such as a triplex or four-plex). Further, the relationships of value to the market rent vary widely depending upon many factors. Still, examples of the value of income producing property typically fall in the range of 80 to 120 times the monthly gross rental income of the property. This application of the income approach is termed the "gross rent multiplier."

Seventeen of the 71 homes in the Naukati Bay CDP were vacant at the time of the last federal census. Six of the vacant housing units were mobile homes. The median value of mobile homes in Naukati at the time of the 2000 Census was reported to be \$9,999. Using that figure for the six mobile homes results in a value of approximately \$60,000. The remaining nine vacant housing units were single family homes. For purposes of this review, it is assumed that those homes had half the value of the rental units (\$18,000 to \$27,000).

(3) Commercial Development.

The Petitioner estimates that commercial development in the territory proposed for incorporation had a taxable value of nearly \$2.2 million at the time the Petition was filed. That consisted of an estimated 9,959 square feet of commercial property (excluding lodges and other overnight accommodations), which was valued at \$90 per square foot. It also included an estimated 10,700 square feet of commercial lodging valued at \$120 per square foot.

Commerce found no current listings of commercial property for sale in Naukati. However, in January 2005, Naukati Connection was listed for sale by Remote Properties, LLC, of Anchorage. The listing indicated that the property was located on 1.45 acres. The property was described as follows:



Store in Naukati.

The store has it all from your favorite fishing lures or fresh vegetables, milk, etc. (which is delivered to the store twice a week), to staple food, pizza, soft drinks or an outboard motor (Dealership for Nissan outboard motors), satellite dish or a pipe fitting, tools or cigarettes, it's all there and a lot, lot more!!!

There is a full retail liquor store, supplying locals as well as tourists, lodge guests or hunters and basically the whole northern part of the island with your favorite brew or rye.

Last but not least, this is the only gas station, diesel or propane refilling place on the north end of the island. . . .

. . .

The Store is apr. 38'x 40' with a 40'x 12' daylight basement storage area and a metal roll up door for the delivery truck. In the store there is also

a contract Post Office with 112 mail-boxes and a pending contract is just under negotiation (possible income \$10-15,000.- a year).

The store has handicap access with a restroom and the building has fire marshal approval and a new DEC approved fuel and gas tanks are in the process of being installed.

The asking price of \$395,000.- is truly a bargain (inventory extra), and is even more attractive since the owner would finance a portion.

Assuming that the listing was accurate in terms of the size of the building and that it also generally reflected the market value of property, the listing price suggests the Petitioner's projections are conservative.³⁷ The listing indicates that Naukati Connection comprises 2,000 square feet on 1.45 acres. At \$90 per square foot for the building and \$8,000 per acre for the land, the Petitioner's figures would yield a taxable value of \$191,600 for the development. Commerce is aware that the listed price typically reflects the top of the market. Commerce also understands that the listing price will also include an intangible "business value" that is not subject to a property tax. However, even taking these two factors into consideration, the value placed upon commercial property by the Petitioner seems conservative when compared to the listed price of that particular property.

Given the Petitioner's description of businesses operating in Naukati (see, in particular, Reply Brief, pp. 18 - 21), the

collective size of the commercial developments listed in the Petition seems reasonable.

(4) Vehicles, Boats, Equipment, and Aircraft.

The Petitioner estimates that there is \$470,000 in taxable equipment in the territory proposed for incorporation. That figure seems reasonable as the Petition describes a number of heavy machinery and timber contractors in the territory. Those include High Drive Drilling and Blasting, TRUCO, Shovel Boy Logging, Island Timber and Stone, and Baskets Heavy Equipment and Repair.

The Petitioner estimates that the territory proposed for incorporation encompasses 133 vehicles valued at \$500 each. The 2000 Census reported that of the 61 occupied housing units in Naukati, 4 had no vehicles, 23 had 1 vehicle, 29 had 2 vehicles, and 5 had 3 or more vehicles. The census data accounted for at least 96 vehicles. As such, the Petitioner's estimate of the number of vehicles seems reasonable. The value of each vehicle estimated by the Petitioner (\$500) seems conservative. The State Assessor's valuation models used to estimate the taxable

³⁷ In terms of accuracy of the listing, Commerce notes that the Petitioner's Reply Brief (Reply Brief, p. 18) indicates that Naukati Connection is a 3,200 square foot business. If the Reply Brief is correct, the Petitioner's \$90 per square foot value for commercial space and \$8,000 per acre for commercial property would suggest a taxable value of \$299,600. Commerce is unaware of whether the listed property sold.

value of motor vehicles on a statewide basis requires a breakdown by category. Each category is valued differently. The average value used in the State Assessor's model for a car is \$4,000 and the average value for a pickup is \$6,000. Those model values are based on assessments of vehicles by various municipalities in the past. Nonetheless, Commerce adopts the figure estimated by the Petitioner. Similarly, the Petitioner's figures for boats and aircraft appears reasonable. Models used by the State Assessor for these two categories require more information than was provided in the Petition so a comparison to the models used by the State Assessor cannot be made.

Using the Petitioner's estimated population (110) and estimated value of taxable property (\$14,356,020), the per capita value of taxable property in the territory proposed for incorporation would be \$130,509. Exclusion of the Sarkar Cove area might be reasonably projected to drop that figure to \$121,755.³⁸

If the Petitioner's estimate of value is correct, a property tax of three mills (three-tenths of one percent of the value) would raise more revenue than the Petitioner's projection for the bed tax. A property tax would enable the prospective city to operate in a fiscally sound manner.

Of course, preparation of the initial assessment roll would represent a significant cost. That cost could be paid from the previously noted organizational grants. The purpose of those grants expressly stated

in law is to "to defray the cost of transition to city government and to provide for interim government operations."

Preparation of the initial assessment roll would entail documenting ownership of all properties in the taxing jurisdiction, determining actual use and tax status of

³⁸ Most significantly, the Sarkar Cove area includes El Capitan Lodge. No specific estimate of the value of that particular property was been provided by the Petitioner. However, the Petitioner estimated that the value of all commercial lodging facilities in the territory proposed for incorporation, including El Capitan Lodge, totaled \$1,284,000.

The El Capitan Lodge is a premier remote facility. It is a chalet-style lodge, with private cedar cabins. Each cabin has a separate bedroom and a full bath, equipped with hot and cold running water, 24-hour electricity and separately controlled heating units. The lodge generally accommodates up to 16 guests. Larger groups can be accommodated if booked as a single party. The lodge includes a cedar recreation room with a lounge and fireplace.

In addition to El Capitan Lodge, four other commercial accommodations are listed in the Petition. Those are Red Cedar Cabins, (1 cabin rental) Naukati Cabins, (3 cabin rentals) Outback Bunkhouse, (20 room rentals) and Naukati Adventures (1 cabin rental). Given the comparative general sizes and descriptions of the commercial lodging facilities, Commerce assumes that El Capitan Lodge represents three-quarters of the Petitioner's estimate of the value of commercial lodges in the territory proposed for incorporation. That would amount to \$963,000. Reducing the Petitioner's estimate of \$14,356,020 in taxable value by that amount results in an adjusted figure of \$13,393,020. That figure, divided by 110, yields an estimated per capita value of \$121,755.

each of those properties, identifying characteristics of the property, and collecting sales data. Valuation models must then be developed and applied. Next, property owners would be notified of the value determinations. The property owners are then allowed to appeal the assessment.

There are several contractors in the state that can provide this service at a more affordable rate. The State Assessor estimates that the initial year setup for assessment costs, from a contractor, will run between \$30,000 and \$40,000. The continued maintenance of the rolls, after the initial setup, should cost between \$2,000 and \$7,000 per year.

Commerce notes 38 municipal governments in Alaska levied property taxes in 2004. At the time, those thirty-eight municipalities were inhabited by 578,182. That figure represented nearly 90 percent (89.2 percent) of all Alaskans.

The thirty-eight municipalities that levied property taxes consisted of twelve organized boroughs, thirteen cities within organized boroughs, and thirteen cities in the unorganized borough. Three cities in the unorganized boroughs with populations under 200 levy property taxes. The per capita value of each of the municipalities that levied property taxes in 2004 is shown in Table 3-21.

Table 3-21. 2004 Per Capita Value of Each Property Tax Levying Alaskan Municipality.

Municipality	2004 Population	2004 Full Value Determination	2004 Per Capita Full Value
Organized Boroughs			
Matanuska-Susitna Borough	67,526	\$4,845,713,010	\$71,761
Fairbanks North Star Borough	82,131	\$5,907,617,440	\$71,929
Kodiak Island Borough	13,797	\$1,032,002,600	\$74,799
City & Borough of Yakutat	690	\$54,183,000	\$78,526
Ketchikan Gateway Borough	13,533	\$1,117,297,100	\$82,561
Municipality of Anchorage	273,565	\$22,651,130,210	\$82,800
City & Borough of Sitka	8,897	\$770,420,100	\$86,593
Haines Borough	2,319	\$220,647,300	\$95,148
City & Borough of Juneau	31,246	\$3,099,578,200	\$99,199
Kenai Peninsula Borough	51,398	\$5,511,891,850	\$107,239
Bristol Bay Borough	1,103	\$131,475,100	\$119,198
North Slope Borough	7,228	\$10,624,537,620	\$1,469,914
Total Population and Value; Average Per Capita Value	553,433	\$55,966,493,530	\$101,126
Cities in the Unorganized Borough			
City of Nenana	385	\$18,254,300	\$47,414
City of Nome	3,414	\$206,289,200	\$60,424
City of Dillingham	2,390	\$154,173,900	\$64,508
City of Craig	1,495	\$102,029,500	\$68,247
City of Wrangell	2,123	\$148,303,900	\$69,856
City of Cordova	2,298	\$189,368,880	\$82,406
City of Unalaska	4,374	\$378,713,800	\$86,583
City of Eagle	126	\$11,184,700	\$88,767
City of Petersburg	3,079	\$274,188,100	\$89,051
City of Pelican	113	\$14,119,900	\$124,955
City of Whittier	173	\$40,504,342	\$234,129
City of Skagway	844	\$222,929,000	\$264,134
City of Valdez	3,935	\$1,223,456,660	\$310,917
Total Population and Value; Average Per Capita Value	24,749	2,983,516,182	\$120,551
Cities Within Organized Boroughs			
City of Houston	1,351	\$74,200,600	\$54,923
City of Fairbanks	29,002	\$1,751,903,800	\$60,406
City of Seldovia	431	\$28,216,100	\$65,467
City of Kenai	7,123	\$502,522,080	\$70,549
City of Palmer	5,267	\$389,816,700	\$74,011
City of Ketchikan	7,989	\$660,810,800	\$82,715
City of Homer	5,865	\$497,201,500	\$84,774
City of Kachemak	478	\$42,564,600	\$89,047
City of Kodiak	6,113	\$563,015,400	\$92,101
City of Seward	2,745	\$270,343,000	\$98,486
City of Wasilla	6,387	\$645,983,100	\$101,140
City of Soldotna	3,992	\$422,180,800	\$105,757
City of North Pole	1,609	\$338,628,600	\$210,459
Total Population and Value; Average Per Capita Value	78,352	\$6,187,387,080	\$78,969.10

Using the estimated \$121,755 per capita figure, Naukati would compare favorably with many local governments that currently levy property taxes.

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

Naukati's economy revolves around tourism, timber, aquaculture, and heavy construction. Commerce is unaware of any significant changes with respect to any of those industries in the Naukati area.

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

During the last federal census, 64 households in the Naukati Bay CDP reported income in 1999. Figure 3-13 compares Naukati and the state as a whole in terms of percentage of households that earned various levels of income.

(i) Land Use for the Proposed City.

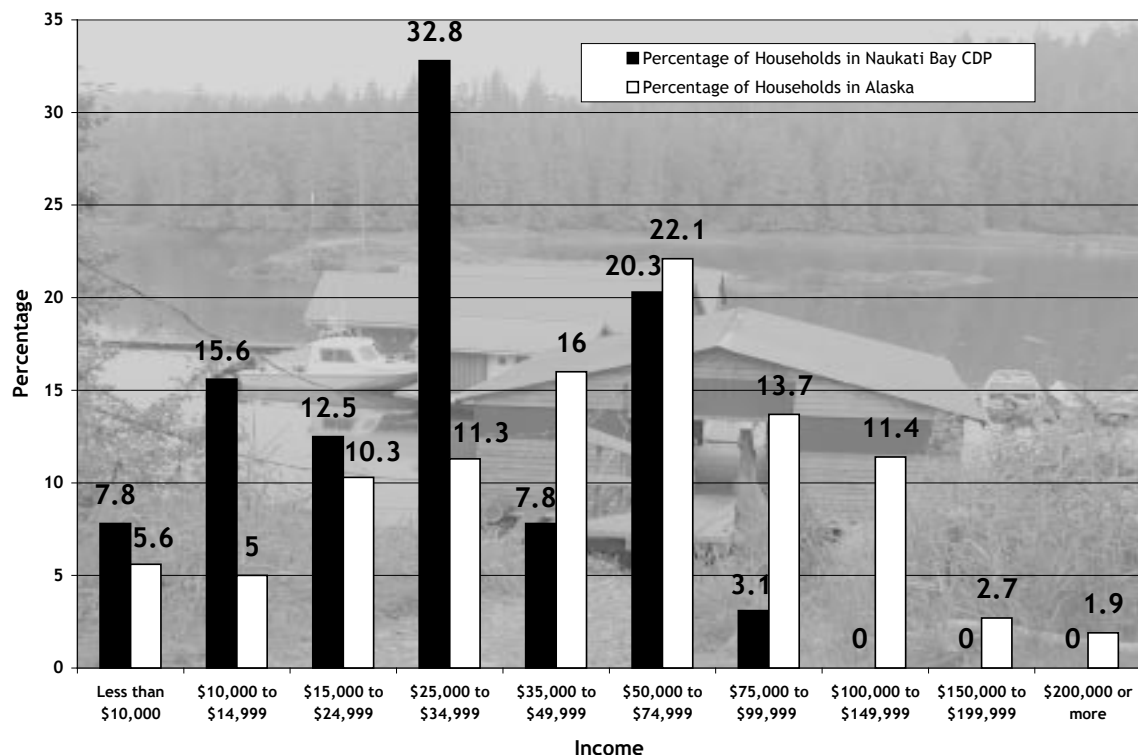
Land use was addressed extensively in the analysis of the community and boundaries standards. No further analysis of land use is offered here.

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

According to the 2000 Census data, 76.0 percent of the Naukati Bay CDP population 25 years of age or older graduated from high school and 8.3 percent completed a bachelor's degree or higher.

