



THE STATE
of **ALASKA**
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Final Report to the Local Boundary Commission

Concerning the Petition to Incorporate Edna Bay as a
Second Class City within the Unorganized Borough

April 2014



This is the *Final Report to the Local Boundary Commission Concerning the Petition to Incorporate Edna Bay as a Second Class City within the Unorganized Borough*. The report was written by staff to the Local Boundary Commission. The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development. The report can also be found at the following address:

http://commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/7.%20Reports/

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at (907) 269-4559/4587, TDD at (907) 465-5437, or LBC@alaska.gov.

Graphic illustration only - this publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

Chapter 1 – Introduction

On February 12, 2014, the Alaska Department of Commerce, Community, and Economic Development (hereafter Commerce or Department) issued its *Preliminary Report to the Local Boundary Commission Concerning the Petition to Incorporate Edna Bay as a Second Class City within the Unorganized Borough*.¹ In that report Commerce found that the city incorporation standards were met. The report recommended that the Local Boundary Commission (hereafter LBC or commission) approve the petition as presented. Notices of the preliminary report and the opportunity to submit public comments on it were duly posted and published.

The public comment period on the preliminary report lasted until March 17, 2014. Twenty two comments were received from the petitioners' representative, the respondent Sealaska, and public members. Staff has read and considered all of the comments submitted. This report considers those comments and other materials and makes the Department's final written recommendation to the LBC. The background information about the LBC and the LBC staff (hereafter staff) is not repeated in this report.

Copies of this report will be distributed to the petitioners, the respondent, the LBC members, and others. All petition materials are available for public review in the Edna Bay post office, 203 W. Davidson, 24/7 binder on bulletin board; the Edna Bay State Harbor, 101 Kosciusko Dr., 24/7 binder on bulletin board; and at www.ednabayalaska.net. The materials are also available on the LBC website, http://www.commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/.

The LBC will convene a public hearing under [3 AAC 110.560](#) regarding the proposal to incorporate Edna Bay as a city. The proposed city consists of approximately 27.5 square miles of land and water. The public hearing will start on May 14, 2014, at 2:00 p.m. at the Edna Bay School. The hearing will reconvene at the same location on May 15, 2014, at 11:00 am. The LBC will convene a decisional meeting under [3 AAC 110.570](#) to act on the proposal immediately after the hearing in the same location.

A copy of the notice for the hearing and decisional meeting is included in Appendix A.

¹ The report was prepared by the staff to the LBC, not the LBC itself as one comment suggested. As stated above, the staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development. The report uses the terms "Commerce," "staff," "Department," and "we" interchangeably.

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Petition's Future Procedures

Public Hearing and the Decisional Meeting

The next step after the final report is the LBC's public hearing per [3 AAC 110.550](#). The staff have sent the LBC members the petition, responsive brief, written comments, reply brief, and the two staff reports. The hearing procedures are governed by [3 AAC 110.560](#). At the hearing the LBC will hear evidence and comments presented by the parties (the petitioners and the respondent), and the public regarding the proposed incorporation of Edna Bay. After the hearing, the LBC will hold its public decisional meeting. At the decisional meeting, the commission will review whether the petition meets the standards and reach a decision. The LBC considers the entire record when it renders a decision.

At the decisional meeting, the LBC may act by:

- approving the petition as presented;
- amending the petition (e.g., expanding or contracting the proposed boundaries);
- imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing the proposed city to levy taxes to ensure financial viability); or
- denying the petition.

If the commission determines that a local action incorporation petition should be amended or have a condition placed on it, per [3 AAC 110.570\(c\)\(2\)](#) the Department shall provide public notice and an opportunity to comment before the LBC can amend the petition or impose a condition on it.

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.² The LBC must proceed within its jurisdiction, conduct a fair hearing and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

The LBC must adopt a written decision stating the basis for its decision. After the decisional meeting, the LBC will meet again to approve or amend a draft written decision. The final written decision is issued within 30 days of the decisional meeting. Decision copies are issued to the petitioners, respondent, and others who request them.

At that point the decision becomes final, but is subject to reconsideration. Under [3 AAC 110.580](#) any person may ask the LBC to reconsider its decision. The LBC may order reconsideration on its own motion as well. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

Implementation

A petition that has been approved by the LBC cannot take effect before any stipulations imposed by the commission are satisfied. If the commission approves a petition, the proposal is typically subject to either voter approval, or disapproval by the legislature. This depends on whether the petition was filed as a local action petition or a legislative review petition, respectively. If an election is held, the Division of Elections director or the appropriate municipal official needs to certify that election.

[3 AAC 110.630\(a\)](#) specifies further conditions that must be met before an LBC approval becomes effective. If all of [3 AAC 110.630\(a\)](#)'s requirements have been met, the Department shall issue a certificate describing the boundary change.

² See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.

Chapter 2 – Department’s Analysis

Introduction

The petition, briefs, and all of the comments were read and reviewed for this report. The petition documents, comments, briefs, reports, and other information are available at http://www.commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/.

Some standards contain factors that the commission “may consider” in determining whether the standard is met. As those standards use the word “may,” it is not required that the commission (or this report) consider those factors, only that the commission consider whether or not the standard is met.

