

1 STATE OF ALASKA

2 LOCAL BOUNDARY COMMISSION

3 Before Commissioners: Darroll Hargraves, Chair
4 Robert Hicks, Vice Chair¹
5 Robert Harcharek
6 Anthony Nakazawa
7 Georgianna Zimmerle

7 In the Matter of the Petition for In-)
8 corporation of the Deltana Borough,)
9 a Unified Home-Rule Borough)
_____)

10 STATEMENT OF DECISION

11 I. SUMMARY OF PROCEEDINGS

12
13 On January 3, 2006, a group of 259 voters in the Delta-Greely
14 region ("Petitioner") filed its *Petition to the Local Boundary Commission for Incorporation of the Deltana Borough, a Unified Home-Rule Borough* (Petition). Forma-
15 tion of a unified home-rule borough results in the dissolution of all cities within the
16 borough. There were no respondents in the proceeding. The proposed borough
17 boundaries are identical to the present boundaries of the Delta-Greely Regional
18 Educational Attendance Area (REAA).
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21 The Petitioner seeks to provide basic municipal services in the
22 Deltana area, including education, planning and taxation. The area also seeks to
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25 _____
26 ¹ Commissioner Hicks participated at the public hearing and decisional session
27 held in Delta Junction on March 16 – 17, 2007. On March 27, 2007, Lynn Chrystal was
28 appointed to the Third Judicial District seat held by Commissioner Hicks. Commissioner
29 Chrystal abstained from the April 12, 2007, vote on this Statement of Decision because
30 he had not participated in the previous Deltana Borough proceedings.
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1 provide services currently provided by the City of Delta Junction; the Delta-Greely
2 REAA; and in the case of platting, the State of Alaska. If a borough is formed, pro-
3 viding these services to the community will become a borough function.

4 In November 2006, the Alaska Department of Commerce, Community,
5 and Economic Development (“DCCED”), which serves as LBC Staff, published its
6 Preliminary Report on the proposal. The report expressed DCCED’s preliminary
7 findings and conclusions that the Petition met the applicable standards for borough
8 incorporation. In February 2007, DCCED published its Final Report. The Final Re-
9 port affirmed the preliminary conclusions that the Petition met all of the requisite
10 standards. Therefore, DCCED recommended that we grant the Petition. Approxi-
11 mately 220 printed copies each of the Preliminary and Final Reports were distrib-
12 uted to members of the public soon after they were published. An additional 73
13 digital copies on discs of the Preliminary and Final Reports (both reports were on
14 the same disc) were picked up by people at the public hearing in Delta Junction on
15 March 16, 2007.

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18 By the March 31, 2006, deadline for receipt of written comments on
19 the Petition, we received written comments regarding the Deltana borough proposal
20 from the following 39 individuals and groups:

- 21 1. Anonymous
- 22 2. Charles Abbott
- 23 3. Harmony Abbott
- 24 4. Ruth Abbott
- 25 5. Vern Aiton
- 26 6. Allen Avinger
- 27 7. Ethan Birkholz
- 28 8. Tina Congioli
- 29 9. Mike Crouch, Vice-President, Delta Industrial Services
- 30 10. Patrick Dalton
- 31 11. Sharon Dalton

- 1 12. Winston Duncan, Petitioner's Representative, Petition to the Local Boundary Commission for Denial of the Deltana Charter
- 2 13. Winston Duncan
- 3 14. Larry Fett
- 4 15. Mary Emma Girvan
- 5 16. Bruce Grossmann
- 6 17. Ken Hall
- 7 18. Roger C. Hendry
- 8 19. B.G. Holland
- 9 20. Jerry Isaac, President and Chairman, Tanana Chiefs Conference
- 10 21. Brian Johnson
- 11 22. Scott Lippy
- 12 23. Chuck and Lorene Mancuso
- 13 24. Leston McNeil
- 14 25. Emma Irene Mead
- 15 26. Mathea Meurer
- 16 27. Mike Murphy
- 17 28. Michael Nuckols
- 18 29. JoAnn Polston, First Chief, Healy Lake Traditional Council, Mendas Cha-Ag Tribe (two letters)
- 19 30. Tom Pyatt
- 20 31. Ryan Richard
- 21 32. Ann Rasmussen
- 22 33. M. Rasmussen (two letters)
- 23 34. Martin Recknagel
- 24 35. Kathy Scott
- 25 36. Marsha and Steven Taylor
- 26 37. Thomas Theisen
- 27 38. Fred Wood
- 28 39. James Youngblood

19 On April 17, 2006, the Chair of the Deltana Borough Charter Commission submitted a written response on the public comments regarding the Petition.

21 The deadline for LBC receipt of comments on the Preliminary Report was December 13, 2006. Nine members of the public submitted letters regarding the Preliminary Report:

- 24 1. Jim and Nadine Black, Diamond B Farms
- 25 2. Winston Duncan
- 26 3. Patrick Dalton
- 27 4. Sharon Dalton
- 28 5. K. G. DeBoer
- 29 6. Mary Emma Girvan

- 1 7. Steve McCombs
- 2 8. Irene Mead
- 3 9. Steve Selvaggio, President, Whitestone Community Association

4 The five members of the LBC traveled to Delta Junction for the public
5 hearing and decisional meeting scheduled for March 16-17, 2007. All the Commis-
6 sioners and two LBC Staff members toured Whitestone and other parts of the pro-
7 posed borough in the same vehicle for approximately 50 minutes on the afternoon of
8 March 16, prior to the hearing. The two LBC Staff members answered questions
9 asked by the Commissioners during the tour. An audio recording of the tour was
10 made for the public record.

11 On the evening of March 16, 2007, all five Commissioners held a pub-
12 lic hearing in Delta Junction. Two hundred and fifty one members of the public at-
13 tended. LBC Staff presented a summary of its reports and recommendations. We
14 heard the Petitioner's opening and closing statements, and heard testimony in favor
15 of the Petition from the following seven witnesses presented by the Petitioner:
16

- 17 1. Lamar Cotten
18 Consultant to the Deltana Borough Charter Commission
- 19 2. Mike Schultz
20 Petitioner's Representative, Deltana Borough Charter Commission
21 Chairman
- 22 3. Jim DeWitt
23 Attorney who discussed the PILT agreement
- 24 4. Mary Leith-Dowling
25 Mayor, City of Delta Junction
26 Lifelong resident and retired school district educator
- 27 5. Bill Ward
28 Borough Charter Commission member and local farmer
- 29 6. Tana Wood
30 Borough Charter Commission member and community activist

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7. Pat Schlichting
Borough Charter Commission member and community activist

Beginning at approximately 7:15 p.m., twenty members of the public made comments. Some answered questions that we asked. The individuals who offered public comment included:

1. Sybil Peters
2. Jon Dufendach
3. H. Mitchell Gay
4. Pete Hallgren; Administrator, City of Delta Junction
5. Patrick Dalton
6. Winston Duncan
7. Godfrey Knight
8. Don Bailey
9. Tom Theisen
10. Tim Robbins
11. Charles Abbott
12. Kenneth DeBoer
13. Daniel Splain
14. JoAnn Polston
15. Justin Cotton
16. Margie Mullins
17. Lori Meek
18. John M. Peters
19. Mike Murphy
20. Steve Selvaggio; President of Whitestone Community Association

The public hearing was concluded and the meeting recessed at approximately 9:35 p.m. We reconvened the following day at 9 a.m. in the same location. On March 17, 2007, we convened a decisional meeting and granted the Petition by unanimous vote. Forty-six members of the public attended the decisional meeting. Our "Findings and Conclusions" are presented below. Following that is the "Order of the Commission." Information about the opportunity to seek reconsideration and appeal is also provided.

1 **II. FINDINGS AND CONCLUSIONS**

2 **Introduction and Background**

3
4 State law, AS 29.05.100(a), provides as follows regarding borough in-
5 corporation decisions of the Local Boundary Commission:

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7 After providing public notice of each proposed amendment or condi-
8 tion and an opportunity for public comment, the Local Boundary
9 Commission may amend the petition and may impose conditions on
10 the incorporation. If the commission determines that the incorpora-
11 tion, 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, and² is in the best interests of the state, it may accept
the petition. Otherwise it shall reject the petition.

12 As reflected above, standards for incorporation of boroughs are found
13 in the Constitution of the State of Alaska, Alaska Statutes, and Alaska Administrative
14 Code. Decisions of the Commission to grant borough incorporation petitions are
15 also subject to federal law (e.g., the federal Voting Rights Act), and applicable deci-
16 sions of Alaska State and federal courts.

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18 The standards in the Constitution are very broad. They call for “maxi-
19 mum local self-government” and a “minimum of local government units” (art. X, sec.
20 1). They also provide that “The entire State shall be divided into boroughs” and that
21 “each borough shall³ embrace an area and population with common interests to the
22 maximum degree possible” (art. X, sec. 3).

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25 ² Note that use of the word “and” means that all four conditions must be met before the LBC
26 may accept a petition. Moreover, even if all four conditions are met, the Commission still has the dis-
cretion to reject a petition.

27 ³ Use of the word “shall” means that this is a constitutional mandate.

1 The constitutional standard that the entire state shall be divided into
2 boroughs reflects the fact that boroughs were intended to encompass the most ur-
3 ban, developed, and densely populated parts of the state as well as the tallest
4 mountains of Alaska, its deepest waters, and the most isolated reaches of the state.
5 That constitutional provision, coupled with other constitutional standards, particularly
6 the “minimum of local government units” clause, call for boroughs that encompass
7 large, natural regions.
8

9 Throughout the 48 years of statehood, the Local Boundary Commis-
10 sion has recognized organized boroughs as municipal governments that are in-
11 tended to exercise jurisdiction over a large area. For example, from November 1959
12 through January 1960, a time that preceded statutory standards for boroughs, the
13 first Local Boundary Commission held a series of meetings and hearings to address
14 prospective borough boundaries, to formulate and recommend standards for bor-
15 ough boundaries, and to recommend procedures and methods for boundary actions.
16 In that regard, meetings and hearings of the Commission were held in Fairbanks,
17 Anchorage, Juneau, Big Delta, Cordova, Dillingham, Kenai, Ketchikan, Kodiak,
18 Palmer, Nenana, Nome, Petersburg, Seward, Sitka, Valdez, and Wrangell. (State of
19 Alaska Local Boundary Commission, *First Report to the Second Session of the First*
20 *Alaska State Legislature*, February 2, 1960, pp. 2-1 – 2-2.)
21

22 Based on those meetings and hearings, and the Commission’s inter-
23 pretation of the Alaska Constitution, the Commission reported as follows to the 1960
24 Legislature:
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26 One thing can be agreed upon: the borough is the intermediate
27 unit of local government between the City and the state. . . .
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1 The Commission presently takes the position that a borough was
2 designed to be a form of regional government. . . .