In Alaska as a whole, 88.3 percent of Alaskans 25 years of age or older graduated from high school. That figure is 12.3

Figure 3-13. 1999 Household Income in Naukati Bay CDP and Alaska.



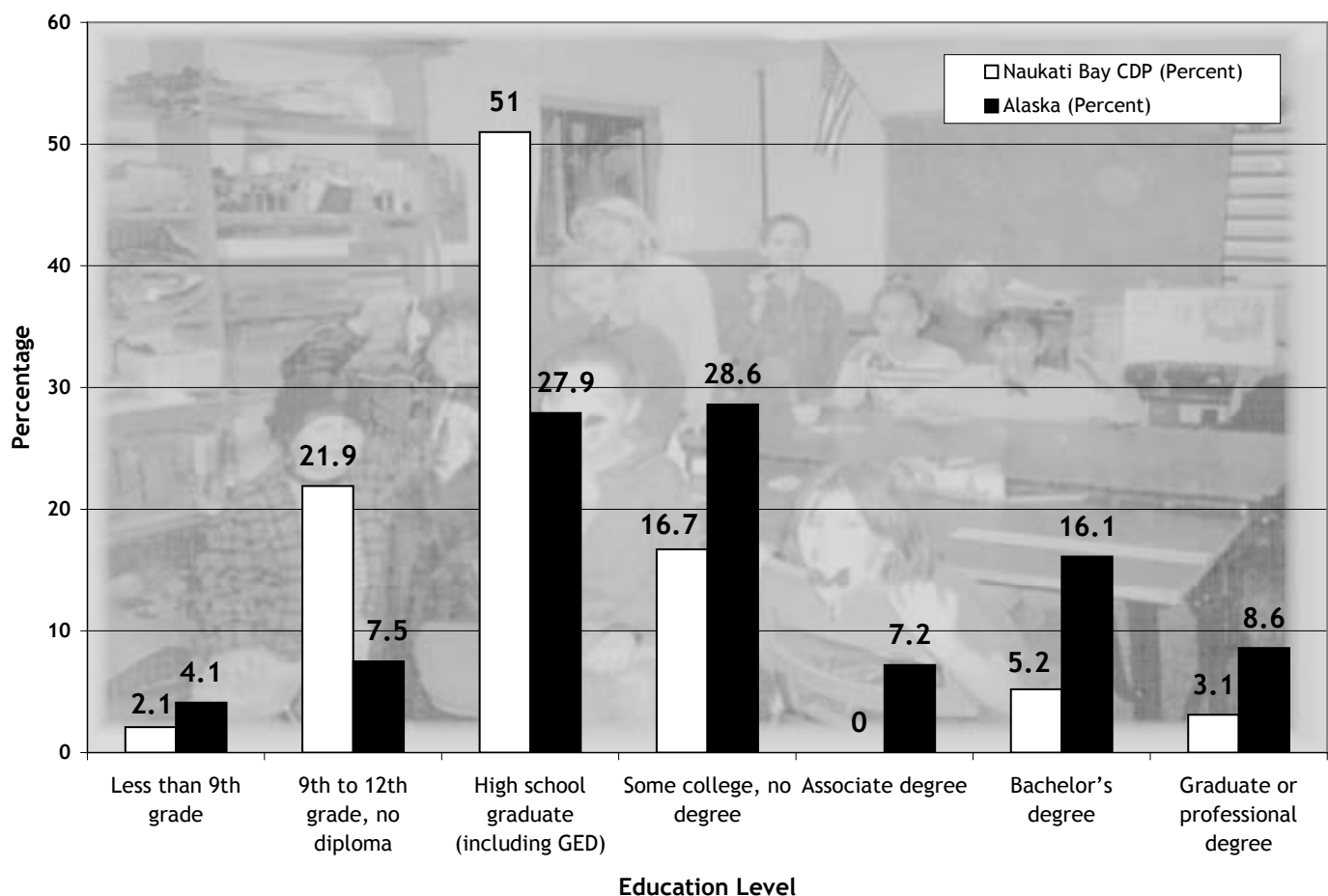
percentage points greater than the comparable figure for Naukati. The 2000 Census also indicates 24.7 percent of Alaskans at least 25 years old completed a bachelor's degree or higher, which is 16.4 percentage points higher than the figure for Naukati Bay CDP.

Figure 3-14 provides comparisons for Naukati and the entire state for all educational levels reported in the 2000 Census data.

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

Residents of Naukati have operated two community associations (organized as a non-profit corporation) for many years. By filing the Petition for incorporation and the Petitioner's Reply Brief, residents of Naukati have reasonably demonstrated interest in forming a city. However, they have not necessarily demonstrated the willingness to provide significant gen-

Figure 3-14. Educational Attainment of Population 25 years of Age and Older.



eral financial support for the prospective city. Of noteworthy importance, the Petitioner's Reply Brief states on page 6 that "Naukati residents have stated that 'they do not want property or a sales tax'."

Commerce concludes that a property tax will be necessary to ensure financial viability of the proposed city, particularly if the boundaries are reduced as recommended by the agency.

(I) Other Considerations.

As noted at the beginning of this chapter, contemporary accounts of local governments facing severe financial and managerial difficulties abound. Those accounts are often based on reports from State and federal agencies regarding financial and management difficulties of city governments in Alaska.

On March 2, 2005, Commerce's Division of Community Advocacy reported to the Commerce, Community, and Economic Development Subcommittee of the Alaska State Senate Finance Committee that nine city governments have ceased day-to-day operations. That report also indicated that 18 city governments "have extreme managerial or financial problems ... severe enough that they could be considered to be insolvent." It further identified 39 city governments "that have significant financial problems." In total, the March 2 report identified 66 city governments that were experiencing financial or management problems. (See memorandum from

Director of the Division of Community Advocacy to Senate Finance Committee, March 2, 2005.)

On July 7, 2005, Commerce's Division of Community Advocacy prepared an internal report which indicated that 82 communities, 70 of which are incorporated as city governments, "may be at risk for significant problems during the winter of 05-06." The report identified communities using seven different "indicators of potential problems."³⁹ Sixty of the sixty-six city governments listed in the March 2 report were also listed in the July 7 report. Ten other city governments not listed in the March 2 report were listed in the July 7 report. (See *Communities Potentially At Risk*, undated and unsigned, but prepared and transmitted by Regional Office Supervisor, Division of Community Advocacy, July 7, 2005.)

In a letter dated July 12, 2005, the Sustainable Utilities Working Group of the Denali Commission identified seven "distressed rural Alaska communities," all of

³⁹ The indicators were for communities that (1) "have been significantly behind in repaying a fuel loan, or that were not deemed credit worthy to receive a fuel loan," (2) reported a shortage of fuel in the past year, (3) have had "payroll tax debt to either the State or Federal government within the past 12 months," (4) have no workers' compensation insurance or have received notice that such insurance coverage will be terminated if late payments are not received, (5) are more than 60 days past due on payment for electrical services; (6) are reported by Commerce staff as "having significant financial issues," and (7) are self-reported as "having significant financial issues."

which are incorporated city governments. Those communities reportedly face the prospect that local utility services will be terminated this winter unless financial and management concerns are resolved. Six of the seven cities identified in the July 12 letter are also listed in the March 2 or July 7 reports noted above. (See letter from B. B. Allen and Kurt Fredriksson, Denali Commission Sustainable Utilities Working Group, July 12, 2005.)

Cumulatively, the three reports list 77 separate city governments that are experiencing significant financial or management difficulties, which amounts to just over half (52.7 percent) of all city governments. A list of risk cities and the three reports referred to above are included in this report as Appendix D. From Appendix D materials, certain summary observations are offered below regarding the cities reportedly experiencing severe financial and managerial difficulties including comments regarding population size, city classification, borough affiliation, and location within six broadly defined regions of Alaska.

- ◆ Most populous of the 77 cities reportedly experiencing difficulties: 1,014.
- ◆ Among the 77 cities reportedly facing difficulties, the number with fewer than 500 residents: 57.
- ◆ Among the 77 cities reportedly facing difficulties, the proportion that have fewer than 500 residents: 74 percent.
- ◆ Among all 89 cities in Alaska that have fewer than 500 residents, the proportion reportedly facing difficulties: 64 percent.
- ◆ Among the 77 cities reportedly facing difficulties, the number with fewer than 200 residents: 24.
- ◆ Among all 38 cities in Alaska that have fewer than 200 residents, the proportion reportedly facing difficulties: 63 percent.
- ◆ Number of second-class cities reportedly facing difficulties: 74.
- ◆ Among all 114 second-class cities in Alaska, the proportion reportedly facing difficulties: 65 percent.
- ◆ Number of cities in the unorganized borough reportedly facing difficulties: 55.
- ◆ Among all 98 cities in Alaska's unorganized borough, the proportion reportedly facing difficulties: 56 percent.
- ◆ Number of second-class cities in the unorganized borough with fewer than 200 residents that are reportedly facing difficulties: 17.
- ◆ Among all 26 second-class cities in Alaska's unorganized borough with fewer than 200 residents, the proportion that are reportedly facing difficulties: 65 percent.
- ◆ Number of cities in organized boroughs reportedly facing difficulties: 22.
- ◆ Among all sixteen organized boroughs, number of boroughs in which cities are reportedly facing difficulties: 4. Those four boroughs are: Kodiak Island Borough in which 3 of 6 cities (50 percent) are reportedly facing difficulties; Lake and Peninsula Borough in

which 4 of 6 cities (67 percent) are reportedly facing difficulties; North Slope Borough in which 6 of 7 cities (86 percent) are reportedly facing difficulties; and Northwest Arctic Borough in which 9 of 10 cities (90 percent) are reportedly facing difficulties.

- ◆ Among all 48 cities in organized boroughs, the proportion reportedly facing difficulties: 46 percent.
- ◆ Number of second-class cities in organized boroughs with fewer than 200 residents that are reportedly facing difficulties: 6.
- ◆ Among all 11 second-class cities in Alaska's organized boroughs with fewer than 200 residents, the proportion that are reportedly facing difficulties: 55 percent.
- ◆ Proportion of cities in general regions of Alaska reportedly facing difficulties:
 - Railbelt: 0 percent (0 of 13);
 - Southeast/Prince William Sound: 22.7 percent (5 of 22);
 - Southwest/Aleutians: 41.4 percent (12 of 29);
 - Interior (excluding Railbelt): 52.2 percent (12 of 23);
 - Yukon-Kuskokwim Delta: 80.8 percent (21 of 26);
 - North/Northwest: 81.8 percent (27 of 33).

Among the prior observations, two stand out with particular relevance to this proceeding. First, Alaska's least populous city governments are reportedly experi-

encing severe financial and management difficulties. No city with more than 1,100 residents is reportedly facing significant financial or managerial difficulties.

Second, the presence of financial or managerial difficulties vary by region. Specifically, no city in the Railbelt is facing severe financial difficulty and fewer than 23 percent of the cities in the southeast Alaska/Prince William Sound region are facing acute difficulties. In contrast, more than four out of every five city governments in both the Yukon-Kuskokwim Delta and North/Northwest regions of Alaska are reportedly experiencing great financial or managerial difficulties.

The reasons for the reported circumstance are numerous and complex. There are a host of fundamental factors that influence the viability of local governments in Alaska. Among them are the health of the local economy, cost of living, local tax effort, economies of scale regarding delivery of services, mandatory duties of the local governments, discretionary functions of local governments, and interest among residents in sustaining their local government.⁴⁰

Another fundamental factor - one that AML and the media have focused on almost exclusively - is State financial assistance. While general financial assistance for all local governments in the form of State Revenue Sharing and Safe Communities

⁴⁰ This discussion is not intended to provide a comprehensive list of all of the factors that influence the viability of local governments.

funding ended in Fiscal Year 2003, a number of city governments still receive significant amounts of other State aid and federal aid administered by the State.

For example, cities in the unorganized regions of southeast Alaska receive significant funding from the National Forest Receipts Program.⁴¹ Sixteen cities in the unorganized regions of southeast Alaska received \$4,429,957 in such funding for FY 2005. Another example of such funding is the State Shared Business Fisheries Tax program. In Fiscal Year 2004, the State of Alaska shared \$8,141,086 under that program with 41 of Alaska's 146 city governments. Of that, \$954,610 was paid to 13 cities in southeast Alaska.

In comparison, city governments in the north and northwest regions of Alaska receive no National Forest Receipts funding. North and northwest cities that do receive Fisheries Business Tax Shared Revenues, receive minimal amounts. That circumstance may explain, in part, why relatively few cities in southeast Alaska are having difficulties compared to other parts of the state.

However, few, if any, absolute conclusions can be drawn in terms of the causes of the reported financial and managerial difficulties. One might intuitively sense, for example, that city governments that receive significant State or federal financial support, have minimal local responsibilities, and serve moderately sized populations would be flourishing. However, that is not always the case. For example, as noted above, six of seven city governments in the North Slope Borough are

among the cities experiencing significant difficulties that are listed in both March 2 and July 7 reports by Commerce. It is noteworthy that those six cities constitute nearly eight-percent of the 77 cities reported to be having difficulties. Yet, those six cities have minimal duties; they provide few, if any, of services that could be reasonably described as "essential city services," as that term is defined under 3 AAC 110.970.⁴²

⁴¹ Cities in the unorganized borough near the Chugach National Forest also receive funding under the National Forest Receipts program. However, the level of such funding is a small percentage (approximately 1.5 percent) of that available to cities in the unorganized borough in or near the Tongass National Forest in southeast Alaska. Cities not in or adjoining either the Chugach or Tongass National Forests receive no funding under the program.

⁴² All seven of the cities are located within an organized borough that has substantial financial resources and which provides essential services to the communities. *Alaska Municipal Officials Directory - 2005*, lists the "municipal facilities and utilities" of each of the six cities in question as follows:

City #1: "Bingo/Pull Tabs, Room Rentals, Community Center, Recreation and Cable TV."

City #2: "Community Hall, Dock, and Cable TV."

City #3: None listed.

City #4: "Kalgi Building, Bingo and Cable TV."

City #5: "Cable TV, Recreation, Concessions and Bingo/Pull Tabs."

City #6: "Bingo/Pull Tabs and Recreation."

Moreover, three of those six city governments receive significant funding under the National Petroleum Reserve - Alaska Impact Mitigation Grant Program to support their local government operations. Specifically, in FY 2006, three of the cities will receive more than \$1 million (\$1,022,968) under the program in question. Further, each of the three cities has a moderately sized population (546, 433, and 228 for a total of 1,207 at the time of the 2000 Census). The FY 2006 aid is equivalent to nearly \$850 per capita (\$847.52).