This report contains the Department’s findings and recommendations regarding the petition. The final report does not repeat all of the analysis found in the preliminary report, but does include further investigation by the staff. This is to ensure the commission has all the information required to make an informed decision regarding the proposal. In both reports, LBC staff cited people with expertise in their respective fields. Their contribution to this report is appreciated.

The Department carefully considered the comments received concerning the preliminary report in evaluating the standards, and in evaluating whether it should change its recommendations. While not all of the comments or all of each particular comment are addressed, all of the comments were read and considered by the staff in writing this report. After considering all the comments, the LBC staff reaches the same conclusion that it did in the preliminary report. It again recommends that the commission approve the petition without amendment or condition.

Standards

AS 29.05.011. Incorporation of a city

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

- (1) the community has 400 or more permanent residents;*
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;*
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic*

base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

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

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

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city. (§ 4 ch 74 SLA 1985; am § 6 ch 58 SLA 1994)

As [AS 29.05.011](#)'s requirements are addressed by and included in the regulatory standards, this report will not address [AS 29.05.011](#)'s standards separately.

AS 29.05.021. Limitations on incorporation of a city

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

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city. (§ 4 ch 74 SLA 1985)

The analysis of [AS 20.05.021](#) is included within the analysis of [3 AAC 110.010](#).

3 AAC 110.005. Community

Territory proposed for incorporation as a city must encompass a community.

Per [3 AAC 110.005](#), the territory proposed for incorporation must encompass a community [as determined in [3 AAC 110.920\(a\)](#), and defined by [3 AAC 110.990\(5\)](#)]. The analysis of [3 AAC 110.005](#) is included within the analysis of [3 AAC 110.990](#).

3 AAC 110.920. Determination of community

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

(1) settlement is inhabited by at least 25 permanent residents;

(2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and

(3) the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of

dwelling units, and the number of commercial or industrial establishments, community services, and 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; or*
 - (2) repealed 1/9/2008;*
 - (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.**
- (c) A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.*

The analysis of [3 AAC 110.920](#) is included within the analysis of [3 AAC 110.990](#).

3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

- (5) a "community" means a social unit comprised of 25 or more permanent residents as determined under [3 AAC 110.920](#);*

Analysis

After analyzing [3 AAC 110.005](#), [3 AAC 110.920](#), and [3 AAC 110.990\(5\)](#) in the preliminary report, Commerce found that Edna Bay comprised a community, and that the standards were met. After considering the comments received on the preliminary report, Commerce affirms that finding.

3 AAC 110.010. Need

- (a) In accordance with [AS 29.05.011\(a\)\(5\)](#), a community must demonstrate a reasonable need for city government. In this regard, the commission may consider relevant factors, including
 - (1) existing or reasonably anticipated social or economic conditions;*
 - (2) existing or reasonably anticipated health, safety, and general welfare conditions;*
 - (3) existing or reasonably anticipated economic development; and*
 - (4) adequacy of existing services.**
- (b) In accordance with [AS 29.05.021\(a\)](#), and to promote a minimum number of local government units in accordance with [art. X, sec. 1, Constitution of the State of Alaska](#), a*

community in the unorganized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively by annexation to an existing city.

(c) In accordance with [AS 29.05.021\(b\)](#), and to promote a minimum number of local government units in accordance with [art. X, sec. 1, Constitution of the State of Alaska](#), a community within an organized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively

(1) by annexation to an existing city;

(2) by an existing organized borough on an areawide or nonareawide basis; or

(3) through an existing borough service area.

Analysis

Commerce carefully considered the comment submitted by the respondent Sealaska (hereafter the respondent). The respondent cites the remarks made by Alaska constitution framer Vic Fischer during the constitutional convention.³ Dr. Fischer stated that the constitutional convention's Committee on Local Government had the goal of limiting the number of local governments formed. The Department has great respect for Dr. Fischer, and is pleased to cite him here. He said then that "[i]n Alaska it is particularly important that we provide a local government system that will have the maximum amount of flexibility with the maximum amount of home rule, and at the same time with the maximum amount of state interest and participation in local affairs."

Here the proposed incorporation would give the citizens of Edna Bay the maximum amount of home rule because they live in neither an organized borough nor a city, and hence have no local government. Incorporating Edna Bay as a city would give those citizens home rule government. As they live in the unorganized borough, their only local government is the Alaska Legislature (per [art. X, sec. 6 of the Constitution of the State of Alaska](#), the Legislature acts as the assembly for the unorganized borough). Forming a City of Edna Bay would not be contrary to Dr. Fischer's goal of limiting the number of local governments formed. Instead, incorporating the community as a city would form a local government where none currently exists.

Further, Commerce finds that the proposed City of Edna Bay would consist of more than the road maintenance district and harbor administrator that the respondent asserts it would be.⁴ The Petition states that the proposed city would offer EMS service, fire service, subsidized postal service, and other services.⁵

³ The respondent's comment on page 1.

⁴ *Id.* on page 2.

⁵ Petition on page 14.

Regarding the stated need to incorporate in order to assume ownership of the road and replace the bridges, the respondent asserts that “[t]he State and Staff agree that the road traverses land owned by the State of Alaska.”⁶ It is true that the Department cited the Department of Transportation (DOT) Land Survey Manager Randal Davis in saying that “it is unclear at this point who owns the road and hence the bridge, but the land that the road transits is owned by DNR [the Department of Natural Resources].”⁷ But in contrast, staff understands from speaking with other state and federal officials that DNR has not yet asserted ownership of the road.