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4 [T]he Commission's present thinking [is] that organized boroughs,
5 particularly in Alaska, were to be large in size – otherwise they
6 would be duplicating the service area's jurisdiction. No opinion is
7 expressed at this time as to just how large the borough should be,
8 for there are other considerations to be weighed: for example, the
9 population density would be an important factor but, it is felt, in view
10 of existing conditions in Alaska, the general rule should be large
11 boroughs, and the exception should be small boroughs. (*Id.* at I-7 –
12 I-9.)

13 The current Commission has, on more than one occasion, affirmed the
14 view that boroughs should be large regional governments and that there should be
15 minimum numbers of boroughs. Most recently, we included our statement of the
16 *Fundamental Nature of Borough and Cities in Alaska* in our annual report to the
17 2007 Legislature.⁴ In that policy statement, we expressed the following points of
18 view:

- 19 ■ A borough is a regional municipality whereas a city is a
20 community-based municipality.
- 21 ■ Geographically, boroughs were envisioned as relatively large
22 regional units while cities are intended to be relatively small
23 units.
- 24 ■ Boroughs should generally include multiple communities and
25 should be able to provide services efficiently and effectively.
- 26 ■ The Constitution encourages a minimum number of bor-
27 oughs.

28 ⁴ *Fundamental Nature of Boroughs and Cities in Alaska* was adopted by the current Commis-
29 sion and included as Appendix H to *School Consolidation: Public Policy Considerations and a Re-
30 view of Opportunities for Consolidation*, Local Boundary Commission and Department of Education
31 and Early Development, February 2004.

- 1 ▪ Alaska’s Constitution encourages the extension of borough
2 government; however, all standards must be met and the
3 Commission is not obliged to approve proposals that only
4 minimally meet the standards.

5 The Framers of Alaska’s Constitution required that the legislature en-
6 act statutory standards for borough incorporation. Specifically, art. X, sec. 3 of the
7 Constitution states in relevant part:

8 They [organized and unorganized boroughs] shall be established in
9 a manner and according to standards provided by law. The stan-
10 dards shall include population, geography, economy, transporta-
11 tion, and other factors.

12 In 1961, the Alaska State Legislature enacted the first statutory stan-
13 dards for organized boroughs (former AS 07.10.030). A study ten years later by the
14 Alaska Institute of Social, Economic and Government Research (ISEGR) dealing
15 with State-local relations characterized those statutory standards as being “much
16 like the constitution itself, at a very high level of generality.” (Thomas A. Morehouse
17 and Victor Fischer, *Borough Government in Alaska*, p. 79.)

18 In 1974, the Alaska Supreme Court stated that

19 The standards for incorporation set out in AS 07.10.030 were in-
20 tended to be flexibly applied to a wide range of regional conditions.
21 This is evident from such terms as “large enough”, “stable enough”,
22 “conform generally”, “all areas necessary and proper”, “necessary
23 or desirable”, “adequate level” and the like. (*Mobil Oil Corp. v. Lo-
24 cal Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974). (Em-
25 phasis added.))

26 Flexibly applying the statutory standards for *regional* government al-
27 lows discretion, but the exercise of that discretion must have a reasonable basis.
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1 The Commission's discretion must be carried out within the context of the law.⁵ In
2 the 1974 *Mobil Oil* case, the Alaska Supreme Court also indicated:

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4 The Local Boundary Commission has been given a broad power to
5 decide in the unique circumstances presented by each petition
6 whether borough government is appropriate. Necessarily, this is an
7 exercise of delegated legislative authority to reach basic policy de-
8 cisions. Accordingly, acceptance of the incorporation petition
9 should be affirmed if we perceive in the record a reasonable basis
10 of support for the Commission's reading of the standards and its
11 evaluation of the evidence. (*Id.* at 99. (Emphasis added.))

12 Using its broad flexibility, the LBC has determined, for example, that
13 the populations of regions that today are inhabited by as many as 282,813 residents
14 (Anchorage) and as few as 634 residents (Yakutat) are "large enough" to support
15 borough government. Again, the Commission's interpretation of the standards must
16 have a reasonable basis under the law. The current standards presume that a re-
17 gion must have at least 1,000 residents to meet the population size requirement.⁶

18 ⁵ AS 44.62.570 (b) and (c) provide:

19 (b) Inquiry in an appeal extends to the following questions:
20 (1) whether the agency has proceeded without, or in excess
21 of jurisdiction; (2) whether there was a fair hearing; and (3)
22 whether there was a prejudicial abuse of discretion. Abuse of
23 discretion is established if the agency has not proceeded in
24 the manner required by law, the order or decision is not sup-
25 ported by the findings, or the findings are not supported by
26 the evidence.

27 (c) The court may exercise its independent judgment on the
28 evidence. If it is claimed that the findings are not supported
29 by the evidence, abuse of discretion is established if the
30 court determines that the findings are not supported by

31 (1) the weight of the evidence; or
(2) substantial evidence in the light of the whole record.

⁶ The first LBC, in 1960, endorsed a borough population standard requiring at least 1,000 residents. The current Commission has recognized that the evaluation of the population of a proposed borough should also take into consideration the student population given the requirement in AS 14.12.025 that a new school district with fewer than 250 students may not be created absent a
(continued . . .)

1 In the 1974 *Mobil Oil* case, the Alaska Supreme Court indicated that
2 art. X, sec. 1 of Alaska’s Constitution should be read to uphold borough decisions by
3 the LBC wherever the standards have been “minimally met” (subject, of course, to
4 the “reasonable basis” test noted above). Specifically, the Court stated:

5 The appellants argue that neither the geography nor the transporta-
6 tion standard is satisfied by the record evidence. Our review of the
7 record has been undertaken in light of the statement of purpose ac-
8 companying article X, the local government article, of the Alaska
9 constitution. Section 1 declares in part:

10 The purpose of this article is to provide for maximum
11 local self-government with a minimum of local gov-
12 ernment units, and to prevent duplication of
13 tax-levying jurisdictions. . . .

14 We read this to favor upholding organization of boroughs by the
15 Local Boundary Commission whenever the requirements for incor-
16 poration have been minimally met. (*Id.*)

17 The 1974 holding should not be construed as license to grant marginal
18 borough proposals. In 1995, the Alaska Supreme Court discounted the view that the
19 LBC was obligated to approve any “minimally acceptable petition”:

20 Petitioners’ arguments, however, reflect the mistaken premise that
21 the LBC must approve any minimally acceptable petition for incor-
22 poration and has only limited authority to consider or adopt “the
23 most desirable” borough boundaries. Given the Alaska Constitu-
24 tion’s mandate that boroughs be cohesive “to the maximum degree
25 possible,”^[7] the LBC acted well within the purview of its authority in
26 considering the desirability of future incorporation of neighboring
27 areas such as Prince William Sound and the interests of affected

28 (. . . continued)

29 best-interests determination by the Commissioner of the Department of Education and Early Devel-
30 opment.

31 ⁷ [Footnote 8 in original.] Alaska Const., art. X, § 3.

1 land owners and users such as the Chugach Alaska Corporation.^[8]
2 (*Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Com'n*, 900 P.2d 721, 727 (Alaska 1995).)

3 Moreover, in the 1995 *Yakutat* case, the Supreme Court expressed its
4 expectation that the LBC would undertake “a thorough consideration of alternative
5 boundaries” and decide “as to what boundaries would be optimal” and “most appro-
6 priate.” The Court stated:

8 An informed decision as to whether boundaries proposed in a peti-
9 tion for incorporation maximize the common interests of the area
10 and population and thus meet the applicable statutory standards
11 presupposes a thorough consideration of alternative boundaries
12 and a decision as to what boundaries would be optimal. For this
13 reason, in discharging its duties under AS 29.05.100(a), the LBC is
14 inevitably called upon to undertake precisely the type of inquiry that
15 Petitioners allege to be improper: an inquiry into the “most appro-
16 priate boundaries” for the proposed borough. (*Id.* at 725.)

17 It is noteworthy that the 1974 *Mobil Oil* case, where the Court stated
18 that the statutory boundary standards were intended to be flexibly applied, preceded
19 the adoption by the LBC of borough incorporation standards in the Alaska Adminis-
20 trative Code. In 1974, the Commission had no statutory duty to adopt regulations
21 establishing borough incorporation standards. It did, however, have such an obliga-
22 tion with respect to annexation standards. In a 1974 case involving city annexation,

23 ⁸ [Footnote 9 in original.] In their reply brief, Petitioners challenge the authority of the LBC to
24 promulgate regulations such as 19 AAC 10.060(a)(1), which expressly authorized the LBC to con-
25 sider “land use and ownership patterns” in determining compliance with the statutory standards set
26 out in AS 29.05.031(a). See, e.g., *Warner v. State*, 819 P.2d 28, 32 n. 3 (Alaska 1991); *State v.*
27 *Anderson*, 749 P.2d 1342, 1345 (Alaska 1988). We need not decide the issue, since even in the ab-
28 sence of the challenged regulations, the LBC clearly had authority to consider information and argu-
29 ments such as those presented by the Chugach Alaska Corporation in addressing the statutory
30 standards articulated in AS 29.05.031(a). In particular, we note that AS 29.05.031(a)(1) gives the
31 LBC power to consider whether “the population of the area [included in the proposed borough] is in-
terrelated and integrated as to its social, cultural, and economic activities.”

1 the Alaska Supreme Court characterized the purpose of imposing that duty on the
2 LBC as follows:

3
4 We see three purposes underlying the statutory requirement of an-
5 nexation standards. First, such standards expose the basic deci-
6 sion-making processes of the commission to public view and thus
7 subject commission action to broad corrective legislation.^[9] Sec-
8 ond, the standards guide local governments in making annexation
9 decisions and in preparing proposals for the commission. Frustra-
tion of these purposes cannot harm the opponent of annexation.
Third, annexation standards objectify the criteria of decision making
and delineate the battleground for a public hearing.^[10] (*Port Valdez
Co., Inc. v. City of Valdez*, 522 P.2d 1147, 1155 (Alaska 1974))

10 In the early 1980s, the LBC first adopted standards in the Alaska Ad-
11 ministrative Code for incorporation of boroughs. The Alaska Legislature now spe-
12 cifically requires such in AS 44.33.812(a)(2):

13
14 The Local Boundary Commission shall adopt¹¹ regulations provid-
15 ing standards and procedures for municipal incorporation, annexa-
16 tion, detachment, merger, consolidation, reclassification, and
dissolution; the regulations providing standards and procedures are
subject to AS 29.04 - AS 29.10. (Emphasis added.)