It is also noted that significant interest in dissolving each of the nine cities in the Northwest Arctic Borough that today are reportedly experiencing difficulties was expressed at least as early as the 1980s. Such interest stemmed, in part, for the preference among some residents for tribal governance at the community level in concert with regional governance through an organized borough. During the 1980s, funding for State Revenue Sharing and Municipal Assistance was at its peak. From 1981 to 1990, the State appropriated a total of \$1,188,647,146 for the two programs - an average of nearly \$120 million annually.

The bottom line is that determining whether communities have the human and financial resources to successfully



Housing in west Naukati.

operate a city government is a complex matter. Substantial State and federal assistance does not guarantee success.

6. Conclusion by Commerce.

Commerce concludes that the budget presented in the Petition does not reasonably appear to provide adequate financial resources to operate the proposed city. That is especially the case if the LBC concurs with this agency's recommendation that the boundaries of the proposed city be reduced.

While Commerce is well aware of the Petitioner's position that "Naukati residents . . . do not want property or a sales tax," Commerce considers a property tax to be necessary to render the incorporation Petition viable. Even that assumes that the Petitioner's estimates of the value of taxable property in the territory are reasonably accurate.

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:⁴³

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

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 page 3 and under Exhibit H of the Petition. On page 3 and within Exhibit H, the Petitioner reports the following:

The number of permanent residents living within the territory proposed for incorporation is estimated to be: (2002) State Demographer is 110. While the 2000 Census recorded 135, we have done a house by house bed count on December 7, 2003 and actually have 144 with 11 persons being part time (summer time residents). These last figures do not reflect the residents in the El Cap/Sarkar subdivision. This is a 93% year round residency. We have a D.N.R. land sale of 56 lots coming up for sale in the spring of 2005, which could increase our population and economic base. Naukati has a 4.1 million-dollar K through 12 schools being built in 2004 the ground-work has already begun... The community of Naukati has a population of 135 persons in 67 households.

⁴³ 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).

3. Responsive Brief and Petitioner's Response.

The Responsive Brief did not address this particular standard.

4. Public Comments and Petitioner's Response.

No public comments were submitted that directly addressed this standard, but several public comments repeatedly affirmed Sarkar area property owners are largely retired seasonal residents that own seasonal vacation homes - not year-round residences. As such, Sarkar area residents report only inhabiting their homes during summer months. The only individual reportedly residing within the Sarkar Subdivision during the non-summer months is the El Capitan Lodge caretaker. Furthermore, only one Sarkar household reports being registered voter of the North Prince of Wales Island voter precinct.

5. Analysis by Commerce.

Under the applicable population standards established in administrative code, Commerce offers the following analysis.

(a) Total Census Enumerations.

As previously noted, 135 individuals inhabited the Naukati Bay CDP and 6 to 27 individuals inhabited the remainder of the territory proposed for incorporation at the time of the 2000 Census.



West Naukati residential housing.

The State Demographer estimates that 107 individuals resided in the Naukati Bay CDP during 2004. Regrettably, no official estimate of the 2004 population is available for the remaining territory proposed for incorporation. The 2004 estimated population of the Naukati Bay CDP represents a loss of 28 individuals (20.7 percent) since 2000.

Comparisons of Naukati's population with those of existing city governments are useful in reviewing the factor at hand. Because a 2004 population figure is not available for the entire territory proposed for incorporation, comparisons are made on the basis of 2000 Census data. Because the precise 2000 population of the territory proposed for incorporation is not available, the comparisons are made for Naukati's 2000 population at both the low end of the range (141) and the high end of the range (162).

Had Naukati been incorporated in 2000, it would have ranked somewhere between the 115th and 121st least populous city government in Alaska out of 147 home-rule, first-class, and second-class cities. Limiting the comparison to just second-class cities, Naukati would have ranked between the 83rd and 89th least populous of 115 second-class cities. Narrowing the field further to just second-class cities in the unorganized borough, had Naukati been incorporated in 2000, it would have ranked between 60th and 65th among 81 such city governments.

In every case, Naukati would rank within or very near the bottom quartile in total population.

(b) Durations of Residency.

Housing characteristics found in the U.S. Census data provide useful information and insight into Naukati resident tenure. According to the 2000 Census, 68.3 percent of the 60 occupied homes in Naukati were inhabited by their owners, a percentage slightly above the statewide average owner-occupied housing rate of 62.5 percent.

Ten years earlier, there were 36 occupied homes in the Naukati Bay CDP. Only 47 percent of those were inhabited by their owners. The increase in the proportion of owner-occupied homes in the Naukati Bay CDP over the following decade amounted to 21 percentage points.

(c) Historical Population Patterns.

A review of historical U.S. Census data provides insight into the Naukati Bay CDP population trends from 1990 to 2004. Specifically, the population of Naukati Bay CDP increased just over 45 percent between 1990 and 2000 with the population growing from 93 to 135 residents.



West Naukati residential housing.

However, the Naukati Bay CDP population trend reversed since the last federal census. According to estimates provided by the State Demographer, the Naukati Bay CDP population has steadily decreased since 2000 with 129 residents in 2001, 111 residents in 2002, 109 residents in 2003, and 107 residents in 2004. Since 2000, the population of the Naukati Bay CDP has declined by 20.7 percent.

Naukati community school enrollment figures echo similar recent declining trends with a 38.9 percent decrease in school enrollment from 2000 to 2004 (Alaska

Department of Education and Early Development). School enrollment figures from 1995 - 2004 are provided earlier in Figure 3-3.

(d) Seasonal Population Changes.

At the time of the 2000 Census, the rental vacancy rate in Naukati was five-percent, nearly equivalent to the statewide average of 7.8 percent. The 2000 U.S. Census also reported that 18 units or 23 percent of the 78 total housing units in Naukati were vacant. Furthermore, vacancies due to seasonal, recreational, or occasional use did not account for any of the vacancies.

Comparing 1990 and 2000 Naukati U.S. Census district housing characteristics reveals certain significant trends. Specifically, total housing units increased from 41 to 78 housing units between 1990 and 2000. Vacancy rates also increased 11 percentage points with 12 percent and 23 percent vacancy rates during 1990 and 2000 respectively. In sum, between 1990 and 2000 total housing units nearly doubled in quantity, but vacancy rates also nearly doubled. Lastly, the proportion of occupied homes in the Naukati Bay CDP that were inhabited by their owners increased by 21.1 percentage points (from 47.2 percent in 1990 to 68.3 percent ten years later).

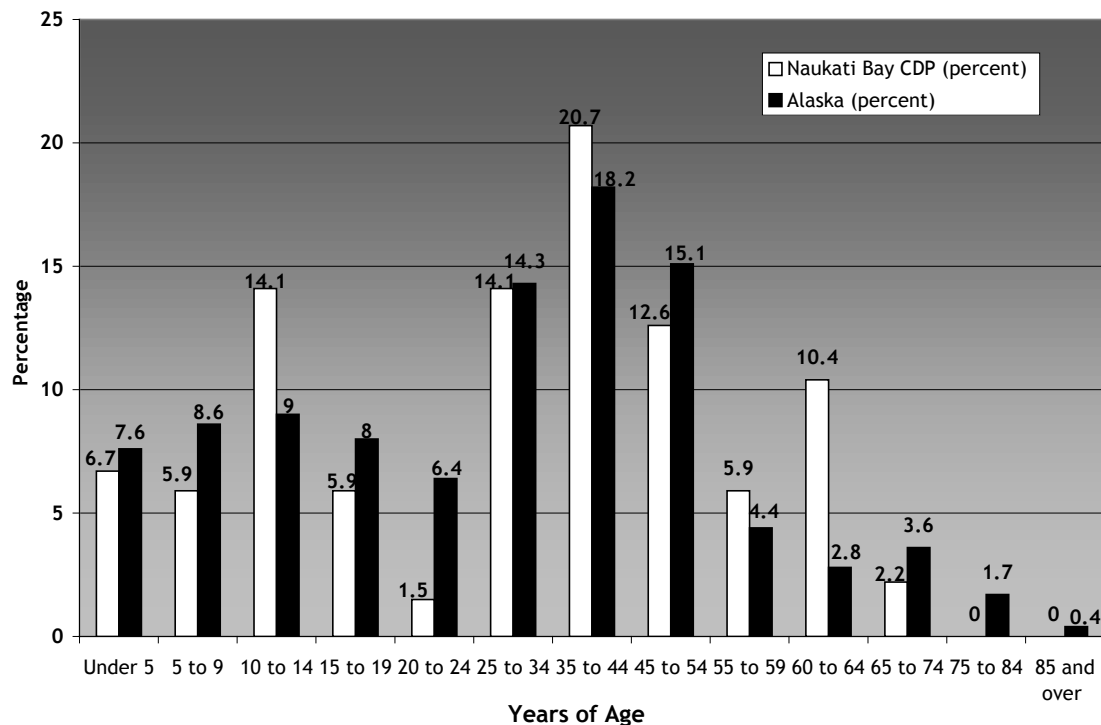
(e) Age Distributions.

In 2000, the median age of a resident of the Naukati Bay CDP was 36.6 years. That was slightly older than the comparable statewide figure of 32.4 years.

The age distribution of Naukati Bay CDP residents is generally representative of statewide figures. Comparisons of the age distributions of Alaska and the Naukati Bay CDP show disparities of more than three percentage points exist in only three of the 13 age categories reported in the 2000 Census. The percentage of residents in the Naukati Bay CDP that were 10 to 14 years of age and the percentage of those 60 to 64 years of age were, respectively, 5.1 and 7.6 percentage points greater than the comparable figures for the entire state. On the other hand, the percentage of Naukati Bay CDP residents that were 20 to 24 years of age were 4.9 percentage points less than the entire state. Figure 3-12 compares the percentage of population of the Naukati Bay CDP and Alaska for each of the 13 different age categories reported in the census.

6. Conclusion by Commerce.

Unlike the case for home-rule and first-class cities, there is no specified minimum population requirement for the incorporation of a second-class city. However, the law does require a minimum of 25 resident registered voters to petition for incorporation of a second-class city using the local option method of incorporation. The community standard addressed previously also requires a settlement proposed for incorporation to have at least 25 permanent residents. With 141 to 162 residents in the territory proposed for incorporation at the time of the 2000 Census and 107 residents in the smaller Naukati Bay CDP in 2004, Naukati meets those two thresholds.

Figure 3-15. 2000 Age Distribution Percentages in Naukati Bay CDP and Alaska.

In terms of stability, the population of Naukati Bay CDP has had significant swings in relative terms. The population increased slightly more than 45 percent between 1990 and 2000, but dropped nearly 21 percent since then. However, measured in absolute terms, the changes seem less dramatic. The population of the Naukati Bay CDP increased by 42 individuals in the decade between the last two federal censuses and has since dropped by 28.

It is noteworthy that nearly two out of every three city governments of the nature proposed in this proceeding (second-class city, fewer than 200 residents, and in the unorganized borough) are reportedly experiencing financial or managerial difficul-

ties. The figure is virtually the same for all city governments in Alaska with fewer than 500 residents.

Alaska's most populous cities are reportedly coping better. None of the 22 most populous cities in Alaska, whose populations range from 1,202 to 30,224, appears on any of the three contemporary reports of troubled city governments. Of the 35 city governments with 500 to 1,200 residents, 57 percent are reportedly experiencing difficulties. That figure is slightly lower than the least populous city governments.

In sum, Commerce concludes that Naukati's population is marginally large and stable enough to support a 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 provided by 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.⁴⁴ 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:

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 Naukati stems from several factors including the following factors: (1) strains on community resource-

⁴⁴ 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.

es stemming from significant economic development and growth in the permanent population since the 1990s; (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 1990s.

The Petitioner asserts that Naukati has experienced substantial economic development and significant population growth during the past two decades. Specifically, the Petitioner asserts (Ex. H, p. 22.):

Many of the residents who have relocated here recently chose Naukati for the lifestyle, the nearness to natural resources, the beauty of the area and for subsistence reasons. Cabins, Bunkhouse, fishing charters, and tours of all types were rapidly established due to the influx of tourists to the region starting in the 1990's and this growth continues.



West Naukati home.

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

The Petitioner indicates that the community's physical infrastructure and volunteer public service providers are hard pressed to continue to effectively provide essential services and facilities including emergency response, roads, and dock facilities. Specifically, the Petitioner states (Ex. H, p. 22.):

During the months of May through September, the population of Naukati increases dramatically with summertime residents returning, small businesses resuming work, and the influx of the many tourists who visit the area. Permanent residents of Naukati number approximately 135, however, the number jumps in the summer. In addition to the residents,

approximately 1,000 tourists visit this small community annually. With the newly paved roads within 10 miles of Naukati it will bring many more tourists to this areas of the Island, as will the new Ferry system being built in Coffman Cove that will bring tourists from the Northern parts of Southeast Alaska. This condition greatly taxes the infrastructure and the fragile services that are mostly provided by volunteers. Naukati Emergency Response, roads, and the small dock in Naukati 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.

(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 (Ex. H, p. 22.):

Naukati currently has Naukati Emergency Response (combined fire and EMS service) for emergencies. The Naukati Emergency Response maintains its cover budget by donations, grants, and volunteers. The income from this service is inadequate to insurance and

other fixed operating costs. Second Class City status would permit NER to enter an insurance pool, receive funding from the City of Naukati, and seek other grants that would permit expansion of their functions to further protect life and property in the area.

(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.

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 (Ex. H, p. 22.) :

Naukati presently has a small dock. There are no regulations or controls over what is presently done on the dock and there is little maintenance of the area due to lack of funds. The dock and boat ramp are almost un-



Naukati dock facility.

usable, and desperately in need of repairs and expansion.

(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 (Ex. H, p. 23.):

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 Naukati increases.

(b) Capacity for Existing City Governments to Serve Naukati.

The Petitioner expresses the view that the isolated nature of Naukati renders the prospect of the delivery of services to the community by an existing city government impractical. Specifically, the Petitioner states as follows (Ex. H, p. 23.):

Naukati is almost alone on the northwest side of Prince of Wales Island except for a small, unorganized community of residents in Point Baker which is about 50 miles away by water. Naukati is one of the only communities of any size on the Prince of Wales Island area that does not have a local



West Naukati housing.

government that can conduct business with the other State, Federal, or City agencies. Craig and Klawock are First Class Cities, while Thorne Bay which is 50 miles away and Coffman Cove which is 40 miles away by the road system are second class cities. The other community in the area is Edna Bay 25 miles away by boat and is very small and has shown no interest in becoming a city of any kind. Naukati has been working on the second-class city status for the past year and has held many meetings to educate the community members. Naukati is ready for the stability and piece of mind that second-class city status would bring. Community members work very hard to keep everything running, and to maintain safe and efficient lifestyle. In addition, Naukati roads are presently being maintained privately in a haphazard, inequitably financed manner. With incorporation, these non-surfaced roads could be maintained much better with money gained through Forest Receipt monies.