The respondent further states that the report says that incorporation “might not be necessary.”⁸ In contrast, the report stated that city *ownership* of the road might not be necessary if DNR asserted ownership of the road, *and* [emphasis added] applied for those funds. If DNR did not assert ownership, then the best way to replace the bridges would be for the city to apply for the funds [by requesting ownership itself].⁹ Commerce found in the preliminary report that there is a reasonable need for city government so that the city can assume ownership of the road.¹⁰ Funding for the bridge replacement could be easier if there was a city:

Tongass Forest Engineer Larry Dunham of United States Forest Service (USFS) said that the Western Federal Lands Highway Division (WFLHD) could fund the replacing of the road bridges through the USFS. Mr. Dunham stated that the WFLHD would find it easier to fund the project if there was a city/public entity as a cooperator. As stated below, currently the community association does not have any legal status as a public authority. They are essentially a non-profit entity, much like a club. If the city was formed and requested ownership of the current road Right of Way (ROW), DNR would transfer ownership of the ROW to the city. The city could in turn vote to have road authorities, allowing the city to give the USFS a road use permit to fix and maintain the road and bridges.¹¹

A third reasonable need for city government was the need to replace the harbor. The preliminary report had said that:

The condition of the harbor also indicates a reasonable need for [a] city. It appears unlikely to Commerce that any other entity but a City of Edna Bay is likely to replace the harbor. The community needs the harbor to be replaced so

⁶ The respondent’s comment on page 4.

⁷ Preliminary report on page 17.

⁸ The respondent’s comment on page 4.

⁹ Preliminary report on pages 16 - 17.

¹⁰ *Id.* on page 17.

¹¹ April 16, 2014 email from Larry Dunham.

that boats, including Edna Bay’s fishing fleet, can use the harbor, and so the seaplanes can dock safely. A replaced harbor is necessary for the same reasons as a reliable road and bridge system – the community relies on the harbor as a link, in this case to the outside world. A replaced harbor is necessary for Edna Bay because without it there can be no economic development. The community needs the harbor to be replaced because that is how most people and the mail travel to Edna Bay. The “mail” is not just letters and bills; it is also how groceries and supplies reach the island. Injured persons are flown out to hospitals. For those reasons, a replaced harbor is necessary for existing and reasonably anticipated social, economic, health, safety, and general welfare conditions. As a city of Edna Bay appears to be the only candidate to replace the harbor, the community shows a reasonable need for city government.¹²

In contrast, the comment from Jere Crew states that “the funds to replace the existing harbor and breakwater have already been budgeted and are not in any way dependent on Edna Bay achieving second class status.”¹³ The Department, however, has received information to the contrary. In the preliminary report, Commerce stated that:

DOT&PF [Department of Transportation and Public Facilities] State Ports and Harbor Engineer Michael Lukshin said that while the state owns the L-shaped main float, the community association owns the breakwater, the tidal grid, the gangway and its supporting float, the stall finger flats, and the seaplane float. He said that the harbor needs to be replaced soon. Mr. Lukshin said if Edna Bay incorporated and asked the state (DOT&PF) to turn over control of the harbor to the city, DOT&PF would do so according to [AS 35.10.120](#). DOT&PF has transferred control of similar harbor facilities to other municipalities about 75 times since 1986. DOT&PF cannot transfer control of harbors to community associations. If the city passes a resolution of support to take over the harbor, then DOT&PF would then ask the Legislature for the community harbor transfer funds. Mr. Lukshin could not guarantee that such funds would be appropriated, but DOT&PF has received favorable responses in the past from the Legislature because such transfers save the state money. DOT&PF saves money too because it would no longer be responsible for any Edna Bay harbor deferred maintenance costs.¹⁴

¹² *Id.* at 17 – 18.

¹³ The comment from Jere Crew is unpaginated, and hence the comment is not cited as to page.

¹⁴ *Id.* at 15.

On April 10, 2014 staff spoke again with Michael Lukshin. He clarified that:

DOT&PF has four state funded programs to support harbor facilities. These funds cannot be used interchangeably. The funding sources are harbor deferred maintenance funds, community harbor transfer funds, 50/50 harbor facility grants, and Corps of Engineer match funds.

The first program is solely for department owned harbor facilities, like the existing L-shaped main float in Edna Bay. Regardless of whether Edna Bay incorporates or not, DOT&PF deferred maintenance funds are used at the *department's discretion*. DOT&PF prioritizes and distributes maintenance funds for DOT&PF managed projects based the department's needs and condition assessments. The distribution of maintenance funds and the scope of projects can change depending on circumstances. For example, his maintenance budget has been reduced, and emergency projects with higher priorities than Edna Bay's have arisen. This has the effect of making Edna Bay's harbor maintenance project a lower priority.