17 The standards for LBC decisions in the Alaska Administrative Code are
18 critically compelling interpretations of the broad constitutional and statutory stan-
19

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21 _____
22 ⁹ [Footnote 29 in original.] Our Nome opinion focused upon the commission's failure to heed
the legislature's commands in exercising the commission's jurisdiction and publicly accounting for its
decisional process:

23 To (hold) otherwise would be to condone the commission's nonobser-
24 vance of a valid legislative prerequisite to the exercise of the commis-
sion's discretion in matters of local boundary changes.

25 *United States Smelting, Refining & Mining Co. v. Local Boundary Commission*, 489 P.2d at 142.

26 ¹⁰ [Footnote 30 in original.] See *Mukluk Freight Lines, Inc. v. Nabors Alaska Drilling, Inc.*, 516
P.2d 408, 415 n. 23 (Alaska 1973).

27 ¹¹ Note that "shall adopt" makes this a mandatory duty of the LBC.

1 dards governing borough incorporation. The regulations in the Alaska Administrative
2 Code stand equal in law with the statutes and the Constitution.

3 Regulations are “laws” elaborating upon and explaining how we will
4 apply the constitutional and statutory law and, as noted above, are mandated by the
5 legislature. We are expressly prohibited by AS 29.05.100(a) from approving a bor-
6 ough incorporation proposal unless that proposal satisfies all of the applicable stan-
7 dards, including those adopted by the LBC in the Alaska Administrative Code. Our
8 regulations constitute enforceable “law” every bit as compelling and authoritative as
9 any statute or the Constitution itself. Standards are equal in law and equal in en-
10 forceability with the statutes and Constitution.

11 Sections A through P of this part of the Statement of Decision address
12 each of the standards for borough incorporation applicable to the pending Deltana
13 Borough proposal.
14

15
16 **Section A. The proposed Deltana Borough promotes maximum local self-**
17 **government.**

18 Art. X, sec. 1 of the Alaska Constitution provides:

19
20 The purpose of this article is to provide for maximum local self-
21 government with a minimum of local government units, and to pre-
22 vent duplication of tax-levying jurisdictions. A liberal construction
23 shall be given to the powers of local government units. (De-
24 emphasis added.)

25 We make the following findings regarding the Deltana Borough with re-
26 spect to the constitutional provision for maximum local self-government: The Peti-
27 tion proposes to incorporate a unified home-rule borough. The boundaries of the
28 proposed borough encompass an estimated 5,892 square miles, all of which lie
29

1 within Alaska’s unorganized borough. Nearly the entire area proposed for incorpora-
2 tion is presently outside any municipal jurisdiction. The only exception is the 13.5
3 square miles within the corporate boundaries of the City of Delta Junction, a second-
4 class general law city. The territory within the boundaries of the City of Delta Junc-
5 tion represents only 0.2 percent of the area within the proposed borough. LBC Staff
6 reported that in 2005, an estimated 4,148 residents inhabited the area proposed for
7 incorporation.¹² The majority of the population of area proposed for incorporation is
8 outside any municipal jurisdiction. Residents of the City of Delta Junction constitute
9 the only exception. In 2005, that population comprised an estimated 1,047 resi-
10 dents, or 25.2 percent of the population of the proposed Deltana Borough.

12 Based on the findings above, we conclude that the Deltana Borough
13 proposal promotes maximum local self-government. It would create a home-rule
14 borough – a municipality with all legislative powers not prohibited by law or charter –
15 the epitome of maximum local self-government. It would also establish borough ju-
16 risdiction to an estimated 5,878.5 square miles and 3,101 residents outside any local
17 government whatsoever and would extend home-rule borough jurisdiction to an ad-
18 ditional 13.5 square miles and 1,047 residents currently within the boundaries of a
19 second-class general law city in the unorganized borough.

22 **Section B. The proposed Deltana Borough comports with the minimum num-
23 ber of local government units constraint of the Alaska Constitution.**

24 Art. X, sec. 1 of the Alaska Constitution provides:

26 ¹² The Petitioner estimates that the 2005 population of the proposed borough
27 was 5,760. The disparity between that figure and the estimate by LBC Staff (4,148) is
28 addressed in Section II-D of this decisional statement.

1 The purpose of this article is to provide for maximum local self-
2 government with a minimum of local government units, and to pre-
3 vent duplication of tax-levying jurisdictions. A liberal construction
4 shall be given to the powers of local government units. (De-
5 emphasis added.)

6 We make the following findings regarding the Deltana Borough with re-
7 spect to the constitutional constraint regarding the minimum number of local gov-
8 ernment units: The Petition proposes to incorporate a unified home-rule borough.
9 Under AS 29.05.140(d), incorporation of a unified home-rule borough results in the
10 dissolution of all other municipalities in the borough. The proposed Deltana Borough
11 would create one local government to provide basic municipal services in the Del-
12 tana area, including education, planning, platting, land use regulation, cemetery,
13 landfill, street and road maintenance, parks and recreation, community center, li-
14 brary, volunteer fire/EMS/ambulance/rescue squad, airport maintenance, and collec-
15 tion of proposed gas and energy taxes along with the payments in lieu of taxes from
16 the Pogo Mine. Most of those services were previously provided by three separate
17 government entities: the City of Delta Junction, the Delta-Greely Regional Educa-
18 tional Attendance Area (REAA), and in the case of platting, the State of Alaska.

19 Based on the findings above, we conclude that the Deltana Borough
20 proposal comports with the minimum number of local government units constraint of
21 the Alaska Constitution.

22
23 **Section C. The proposed Deltana Borough embraces an area and population**
24 **with common interests to the maximum degree possible and, on a scale suit-**
25 **able for borough government, has a population that is interrelated and inte-**
26 **grated with respect to social, cultural, and economic characteristics and**
27 **activities.**

1 Several provisions of law relate to this particular standard. Those con-
2 sist of art. X, sec. 3 of the Alaska Constitution, AS 29.05.031(a)(1), 3 AAC
3 110.045(a), 3 AAC 110.045(b), 3 AAC 110.920, and 3 AAC 110.990(5). Those laws
4 state:

6 The entire State shall be divided into boroughs, organized or unor-
7 ganized. They shall be established in a manner and according to
8 standards provided by law. The standards shall include population,
9 geography, economy, transportation, and other factors. Each bor-
10 ough shall embrace an area and population with common interests
11 to the maximum degree possible. The legislature shall classify bor-
12 oughs and prescribe their powers and functions. Methods by which
13 boroughs may be organized, incorporated, merged, consolidated,
14 reclassified, or dissolved shall be prescribed by law. (Art. X, sec. 3
15 of the Alaska Constitution) (Emphasis and de-emphasis added.)

13 An area that meets the following standards may incorporate as a
14 home rule, first class, or second class borough, or as a unified mu-
15 nicipality: (1) the [must have a] population of the area [that] is inter-
16 related and integrated as to its social, cultural, and economic
17 activities. (AS 29.05.031(a)(1)) (Emphasis, de-emphasis, and clari-
18 fication added.)

18 The social, cultural, and economic characteristics and activities of
19 the people in a proposed borough must be interrelated and inte-
20 grated. In this regard, the commission may consider relevant fac-
21 tors, including the
22 (1) compatibility of urban and rural areas within the proposed
23 borough;
24 (2) compatibility of economic lifestyles, and industrial or
25 commercial activities;
26 (3) existence throughout the proposed borough of customary
27 and simple transportation and communication patterns; and
28 (4) extent and accommodation of spoken language differ-
29 ences throughout the proposed borough. (3 AAC 110.045(a))

30 Absent a specific and persuasive showing to the contrary, the
31 commission will presume that a sufficient level of interrelationship
cannot exist unless there are at least two communities in the pro-
posed borough. (3 AAC 110.045(b))

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[A] 'community' means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920. (3 AAC 110.990(5))

Determination of community. (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 individuals;
- (2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and
- (3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

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

- (1) public access to or the right to reside at the location of the population is restricted;
- (2) the population is adjacent to a community and is dependent upon that community for its existence; or
- (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. (3 AAC 110.920)

We make the following findings regarding whether the proposed Deltana Borough embraces an area and population with common interests to the maximum degree possible and, on a scale suitable for borough government, has a population that is interrelated and integrated with respect to social, cultural, and economic characteristics and activities: The proposed boundaries of the Deltana Borough are identical to those of the Delta-Greely REAA. Those boundaries have been in place since 1975. Thus, for more 32 years, residents of the proposed Deltana Borough have shared common interests on a regional scale with respect to

1 educational services. More significantly, the boundaries of the Delta-Greely REAA
2 were based in large measure on the recognition of the strong social, economic, cul-
3 tural, and linguistic ties among the residents of the region. AS 14.08.031, which
4 provides standards under which the Delta-Greely REAA was created, states:

5
6 As far as practicable, each regional educational attendance area
7 shall contain an integrated socio-economic, linguistically and cul-
8 turally homogeneous area. In the formation of the regional educa-
9 tional attendance areas, consideration shall be given to the
10 transportation and communication network to facilitate the admini-
11 stration of education and communication between communities that
12 comprise the area. Whenever possible, municipalities, other gov-
13 ernmental or regional corporate entities, drainage basins, and other
14 identifiable geographic features shall be used in describing the
15 boundaries of the regional school attendance areas.

