

Members

Lynn Chrystal
Chair
At Large

John Harrington
Member
First Judicial District

Bob Harcharek
Vice Chair
Second Judicial District

Darroll Hargraves
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District



Local Boundary Commission Decision

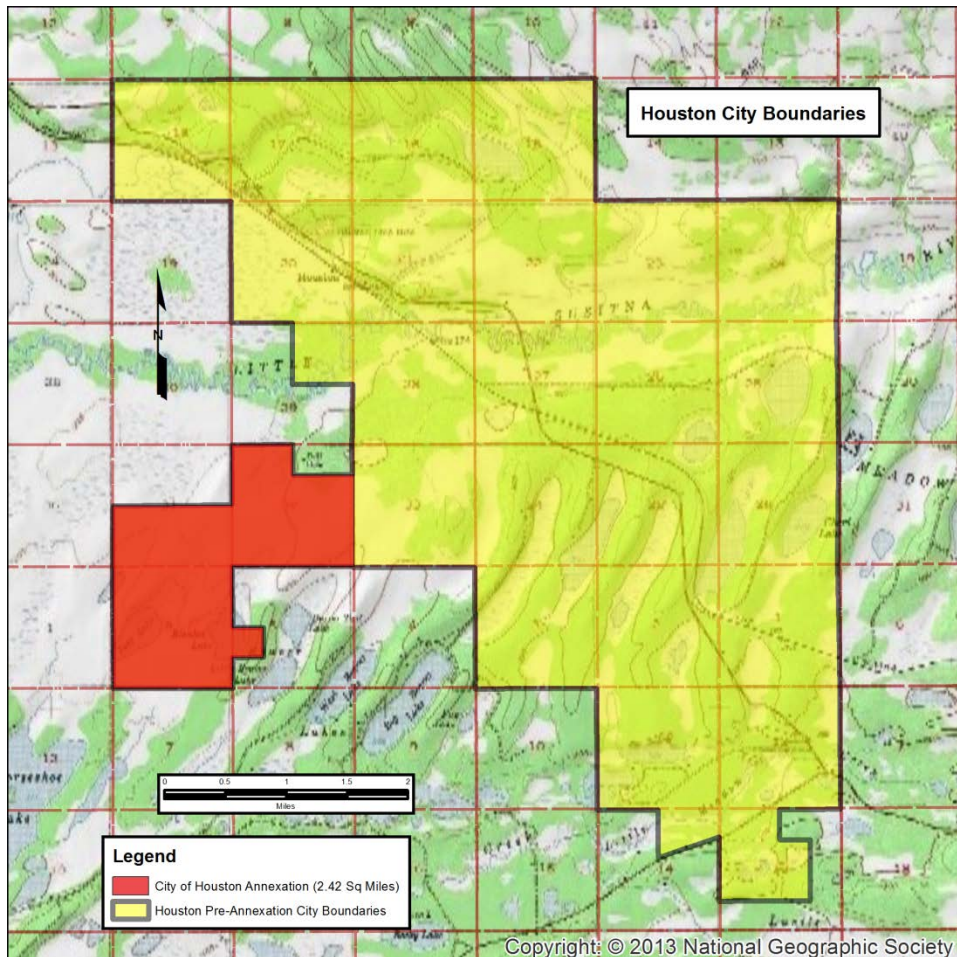
In the matter of the June 12, 2014, petition by the City of Houston to annex approximately 2.42 square miles.

Section I Introduction

On June 13, 2014, the City of Houston (also referred to as "Houston" or "City") petitioned the Local Boundary Commission (also referred to as "LBC" or "commission") to annex approximately 2.42 square miles, more or less, of land and water with the unanimous consent of the property owner. The territory proposed for annexation ("territory") is described as follows and is shown on the map below:

- (a) Territory generally described as Township 17 North, Range 3 West, Section 5, Lot 8; Section 6, SE4NW4, SW4NE4, E2SW4, W2SE4; and Lots 1 to 10, Seward Meridian; and
- (b) Township 18 North, Range 3 West, Section 31, SE4, E2SW4, Lots 3 and 4; and Section 32, W2, SE4 and S2NE4, Seward Meridian.