The second program is community harbor transfer funds. These are funds that the Legislature commonly appropriates to assist a municipality with the transfer of a state owned harbor facility to local government. Per statute, these funds can only be given to a municipality. The Edna Bay community would need to vote favorably for incorporation and then agree to accept ownership and maintenance responsibilities for the department's L-shaped main float in order to receive these funds. Once the city accepts ownership then it is ultimately up to the municipality to decide when and how to use these transfer funds. The municipality could apply them immediately towards a harbor facility repair or replacement project. Alternatively, the municipality could choose to wait and defer the project until a later time. These funds can also be used as local match funding for the next program.

The third program, Harbor Facility Grant Program ([AS 29.60.800](#)), allows the department to provide a 50/50 matching grant of up to \$5 million for a major maintenance or construction project at municipality owned harbor facilities. The funds can used to fix, repair, replace, update, and improve harbors but do not pay for operational expenses.

The fourth program with the Corps of Engineers provides state financial assistance with a portion of the local match for federal Corps of Engineer harbor projects.

In addition, there may be other federal and state grant and loan programs that only a municipality owned harbor facility would be eligible for based on economic

development associated with or directly related to a harbor. For example, many fisheries related enterprises, ice plants, and marine repair facilities have been developed recently because of their proximity to a municipally owned harbor. There are several project examples in neighboring Southeast Alaska municipalities.

Incorporation at Edna Bay has another intangible benefit in that it gives policing powers to the municipality. This is especially important when it comes time for city staff to collect harbor usage fees, which support harbor operating expenses and provide an income stream to the city's general fund. Incorporation is also important for the establishment and enforcement of municipal ordinances aimed at maintaining a clean and orderly harbor facility for the public.

For that reason, Commerce finds that obtaining funds to replace the harbor and breakwater (through a state transfer of the harbor) depends on Edna Bay becoming a city. Incorporation would have further ancillary benefits regarding the harbor.

Commerce found in its preliminary report that [AS 29.05.011\(a\)\(5\)](#), [AS 29.05.021\(a\)](#), [AS 29.05.021\(b\)](#), and [3 AAC 110.010](#) were met. After considering the comments on the preliminary report, and based on the community's need for maximum local government, for ownership of the road and funding for bridge replacement, and for control of the harbor, Commerce affirms its finding that the community demonstrates a reasonable need for city government, and that [AS 29.05.011\(a\)\(5\)](#), [AS 29.05.021\(a\)](#), [AS 29.05.021\(b\)](#), and [3 AAC 110.010](#) are met.

3 AAC 110.020. Resources

In accordance with [AS 29.05.031\(a\)\(3\)](#), the economy of a proposed city must include the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission (1) will consider

- (A) the reasonably anticipated functions of the proposed city;*
- (B) the reasonably anticipated expenses of the proposed city;*
- (C) the ability of the proposed city to generate and collect revenue at the local level;*
- (D) the reasonably anticipated income of the proposed city;*
- (E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date
 - (i) for receipt of the final organization grant under [AS 29.05.180](#) ;*
 - (ii) for completion of the transition set out in [AS 29.05.130](#) - [AS 29.05.140](#) and [3 AAC 110.900](#); and**

(iii) on which the proposed city will make its first full local contribution required under [AS 14.17.410 \(b\)\(2\)](#) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;

(F) the economic base of the proposed city;

(G) valuations of taxable property within the proposed city;

(H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and

(I) personal income of residents within the proposed city; and

(2) may consider other relevant factors, including

(A) land use within the proposed city

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

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

Analysis

In its comment, the respondent states that the commission's 2006 decision to incorporate Naukati as a city is directly on point with this petition.¹⁵ But, no two petitions are identical – the circumstances can vary. Further, the standards can and do change over time.

With Naukati, the LBC was concerned about the proposed city's financial viability, its dependence on federal Payment In Lieu of Taxes (PILT) and forest receipts, its dependence on selling land to raise revenue, its dependence on a nascent aquaculture industry to raise revenue, and its reluctance to impose taxes. The commission found that Naukati's reliance on both PILT and forest receipts was unwise. To make the proposed city financially sound, the LBC approved the petition, but with the condition that the voters authorize the levying of a sales tax and a property tax. The voters defeated both of the authorizing measures, and the incorporation measure as well.

Commerce finds that the Naukati petition differs in many ways from the Edna Bay petition. The proposed City of Edna Bay relies mainly upon state community revenue sharing.¹⁶ The Department said in its preliminary report that there was no guarantee that community revenue sharing would continue.¹⁷ The Petitioners recognized that as well.¹⁸ But what impressed staff in its preliminary report was that Edna Bay had accrued

¹⁵ The respondent's comment on pages 3 – 4.

¹⁶ It relies on federal PILT for about 10 percent of its post transition grant income - forest receipts are not mentioned in its budget. Petition on page 9.

¹⁷ Preliminary report on page 20.

¹⁸ Petition on page 10.

a surplus of about \$100,000, and had no long term debt.¹⁹ Commerce found that the situation reflected sound financial management. Sound financial management would benefit the proposed city as it does the community association.

The respondent's concerns about the proposed city's finances are well taken, but after carefully considering those concerns and examining the community's financial management, Commerce finds that the situation differs from that in Naukati. Naukati had a much bigger budget and showed resistance to taxes; no such opposition was expressed here. Further, the proposed city of Edna Bay would start with \$100,000 in reserves. Third, it would have lower expenses than Naukati, and an income to expenses ratio of 3.62 to one *after* the organization grants end. The figure would be higher while the organization grants are being distributed in the first two fiscal years.