3. Responsive Brief.

The Responsive Brief did not provide specific comment regarding this standard.

4. Public Comments.

Public comments did not provide specific comment regarding this standard.

5. Analysis by Commerce.

(a) The Need for City Government in Naukati.

(1) Social or Economic Conditions.

In other recent city incorporation proceedings, the LBC has considered the size of the population of a community as a “social condition” that reflects the need for city government.

As noted previously, the 2000 population of the territory proposed for incorporation was somewhere in the range of 141 to 162 residents. At the time of the 2000 Census, Naukati Bay was among 101 populated CDPs in the unorganized borough. By definition, none of those areas was served by a city or borough government.

The Naukati Bay CDP ranked 32nd among CDPs in the unorganized borough in terms of population at the time of the 2000 Census. In other words, 31 more populous settlements existed as unincorporated territories in the unorganized borough at the time of the last federal census. The



Auto parts salvage yard in Naukati.

two most populous of these were Deltana (population 1,570) and Tok (population 1,393).

Historically, Commerce and the LBC have adopted a liberal approach to application of the need for city government standard.

In terms of “economic conditions,” it is perhaps most noteworthy that as State government policy makers continue to take measures relating to the State of Alaska’s “fiscal gap,” general financial aid to local communities has declined significantly. In recent city incorporation proceedings, the LBC found that there was a need for city government, in part, because of those reductions. That conclusion reflected the fact that in Alaska, only the federal government, State of Alaska, borough governments, and city governments hold taxing authority. With



Road signage directing visitors to businesses in west Naukati.

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

Alaska Department of Environmental Conservation staff advised Commerce that no specific environmental health issues are evident in Naukati. The Petitioner indicates that poor drainage and a raised water table represent a threat to the safety of drinking water in areas with concentrated populations. The Petition contemplates that, in the long-term (beginning in 2015), the City of Naukati would provide water and sewer service.

The Alaska Department of Environmental Conservation indicated that Naukati West, Inc., applied for Fiscal Year 2005 funding for \$100,000 for an "Alternative Water Source and Collection Study."

Fourteen projects with scores ranging from 425 to 650 were recommended for funding. Thirteen projects with scores of 400 or less were not recommended for funding. At 350 points, the Naukati Proposal was not recommended for funding. However, Naukati West, Inc.,

reductions in general government financial support from the State, the need for local support is increased.

As noted above, the Petitioner also indicates that a city government would provide a means of resolving land use conflicts. While expressing that view, however, the Petitioner does not formally propose that the prospective city will exercise municipal planning, platting, or land use powers.⁴⁵

⁴⁵ No mention of such is included in the discussion of powers to be exercised. The budget does include provisions for \$16,000 to be spent for planning in each of the first two years of operation. However, an explanation is provided that the figures represent "[f]ees to be paid for surveying, engineers etc. for planning & improvements."

has received FY 2006 funding to update its community master plan for water and sewer service to individual homes.

(3) Economic Development.

The Petitioner indicates that Naukati has experienced rapid economic development during the past 15 years. Reportedly, some 1,000 tourists visit Naukati each year, mostly from May through September, which is approximately equivalent to 6.5 visitors for each of the 153 days in the tourist season reported by the Petitioner.

With recent and pending transportation improvements, the Petitioner expects the number of visitors to increase. Those improvements include newly paved roads nearby and plans by the Inter-Island Ferry Authority⁴⁶ to begin ferry service between Coffman Cove, Wrangell, and Petersburg in the summer of 2006. Figure 3-16 on the following page shows the planned Inter-Island Ferry Authority route.

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

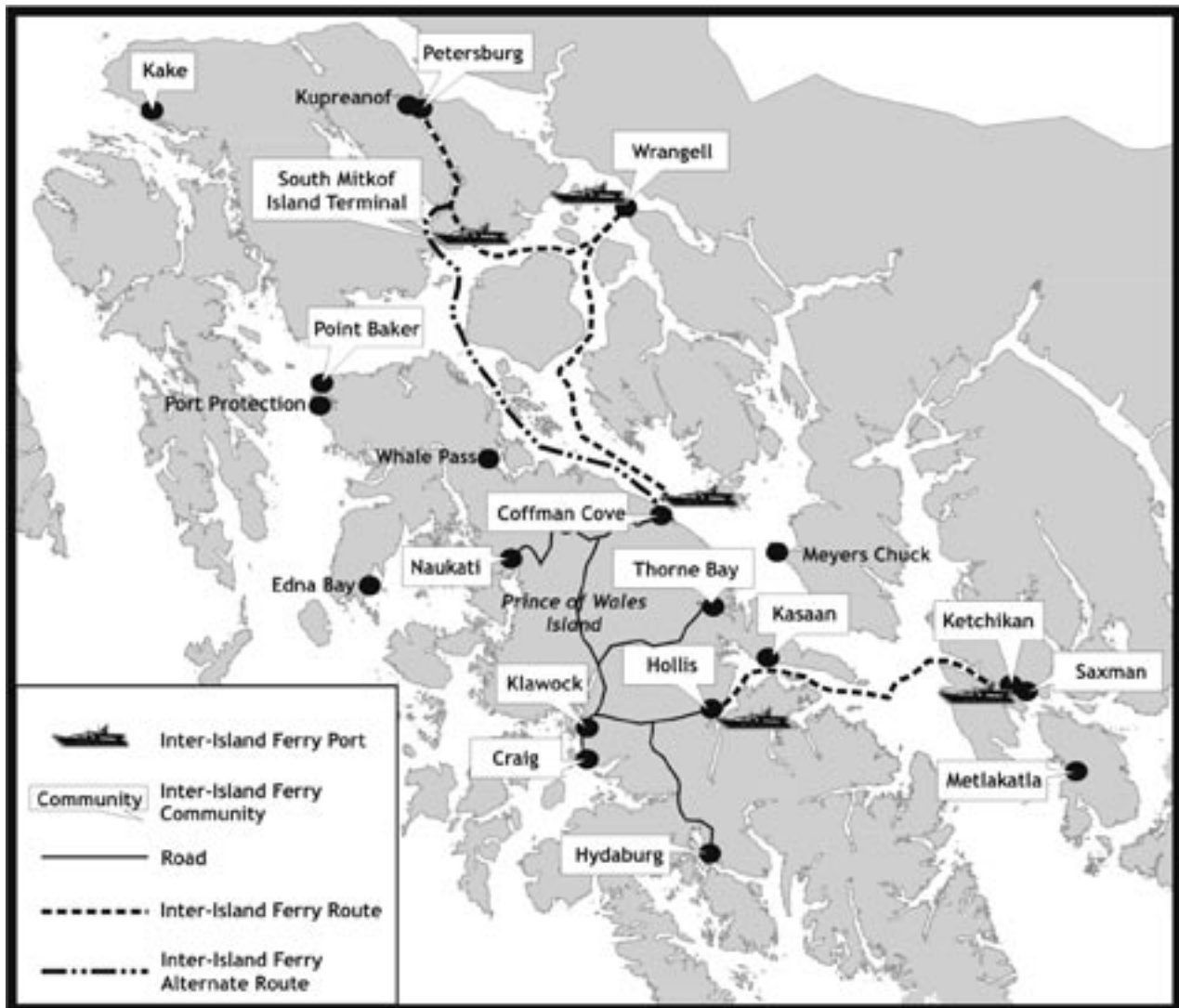
Commerce takes the view that the constitutional principles of maximum local self-government and a minimum of local government units are best achieved through formation of organized boroughs. However, the "maximum local self-government" goal of Article X, Section 1 may be achieved through incorporation of a city government.

Establishment of city governments in the unorganized borough might actually impede formation of organized boroughs over the long-term. As noted in Chapter 1, city governments are prolific in the unorganized borough.⁴⁷ 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 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 concern

⁴⁶ The Inter-Island Ferry Authority (IFA) was formed in 1997 when the Prince of Wales Island cities of Craig, Klawock, Thorne Bay, and Coffman Cove joined in a coalition with Wrangell and Petersburg to create the IFA, which is a public corporation organized under Alaska's Municipal Port Authority Act.

⁴⁷ 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.

Figure 3-16. Inter-Island Ferry Routes.

among some State policy makers. With the exception of the 1963 Mandatory Borough Act, the State of Alaska has maintained a laissez-faire policy regarding borough formation. Given that stance, it would seem unreasonable to consider the potential adverse effect that incorporation of the City of Naukati might have on the prospect for a Prince of Wales Island borough formation over the long-term.

Currently, residents of Naukati must rely on non-municipal entities to provide fundamental public services in the community. Current service providers include the State of Alaska, Southeast Island REAA, Naukati West, Inc., and the Naukati Volunteer Fire Department.

If a city government were formed, it would establish an entity to provide road maintenance, harbor maintenance, and

emergency response. The Petitioner also proposes that the City would provide a shellfish nursery and, in the long-term, water and sewer utilities.

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

The existing city government nearest to Naukati is the City of Coffman Cove. Coffman Cove and Naukati are approximately 32 miles apart and are linked by road.

The substantial distance between Coffman Cove and Naukati, in addition to the limitation-of-community doctrine addressed earlier regarding the boundaries, would seem to render the prospect of annexation of Naukati to the City of Coffman Cove unfeasible. The legal standards for annexation include 3 AAC 110.130(d), which provides 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.

Commerce cannot conceive of circumstances under which the annexation of

the large unpopulated expanse between Naukati and Coffman Cove could be justified under the applicable legal standards.

6. Conclusion by Commerce.

Historically, Commerce and the LBC have taken a liberal approach regarding the need for city government, particularly with respect to unincorporated communities in the unorganized borough. The Petitioner proposes that the prospective city will provide a number of essential services. Those include fire protection, emergency medical service, road maintenance, and harbor maintenance. Other proposed services include a shellfish nursery and recreational vehicle park.

As the prospective city government matures, it may take on added responsibilities. In particular, the Petitioner



Boat launch area at the Naukati dock.

contemplates that the proposed city will take on water and sewer utility service within ten years following incorporation.

Commerce also concludes there is no existing city government with the capacity to serve the local needs of Naukati through annexation. Therefore, the standard set out in AS 29.05.021(a) and 3 AAC 110.010(b) is satisfied.

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

(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 Naukati city incorporation proposal. The Petition (Ex. H, p. 26) states:

The incorporation of the City of Naukati 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 Naukati will take ownership of and provide maintenance for those facilities that support the community as rapidly as the city can assume that responsibility.

3. Responsive Brief.

The Responsive Brief did not provide specific comment regarding this standard.



Development around the old school and dock area.

4. Public Comments and Petitioner's Response.

The only public comment received by Commerce regarding the best interests of the state were those offered by Sarkar area resident Roland Nehring who asserts the following:

The public interest will not be served by including Sarkar within the boundary and such inclusion could very well expose the State of Alaska to substantial risk as the prospective successor to the City of Naukati. Quite simply, Naukati does not have the current or foreseeable economic base to support a city government and needs to substantially mature as a community - or await the imminent creation of the Prince of Wales Island Borough.

Although not directly responding to Roland Nehring's public comment, the Petitioner did assert numerous times throughout the Petition and response to public comment that Naukati is prepared and capa-

ble of evolving into a second class city. Specifically, the Petitioner notes "Naukati is prepared and competent to handle the change that will be made in becoming a second-class city."

5. Analysis by Commerce.

The best-interests standard focuses, in large part, on constitutional principles of local government in Alaska. Commerce'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.

Commerce concurs with the Petitioner's assessment that, "the proposed city will replace the Naukati Community Association to become the only governmental entity in the area." (Petition, Ex. H, p. 26.) As an unincorporated community in the unorganized borough, Naukati currently has no structure for delivery of municipal services. While there is preliminary interest in forming an organized borough for Prince of Wales Island, incorporation of a second class city is the only municipal government option that is currently available to Naukati residents. Commerce asserts the incorporation of the City of Naukati 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.

(b) Relief from Providing Local Services.

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

Once incorporated, the Petitioner proposes the proposed City of Naukati will operate the community's shellfish nursery and provide emergency response, road maintenance, harbor maintenance, and water/sewer utility services. The City of Naukati will also assume all other duties and responsibilities currently performed by the Naukati Community Association. The Petitioner's proposal for the City of

Naukati includes the levying of a bed/vacation package tax (four percent) to help pay for municipal services.

Since 1987, State funding for direct and indirect services to communities has continued to significantly decline.⁴⁸ Of particular importance, the State Revenue Sharing and Safe Communities funding programs were completely discontinued during FY 2004. Thus, while responsible for providing local services in unincorporated communities within the unorganized borough, declining revenues have forced the State to significantly decrease its level of funding for such.

As observed in a recent report by the LBC:

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).

While the above statement was made with regard to borough formation, it is no less applicable to city formation in the unor-

⁴⁸ 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.

ganized borough when there is no existing city or borough to which a community could attach.

While Naukati satisfies the minimum population standard required for incorporation (e.g., settlement inhabited by at least 25 individuals), the stability of the population base has been inconsistent during recent years. Specifically, Naukati has experienced a steady declining population trend during the past four years with a 21% decline between 2000 and 2004. In an era of declining State funding for local services, the community of Naukati is also experiencing a declining population base, which will likely impact the community's ability to generate revenue to support municipal service delivery. Assuming Naukati's population base stabilizes, the population of Naukati is marginally large enough to support the proposed city government, the costs of which will, in significant part, be paid for through local taxes and other means of locally-generated revenue. Incorporation of the City of Naukati, to paraphrase the LBC Report, allows 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 Naukati. This conclusion that the proposed City of Naukati will alleviate the State of the responsibility of providing local services assumes the stabilization of Naukati's recent declining population trend.

(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, Naukati has functioned as a community for many years and has historically qualified for various State financial assistance programs as a legitimate community. Although experiencing a declining population during the past four years, the current population of Naukati community is sufficiently large enough to support the proposed municipality. Once incorporated, it is unknown 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, Naukati would not be allowed to provide a school district⁴⁹ and, thus, would not be faced with education, which is generally the largest category of municipal expense.

⁴⁹ 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.

6. Conclusion by Commerce.

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



Community picnic shelter.

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 Naukati is an unincorporated community within the unorganized borough. For the past 16 years, the Naukati Community Association (NCA)

has been the *de facto* local government in Naukati. The Petition (Ex. F, p. 18) includes a transition plan that describes the method in which NCA's assets, liabilities, powers, and duties will be transferred to the City of Naukati. The Petitioner's proposal reports funds have been budgeted to conduct a formal audit of the NCA books before transfer to the City.