16 Further, most of the services and facilities provided by the City of Delta Junction are
17 already areawide in nature (i.e., throughout the Delta-Greely REAA), both in terms of
18 the contributions of human and financial resources necessary to provide those ser-
19 vices and facilities, as well as in terms of the use of or benefit from those services
20 and facilities by residents of the entire region. Healy Lake, which is somewhat more
21 geographically isolated from other inhabited portions of the proposed borough, is still
22 integrated into the area's educational structure (e.g., there is a school in Healy Lake,
23 although it is currently closed due to low enrollment; four Healy Lake students cur-
24 rently receive instruction by correspondence study provided by the Delta-Greely
25 REAA). Furthermore, Healy Lake uses Delta Junction as a consumer hub more
26 than it uses the adjacent Alaska Gateway REAA region. Commissioner Hicks ex-
27 pressed the view that the area within the proposed Deltana Borough lacks multiple

1 bona fide communities as determined under 3 AAC 110.920.¹³ We can overcome
2 the presumption in 3 AAC 110.045(b) that a sufficient level of interrelationship can-
3 not exist unless there are at least two communities in the proposed borough through
4 a higher level of proof (“a specific and persuasive showing”) that the proposed Del-
5 tana Borough meets the Community of Interests Standard. In that regard, we find
6 the residents of the proposed Deltana Borough have strong ties with respect to so-
7 cial, cultural, and economic characteristics and activities, enough to overcome the
8 presumption in 3 AAC 110.045(b). There exists among residents of the proposed
9 Deltana Borough a compatibility of urban and rural areas, including compatibility of
10 economic lifestyles, and industrial, or commercial activities. There also exists
11 throughout the proposed borough, transportation and communication patterns that
12 reflect, on a scale suitable for borough government, a population that is interrelated
13 and integrated with respect to social, cultural, and economic characteristics and ac-
14 tivities. Slavic immigrants comprise a significant component of the population of the
15 proposed Deltana Borough. Some Slavic immigrants might not speak English very
16 well. To the extent that is the case, however, there clearly are accommodations of
17 spoken language differences. For example, arrangements were made for translation
18 of our hearing and decisional session. Accommodations for spoken language differ-
19 ences are also made by the Delta-Greely REAA and through social service organi-
20 zations in the proposed Deltana Borough. Lastly, the geographic area of the

24 ¹³ Commissioner Hicks expressed the conclusion that Whitestone and Healy
25 Lake are both closed communities in the sense that there is not unimpeded public access
26 to or the right to reside there. He indicated further that there is a lack of frequent per-
27 sonal interaction between residents of Whitestone and the immediately adjoining proper-
28 ties. Moreover, he characterized the Whitestone Community Association as a

(continued . . .)

1 proposed Deltana Borough, which comprises an estimated 5,892 square miles, is of
2 a scale suitable for borough government.

3 Based on the findings above, we conclude that the proposed Deltana
4 Borough embraces an area and population with common interests to the maximum
5 degree possible and, on a scale suitable for borough government, has a population
6 that is interrelated and integrated with respect to social, cultural, and economic
7 characteristics and activities.
8

9
10 **Section D. The proposed Deltana borough – on a scale suitable for borough**
11 **government – has a population that is large enough to support borough gov-**
12 **ernment.**

13 Several provisions of law relate to this particular standard. Those con-
14 sist of AS 29.05.031(a)(1); 3 AAC 110.050(a); and 3 AAC 110.050(b). Those laws
15 state:

16 An area that meets the following standards may incorporate as a
17 home rule, first class, or second class borough, or as a unified mu-
18 nicipality: (1) the [must have a] population of the area [that] is inter-
19 related and integrated as to its social, cultural, and economic
20 activities, and is large and stable enough to support borough gov-
ernment. (AS 29.05.031(a)(1)) (Emphasis, de-emphasis, and clari-
fication added.)

21 The population of a proposed borough must be sufficiently large
22 and stable to support the proposed borough government. In this
23 regard, the commission may consider relevant factors, including
24 (1) total census enumerations;
25 (2) durations of residency;
(3) historical population patterns;

26 (. . . continued)

27 contrivance created for purposes of securing permits for developments of the local land-
28 fill.

1 (4) seasonal population changes; and
2 (5) age distributions. (3 AAC 110.050(a)) (De-emphasis added.)

3 Absent a specific and persuasive showing to the contrary, the com-
4 mission will presume that the population is not large enough and
5 stable enough to support the proposed borough government unless
6 at least 1,000 permanent residents live in the proposed borough.
7 (3 AAC 110.050(b)) (De-emphasis added.)

8 We make the following findings regarding whether the proposed Del-
9 tana Borough – on a scale suitable for borough government – has a population that
10 is large enough to support borough government: The boundaries of the proposed
11 Deltana Borough encompass an estimated 5,892 square miles. As noted in part II-A
12 of this decisional statement, LBC Staff estimated that there were 4,148 residents of
13 the proposed Deltana Borough in 2005. The Petitioner estimated that 5,760 resi-
14 dents lived in the proposed borough in 2005. The Petitioner’s estimates the number
15 of residents to be 1,612 residents (38.9 percent) more than the figure presented by
16 the LBC Staff. The Petitioner’s figure is the total of its estimates for the City of Delta
17 Junction (1,000), Big Delta (800), Deltana (1,800), Fort Greely (2,000), and “Other”
18 (including Healy Lake) (160). In communications with LBC Staff, the Petitioner later
19 reduced the estimate of the population of “Other” to the population of Healy Lake
20 plus about “20-30 people on the road system” outside of Delta Junction, Big Delta,
21 Deltana, and Fort Greely. Most of the disparity between the Petitioner’s estimate of
22 5,760 and the LBC Staff’s estimate of 4,148 is due to the difference in the estimated
23 population of Fort Greely. The Petitioner estimated Fort Greely’s 2005 population to
24 be 2,000 people, while the LBC Staff’s figure is based on the State Demographer
25 estimate that the Fort Greely population was 395 permanent residents in 2005.
26 Even the more conservative estimate by LBC Staff exceeds by a factor greater than
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1 four the 1,000 person threshold presumed by 3 AAC 110.050(b) to be a population
2 of sufficient size to support borough government. Moreover, the more conservative
3 population figure is greater than the 2005 populations of six of Alaska's sixteen or-
4 ganized boroughs. The average 2005 population for those six boroughs was 1,667,
5 40 percent of the size of the 2005 population of the proposed Deltana Borough.

6
7 Based on the findings above, we conclude that the proposed Deltana
8 borough has a population that is large enough to support borough government.

9
10 **Section E. The proposed Deltana Borough – on a scale suitable for borough**
11 **government – has a population that is stable enough to support borough gov-**
12 **ernment.**

13 Several provisions of law relate to this particular standard. Those con-
14 sist of AS 29.05.031(a)(1); 3 AAC 110.050(a); and 3 AAC 110.050(b). Those laws
15 state:

16 An area that meets the following standards may incorporate as a
17 home rule, first class, or second class borough, or as a unified mu-
18 nicipality: (1) the [must have a] population of the area [that] is inter-
19 related and integrated as to its social, cultural, and economic
20 activities, and is large and stable enough to support borough gov-
21 ernment. (AS 29.05.031(a)(1)) (Emphasis, de-emphasis, and clari-
22 fication added.)

23 The population of a proposed borough must be sufficiently large
24 and stable to support the proposed borough government. In this
25 regard, the commission may consider relevant factors, including
26 (1) total census enumerations;
27 (2) durations of residency;
28 (3) historical population patterns;
29 (4) seasonal population changes; and
30 (5) age distributions. (3 AAC 110.050(a)) (De-emphasis added.)

31 Absent a specific and persuasive showing to the contrary, the
commission will presume that the population is not large enough

1 and stable enough to support the proposed borough government
2 unless at least 1,000 permanent residents live in the proposed bor-
3 ough. (3 AAC 110.050(b)) (De-emphasis added.)

4 We make the following findings regarding whether the proposed Del-
5 tana Borough – on a scale suitable for borough government – has a population that
6 is stable enough to support borough government: There is a clear history of stability
7 of the population of the proposed Deltana Borough as reflected in student enrollment
8 and other factors. Residents of the proposed Deltana Borough demonstrate a
9 strong work ethic, self-sufficiency, resourcefulness, and productivity. The area of the
10 proposed Deltana Borough can reasonably be characterized as the agrarian democ-
11 racy envisioned by Thomas Jefferson. The Deltana Borough is inhabited by indi-
12 vidualists who also have a strong sense of community. There is no evidence that
13 durations of residency; historical population patterns; seasonal population changes;
14 and age distributions are deficient in terms of population stability.

15
16 Based on the findings above, we conclude that the proposed Deltana
17 borough has a population that is stable enough to support borough government.

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19 **Section F. The proposed Deltana Borough – on a scale suitable for borough**
20 **government – proposes boundaries that conform generally to natural geogra-**
21 **phy.**

22 Two provisions of law relate to this particular standard. Those consist
23 of AS 29.05.031(a)(2) and 3 AAC 110.060(a). Those laws state:

24 An area that meets the following standards may incorporate
25 as a home rule, first class, or second class borough, or as a
26 unified municipality: . . . 2) the [must have] boundaries [that]
27 of the proposed borough or unified municipality conform
28 generally to natural geography and include all areas neces-
29 sary for full development of municipal services.
30 (AS 29.05.031(a)(2)) (Emphasis, de-emphasis, and clarifica-
31 tion added.)

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

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

and

- (6) extraterritorial powers of boroughs. (3 AAC 110.060(a))

(De-emphasis added.)

We make the following findings regarding whether the proposed Deltana Borough – on a scale suitable for borough government – has boundaries that conform generally to natural geography: The northern boundary of the proposed Deltana Borough is coterminous with the southern boundary of the Fairbanks North Star Borough. The western boundary of the proposed Deltana Borough is defined by the boundaries of the Denali Borough and the Matanuska-Susitna Borough. The boundaries of existing boroughs can reasonably be presumed to reflect natural geography based on the standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a). No evidence was presented in this proceeding to overcome that presumption. Similarly, the southern boundary of the proposed Deltana Borough is defined, in part by the Matanuska-Susitna Borough. That boundary is also coterminous with the northern boundary of the Copper River REAA and Copper River Model Borough. The eastern boundary of the proposed Deltana Borough is the same as the western boundary of the Alaska Gateway REAA. As reflected in part II-C of this decisional statement, AS 14.08.031 provides with respect to REAA

1 boundaries that “Whenever possible . . . drainage basins, and other identifiable geo-
2 graphic features shall be used in describing the boundaries of the regional school
3 attendance areas.” Here again, it is reasonable to presume that the boundaries of
4 REAAs conform generally to natural geography. No evidence was presented in this
5 proceeding to overcome that presumption. The geographic area of the proposed
6 Deltana Borough, which comprises an estimated 5,892 square miles, is of a scale
7 suitable for borough government.
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9 Based on the findings above, we conclude that the proposed Deltana
10 Borough – on a scale suitable for borough government – proposes boundaries that
11 conform generally to natural geography.
12

13 **Section G. The proposed Deltana Borough – on a scale suitable for borough**
14 **government – proposes boundaries that include all areas necessary for full**
15 **development of essential borough services on an efficient, cost-effective level.**

16 A number of provisions of law relate to this particular standard. Those
17 consist of AS 29.05.031(a)(2), 3 AAC 110.060(a), 3 AAC 110.060(d), and 3 AAC
18 110.970(a) and (b). Those laws state:

19 An area that meets the following standards may incorporate as a
20 home rule, first class, or second class borough, or as a unified mu-
21 nicipality: . . . 2) the [must have] boundaries [that] of the proposed
22 borough or unified municipality conform generally to natural geog-
23 raphy and include all areas necessary for full development of mu-
24 nicipal services. (AS 29.05.031(a)(2)) (Emphasis, de-emphasis,
25 and clarification added.)