Regarding income, on page 3 of its comment the respondent correctly points out that Edna Bay predicts \$4,800 of income from harbor fees, but will impose no taxes.²⁰ In predicting that the proposed city would be a "ward of the state," the respondent correctly points out that the harbor fees are the only locally generated income.²¹ But, many cities in Alaska levy no taxes.²² Of the 143 incorporated cities in Alaska, 42 of them or 29.4% reported no taxes, and another seven or 4.9% reported taxes lower than the proposed city's harbor fees.²³ In other words, over a third (34.27%) of Alaska cities reported no taxes, or reported taxes that were less than the proposed City of Edna Bay's locally generated income, yet those cities still need income from external sources. Thus, many cities in Alaska rely primarily on income other than local taxes, so Edna Bay would not be an anomaly.

In the preliminary report the Department expressed concern that the petitioners had not included at least a part time city clerk's salary in the budget. The Department agrees with the comment from Jere Crew that it is reasonable to expect to pay at least a clerk's salary. Commerce was also concerned that the expenses were static and did not take inflation into account. Despite that, Commerce concluded that the community's financial

¹⁹ Preliminary report on page 20.

²⁰ The \$4800 figure could rise because if the harbor is replaced, it could possibly attract more boats and thus raise more revenue for the proposed city.

²¹ The respondent's comment on pages 2 – 3.

²² The cities of Akiak, Akhiok, Allakaket, Ambler, Anaktuvuk Pass, Anvik, Atkasuk, Chuathbaluk, Clark's Point, Coffman Cove, Delta Junction, Eagle, Ekwok, Golovin, Goodnews Bay, Grayling, Holy Cross, Hughes, Huslia, Kachemak, Kaktovik, Kaltag, Kasaan, Kobuk, Koyukuk, Kupreanof, Lower Kalskag, Larsen Bay, Mountain Village, Newhalen, New Stuyahok, Nikolai, Nondalton, Nulato, Platinum, Port Heiden, Ruby, Russian Mission, Shageluk, Upper Kalskag, Wainwright, and Wales reported no taxes collected in 2013. Bettles, Manokotak, McGrath, Nightmute, Nunam Iqua, Ouzinkie, and Port Lions reported tax income of \$4,448 or less. The Metlakatla Indian Community, organized under federal law, also reported no taxes collected in 2013.

²³ It is possible that some cities collect fees rather than taxes. Most fees are not reported to the State Assessor's office.

management was laudable, both in light of its income to expenses ratio, and because it had amassed roughly a \$100,000 surplus.²⁴

The comment from Jere Crew also remarked on the personal income of the residents. In evaluating whether the economy of a proposed city includes the human and financial resources to provide essential municipal services on an efficient and cost effective level, the LBC will consider, among many other factors, the personal income of the residents of the proposed city. The overall standards of [AS 29.05.031\(a\)\(3\)](#) and [3 AAC 110.020](#) must be met. The LBC will consider the individual factors enumerated by both standards in determining that.

In its preliminary report, Commerce used figures and other information provided by the Alaska Department of Labor and Workforce Development (hereafter Labor), an official state source, to determine the total wages of the Edna Bay residents. Based on that data, Commerce found that the total wages did not include income from Social Security, pensions, or investments. Commerce makes no finding as to the amount of retirees' income, and is not aware of any way to ascertain such income. The total amount of wages does not include either PFD checks or reliance on subsistence. Likewise, the income that fishers derive from fishing is not likely included in Edna Bay's total wages.²⁵ Further, Jere Crew's comment on the preliminary report states that the local businesses have income not included in Labor's total wage statistics, which supports the Department's point that the community's total income is larger than the reported wages.

Based on the above, the residents' collective income can be much larger than the wages figure indicated. The community's economy partly depends on subsistence living. The staff does not make light of the difficulty which reliance on subsistence can cause, but subsistence activities can offset the necessity of earning wages to pay for food.

Regarding the fishers' income, Jere Crew's comment indicates that the average fishing income of Edna Bay fishers is low. Staff does not disagree, but points out that some of the fishers possibly have other income. While the total fishing income of Edna Bay fishers can be determined from the Alaska Commercial Fisheries Entry Commission (CFEC) website at <http://www.cfec.state.ak.us/gpbycen/2012/201431.htm>, it is not clear to staff how a fisher's total personal income can be publically available and documented. There is no other empirical evidence before Commerce or the commenter to determine the financial well being of the fishers.

²⁴ Preliminary report on page 20.

²⁵ Preliminary report on pages 23 to 24.

The Crew comment further states “before the LBC can say that the financial resources of the local residents is [sic] “adequate” there needs to be more documentation.” Similar to the difficulty in documenting the fishers’ total income, it is not clear to Commerce how such information on overall personal income can be obtained. Regardless, the personal income of the residents is just one factor that the LBC must consider in determining the human and financial resources of the proposed city.²⁶

Commerce stated in the preliminary report that the personal income of residents of the proposed city is such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level. Commerce, in considering the Crew comment and the data available to the staff, retracts that statement, but points out that there are data and information in the record, including from the upcoming hearing, that the commission will consider in its decisional meeting in determining whether [AS 29.05.011\(a\)\(3\)](#) and [3 AAC 110.020](#) are met.