3. Responsive Brief.

The Responsive Brief did not provide comment regarding this standard.

4. Public Comments.

No public comments were received regarding this standard.

5. Analysis by Commerce.

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



Dock area in Naukati.

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 projects that, upon a favorable vote for incorporation of Naukati, the NCA 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 (Ex. J, p. 27) 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.

6. Conclusion by Commerce.

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

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. Statement of non-discrimination. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

In addition to the provisions in State law, the federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. § 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 sub-section (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 (Petition, p.7 and Ex. G) addresses the Naukati city proposal within the context of the federal Voting Rights Act. The Petitioner asserts that it does “not foresee any effect on the voting rights of minorities should the proposed territory incorporate” The Petitioner also reports all residents of Naukati, 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. Responsive Brief.

The Responsive Brief did not address this particular standard.

4. Public Comments.

No public comments were received regarding this standard.

5. Analysis by Commerce.

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”⁵⁰ and 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 jurisdic-

⁵⁰ “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.”

tions 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 five 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.⁵¹ 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 within the district.

6. Conclusion by Commerce.

Given the foregoing, Commerce concludes that no voting qualifications, prerequisites, standards, practices, or procedures will result from incorporation of the City of Naukati 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. Commerce 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 Naukati city proposal.

⁵¹ Using 2000 U.S. Census data, the population, by race, of the area proposed for incorporation is:

Population by Race:

Population in 2000:	135
White	117
Alaska Native or American Indian*	13
Black	1
Asian	3
Hawaiian Native	0
Other Race	1
Two or More Races*	0

*Percent Native: 9.60% (Percent reporting Alaska Native alone or in combination with one or more races)

Chapter 4

Summary of Conclusions and Recommendation

This brief chapter provides a succinct overview of the conclusions reached by Commerce in Chapter 3 based on previously presented analysis. It also presents Commerce's preliminary recommendation to the LBC regarding the Petition.

Naukati is a bona fide community; however, the 44-square mile territory proposed for incorporation by the Petitioner includes substantial territory that cannot

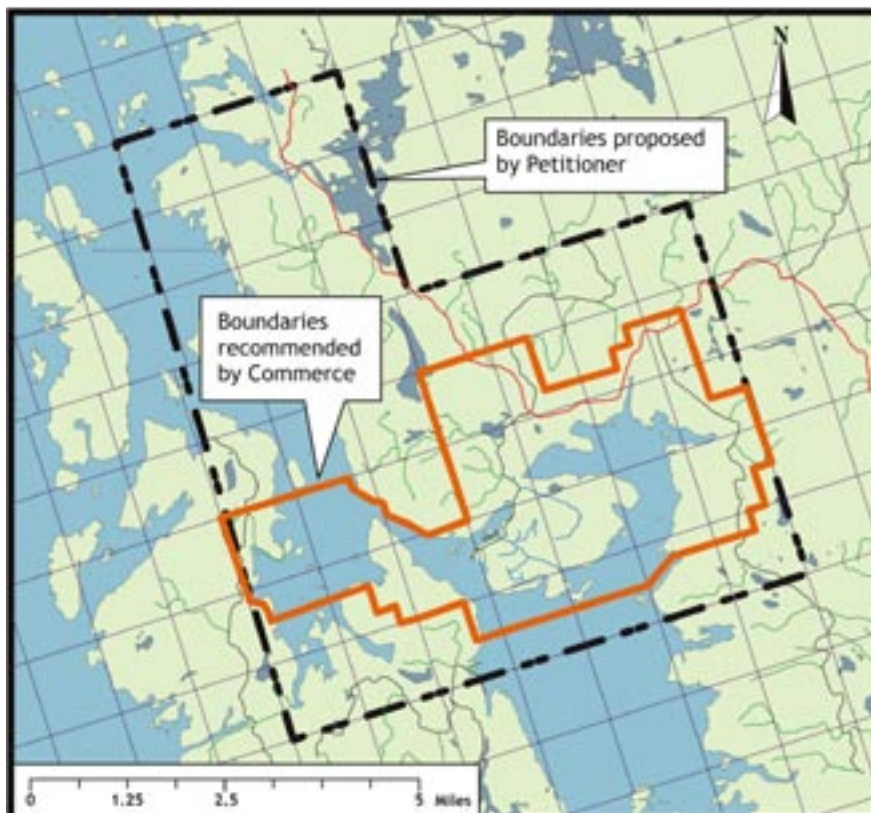
reasonably be said to be part of that community as reflected in the formal standards set out in 3 AAC 110.920.

State laws establishing city boundaries standards, which reflect the "limitation-of-community doctrine," restrict the boundaries of a newly formed city to the existing community, plus territory reasonably anticipated for growth and development within ten years. The law prohibits the inclusion of large undeveloped and uninhabited areas. Those standards compel Commerce to recommend the reduction

of boundaries to those shown on the adjacent map in Figure 4-1.

Commerce has significant concerns with respect to aspects of the Petitioner's proposed budget. In particular, because of restrictions in State and federal law, there is a disparity of some \$20,000 regarding funding for road maintenance. Either the projected costs for road maintenance must increase by the amount of the disparity or the projected revenues must

Figure 4-1. *Petitioner's Proposed and Commerce's Recommended Boundaries for the Proposed City of Naukati.*



be reduced by the amount of the disparity. In a proceeding where total projected revenues are in the neighborhood of \$160,000, a \$20,000 disparity is significant in that it represents about 12.5 percent of the budget. The Petitioner also listed revenues (more than \$26,000 over two years) from capital matching grants, which are no longer available as a source of funding. The Petitioner's budget also treats one-time organization grant funds (\$75,000) as funding to support the routine operations of the city government. Lastly, the Petitioner relies heavily (nearly 90 percent) on the El Capitan Lodge to provide locally generated revenues. The El Capitan Lodge is beyond the boundaries endorsed by Commerce.

It appears, however, that the boundaries recommended by Commerce encompass property that may offer a property tax base that would render the prospective city government economically viable. The Petitioner has stated that Naukati residents do not want property taxes or general sales taxes. Commerce notes that nearly 90 percent of Alaskans currently live within municipal governments that rely upon municipal property taxes to support local services. In this era of demands by some State policy makers for greater local responsibility, Commerce concludes that a property tax may be necessary if Naukati residents wish to pursue city incorporation. Moreover, contemporary reports by State and federal agencies suggest that more than half of Alaska's city governments are experiencing severe financial and managerial difficulties. Considering the current status of many municipalities, Commerce continues to

be vigilant in terms of promoting municipal incorporation of only those prospective local governments that are financially sustainable. Therefore, notwithstanding the local preferences expressed by the Petitioner, a property tax may be the only way to ensure financial viability for the proposed city.

The size and stability of the population of the proposed city is marginally large and stable enough to support the proposed city government.

There is a reasonable need for city government, particularly since Naukati is located within Alaska's unorganized borough.

Incorporation of the proposed city would serve the best interests of the State of Alaska.

The Petitioner provides an adequate plan for transition to the proposed new city government.

Formation of the proposed City of Naukati would not 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. Nor will incorporation of the proposed city deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Based on its analysis and conclusions in Chapter 3, Commerce recommends that the LBC amend the Petition to modify the boundaries as shown above and that the Commission impose, as a condition of incorporation, voter approval of a proposition to authorize the proposed City of Naukati to levy a property tax.

Appendix A

Glossary

This glossary lists terms and acronyms that are used in this Preliminary 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:

"Agglomeration" means the action or process of collecting in a mass or cluster. (Merriam-Webster's Collegiate Dictionary, Tenth Ed., 1999.)

"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 the most general sense, 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, Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, p. 37.)

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

"CDP" refers to census designated place.

"City" means a general law (first-class or second-class city or a home-rule city government. (AS 29.71.800.) It is a municipal corporation and political subdivision of the State of Alaska.

"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).)

"Contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other. (3 AAC 110.990(6).)

"Council" means the governing body of a city. (AS 29.71.800.)

"Commerce" means the Alaska Department of Commerce, Community, and Economic Development (the Department of Community and Economic Development was be renamed as Commerce on September 2, 2004).

"Department" means the Alaska Department of Commerce, Community, and Economic Development.

"Department of Commerce, Community, and Economic Development" means the State agency that serves as staff to the Alaska Local Boundary Commission and also serves as the local government agency mandated by Article X, Section 14 of the Constitution of the State of Alaska.

"Figure" means illustrations, diagrams, charts, maps and drawings. Includes a wide range of graphics whose purpose is to depict parts, functions, relationships, activities, geographic relationships and processes.

"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.

"Local Boundary Commission" is the independent commission established under Alaska's Constitution (Article X, Section 12) to render judgments regarding proposals to alter municipal boundaries. The Local Boundary Commission is one of only five boards of the State of Alaska with constitutional origins.

"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.)

"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" refers to the proposal to incorporate the second class City of Naukati, which was received by the LBC on January 22, 2004. The Petition sought incorporation of an estimated 44 square miles.

"Petitioner" refers to the 44 residents (including their representative) that submitted the petition.

"Political" means pertaining or relating to the policy of the administration or government. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state; as political theories; or pertaining to exercise of rights and privileges or the influence by which individuals of a state seek to determine or control its public policy; having to do with organization or action of individuals, parties or interests that seek to control appointment or action of those who manage affairs of a state. (Blacks Law Dictionary)

"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).)

"Reply Brief" refers to the reply brief filed by the Petitioner with the Local Boundary Commission pursuant to 3 AAC 110.490 on September 11, 2000.

"Respondent" refers to the party who filed a formal Responsive Brief in the proceeding by the deadline of June 15, 2004. The respondent in this proceeding is Scott Van Valin represented by H. Clay Keene, Keene & Currall, Attorneys at Law and James A. Van Altvorst, Van Altvorst & Associates.

"Responsive Brief" refers to the brief filed with the Local Boundary Commission in the original proceeding pursuant to 3 AAC 110.480.

"REAA" means "regional educational attendance area."

"Regional educational attendance area" means an educational service area established and organized under AS 14.08.031 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.

"State" where capitalized, refers to the State of Alaska government (i.e., the corporation); where not capitalized, refers to the geographic area within the corporate boundaries of the State of Alaska.

"Table" means information displays organized by rows and columns.

"Unorganized borough" means areas of Alaska that are not within the boundaries of an organized borough. (AS 29.03.010.)

"VPSO" means Village Public Safety Officer.

Appendix B

It's Time to Fully Implement the Local Government Provisions of Our Constitution.

By Arliss Sturgulewski and Victor Fischer

January 2005

On the eve of the 50th anniversary of Alaska's Constitutional Convention and the beginning of our 46th year of statehood, it is fitting to reflect on how we have implemented our Constitution. For the most part, it seems we have done quite well, with one major exception – fully implementing the local government article.

Framers of Alaska's Constitution provided for a system of boroughs. Boroughs were a new concept, envisioned to provide self-government and public services on an areawide basis. Since statehood, 16 boroughs have been organized in regions as diverse as Anchorage, Kodiak Island, and the North Slope. Half were organized by legislative mandate, while the others formed voluntarily. Organized areas encompass about forty percent of Alaska.

The Constitution requires that the entire state be divided into boroughs – organized or unorganized. Each was to encompass a large, natural region reflecting social, cultural, economic, geographic, and other characteristics. But rather than dividing the state into boroughs, the 1961 legislature simply grouped all non-organized areas into a one unorganized borough, which forms a meaningless glob that stretches from one end of Alaska to the other. Subsequent legislatures have shirked their responsibility to make the system work.

"Thirty years ago, the late Eben Hopson . . . stated: 'If I were governor, organization of regional borough government would become one of my primary goals.' Wise words."



Constitutional provision for unorganized boroughs was made to allow for transition to organized status, and to recognize that some regions might lack the fiscal and administrative capacity to operate boroughs. In either case, the State was to provide services in unorganized boroughs, use them as regional planning units, and allow for maximum local participation and responsibility. It is time for the State to initiate establishment of unorganized boroughs, as required by Alaska's Constitution.

A number of unorganized areas have the capacity to operate boroughs, but their residents have not initiated action to do so. There are serious disincentives to incorporation as a borough.

Continued on back

They include mandates to pay a portion of school operations, inadequate money for organizational planning, lack of assessment data, and concern over school district consolidation.

There are many public policy reasons to promote borough formation. Boroughs provide (1) maximum local self-government, (2) a legal framework for regional services, (3) stable administrative capacity, (4) local responsibility and control over local affairs, (5) accountability to the public, (6) increased local and private land ownership, (7) greater control over education and ability to supplement state school funding, (8) consolidation of school districts, (9) the means for regional alcohol control, (10) ability to promote economic development, (11) a proper role for State government, and (12) greater taxpayer equity.

Boroughs are Alaska's vehicle for regional self-rule. They have proven effective both when they cover urban areas and when they encompass exclusively rural populations. Today, seven out of every eight Alaskans live in organized boroughs, as do two-thirds of all Alaska Natives. Many reside in boroughs where citizens have adopted home rule charters, exercising the ultimate level of self-government.

Action is way overdue to divide this amorphous mass into regional units that make sense. Some years ago, after thorough study and extensive hearings, the Alaska Local Boundary Commission divided the state into "model boroughs." In accordance with the Constitution, the models encompass large, natural regions and reflect social, cultural, economic, geographic and other characteristics.

The time has come to create a series of organized and unorganized boroughs in the rest of the state as set out in the Constitution.

Both State and local leadership will be required to carry out the Constitution's stated purpose "to provide for maximum local self-government". The effort of creating boroughs will be worthwhile, for it will give the people of local communities a real voice in how government touches their lives, as well as pursuing the general public interest.

Thirty years ago, the late Eben Hopson – territorial legislator, State senator, and first mayor of the North Slope Borough – stated: "If I were governor, organization of regional borough government would become one of my primary goals." Wise words.