26 The boundaries of a proposed borough must conform generally to
27 natural geography, and must include all land and water necessary
28 to provide the full development of essential borough services on an
29 efficient, cost-effective level. In this regard, the commission may
30 consider relevant factors, including
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- 1 (1) land use and ownership patterns;
- 2 (2) ethnicity and cultures;
- 3 (3) population density patterns;
- 4 (4) existing and reasonably anticipated transportation patterns and facilities;
- 5 (5) natural geographical features and environmental factors; and
- 6 (6) extraterritorial powers of boroughs. (3 AAC 110.060(a)) (De-emphasis added.)

7 Absent a specific and persuasive showing to the contrary, the
8 commission will presume that territory proposed for incorporation
9 that is non-contiguous or that contains enclaves does not include all
10 land and water necessary to allow for the full development of es-
11 sential borough services on an efficient, cost-effective level.
12 (3 AAC 110.060(d))

13 Determination of essential city or borough services. (a) If a provi-
14 sion of this chapter provides for the identification of essential bor-
15 ough services, the commission will determine those services to
16 consist of those mandatory and discretionary powers and facilities
17 that, as determined by the commission,

- 18 (1) are reasonably necessary to the territory; and
- 19 (2) cannot be provided more efficiently and more effectively
20 (A) through some other agency, political subdivision of the state,
21 regional educational attendance area, or coastal resource service
22 area; or
23 (B) by the creation or modification of some other political subdivi-
24 sion of the state, regional educational attendance area, or coastal
25 resource service area.

26 (b) The commission may determine essential borough services to
27 include

- 28 (1) assessing and collecting taxes;
- 29 (2) providing primary and secondary education;¹⁴
- 30 (3) planning, platting, and land use regulation; and
- 31 (4) other services that the commission considers reasonably nec-
essary to meet the borough governmental needs of the territory.
(3 AAC 110.970(a) and (b))

¹⁴ Under AS 14.12.010(2) and AS 29.35.160(a) education is a mandatory areawide borough power and may be determined by the LBC to be an "essential" borough service under § 970. AS 14.12.025 prohibits the creation of a new school district with fewer than 250 students absent a determination from the Commissioner of DEED that a smaller district is in the best interests of the State and the proposed district. Creation of a borough with fewer than 250 students might relate to the standard in § 060(a).

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We make the following findings regarding whether the proposed Deltana Borough – on a scale suitable for borough government – proposes boundaries that include all areas necessary for full development of essential borough services on an efficient, cost-effective level: State law, AS 29.35.150 – 29.35.180, sets out the mandatory powers of organized boroughs:

Sec. 29.35.150. Scope of areawide powers. A borough shall exercise the powers as specified and in the manner specified in AS 29.35.150 - 29.35.180 on an areawide basis.

Sec. 29.35.160. Education. (a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education and Early Development. However, operation of the military reservation schools by the borough school district may be required by the Department of Education and Early Development under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education and Early Development, operation, management, and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

(b) This section applies to home rule and general law municipalities.

Sec. 29.35.170. Assessment and collection of taxes. (a) A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.

(b) Taxes levied by a city shall be collected by a borough and returned in full to the levying city. This subsection applies to home rule and general law municipalities.

Sec. 29.35.180. Land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40.

(b) A home rule borough shall provide for planning, platting, and land use regulation.

1 In this proceeding, no evidence regarding land use and ownership patterns; ethnicity
2 and cultures; population density patterns; existing and reasonably anticipated trans-
3 portation patterns and facilities; natural geographical features and environmental
4 factors; and extraterritorial powers of boroughs suggests that any powers or facilities
5 beyond those set out in AS 29.35.150 – 29.35.180 are “essential borough services”
6 for the area within the proposed Deltana Borough. No portion of the proposed bor-
7 ough is non-contiguous or contains enclaves.
8

9 Based on the findings above, we conclude that the proposed Deltana
10 Borough – on a scale suitable for borough government – proposes boundaries that
11 include all areas necessary for full development of essential borough services on an
12 efficient, cost-effective level.
13

14 **Section H. The proposed Deltana Borough boundaries do not extend beyond**
15 **any model borough boundaries.**

16 The provisions of 3 AAC 110.060(b) state:

17 Absent a specific and persuasive showing to the contrary, the
18 commission will not approve a proposed borough with boundaries
19 extending beyond any model borough boundaries.

20 We make the following findings regarding whether the proposed Del-
21 tana Borough boundaries extend beyond any model borough boundaries: The
22 model borough encompassing the proposed Deltana Borough is comprised of the
23 area within the Delta-Greely REAA and the adjoining Alaska Gateway REAA. As
24 noted previously, the boundaries of the proposed Deltana Borough conform pre-
25 cisely to those of the Delta-Greely REAA. Again, the Delta-Greely REAA does not
26 extend beyond the model borough boundaries for the area in question.
27

1 Based on the findings above, we conclude that the proposed Deltana
2 Borough boundaries do not extend beyond any model borough boundaries.

3 While we have concluded here and elsewhere that the proposed Del-
4 tana Borough boundaries satisfy all applicable standards, we express our aware-
5 ness, however, that each time a new borough is formed from the unorganized
6 borough, it naturally diminishes the size of the unorganized borough. There is some
7 degree of concern among us that a future LBC is going to look back at what was
8 done here, in our prior actions, and actions by earlier commissions, and question
9 whether we, and our predecessors, did not create some economic orphans in the
10 unorganized borough. It is fitting in this context to recognize remarks by Senator
11 Gary Wilken of Fairbanks, during the February 27, 2007, meeting of the Senate
12 Community and Regional Affairs Committee:
13

14 [The LBC] is the most difficult and most under-appreciated com-
15 mission that I know of in State government. It is so important that it
16 is in our Constitution, and [the Framers of our Constitution] had the
17 vision that local government is the best government. It has been
18 difficult to move us ahead. Most of us – we’re worried about what’s
19 around the corner. This commission, the Local Boundary Commis-
20 sion, is charged with looking what’s over the horizon. We think
21 about the next election; they’re charged with thinking about the next
22 generation and beyond. That’s really, really difficult especially
23 when you deal with issues that carry a lot of dogma and a lot of
24 angst about change; and that is what we’re talking about – change.
25 Not change for today, but change for the next generation. We’re
26 the only state in the nation with unorganized areas. So, as much
27 as people would like to ignore local government, it does work. It is
28 the bedrock of our system in America, and it will be, over time, the
29 bedrock of our system in Alaska. This commission is charged with
30 some very difficult decisions.

31

It seems to me that we’re at a spot here that we can make our state
a bunch of little boroughs – and when we do that we disenfranchise
– we don’t bring to the surrounding area, whatever that may be –

1 the benefit of the discussion – of the tension of local government.
2 We're at the point – and we just passed that first milestone, and
3 we're heading for Donlin Creek [within the prospective Kuspuk re-
4 gion borough] – perhaps we may be headed for Delta – where we
5 carve out the little enclaves of wealth. And those little wealthy ar-
6 eas are very happy because they'll have a big tax base and they'll
7 provide very little, if anything, of local support that comes out of
8 their wallets. In the meantime, the people that are carved out, the
9 people that aren't considered because we're thinking what is
10 around the corner and not what's over the horizon -- those people,
11 twenty years from now or forty years from now, will look back and
12 say, "How come? What happened back there that we're not a part
13 of that?" And, so, we're asking these five people to look over that
14 horizon.

15 We recognize that the proposed Delta Borough captures considerable fiscal re-
16 sources. Those resources include the Pogo Mine; Trans-Alaska Oil Pipeline, and
17 Fort Greely. We have a certain sense of wariness whether by allowing the formation
18 of the Deltana Borough, we are not putting the adjoining Alaska Gateway region at a
19 disadvantage. The concern, however, is not strong enough for us to deny the Peti-
20 tion or amend it to include the Alaska Gateway region.

21 **Section I. The proposed Deltana Borough boundaries conform to REAA**
22 **boundaries.**

23 The provisions of 3 AAC 110.060(c) state:

24 The proposed borough boundaries must conform to existing re-
25 gional educational attendance area boundaries¹⁵ unless the com-
26 mission determines, after consultation with the commissioner of
27 education and early development, that a territory of different size is
28 better suited to the public interest in a full balance of the standards
29 for incorporation of a borough.

30 ¹⁵ Under AS 14.08.031, the entire unorganized borough, including first-class cities and home-
31 rule cities, is divided into REAAs. AS 14.12.010 and AS 29.35.260(b) relate only to the delegated
authority for local school administration in first-class cities and home-rule cities in the unorganized
borough. Neither of those statutes changes the boundaries of REAAs. REAA boundaries are estab-
lished by the Department of Commerce, Community, and Economic Development, which also serves
as Staff to the Commission under AS 44.33.020(4).

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We make the following finding regarding whether the proposed Deltana Borough boundaries conform to REAA boundaries: The boundaries of the proposed Deltana Borough are coterminous with those of the Delta-Greely REAA.

Based on the finding above, we conclude that the proposed Deltana Borough boundaries conform to REAA boundaries.

In considering the suitability of the proposed Deltana Borough boundaries, we are cognizant that the Delta-Greely REAA boundaries have been in place for more than 30 years. The voters who petitioned for incorporation of the Deltana Borough considered those boundaries to be optimum. The Delta-Greely REAA boundaries encompass an area that is of a scale suitable for borough government. We considered the merits of adjusting the boundaries of the proposed Deltana Borough to exclude Healy Lake and to include Dry Creek, but determined that the boundaries proposed by the Petition are, at this particular moment in time, appropriate.¹⁶ We recognize, however, that those boundaries may be adjusted in the future to exclude Healy Lake, include Dry Creek, or modified in some other respect.

Section J. The boundaries of the Deltana Borough do not overlap any part of an existing organized borough.

The provisions of 3 AAC 110.060(e) state:

If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the over-

¹⁶ In doing so, we rejected a motion by a four to one vote to exclude Healy Lake from the proposed Deltana Borough.

1 lapping region from the existing organized borough.¹⁷ The commis-
2 sion will consider and treat that petition for incorporation as also be-
3 ing a detachment petition.

4 We make the following finding regarding whether the proposed Deltana
5 Borough boundaries overlap any part of an existing organized borough: The area
6 within proposed Deltana Borough is wholly within the unorganized borough.

7 Based on the finding above, we conclude that the proposed Deltana
8 Borough boundaries do not overlap any part of an existing organized borough.