Commerce concluded in its preliminary report that the proposed city had the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, and that [3 AAC 110.020](#) is met. After carefully considering the comments on the preliminary report, Commerce affirms its finding that [AS 29.05.011\(a\)\(3\)](#) and [3 AAC 110.020](#) are met.

3 AAC 110.030. Population

(a) In accordance with [AS 29.05.011\(a\)\(4\)](#), the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including

- (1) census enumerations;*
- (2) durations of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under [AS 43.23](#) for permanent fund dividends.*

²⁶ On pages 5 and 6 of its comment, the respondent was concerned that the staff was filling in evidentiary gaps and curing defects in the petition by providing information regarding property valuation and personal income, respectively. But, per 3 AAC 110.435(c) it is the staff’s responsibility to ensure that the commission is fully and accurately informed by providing to the commission new or additional information.

(b) To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.

Analysis

The comment on the preliminary report from Jere Crew stated that Labor's population estimates were based on the number of people who filed for a 2013 PFD and cited Edna Bay as their residence. The comment further states that some of the PFD applicants claim Edna Bay as their residence but "have not been here in years." It is true that Labor's population estimates use the number of people who filed for a 2013 PFD. But, a person who files for a PFD swears under criminal penalties that the information he or she submits is true. The preliminary report relied on the information that the Department received from an official state source (Labor), which in turn relied on information obtained from sworn statements. For that reason Commerce considers Labor's estimates to be the most reliable source available, and so uses those estimates.

Commerce had found in its preliminary report that the population of the proposed city was sufficiently large and stable to support the proposed city government. After carefully considering the comments received on the preliminary report, Commerce affirms that finding, and that [AS 29.05.011\(a\)\(4\)](#) and [3 AAC 110.030](#) are met.

3 AAC 110.040. Boundaries

(a) In accordance with [AS 29.05.011\(a\)\(2\)](#), the boundaries of a proposed city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use, subdivision platting, and ownership patterns;*
- (2) population density;*
- (3) existing and reasonably anticipated transportation patterns and facilities;*
- (4) natural geographical features and environmental factors;*
- (5) extraterritorial powers of cities;*
- (6) salability of land for residential, commercial, or industrial purposes; and*
- (7) suitability of the territory for reasonably anticipated community purposes.*

(b) To promote the limitation of community, the boundaries of the proposed city

- (1) must be on a scale suitable for city government and may include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation; and*

(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in [3 AAC 110.005](#) - [3 AAC 110.042](#) and are otherwise suitable for city government.

(c) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

(d) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough or city, the petition for incorporation must also address and comply with all standards and procedures to alter the boundaries of the existing organized borough or city to remove the overlapping territory. The commission will consider that petition for incorporation as also being a petition to alter the boundaries of the existing borough or city.

Commerce had found in the preliminary report that the standard of [3 AAC 110.040](#) was met. After considering the comments on the preliminary report, Commerce affirms its finding that [AS 29.05.011\(a\)\(2\)](#) and [3 AAC 110.040](#) are met.

3 AAC 110.042. Best interests of state

In determining whether incorporation of a city is in the best interests of the state under [AS 29.05.100\(a\)](#), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government, as determined under [3 AAC 110.981](#);*
- (2) promotes a minimum number of local government units, as determined under [3 AAC 110.982](#) and in accordance with [art. X, sec. 1, Constitution of the State of Alaska](#);*
- (3) will relieve the state government of the responsibility of providing local services; and*
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.*

Commerce had found in the preliminary report that finds that the standard of [3 AAC 110.042](#) was met. After carefully considering the comments of the preliminary report, Commerce affirms that the proposed incorporation is in the best interests of the state under Alaska's constitution, [AS 29.05.100\(a\)](#) and [3 AAC 110.042](#).

3 AAC 110.900. Transition

Commerce affirms that [3 AAC 110.900](#) is met.

3 AAC 110.910. Statement of nondiscrimination

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Commerce had found in the preliminary report that the standard of [3 AAC 110.910](#) was met. After carefully considering the comments of the preliminary report, Commerce affirms that [3 AAC 110.910](#) is met.

3 AAC 110.970. Determination of essential municipal services²⁷

(c) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that

- (1) are reasonably necessary to the community;*
- (2) promote maximum, local self-government; and*
- (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.*

(d) The commission may determine essential municipal services for a city to include

- (1) levying taxes;*
- (2) for a city in the unorganized borough, assessing the value of taxable property;*
- (3) levying and collecting taxes;*
- (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in [AS 14.14.065](#) ;*
- (5) public safety protection;*
- (6) planning, platting, and land use regulation; and*
- (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

Commerce found in the preliminary report that road service, harbor maintenance, EMS, and postal service are essential municipal services for this community because they are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. The city plans to offer these services. After carefully considering the comments on the preliminary report, Commerce affirms that road service, harbor maintenance, EMS, and postal service²⁸ are essential municipal services for the proposed city.

²⁷ 3 AAC 110.970(a) and (b) only apply to borough incorporation.

²⁸ The community organization contracts with a resident to pick up the mail at the seaplane dock and distribute at the

3 AAC 110.981. Determination of maximum local self-government

Commerce had found in the preliminary report that the standard of [3 AAC 110.981](#) was met. After carefully considering the comments of the preliminary report, Commerce affirms that finding.