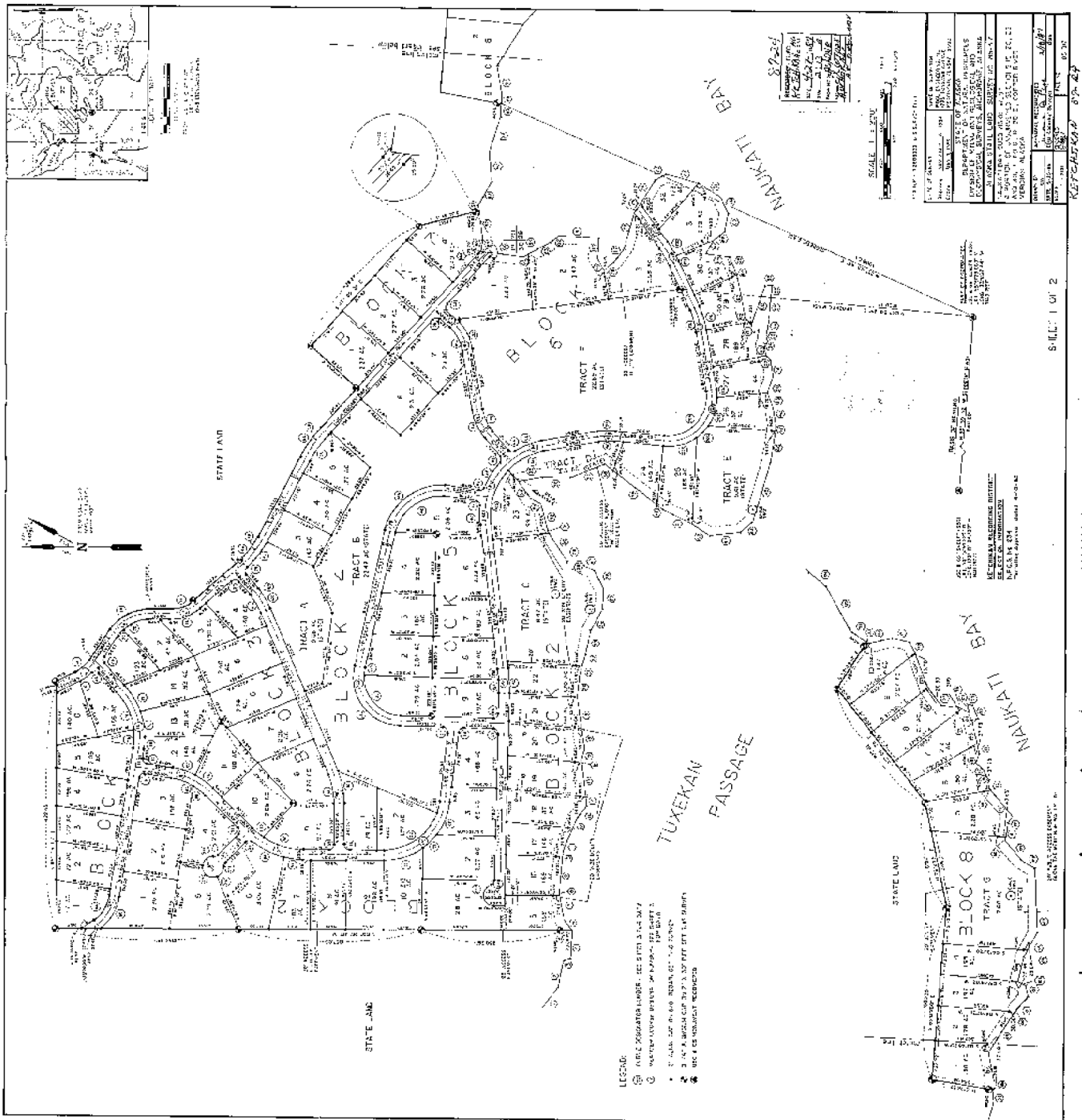
Arliss Sturgulewski is a Republican, and Victor Fischer is a Democrat. Both have expertise in matters of local government; both have distinguished records in terms of public service at the local and state levels, including the Alaska State Senate. Victor Fischer was a delegate to Alaska's Constitutional Convention, where he served as Secretary of the Local Government Committee.

Appendix C

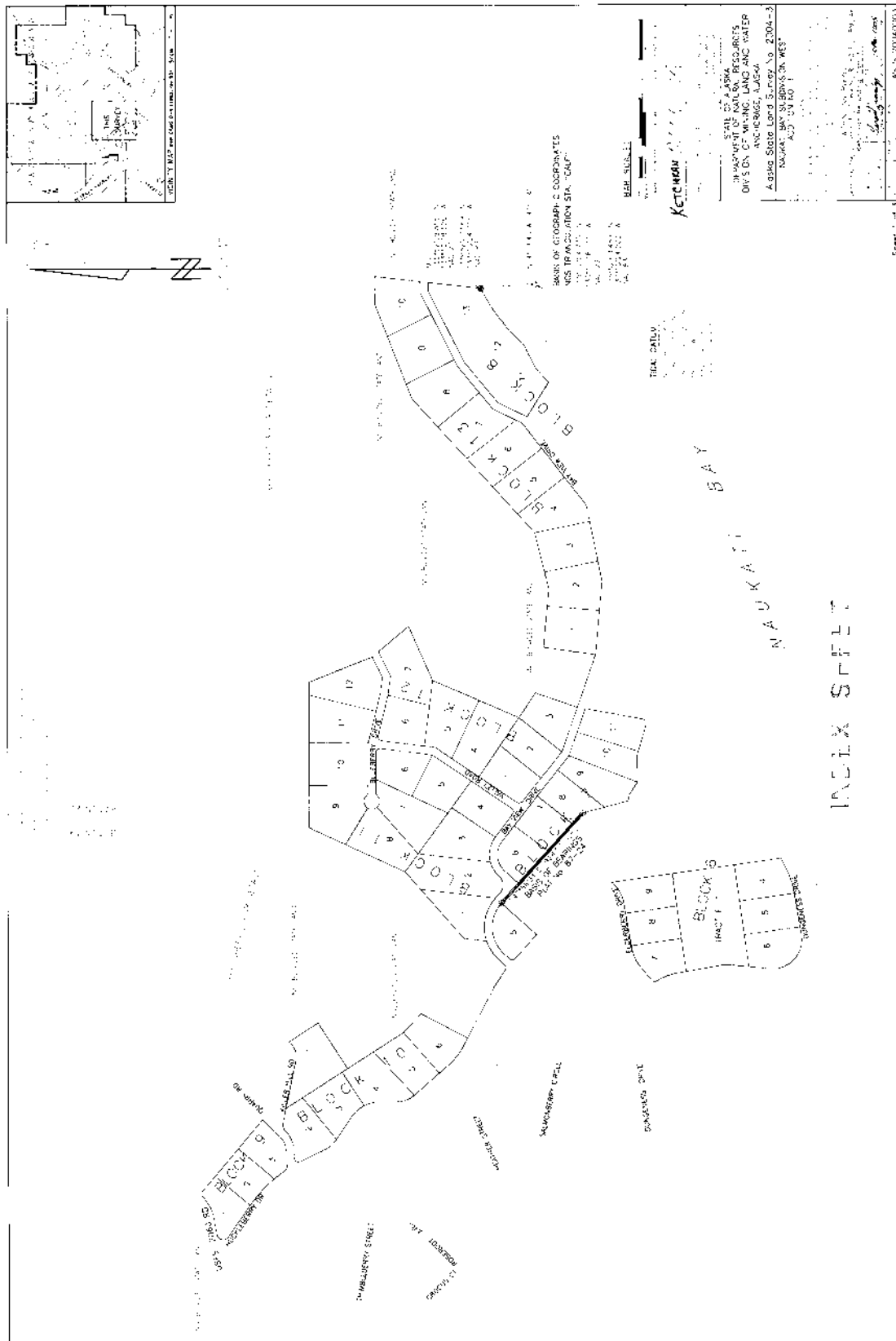
Subdivision Plats

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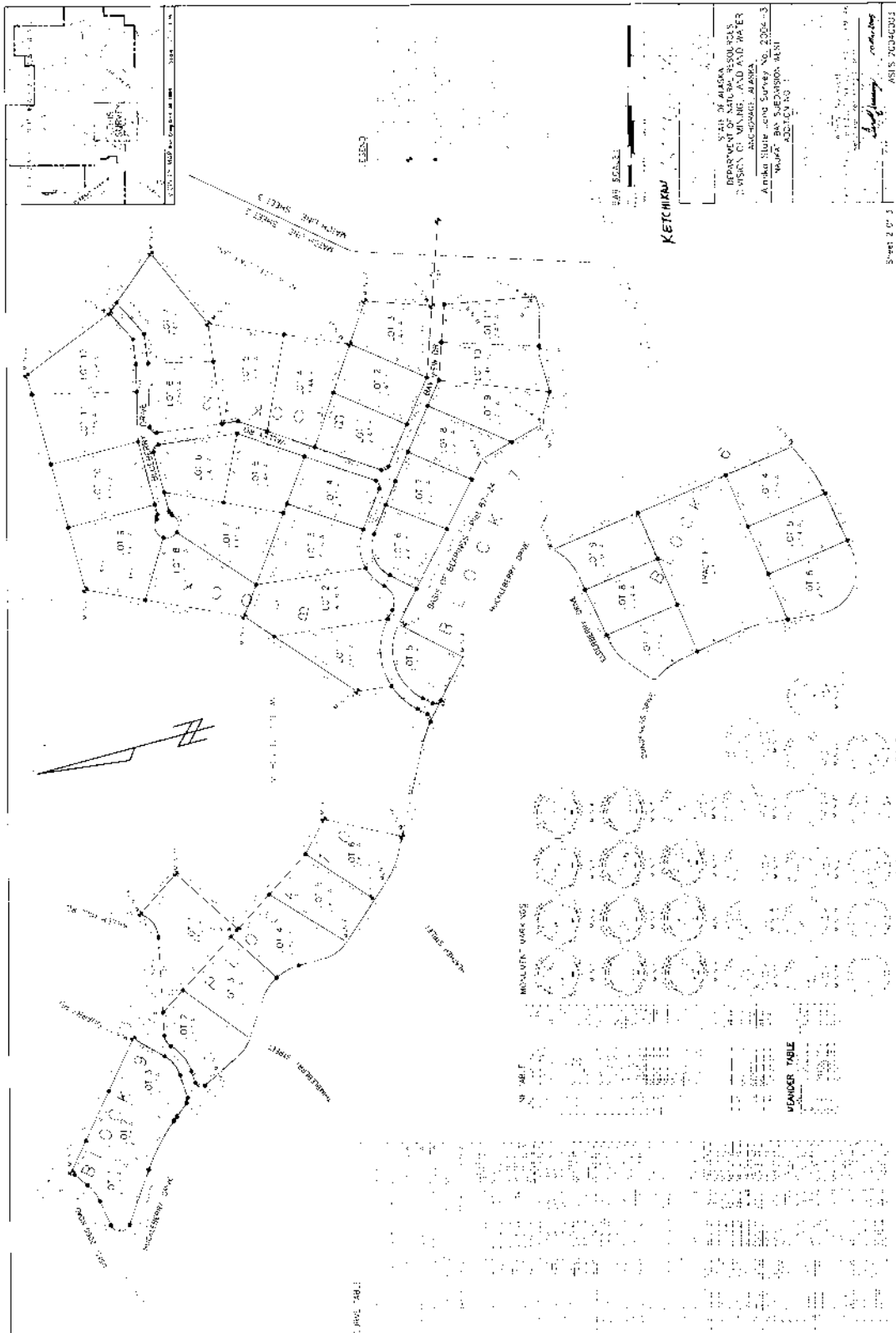
Naukati Bay Subdivison West