9 **Section K. The proposed Deltana Borough – on a scale suitable for borough**
10 **government – has an economy with the human resources necessary to pro-**
11 **vide essential borough services on an efficient, cost-effective level.**

12 A number of provisions of law relate to this particular standard. Those
13 consist of AS 29.05.031(a)(3), 3 AAC 110.055, and 3 AAC 110.970(a) and (b). AS
14 29.05.031(a)(3) and 3 AAC 110.055 are set out below; however 3 AAC 110.970(a)
15 and (b) are quoted in part II-G of this decisional statement and are, therefore, not
16 repeated here.
17

18 An area that meets the following standards may incorporate as a
19 home rule, first class, or second class borough, or as a unified mu-
20 nicipality: . . . 3) the [must have an] economy of the area [that] in-
21 cludes the human and financial resources capable of providing
22 municipal services; evaluation of an area's economy includes land
23 use, property values, total economic base, total personal income,
24 resource and commercial development, anticipated functions, ex-
25 penses, and income of the proposed borough or unified municipal-
26 ity. (AS 29.05.031(a)(3)) (Emphasis, de-emphasis, and clarification
27 added.)

28 ¹⁷ AS 29.06.040(a) and 3 AAC 110.270 establish standards for detachment. Procedures for
29 detachment are set out in AS 29.06 and 3 AAC 110. Those provisions are not listed here.

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

3 (1) will consider

4 (A) the reasonably anticipated functions of the pro-
posed borough;

5 (B) the reasonably anticipated expenses of the pro-
posed borough;

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

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

9 (E) the economic base of the proposed borough;

10 (F) property valuations for the proposed borough;

11 (G) land use for the proposed borough;

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

13 (I) personal income of residents of the proposed bor-
ough; and

14 (2) may consider other relevant factors, including

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

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

17 (3 AAC 110.055) (Emphasis and de-emphasis added.)

18 We make the following findings regarding whether the proposed Del-
19 tana Borough – on a scale suitable for borough government – has an economy with
20 the human resources necessary to provide essential borough services on an effi-
21 cient, cost-effective level. The City of Delta Junction has provided services to the
22 region on an areawide basis for many years.¹⁸ The City has successfully operated
23 and managed the cemetery, landfill, parks, library and other community buildings,
24

25
26 ¹⁸ The record in this proceeding indicates that some have stated that the City of
27 Delta Junction has provided services for the entire region for the past three decades.

1 and has maintained the airport and roads used by all residents of the Deltana area.
2 Thus, the City of Delta Junction has long demonstrated that it has the human re-
3 sources necessary to serve the residents of the Deltana region. The Delta-Greely
4 REAA has provided educational services throughout its 5,892-square-mile jurisdic-
5 tion since its formation in 1975. Employees of the former City of Delta Junction shall
6 become employees of the new borough government, in accordance with AS
7 29.05.130 – 29.05.140, Exhibit E of the Petition, and Section 17.10 of the Deltana
8 Borough Charter. During a transition period not to exceed two years after incorpora-
9 tion, the Delta-Greely REAA will remain in place and continue to operate. Upon in-
10 tegration into the new borough, Delta-Greely REAA employees will become
11 employees of the borough. We have confidence that the Deltana Borough will con-
12 tinue to provide all the essential services that the City of Delta Junction and the
13 Delta-Greely REAA have successfully provided in the past. Analysis of the civilian
14 workforce and the employable skilled and unskilled persons available to serve the
15 proposed borough in the LBC Staff’s Preliminary Report indicates that the human
16 resources are adequate to operate the borough.
17
18

19 Based on the findings above, we conclude that the proposed Deltana
20 Borough, on a scale suitable for borough government, has an economy with the hu-
21 man resources necessary to provide essential borough services on an efficient, cost-
22 effective level. The City of Delta Junction and the Delta-Greely REAA have suc-
23 cessfully operated for many years. This proves that the residents of the region have
24 the expertise and the level of commitment and interest necessary to sustain a bor-
25 ough government.
26
27
28
29

1 **Section L. The proposed Deltana Borough – on a scale suitable for borough**
2 **government – has an economy with the financial resources necessary to pro-**
3 **vide essential borough services on an efficient, cost-effective level.**

4 A number of provisions of law relate to this particular standard. Those
5 consist of AS 29.05.031(a)(3), 3 AAC 110.055, and 3 AAC 110.970(a) and (b). AS
6 29.05.031(a)(3) and 3 AAC 110.055 are set out below; however 3 AAC 110.970(a)
7 and (b) are quoted in part II-G of this decisional statement and are, therefore, not
8 repeated here.

9 An area that meets the following standards may incorporate as a
10 home rule, first class, or second class borough, or as a unified mu-
11 nicipality: . . . 3) the [must have an] economy of the area [that] in-
12 cludes the human and financial resources capable of providing
13 municipal services; evaluation of an area's economy includes land
14 use, property values, total economic base, total personal income,
15 resource and commercial development, anticipated functions, ex-
16 penses, and income of the proposed borough or unified municipal-
17 ity. (AS 29.05.031(a)(3)) (Emphasis, de-emphasis, and clarification
18 added.)

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

18 (1) will consider

19 (A) the reasonably anticipated functions of the pro-
20 posed borough;

20 (B) the reasonably anticipated expenses of the pro-
21 posed borough;

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

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

24 (E) the economic base of the proposed borough;

25 (F) property valuations for the proposed borough;

26 (G) land use for the proposed borough;

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

1 (l) personal income of residents of the proposed bor-
2 ough; and

3 (2) may consider other relevant factors, including
4 (A) the need for and availability of employable skilled
5 and unskilled persons to serve the proposed borough; and
6 (B) a reasonably predictable level of commitment and
7 interest of the population in sustaining a borough government.
8 (3 AAC 110.055)

9 We make the following findings regarding whether the proposed Del-
10 tana Borough – on a scale suitable for borough government – has an economy with
11 the financial resources necessary to provide essential borough services on an effi-
12 cient, cost-effective level. Our human resources finding in part II-K of this decisional
13 statement that the City of Delta Junction has served the region on an areawide basis
14 for many years is also relevant here. Since its incorporation as a second-class city
15 in 1960, the City of Delta Junction has assessed and collected revenues and fees
16 needed to operate and manage the cemetery, landfill, parks, library and other com-
17 munity buildings, and has maintained the airport and roads used by all residents of
18 the Deltana area. Thus, the City of Delta Junction has long demonstrated its capac-
19 ity to generate and collect local revenue, and to serve the residents of the 5,892-
20 square-mile Deltana region. The new borough will collect the proposed gas and en-
21 ergy taxes, along with the payments in lieu of taxes from the Pogo Mine. Incorpora-
22 tion of the Deltana Borough will be subject to voter approval of a 3 percent home
23 heating fuel and vehicle gas sales tax; a 10 percent tax on the sale of electrical
24 power; and the PILT Agreement with Teck-Pogo, Inc. We have confidence that the
25 Deltana Borough will provide all the essential services that the City of Delta Junction
26 and the Delta-Greely REAA have successfully provided in the past. The Petitioner
27 supplied a six-year operating and capital budget that is feasible and plausible. The

1 extent to which projected revenues exceed projected expenditures results in a gen-
2 erous surplus of funds available for operation of the Borough. In the sixth year of
3 incorporation, when the required local contribution for the schools would be the
4 equivalent to four-mills of the value of taxable property, it is projected that the Del-
5 tana Borough would have a surplus for that year of \$673,806. The projected cumu-
6 lative surplus for year one through year six is \$7,153,119. We find the proposed
7 budget and the borough incorporation to be fiscally viable. The economy of the Del-
8 tana region is diverse and includes agriculture, forestry, mining, highway tourism,
9 and the military. The abundant fish and wildlife promises income from recreation
10 and tourism. Farming is the major land use in the region, especially on private
11 lands. In a composite ranking of economic factors by boroughs and REAAs using
12 2000 census data, the Delta-Greely REAA ranked 19 out of 35 among Alaska bor-
13 oughs and REAAs. According to the 2000 census, the estimated average house-
14 hold income was \$51,876; the estimated per capita household income was \$17,843;
15 and 17.6 percent of households were at the poverty level. Excluding the Pogo Mine
16 and the Trans-Alaska Pipeline, the State Assessor estimated the value of taxable
17 property in the Delta-Greely area was \$182.1 million.

20 Based on the findings above, we conclude that the proposed Deltana
21 Borough, on a scale suitable for borough government, has an economy with the fi-
22 nancial resources necessary to provide essential borough services on an efficient,
23 cost-effective level.

24 **Section M. The area of the proposed Deltana Borough – on a scale suitable for**
25 **borough government – has the communications media and the land, water,**
26

1 **and air transportation facilities to allow the communication and exchange**
2 **necessary for the development of integrated borough government.**

3 A number of provisions of law relate to this particular standard. Those
4 consist of AS 29.05.031(a)(4), 3 AAC 110.045(c), and 3 AAC 110.045(d). Those
5 laws state:

6 An area that meets the following standards may incorporate as a
7 home rule, first class, or second class borough, or as a unified mu-
8 nicipality: . . . (4) [must have the] land, water, and air transportation
9 facilities [necessary to] allow the communication and exchange
10 necessary for the development of integrated borough government.
(AS 29.05.031(a)(4)) (Emphasis, de-emphasis, and clarification
added.)

11 The communications media and the land, water, and air transporta-
12 tion facilities throughout the proposed borough must allow for the
13 level of communications and exchange necessary to develop an in-
tegrated borough government. In this regard, the commission may
consider relevant factors, including

- 14 (1) transportation schedules and costs;
- 15 (2) geographical and climatic impediments;
- 16 (3) telephonic and teleconferencing facilities; and
- 17 (4) electronic media for use by the public. (3 AAC 110.045(c))

18 Absent a specific and persuasive showing to the contrary, the
19 commission will presume that communications and exchange pat-
20 terns are insufficient unless all communities within a proposed bor-
21 ough are connected to the seat of the proposed borough by a
22 public roadway, regular scheduled airline flights on at least a
23 weekly basis, regular ferry service on at least a weekly basis, a
24 charter flight service based in the proposed borough, or sufficient
25 electronic media communications. (3 AAC 110.045(d))

26 The existing transportation network within the proposed borough in-
27 cludes the Richardson and Alaska Highways; the oil pipeline; and many roads and
28 navigable rivers including the Delta and Tanana Rivers. Delta Junction, Big Delta,
29 Fort Greely, Trimms Camp, and Deltana are all highway accessible. There is a pri-

1 vate bus service in the Deltana region with Fairbanks as the main destination. With
2 the exception of Whitestone and Healy Lake, all regional residents are linked by a
3 modern road system that is mostly paved. Whitestone is located on the west side of
4 the Delta and Tanana Rivers, 10-12 miles north of Delta Junction. In the summer,
5 Whitestone is only accessible by boat on the Tanana River. There are no water
6 transportation systems within the area other than the private vessels used to travel
7 to Whitestone. For four to six months in the winter, access to Whitestone is by an
8 ice road constructed across the frozen Delta River, approximately a mile upstream of
9 the Tanana River. From January to March, there is a winter road open to Healy
10 Lake, but it is not always plowed. During the winter, residents may also fly in by ski
11 plane. Healy Lake is accessible by boat, floatplane and airplane in the summer.
12 The airstrip in Healy Lake is on private land. Delta Junction has an airstrip. There
13 are two air taxi services located in the Deltana region, but there are currently no
14 regularly scheduled flights between Tok or Fairbanks and the Deltana region. Five
15 media outlets provide regional communications in the proposed borough area: radio
16 stations, newspapers, television, telephone, and Internet services. The *Delta Wind*,
17 a local newspaper, is published every Thursday. The *Fairbanks Daily News-Miner*
18 newspaper is delivered on a daily basis. Community news and a community calen-
19 dar is updated daily on the Delta News Web at <www.deltanewsweb.com>. The
20 Deltana area receives Fairbanks television programming via a relay dish system.
21 Telephone, cell phone, fax, and Internet services are extensive.