3 AAC 110.982. Minimum number of local government units

Commerce had found in the preliminary report that the standard of [3 AAC 110.982](#) was met. After carefully considering the comments on the preliminary report, Commerce affirms that finding.

Conclusion

Commerce finds that the city incorporation standards are met. It recommends that LBC approve the petition as presented.

post office. The proposed city plans to continue that service. If that service was not provided, the mail would simply be unloaded from the plane and left at the dock. Based on April 10, 2014 conversation with Myla Poelstra, Edna Bay postal worker.

APPENDIX A: Public Notice

State of Alaska
Local Boundary Commission (LBC)

Notice of an LBC Public Hearing and Decisional Meeting Regarding the Proposed City
of Edna Bay Incorporation

The LBC will convene a public hearing under 3 AAC 110.560 regarding the proposal to incorporate a city in Edna Bay. The proposed city consists of approximately 27.5 square miles of land and water. The public hearing will be held:

May 14, 2014 – 2:00 p.m.
Edna Bay School
Edna Bay, AK, 99950

The hearing will reconvene at the same location on May 15, 2014 at 11:00 am. The LBC will convene a decisional meeting under 3 AAC 110.570 immediately after the hearing in the same location to act on the proposal.

Once the hearing and decisional meeting agendas are prepared, they can be obtained prior to May 13 from:

LBC staff
550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501-3510
(907) 269-4559/4587 Fax: (907) 269-4563
LBC@alaska.gov

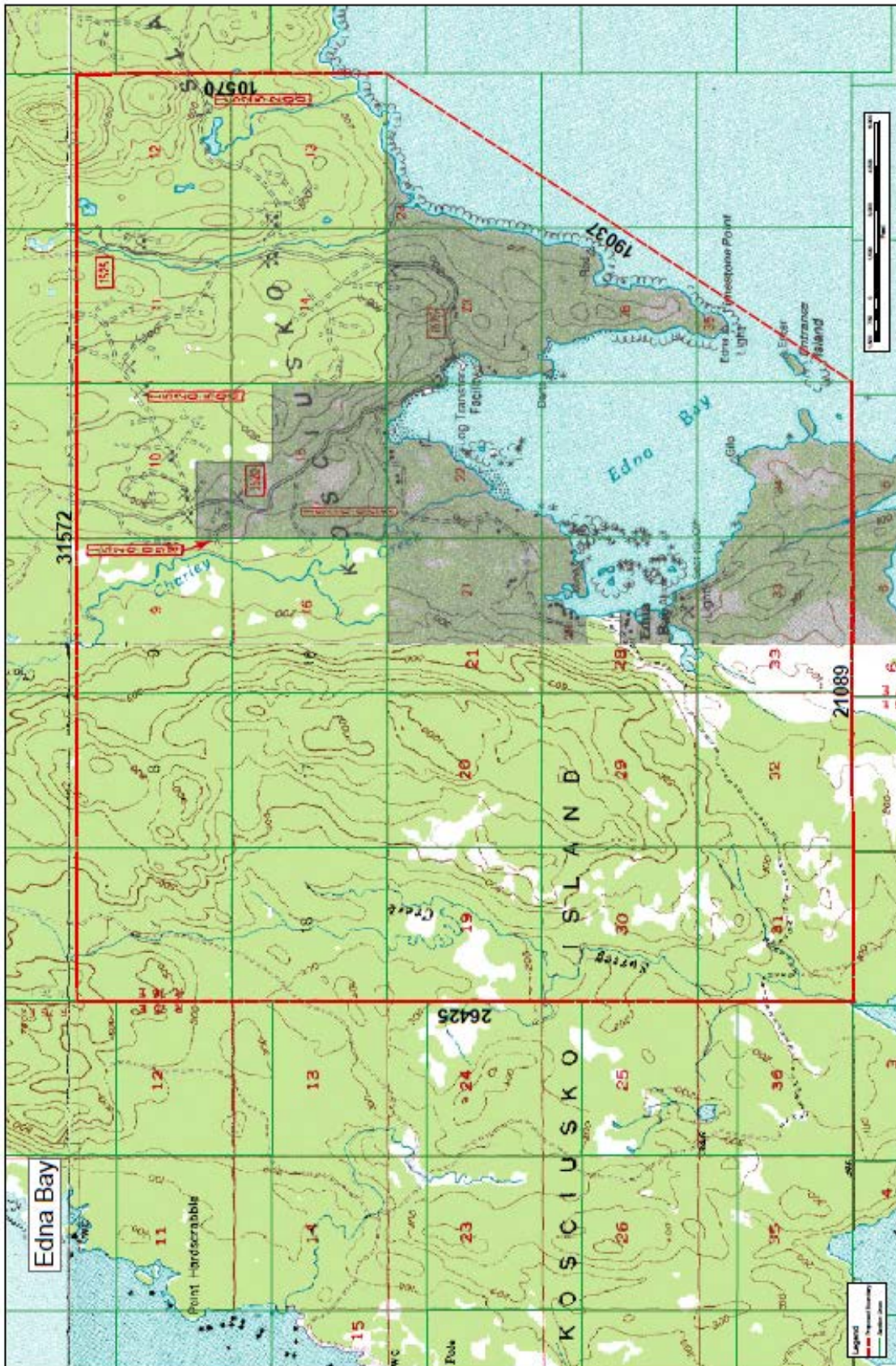
All petition materials are available for public review in the Edna Bay Post Office, 203 W. Davidson, 24/7 binder on bulletin board; Edna Bay State Harbor, 101 Kosciusko Dr., 24/7 binder on bulletin board; and at www.ednabayalaska.net. The materials are also available on the LBC website: commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/#FolderHead.