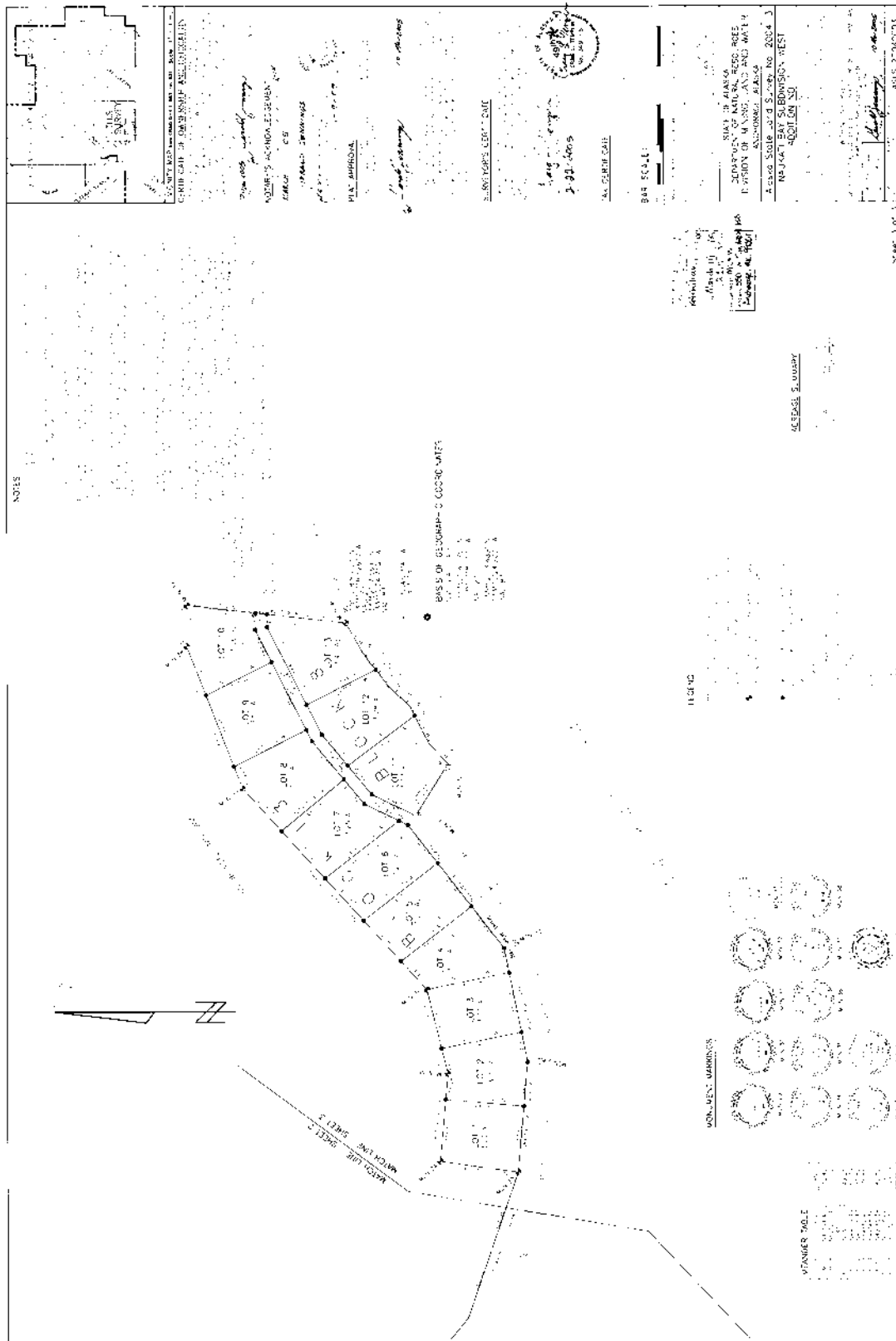


Naukati Bay Subdivison West Addition 1 - Index Sheet

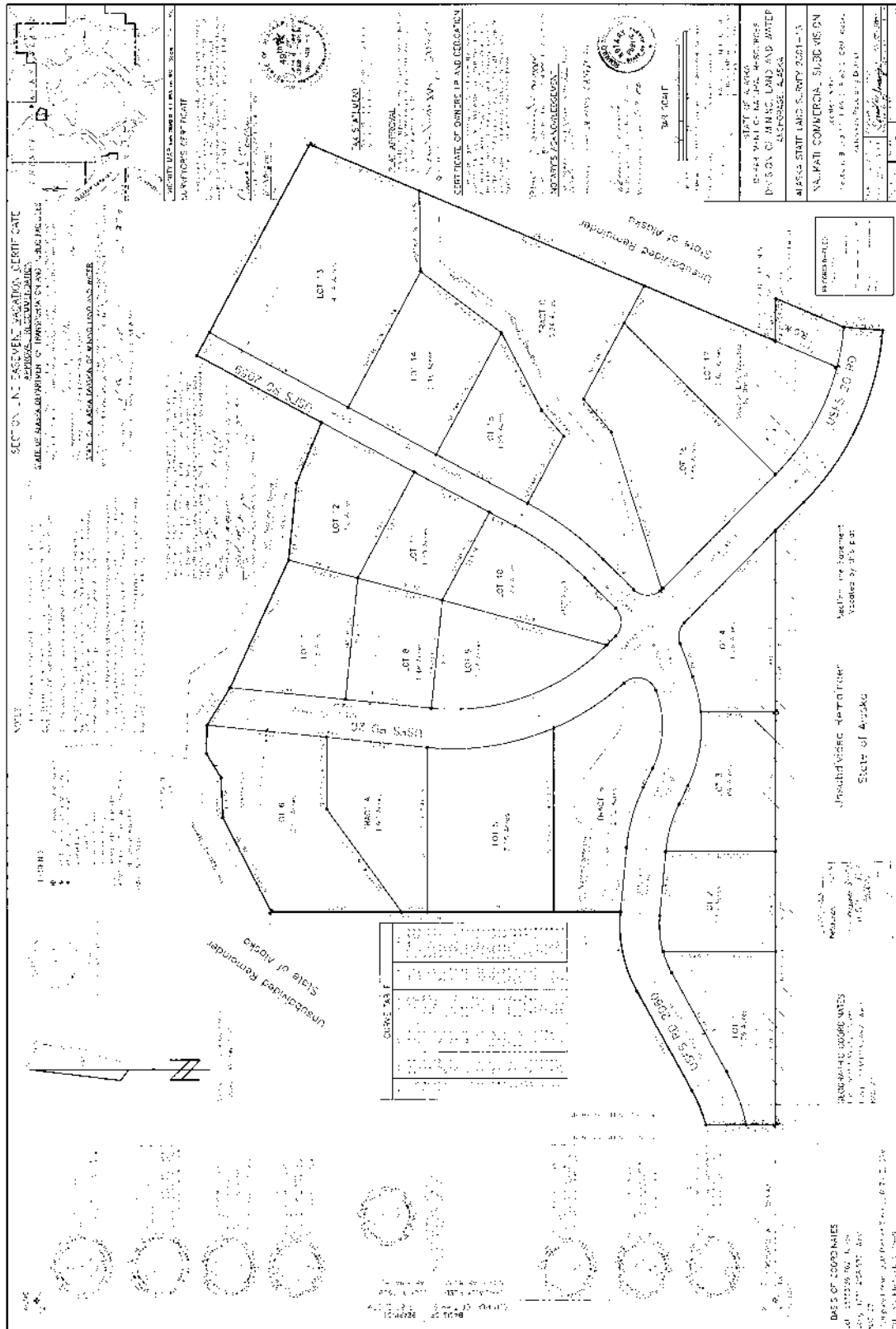


Naukati Bay Subdivison West Addition 1 - Sheet 2 of 3





Naukati Commercial Subdivision



Appendix D

Communities At Risk

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Adak	Southwest/ Aleutians	316	2nd Class City	Unorganized					
Akhiok	Southwest/ Aleutians	80	2nd Class City	Kodiak Island Borough	X			X	X
Akiak	YK Delta	309	2nd Class City	Unorganized			X	X	X
Akutan	Southwest/ Aleutians	713	2nd Class City	Aleutians East Borough					
Alakanuk	YK Delta	652	2nd Class City	Unorganized			X	X	
Aleknagik	Southwest/ Aleutians	221	2nd Class City	Unorganized					
Allakaket	Interior - ex Railbelt	97	2nd Class City	Unorganized		X		X	
Ambler	North/ Northwest	309	2nd Class City	Northwest Arctic Borough			X	X	
Anaktuvuk Pass	North/ Northwest	282	2nd Class City	North Slope Borough			X	X	
Anderson	Railbelt	367	2nd Class City	Denali Borough					
Angoon	Southeast/ PWS	572	2nd Class City	Unorganized			X	X	
Aniak	Interior - ex Railbelt	572	2nd Class City	Unorganized					
Anvik	Interior - ex Railbelt	104	2nd Class City	Unorganized					
Atka	Southwest/ Aleutians	92	2nd Class City	Unorganized					
Atkasuk	North/ Northwest	228	2nd Class City	North Slope Borough			X	X	
Barrow	North/ Northwest	4581	1st Class City	North Slope Borough					
Bethel	YK Delta	5471	2nd Class City	Unorganized					
Bettles	Interior - ex Railbelt	43	2nd Class City	Unorganized					
Brevig Mis- sion	North/ Northwest	276	2nd Class City	Unorganized				X	
Buckland	North/ Northwest	406	2nd Class City	Northwest Arctic Borough		X		X	
Chefornak	YK Delta	394	2nd Class City	Unorganized					

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Chevak	YK Delta	765	2nd Class City	Unorganized		X		X	X
Chignik	Southwest/ Aleutians	79	2nd Class City	Lake & Peninsula Borough			X	X	X
Chuathba- luk	Interior - ex Railbelt	119	2nd Class City	Unorganized			X		
Clark's Point	Southwest/ Aleutians	75	2nd Class City	Unorganized			X	X	
Coffman Cove	Southeast/ PWS	199	2nd Class City	Unorganized					
Cold Bay	Southwest/ Aleutians	88	2nd Class City	Aleutians East Borough					
Cordova	Southeast/ PWS	2454	Home Rule City	Unorganized					
Craig	Southeast/ PWS	1397	1st Class City	Unorganized					
Deering	North/ Northwest	136	2nd Class City	Northwest Arctic Borough				X	
Delta Junc- tion	Interior - ex Railbelt	840	2nd Class City	Unorganized					
Dillingham	Southwest/ Aleutians	2466	1st Class City	Unorganized					
Diomedes	North/ Northwest	146	2nd Class City	Unorganized			X	X	
Eagle	Interior - ex Railbelt	129	2nd Class City	Unorganized					
Eek	YK Delta	280	2nd Class City	Unorganized			X	X	
Egegik	Southwest/ Aleutians	116	2nd Class City	Lake & Peninsula Borough					
Ekwok	Southwest/ Aleutians	130	2nd Class City	Unorganized					X
Elim	North/ Northwest	313	2nd Class City	Unorganized					
Emmonak	YK Delta	767	2nd Class City	Unorganized			X	X	X
Fairbanks	Railbelt	30224	Home Rule City	Fairbanks North Star Borough					
False Pass	Southwest/ Aleutians	64	2nd Class City	Aleutians East Borough					
Fort Yukon	Interior - ex Railbelt	595	2nd Class City	Unorganized					
Galena	Interior - ex Railbelt	675	1st Class City	Unorganized					
Gambell	North/ Northwest	649	2nd Class City	Unorganized			X	X	
Golovin	North/ Northwest	144	2nd Class City	Unorganized			X	X	X

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Goodnews Bay	YK Delta	230	2nd Class City	Unorganized		X		X	
Grayling	Interior - ex Railbelt	194	2nd Class City	Unorganized		X		X	
Gustavus	Southeast/ PWS	429	2nd Class City	Unorganized					
Holy Cross	Interior - ex Railbelt	227	2nd Class City	Unorganized		X		X	
Homer	Railbelt	3946	1st Class City	Kenai Peninsula Borough					
Hoonah	Southeast/ PWS	860	1st Class City	Unorganized					
Hooper Bay	YK Delta	1014	2nd Class City	Unorganized			X	X	
Houston	Railbelt	1202	2nd Class City	Matanuska- Susitna Borough					
Hughes	Interior - ex Railbelt	78	2nd Class City	Unorganized					
Huslia	Interior - ex Railbelt	293	2nd Class City	Unorganized					
Hydaburg	Southeast/ PWS	382	1st Class City	Unorganized		X		X	
Kachemak	Railbelt	431	2nd Class City	Kenai Peninsula Borough					
Kake	Southeast/ PWS	710	1st Class City	Unorganized					
Kaktovik	North/ Northwest	293	2nd Class City	North Slope Borough			X	X	
Kaltag	Interior - ex Railbelt	230	2nd Class City	Unorganized					
Kasaan	Southeast/ PWS	39	2nd Class City	Unorganized					
Kenai	Railbelt	6942	Home Rule City	Kenai Peninsula Borough					
Ketchikan	Southeast/ PWS	7922	Home Rule City	Ketchikan Gateway Borough					
Kiana	North/ Northwest	388	2nd Class City	Northwest Arctic Borough	X			X	
King Cove	Southwest/ Aleutians	792	1st Class City	Aleutians East Borough					
Kivalina	North/ Northwest	377	2nd Class City	Northwest Arctic Borough	X			X	
Klawock	Southeast/ PWS	854	1st Class City	Unorganized					
Kobuk	North/ Northwest	109	2nd Class City	Northwest Arctic Borough			X	X	

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Kodiak	Southwest/ Aleutians	6334	Home Rule City	Kodiak Island Borough					
Kotlik	YK Delta	591	2nd Class City	Unorganized			X	X	
Kotzebue	North/ Northwest	3082	2nd Class City	Northwest Arctic Borough					
Koyuk	North/ Northwest	297	2nd Class City	Unorganized			X	X	
Koyukuk	Interior - ex Railbelt	101	2nd Class City	Unorganized			X	X	
Kupreanof	Southeast/ PWS	23	2nd Class City	Unorganized	X			X	
Kwethluk	YK Delta	713	2nd Class City	Unorganized				X	
Larsen Bay	Southwest/ Aleutians	115	2nd Class City	Kodiak Island Borough					
Lower Kalskag	Interior - ex Railbelt	267	2nd Class City	Unorganized		X		X	
Manokotak	Southwest/ Aleutians	399	2nd Class City	Unorganized					
Marshall	YK Delta	349	2nd Class City	Unorganized					
McGrath	Interior - ex Railbelt	401	2nd Class City	Unorganized					
Mekoryuk	YK Delta	210	2nd Class City	Unorganized	X			X	
Mountain Village	YK Delta	755	2nd Class City	Unorganized			X	X	
Napakiak	YK Delta	353	2nd Class City	Unorganized			X	X	
Napaskiak	YK Delta	390	2nd Class City	Unorganized		X		X	
Nenana	Railbelt	402	Home Rule City	Unorganized					
New Stuyahok	Southwest/ Aleutians	471	2nd Class City	Unorganized				X	
Newhalen	Southwest/ Aleutians	160	2nd Class City	Lake & Peninsula Borough					
Nightmute	YK Delta	208	2nd Class City	Unorganized			X	X	
Nikolai	Interior - ex Railbelt	100	2nd Class City	Unorganized	X			X	
Nome	North/ Northwest	3505	1st Class City	Unorganized					
Nondalton	Southwest/ Aleutians	221	2nd Class City	Lake & Peninsula Borough				X	
Noorvik	North/ Northwest	634	2nd Class City	Northwest Arctic Borough			X	X	
North Pole	Railbelt	1570	Home Rule City	Fairbanks North Star Borough					

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Nuiqsut	North/ Northwest	433	2nd Class City	North Slope Borough			X	X	
Nulato	Interior - ex Railbelt	336	2nd Class City	Unorganized				X	
Nunam Iqua	YK Delta	164	2nd Class City	Unorganized		X		X	
Nunapi- tchuk	YK Delta	466	2nd Class City	Unorganized					
Old Harbor	Southwest/ Aleutians	237	2nd Class City	Kodiak Island Borough			X	X	
Ouzinkie	Southwest/ Aleutians	225	2nd Class City	Kodiak Island Borough					
Palmer	Railbelt	4533	Home Rule City	Matanuska- Susitna Borough					
Pelican	Southeast/ PWS	163	1st Class City	Unorganized			X		
Petersburg	Southeast/ PWS	3224	Home Rule City	Unorganized					
Pilot Point	Southwest/ Aleutians	100	2nd Class City	Lake & Peninsula Borough		X		X	
Pilot Sta- tion	YK Delta	550	2nd Class City	Unorganized			X	X	
Platinum	YK Delta	41	2nd Class City	Unorganized	X			X	
Point Hope	North/ Northwest	757	2nd Class City	North Slope Borough		X		X	
Port Ale- xander	Southeast/ PWS	81	2nd Class City	Unorganized					
Port Heiden	Southwest/ Aleutians	119	2nd Class City	Lake & Peninsula Borough				X	
Port Lions	Southwest/ Aleutians	256	2nd Class City	Kodiak Island Borough			X		
Quinhagak	YK Delta	555	2nd Class City	Unorganized	X				
Ruby	Interior - ex Railbelt	188	2nd Class City	Unorganized			X	X	
Russian Mission	YK Delta	296	2nd Class City	Unorganized	X			X	
Saint Ge- orge	Southwest/ Aleutians	152	2nd Class City	Unorganized		X		X	
Saint Mary's	YK Delta	500	1st Class City	Unorganized					
Saint Mi- chael	North/ Northwest	368	2nd Class City	Unorganized			X	X	
Saint Paul	Southwest/ Aleutians	532	2nd Class City	Unorganized					
Sand Point	Southwest/ Aleutians	952	1st Class City	Aleutians East Borough					