22
23
24
25 Based on the findings above, we conclude that the proposed Deltana
26 Borough, on a scale suitable for borough government, has the communications me-
27 dia and the land, water, and air transportation facilities to allow the communication
28
29

1 and exchange necessary for the development of integrated borough government.
2 The communications media; and land, air, and water transportation facilities in the
3 proposed borough are well developed and integrated. We find that the communica-
4 tions media and the transportation facilities clearly allow the communication and ex-
5 change necessary for the development of an integrated borough government.
6

7
8 **Section N. Formation of the proposed Deltana Borough is in the best interests
of the State.**

9
10 Two provisions of law relate to this particular standard. Those consist
11 of AS 29.05.100(a) and 3 AAC 110.065. Those laws state:

12
13 After providing public notice of each proposed amendment or condi-
14 tion and an opportunity for public comment, the Local Boundary
15 Commission may amend the petition and may impose conditions on
16 the incorporation. If the commission determines that the incorpora-
17 tion, as amended or conditioned if appropriate, meets applicable
18 standards under the state constitution and commission regulations,
19 meets the standards for incorporation under AS 29.05.011 or
20 29.05.031, and is in the best interests of the state, it may accept the
21 petition. Otherwise it shall reject the petition. (AS 29.05.100(a))
(De-emphasis added.)

22 In determining whether incorporation of a borough is in the best in-
23 terests of the state under AS 29.05.100(a), the commission may
24 consider relevant factors, including whether incorporation
25 (1) promotes maximum local self-government;
26 (2) promotes a minimum number of local government units;
27 (3) will relieve the state government of the responsibility of
28 providing local services; and
29 (4) is reasonably likely to expose the state government to
30 unusual and substantial risks as the prospective successor to the
31 borough in the event of the borough's dissolution. (3 AAC 110.065)

32 We make the following findings regarding whether formation of the
33 proposed Deltana Borough is in the best interests of the State: As reflected in the

1 findings and conclusion set out in part II-A of this decisional statement, formation of
2 the proposed Deltana Borough would promote maximum local self-government.
3 Formation of the Deltana Borough would create a structure to permit governance
4 and decision making at the local level. As stated in the findings and conclusion set
5 out in part II-B of this decisional statement, formation of the proposed Deltana Bor-
6 ough would also comport with the minimum number of local governments constraint
7 in our Constitution. Incorporation of the Deltana Borough will relieve the State of
8 Alaska of the responsibility of providing local services, particularly education and
9 platting. The Petition estimates that local assumption of education responsibility will
10 save the State some \$1,347,348 annually. There is no evidence that creation of the
11 Deltana Borough is reasonably likely to expose the State of Alaska to unusual and
12 substantial risks as the prospective successor to the borough in the event of the
13 borough's dissolution.
14

15
16 Based on the findings above, we conclude that formation of the pro-
17 posed Deltana Borough is in the best interests of the State.
18

19 **Section O. A proper plan for the orderly transition to borough government has
20 been provided.**

21 The provisions of 3 AAC 119.900 state:

22 Transition. (a) A petition for incorporation, annexation, merger, or
23 consolidation must include a practical plan that demonstrates the
24 capacity of the municipal government to extend essential city or es-
25 sential borough services into the territory proposed for change in
26 the shortest practicable time after the effective date of the proposed
27 change. A petition for city reclassification under AS 29.04, or mu-
28 nicipal detachment or dissolution under AS 29.06, must include a
29 practical plan demonstrating the transition or termination of munici-
30 pal services in the shortest practicable time after city reclassifica-
31 tion, detachment, or dissolution.

1 (b) Each petition must include a practical plan for the as-
2 sumption of all relevant and appropriate powers, duties, rights, and
3 functions presently exercised by an existing borough, city, unorgan-
4 ized borough service area, and other appropriate entity located in
5 the territory proposed for change. The plan must be prepared in
6 consultation with the officials of each existing borough, city and un-
7 organized borough service area, and must be designed to effect an
8 orderly, efficient, and economical transfer within the shortest practi-
9 cable time, not to exceed two years after the effective date of the
10 proposed change.

7 (c) Each petition must include a practical plan for the transfer
8 and integration of all relevant and appropriate assets and liabilities
9 of an existing borough, city, unorganized borough service area, and
10 other entity located in the territory proposed for change. The plan
11 must be prepared in consultation with the officials of each existing
12 borough, city, and unorganized borough service area wholly or parti-
13 tially included in the area proposed for the change, and must be
14 designed to effect an orderly, efficient, and economical transfer
15 within the shortest practicable time, not to exceed two years after
16 the date of the proposed change. The plan must specifically ad-
17 dress procedures that ensure that the transfer and integration occur
18 without loss of value in assets, loss of credit reputation, or a re-
19 duced bond rating for liabilities.

14 (d) Before approving a proposed change, the commission
15 may require that all boroughs, cities, unorganized borough service
16 areas, or other entities wholly or partially included in the area of the
17 proposed change execute an agreement prescribed or approved by
18 the commission for the assumption of powers, duties, rights, and
19 functions, and for the transfer and integration of assets and liabili-
20 ties. (De-emphasis added.)

19 We make the following findings regarding whether a proper plan for the
20 orderly transition to borough government has been provided: The Petition includes a
21 four-page transition plan. That plan demonstrates the capacity of the proposed Del-
22 tana Borough to extend borough services into the area proposed for incorporation in
23 the shortest practicable time after incorporation. The transition plan includes a
24 practical plan for the assumption of all relevant and appropriate powers, duties,
25 rights, and functions presently exercised by the City of Delta Junction, the Delta-
26 Greely REAA, and the State of Alaska. The transition plan was developed in consul-
27

1 tation with officials of the City of Delta Junction, Delta-Greely REAA, and other
2 agencies. The transition plan provides a practical plan for the transfer and integra-
3 tion of all relevant and appropriate assets and liabilities of the City of Delta Junction
4 and the Delta-Greely REAA in an orderly, efficient, and economical fashion within
5 the shortest practicable time, not to exceed two years after incorporation.

6
7 Based on the findings above, we conclude that a proper plan for the
8 orderly transition to borough government has been provided.

9
10 **Section P. Formation of the proposed Deltana Borough will not have the ef-**
11 **fect of denying any person the enjoyment of any civil or political right, includ-**
12 **ing voting rights, because of race, color, creed, sex, or national origin.**

13
14 Two provisions of law relate to this particular standard. Those consist
15 of 3 AAC 110.910, and 3 AAC 110.630(a). Those laws state:

16 A petition will not be approved by the commission if the effect of the
17 proposed change denies any person the enjoyment of any civil or
18 political right, including voting rights, because of race, color, creed,
19 sex, or national origin. (3 AAC 110.910)

20 Except as provided in (b) or (c) of this section, a final decision of
21 the commission is effective when
22 (1) notification of compliance with 42 U.S.C. 1973c (Voting Rights
23 Act of 1965) is received from the United States Department of Jus-
24 tice;
25 (2) certification of the legally required voter approval of the com-
26 mission's final decision is received from the director of elections or
27 the appropriate municipal official; and
28 (3) 45 days have passed since presentation of the commission's fi-
29 nal decision on a legislative review petition was made to the legisla-
30 ture and the legislature has not disapproved the decision. (3 AAC
31 110.630(a))

32 We make the following findings regarding whether formation of the
33 proposed Deltana Borough will have the effect of denying any person the enjoyment

1 of any civil or political right, including voting rights, because of race, color, creed,
2 sex, or national origin: No evidence has been presented to us in this proceeding to
3 indicate that proposed incorporation of the Deltana Borough will have the purpose or
4 effect of discriminating based on race, color, creed, sex, or national origin. As has
5 been noted throughout this decisional statement, the boundaries of the proposed
6 Deltana Borough are identical to those of the Delta-Greely REAA, a regional jurisdic-
7 tion that has been in place for more than 30 years. In that regard, the Deltana Bor-
8 ough proposal maintains the status quo in terms of jurisdiction for educational
9 services. The proposed incorporation of the Deltana Borough does not have a ret-
10 rogressive purpose or effect with regard to any civil or political right, including voting
11 rights, because of race, color, creed, sex, or national origin. Moreover, no evidence
12 has been presented to us in this proceeding to suggest that proposed incorporation
13 of the Deltana Borough will have the purpose or effect of discriminating against a
14 language minority group. The Federal Voting Rights Act includes minority language
15 assistance provisions. Under those provisions, the State of Alaska is required to
16 provide language assistance to groups covered by the Act. The requirement to pro-
17 vide minority language assistance applies to: ballots (polling place, sample and ab-
18 sentee), voter registration forms and instructions, candidate qualifying forms and
19 instructions, polling place notices, instructional forms, voter information pamphlets,
20 and oral assistance throughout the electoral process. (28 C.F.R. 55.19). Language
21 minority groups covered by the Federal Voting Rights Act are limited to American
22 Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens - the
23 groups that Congress found to have faced barriers in the political process. Lan-
24 guage minority groups covered by the Federal Voting Rights Act are determined by
25
26
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1 the U.S. Census Bureau after each census based upon a formula set out in the Vot-
 2 ing Rights Act. The most recent determinations were made on July 26, 2002. For
 3 Alaska, the areas in which language minority groups were identified are listed below.