Persons interested in receiving future LBC notices, updates, and materials by email may subscribe to the LBC notice list server by visiting list.state.ak.us/index.htm, selecting "DCED-Local Boundary Commission," clicking "join or leave," and following the instructions.

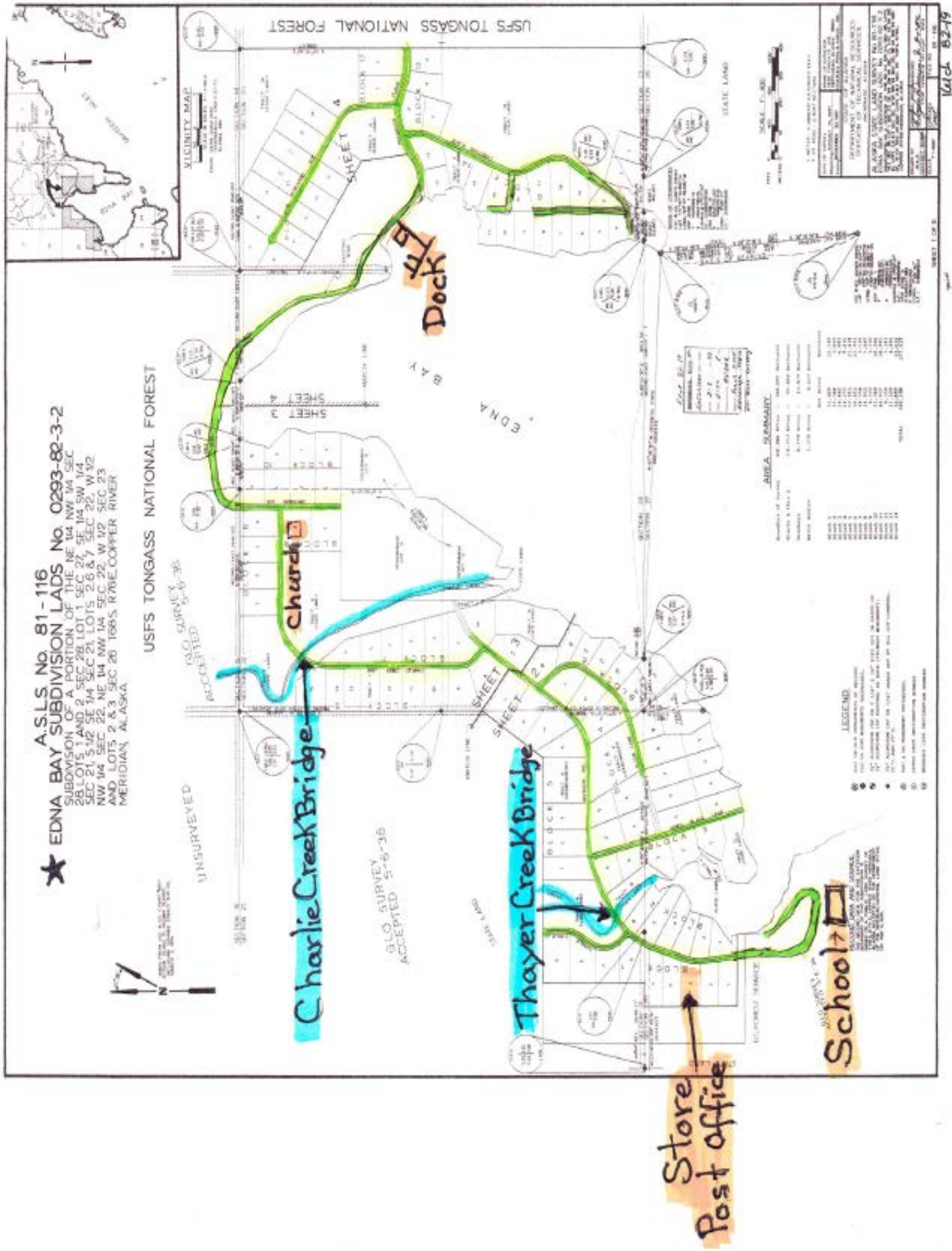
Teleconference sites for the proceedings may be added for the convenience of the public and/or LBC members. To participate in the teleconference, please call 1-800-315-6338 toll free and use access code 4587#. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff by Tuesday, May 6, 2014.

The petition, if approved by the LBC, will be subject to a local election. The date of the election will be determined at a later date in an order from the Division of Elections. A qualified voter is one who is registered to vote within the proposed city at least 30 days before the date of the election order. AS 29.05.110(b).

APPENDIX B: Maps



(Map submitted with the petition to incorporate Edna Bay as a second class city.)



(Map submitted as part of a comment on to the preliminary report by E. Lee and Doris Grief on March 4, 2014.)