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Savoonga	North/ Northwest	643	2nd Class City	Unorganized				X	
Saxman	Southeast/ PWS	431	2nd Class City	Ketchikan Gateway Borough					
Scammon Bay	YK Delta	465	2nd Class City	Unorganized			X	X	
Selawik	North/ Northwest	772	2nd Class City	Northwest Arctic Borough			X	X	
Seldovia	Railbelt	286	1st Class City	Kenai Peninsula Borough					
Seward	Railbelt	2830	Home Rule City	Kenai Peninsula Borough					
Shageluk	Interior - ex Railbelt	129	2nd Class City	Unorganized		X		X	
Shaktolik	North/ Northwest	230	2nd Class City	Unorganized			X	X	
Shishmaref	North/ Northwest	562	2nd Class City	Unorganized		X		X	
Shungnak	North/ Northwest	256	2nd Class City	Northwest Arctic Borough			X	X	
Skagway	Southeast/ PWS	862	1st Class City	Unorganized					
Soldotna	Railbelt	3759	1st Class City	Kenai Peninsula Borough					
Stebbins	North/ Northwest	547	2nd Class City	Unorganized				X	
Tanana	Interior - ex Railbelt	308	1st Class City	Unorganized				X	
Teller	North/ Northwest	268	2nd Class City	Unorganized			X	X	
Tenakee Springs	Southeast/ PWS	104	2nd Class City	Unorganized			X	X	
Thorne Bay	Southeast/ PWS	557	2nd Class City	Unorganized					
Togiak	Southwest/ Aleutians	809	2nd Class City	Unorganized			X	X	
Toksook Bay	YK Delta	532	2nd Class City	Unorganized		X		X	
Unalakleet	North/ Northwest	747	2nd Class City	Unorganized					
Unalaska	Southwest/ Aleutians	4283	1st Class City	Unorganized					
Upper Kalskag	Interior - ex Railbelt	230	2nd Class City	Unorganized		X			

City	Region	2000 Population	Classification	Borough	3/2/05 Report - Closed or Transferred Operations	3/2/05 Report - Extreme Managerial or Financial Problems	3/2/05 Report - Struggling	7/7/05 Report - Potentially at Risk	7/12/05 Report - Distressed
Valdez	Southeast/ PWS	4036	Home Rule City	Unorganized					
Wainwright	North/ Northwest	546	2nd Class City	North Slope Borough			X	X	
Wales	North/ Northwest	152	2nd Class City	Unorganized		X			
Wasilla	Railbelt	5469	1st Class City	Matanuska- Susitna Borough					
White Mountain	North/ Northwest	203	2nd Class City	Unorganized					
Whittier	Southeast/ PWS	182	2nd Class City	Unorganized					
Wrangell	Southeast/ PWS	2308	Home Rule City	Unorganized					

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DCBD

002

Bill BoltzerRECEIVED
MAR 07 2005**MEMORANDUM***Frank H. Murkowski, Governor***TO:** Senate Finance Committee Thru
Senator Bert Stedman, Chair**DATE:** March 2, 2005Senator Albert Kookesh
Senator Ralph Seekins
Senator Gary Stevens**PHONE:** 907-269-4578**FROM:** Michael Black, Director 
Division of Community Advocacy**SUBJECT:** Request for information on financial
difficulties and distress experienced by
small municipalities

Attached is a report prepared by the Division staff that works most directly with small cities and communities throughout the state. This report was prepared for your committee at your request at the February 28, 2005, committee meeting.

Obviously we are not in possession of all the information concerning the financial health of all the municipalities within the state. Therefore the information provided is an estimate of municipalities experiencing financial difficulties.

The attachment does not include small-unincorporated communities since the requested information was limited to municipalities. There are certainly a number of unincorporated communities that are experiencing difficulties from increased operating expenses and lack of revenue.

The municipalities that are listed are addressing their problems in different ways. Some have reduced services, increased taxes and fees, eliminated overhead expenses such as insurance, combined their service delivery efforts with those of other organizations such as tribal governments and generally looked for cost efficiencies and savings. The success of those efforts in avoiding further deterioration in the financial condition of municipalities is difficult to predict.

I hope that the information provided meets your needs. If I can be of further assistance, please contact me.

Attachment

Cc: Commissioner Edgar Blatchford
Jo Ellen Hanrahan, Director, Division of Administrative Services

08/01/05 11:14 FAX 9074653767

DCBD

004

Struggling with financial situations or have made significant reductions to core services.

There are 39 communities that we know about that have significant financial problems. These problems could become severe enough in the next 24 months to cause closure of the city administrative offices and result in the financial insolvency of the municipality. These municipalities have already eliminated a core governmental service. The problems include:

- Eliminate core municipal services such as police protection, closure of washeteria, or elimination of road maintenance due to lack of available funds,
- Large PERS debts from terminating from the PERS program,
- Large IRS debts or default fuel loans to the Alaska Energy Authority,
- Significantly behind on payment for insurance or fuel.

The following listing of municipalities by category of distress is based upon evidence provided from various sources to the Division's Local Government Specialist staff. There is no way to completely and accurately predict the future. These are estimates of the municipalities we believe to be in various levels of financial distress.

Closed down or transferred operations to another entity (9 municipalities)

Ahkiok	Kiana	Kivalina	Kupreanof
Mekoryuk	Nikolai	Platinum	Quinhagak
Russian Mission			

Accrued significant debt or financial problems yet to be dealt with (17 municipalities)

Allakaket	Buckland	Chevak	Goodnews Bay
Grayling	Holy Cross	Hydaburg	Lower Kalskag
Napaskiak	Nunam Iqua	Pilot Point	Point Hope
Saint George	Shageluk	Shishmaref	Toksook Bay
Upper Kalskag	Wales		

Struggling with financial situations or have made significant reductions to core services (39 municipalities)

Akiak	Alakanuk	Ambler	Anaktuvuk Pass
Angoon	Atquasuk	Chignik	Chuathbaluk
Clark's Point	Diomedea	Eek	Emmonak
Gambell	Golovin	Hooper Bay	Kaktovik
Kobuk	Kotlik	Koyuk	Koyukuk
Mountain Village	Napakia	Nightmute	Noorvik
Nuiqsut	Old Harbor	Pelican	Pilot Station
Port Lions	Ruby	Saint Michael	Scammon Bay
Selawik	Shaktolik	Shungnak	Teller
Tenakee Springs	Togiak	Wainwright	

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Struggling with financial situations or have made significant reductions to core services.

There are 39 communities that we know about that have significant financial problems. These problems could become severe enough in the next 24 months to cause closure of the city administrative offices and result in the financial insolvency of the municipality. These municipalities have already eliminated a core governmental service. The problems include:

- Eliminate core municipal services such as police protection, closure of washeteria, or elimination of road maintenance due to lack of available funds,
- Large PERS debts from terminating from the PERS program,
- Large IRS debts or default fuel loans to the Alaska Energy Authority,
- Significantly behind on payment for insurance or fuel.

The following listing of municipalities by category of distress is based upon evidence provided from various sources to the Division's Local Government Specialist staff. There is no way to completely and accurately predict the future. These are estimates of the municipalities we believe to be in various levels of financial distress.

Closed down or transferred operations to another entity (9 municipalities)

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Mekoryuk	Nikolai	Platinum	Quinhagak
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Tenakee Springs	Togiak	Wainwright	

Communities Potentially At Risk

The attached spreadsheet shows a list of communities that may be at risk for significant problems during the winter of 05-06. Along with the community name is a list of indicators used to compile the list. Below is a description of the indicators. It must be noted that these are indicators of potential problems and not a definitive or absolute list. This list is presented to raise awareness of the scope of the potential problem and as a starting point for a discussion.

Fuel Loan	Communities which have been significantly behind in repaying a fuel loan, or that were not deemed credit worthy to receive a fuel loan in the past year. This includes those communities which received a Bridge Fuel Loan.
Fuel Supply	Communities that reported a shortage of fuel (including gasoline) sometime in the past year. This shortage could be result of lack of financial ability to purchase all the fuel needed, lack of adequate storage capacity, usage above expected levels, missed deadlines for ordering fuel, or inability to deliver fuel due to unusually low water conditions.
Tax Debt	Those communities that have a or have had a payroll tax debt to either the State or Federal government within the past 12 months. In some cases the debt has be resolved, but the resolution may have placed a financial strain on the community.
Workers' Compensation Insurance	Those communities that within the last year have received a warning of cancellation due to late payments, have had policies cancelled due to lack of payment, or have not had a workers' compensation policy in place.
Electrical Payment	Those communities that have been over 60 days past due on payment of electric bill, or who have reported that increased cost of electricity is putting a financial strain on the sustainability of a public funded facility.
Other	Those communities that an agency staff has reported is having significant financial issues.
Self Reported	Communities that have reported they are having significant financial issues.

Community	Pop	Entity	Fuel Loan	Fuel Supply	Tax Debt	WC Insurance	Electrical Payments	Other	Self Reported
Akhiok	56	City	X	X	X	X		X	X
Akiak	367	City			X				
Alakanuk	667	City	X	X	X	X	X		X
Allakaket	90	City						X	X
Ambler	274	City	X					X	X
Anaktuvuk Pass	300	City			X			X	
Angoon	542	City				X			
Arctic Village	146	Tribe	X	X	X			X	X
Atmauthluak	285	Tribe	X	X					X
Atkasuk	218	City						X	
Brevig Mission	307	City	X			X		X	X
Buckland	437	City						X	
Chevak	899	City	X	X	X	X	X	X	X
Chignik	92	City				X		X	X
Chignik Lake	113	Tribe	X	X				X	X
Clark's Point	62	City		X				X	X
Crooked Creek	147	Tribe	X						
Deering	145	City				X		X	X
Diomede	141	City			X			X	X
Eek	292	City				X		X	X
Emmonak	292	City				X	X	X	X
Gambell	648	City	X				X		X
Golovin	160	City				X		X	
Goodnews Bay	236	City				X	X		X
Grayling	182	City			X				
Holy Cross	206	City		X	X		X	X	X
Hooper Bay	1124	City				X		X	X
Hydaburg	349	City		X	X	X		X	X
Kaktovik	284	City						X	
Kiana	394	City				X			
Kivalina	388	City	X	X	X		X	X	X
Kobuk	128	City						X	
Kotlik	588	City	X		X	X			X
Koyuk	348	City					X		
Koyukuk	109	City	X	X		X		X	X
Kupreanof	38	City						X	
Kwethluk	695	City	X					X	X
Lower Kalskag	262	City			X	X		X	X
Mekoryuk	198	City		X				X	X
Mountain Village	769	City				X		X	
Napakiak	360	City				X		X	X
Napaskiak	436	City	X					X	
New Stuyahok	477	City						X	X
Nightmute	232	City		X	X	X		X	X
Nikolai	121	City				X			
Noatak	448	Tribe					X		
Nondalton	205	City	X		X			X	X
Noorvik	609	City					X	X	
Northway	89	Tribe			X			X	X
Nuiqsut	430	City						X	X
Nulato	320	City					X	X	
Nunam Iqua	172	City		X				X	X
Old Harbor	196	City				X		X	
Pilot Point	75	City	X		X	X		X	
Pilot Station	559	City					X	X	X

Community	Pop	Entity	Fuel Loan	Fuel Supply	Tax Debt	WC Insurance	Electrical Payments	Other	Self Reported
Platinum	39	City						X	X
Point Hope	726	City			X	X		X	X
Port Heiden	90	City	X						
Ruby	190	City				X		X	
Russian Mission	331	City				X	X	X	X
Saint George	137	City	X		X	X		X	
Saint Michael	409	City			X		X	X	X
Savoonga	686	City			X	X			
Scammon Bay	486	City				X		X	
Selawik	829	City					X	X	X
Shageluk	132	City						X	
Shaktolik	209	City			X		X	X	
Shishmaref	591	City	X		X	X	X	X	X
Shungnak	264	City					X	X	X
Stebbins	586	City				X			
Tanana	304	City					X	X	X
Teller	241	City	X			X		X	
Tenakee Springs	105	City		X		X		X	
Tetlin	129	Tribe	X					X	
Togiak	805	City				X			X
Toksook Bay	561	City				X		X	X
Tuluksak	470	Tribe		X	X			X	X
Tuntutuliak	398	Tribe	X	X	X			X	X
Tununak	328	Tribe			X	X		X	
Twin Hills		Tribe	X					X	
Venetie	188	Tribe		X	X				
Wainwright	531	City				X		X	



**United States Department of Agriculture
Rural Development
Alaska State Office**

July 12, 2005

Mr. Michael Black
Director, Division of Community Advocacy
Department of Commerce, Community and Economic Development
550 W7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Dear Mike,

On behalf of your partners that are signatory to the Denali Commission Memorandum of Understanding, we want to thank you for accepting the responsibility of chairing the intrastate/federal agency Task Force to address the issues surrounding payment for utilities by distressed rural Alaska communities.

Please accept this letter as your Charge of Activities that will assist in bringing this issue to a short-term resolve which will, in essence, prevent several villages from having utility service terminated this winter.

It is our recommendation that you form 3-4 individual teams of 3 people each to call on community leaders in the designated communities to determine the communities' financial condition and their ability to meet financial obligations in order to provide and maintain local utility service.

The activities and dates anticipated for completion that we expect the Task Force to meet are outlined as follows.

RE: LETTER OF CHARGE

TASK 1. Focus on sustainability issues within the following distressed communities:

- Chevak;
- Emmonak;
- Akiak;
- Golovin;
- Ekwok;
- Chignik;
- Akhiok.

800 West Evergreen • Suite 201 • Palmer, AK 99645
Phone: (907) 761-7705 • Fax: (907) 761-7783 • TDD: (907) 761-7786

"Empowering Rural Alaska Communities"

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Mr. Michael Black
July 12, 2005
Page 2.

Identify unrestricted cash flow from all sources coming to the village and community fixed and variable expenses to determine each entity's ability to achieve sustainability regarding local utility requirements. Provide recommendations regarding public facilities that would need to be mothballed if a satisfactory financial resolution is not possible.

TASK 2. Contact the seven distressed communities and discuss with the leadership their plans to address local energy issues short term, i.e. for winter 2005/2006.

- a) Chevak is the highest priority. Send team to Chevak in July to develop plan with community leadership.
- b) Develop contingency plan for possible failed communities.
- c) Draft letter to communities with survey.
- d) Draft report of the findings and recommendations and proposal for plan for implementation.
- e) Call meeting of Sustainable Utilities Work Group.
- f) Group reviews/amends/approves report.
- g) Co-chairs meet with Governor.
- h) Funding plan, with exit plan, for inflation-proofing bridge loans.

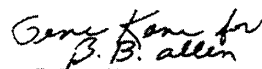
MATURITY DATES


August 1, 2005 – report completed (include survey report regarding bridge loan repayment capacity).

August 3, 2005 – Denali Commission Sustainable Utilities Work Group Meeting reviews report.

August 5, 2005 – meet with Governor.

Yours truly,


B.B. Allen
State Director
USDA Rural Development


Kurt Fredriksson
Commissioner
ADEC