Area	Language Minority Group
Aleutians West Census Area:	Aleut
Bethel Census Area	Eskimo
Bethel Census Area	American Indian (Tribe not specified)
Bethel Census Area	American Indian (Other Tribe specified)
Denali Borough	Athabascan
Dillingham Census Area	Eskimo
Dillingham Census Area	American Indian (Other Tribe specified)
Dillingham Census Area	Native (Other Group specified)
Kenai Peninsula Borough	American Indian (Tribe not specified)
Kenai Peninsula Borough	Aleut
Kodiak Island Borough	Filipino
Lake and Peninsula Borough	Athabascan
Lake and Peninsula Borough	Aleut
Lake and Peninsula Borough	Eskimo
Nome Census Area	Eskimo
North Slope Borough	American Indian (Tribe not specified)
North Slope Borough	Eskimo
Northwest Arctic Borough	Eskimo
Northwest Arctic Borough	Alaska Native (Other Group specified)
Southeast Fairbanks Census Area	Athabascan

1	Southeast Fairbanks Census Area	Native (Other Group specified)
2	Valdez-Cordova Census Area	Athabascan
3	Wade Hampton Census Area	Eskimo
4	Wade Hampton Census Area	American Indian (Chickasaw) ¹⁹
5	Wade Hampton Census Area	American Indian (Tribe not specified)
6	Yukon-Koyukuk Census Area	Athabascan
7	Yukon-Koyukuk Census Area	Eskimo
8	Yukon-Koyukuk Census Area	American Indian (Other Tribe specified)
9	Source: <i>Federal Register</i> , Vol. 67, No. 144, p. 48872, Friday, July 26, 2002, Notices	

12
 13 The vast majority, if not all, of the proposed Deltana Borough lies within the South-
 14 east Fairbanks Census Area. As reflected above, two minority language groups
 15 covered by the Federal Voting Rights Act exist in that region. Those are “Athabas-
 16 can” and “Native (Other Group specified).” It will be the responsibility of the State
 17 Division of Elections to comply with any requirements to provide language assis-
 18 tance to groups covered by the Act in the conduct of the incorporation election.

19
 20 Based on the findings above, we conclude that formation of the pro-
 21 posed Deltana Borough will not have the effect of denying any person the enjoyment
 22 of any civil or political right, including voting rights, because of race, color, creed,
 23 sex, or national origin.

24
 25 ¹⁹ The *Federal Register* does indeed list Chickasaw as a minority language group
 26 in the Wade Hampton Census Area. We recognize the Chickasaw as a Native American
 27 people originally from present-day Mississippi, now mostly living in Oklahoma. They are
 28 related to the Choctaws, who speak a language very similar to the Chickasaw language,
 29 both forming the Western Group of the Muskogean languages.

1 **III. ORDER OF THE COMMISSION**

2
3 On the basis set out in the above “Findings and Conclusions” portion of
4 this Statement of Decision, we determine that the Petition meets all applicable stan-
5 dards under the State Constitution and Commission regulations, meets the stan-
6 dards for incorporation under AS 29.05.031, and is in the best interests of the State.
7 Accordingly, we approve, without amendment or conditions,²⁰ the *Petition to the Lo-*
8 *cal Boundary Commission for Incorporation of the Deltana Borough, a Unified*
9 *Home-Rule Borough*. Unless a timely request for reconsideration is granted under
10 3 AAC 110.580, or we order reconsideration on our own motion under 3 AAC
11 110.580, the Commission Chair shall immediately notify the Director of Elections for
12 the State of Alaska of our acceptance of the Petition.
13

14 Under AS 29.05.110, within 30 days after such notification, the Director
15 of Elections shall order an election in the area of the proposed borough to determine
16 whether the voters desire borough incorporation and, if so, to elect the initial bor-
17 ough officials. The election shall be held not less than 30 or more than 90 days after
18 the date of the election order. The election order must specify the dates during
19 which nomination petitions for election of initial officials may be filed.
20

21 The initial elected officials shall consist of one borough mayor and
22 seven borough assembly members.²¹ As provided in Sections 2.02 and 4.01 of the
23

24 ²⁰ As is reflected in part III of this decisional statement, the Petition itself provides
25 conditions for incorporation.

26 ²¹ The initial elected officials will not include a school board. The transition plan
27 included with the Petition states “There shall be a school board election to be conducted
28 by the Deltana Borough at a date prior to the assumption of educational powers to ensure
29 an [sic] seamless transition of education services.”
30

1 Deltana Borough Charter, the mayor and each assembly member shall be elected at
2 large. As provided in Sections 2.04 and 4.01 of the Deltana Borough Charter, a
3 candidate for the office of mayor or assembly shall be a qualified voter of the pro-
4 posed Deltana Borough and a resident of the area within the proposed Deltana Bor-
5 ough for at least one year preceding the election. As provided in Section 4.01 of the
6 Deltana Borough Charter, the Mayor is elected for a three-year term. As provided in
7 Section 17.03 of the proposed home-rule Charter, for purposes of the election of the
8 initial assembly members: Seats A and B shall be designated as one-year seats;
9 Seats C and D shall be designated as two-year seats; and Seats E, F, and G shall
10 be designated as three-year seats.
11

12 Under AS 29.05.120, nominations for initial municipal officials are
13 made by petition. The petition shall be in the form prescribed by the Director of Elec-
14 tions and must include the name and address of the nominee and a statement of the
15 nominee that the nominee is qualified under the provisions of the Alaska Statutes for
16 the office that is sought. A person may file for and occupy more than one office but
17 may not serve simultaneously as borough mayor and as a member of the assembly.
18 If the voters approve the proposition to incorporate, the initial elected officials take
19 office on the first Monday following certification of their election. A qualified voter
20 who is registered to vote within the proposed Deltana Borough at least 30 days be-
21 fore the date of the election order may vote.
22

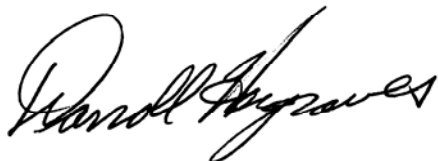
23 Under AS 29.05.110, areawide borough powers included in the Petition
24 are considered to be part of the incorporation question. The home-rule charter in-
25 cluded in the Petition is considered to be part of the incorporation question. The
26 home-rule charter is adopted if the voters approve incorporation of the Deltana Bor-
27
28

1 ough. Under AS 29.05.140, upon incorporation, the home-rule charter of the Del-
2 tana Borough, a unified home-rule borough, operates to dissolve all municipalities in
3 the borough.

4 In accordance with Subsection 11-F of the Petition, incorporation is
5 conditioned upon voter approval of (1) the “Agreement for Payment in Lieu of Taxes”
6 between the City of Delta Junction and Teck-Pogo, Inc., included as Exhibit K of the
7 Petition, (2) a proposition to authorize the Deltana Borough to levy a 3 percent home
8 heating fuel and vehicle gas sales tax, and (3) a proposition to authorize the Deltana
9 Borough to levy a 10 percent tax on the sale of electrical power. Those three propo-
10 sitions shall be presented to the voters as a single question at the time of incorpora-
11 tion. Again, voter approval of that question presenting those three propositions is a
12 condition for incorporation.
13

14 As prescribed by AS 29.05.110, the Director of Elections shall super-
15 vise the election in the general manner prescribed by AS 15 (Election Code). The
16 State of Alaska shall pay all election costs.
17

18 Approved in writing this 12th day of April 2007 by Commissioners Har-
19 graves, Harcharek, Nakazawa, and Zimmerle.²²
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23 Darroll Hargraves, Chair
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27 ²² See n. 1.
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1 Attest:

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3 Dan Bockhorst, Staff

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6 **RECONSIDERATION BY THE COMMISSION**

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8 Within eighteen days after this decision becomes final under 3 AAC
9 110.570(g), any person may file a request for reconsideration of the decision. The
10 laws governing reconsideration provide as follows:

11 3 AAC 110.580. Reconsideration

12 (a) Within 18 days after a written statement of decision is
13 mailed under 3 AAC 110.570(f), a person or entity may file an origi-
14 nal and five copies of a request for reconsideration of all or part of
15 that decision, describing in detail the facts and analyses that sup-
16 port the request for reconsideration.

17 (b) Within 20 days after a written statement of decision is
18 mailed under 3 AAC 110.570(f), the commission may, on its own
19 motion, order reconsideration of all or part of that decision.

20 (c) A person or entity filing a request for reconsideration shall
21 provide the department with a copy of the request for reconsidera-
22 tion and supporting materials in an electronic format, unless the
23 department waives this requirement because the person or entity
24 requesting reconsideration lacks a readily accessible means or the
25 capability to provide items in an electronic format. A request for re-
26 consideration must be filed with an affidavit of service of the re-
27 quest for reconsideration on the petitioner and each respondent by
28 regular mail, postage prepaid, or by hand-delivery. A request for re-
29 consideration must also be filed with an affidavit that, to the best of
30 the affiant's knowledge, information, and belief, formed after rea-
31 sonable inquiry, the request for reconsideration is founded in fact,
and is not submitted to harass or to cause unnecessary delay or
needless expense in the cost of processing the petition.

(d) If the person or entity filing the request for reconsidera-
tion is a group, the request must identify a representative of the
group.

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

- 1 (1) a substantial procedural error occurred in the
original proceeding;
2 (2) the original vote was based on fraud or misrepre-
sentation;
3 (3) the commission failed to address a material issue
of fact or a controlling principle of law; or
4 (4) new evidence not available at the time of the hear-
5 ing relating to a matter of significant public policy has become
known.

6 (f) If the commission does not act on a request for reconsid-
7 eration within 20 days after the decision was mailed under 3 AAC
110.570(f), the request is automatically denied. If it orders recon-
8 sideration or grants a request for reconsideration within 20 days af-
9 ter the decision was mailed under 3 AAC 110.570(f), the
10 commission will allow a petitioner or respondent 10 days after the
11 date reconsideration is ordered or the request for reconsideration is
12 granted to file an original and five copies of a responsive brief de-
13 scribing in detail the facts and analyses that support or oppose the
14 decision being reconsidered. The petitioner or respondent shall
15 provide the department with a copy of the responsive brief in an
16 electronic format, unless the department waives this requirement
17 because the petitioner or respondent lacks a readily accessible
means or the capability to provide items in an electronic format.

18 (g) Within 90 days after the department receives timely filed
19 responsive briefs, the commission, by means of the decisional
20 meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a
21 decision on reconsideration. A decision on reconsideration by the
22 commission is final on the day that the written statement of decision
23 is mailed, postage prepaid, to the petitioner and the respondents.

24 In summary, reconsideration may be granted or order only if (1) a substantial
25 procedural error occurred in the original proceeding; (2) the original vote was based
26 on fraud or misrepresentation; (3) the commission failed to address a material issue
27 of fact or a controlling principle of law; or (4) new evidence not available at the time
28 of the hearing relating to a matter of significant public policy has become known.

JUDICIAL APPEAL

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

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