The territory is located in the Palmer Recording District, Third Judicial District, State of Alaska.



Section II Proceedings

LBC Public Hearing

In accordance with 3 AAC 110.550 and 3 AAC 110.560, the commission held a duly noticed public hearing on Wednesday, April 15, 2015, at 1:30 p.m. regarding the consolidated Big Lake second class city incorporation petition and the Houston annexation petition. The LBC chair had consolidated the petitions because they had overlapping territory. The hearing was held in the Big Lake Lions Recreation Center. Both petitioners gave opening and closing statements. The commission heard sworn testimony from witnesses for both petitions.

LBC Decisional Meeting

In accordance with 3 AAC 110.570, the Local Boundary Commission held a duly noticed decisional meeting on the same day, April 15, 2015, in the same location. At that meeting the commission continued the Big Lake incorporation hearing per the Big Lake petitioner's request. The LBC then held the decisional meeting for Houston. It voted 5 to 0 to approve the Houston annexation petition without amendment.

Section III Findings and Conclusions

The Local Boundary Commission is required to apply the standards for annexation to cities found in 3 AAC 110.090-3 AAC 110.150 and 3 AAC 110.900-3 AAC 110.990. The record for this proceeding includes the City of Houston's annexation petition with supporting materials, Commerce's reports, and the testimony and statements heard at the LBC's April 15, 2015, public hearing. Based on the evidence in the record, the commission has reached the findings and conclusions set out in this section:

3 AAC 110.090. Need.

Under 3 AAC 110.090(a), in determining whether the territory may be annexed to a city, the territory must exhibit a reasonable need for city government. Some of the owner's land lies inside current city limits, and some lies outside. The owner had requested annexation because with annexation, the owner can receive the benefit of city zoning regulations, road maintenance, fire protection, and code enforcement to protect the values of its commercial property. Such benefit will increase given the likelihood of development in and nearby the territory, such as the Port Mackenzie rail spur. After considering all of the record and arguments, the commission finds that the territory demonstrates a reasonable need for city government and that 3 AAC 110.090(a) is met.

Under 3 AAC 110.090(b), territory may not be annexed to a city if the essential municipal services can be provided more efficiently and more effectively by another existing city, by an organized borough on an areawide basis or nonareawide basis, or through a borough service area. The commission finds that essential city services cannot be provided more efficiently and more effectively by any other local government. While the borough does not have a police force, the City does have one (although it is temporarily inactive), so the city can better provide that service to the territory than the borough can. Houston also provides planning and zoning services because the Matanuska-Susitna Borough has delegated that power to the city. Those

services can be best performed by the City because the Houston residents know best what their planning needs are. After considering all of the record and arguments, the commission finds that 3 AAC 110.090(b) is met.

After considering all of the record and arguments the commission finds that 3 AAC 110.090(a) and 3 AAC 110.090(b) are met.

3 AAC 110.100. Character.

A territory may be annexed to a city if it is compatible in character with that city. The territory proposed for annexation is compatible in character with the City because the territory comprises commercial property, and the city has zoned nearby land for commercial and industrial purposes. Further, the owner of the land in the territory owns other land within the present city. After considering all of the record and arguments, the commission finds that 3 AAC 110.100 is met.

3 AAC 110.110. Resources.

A territory may be annexed to a city if the economy within the proposed expanded boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. The city forecasts a balanced budget. Past budgets indicated lesser expenses than revenues. The city's population exceeds that of most Alaska cities. It has a 2013 estimated population of 2,039. The commission finds that that population is large enough to provide essential municipal services efficiently. After considering all of the record and arguments, the commission concludes 3 AAC 110.110 is met because the economy within Houston's proposed expanded boundaries includes the human and financial resources necessary to provide essential municipal services efficiently and cost-effectively.

3 AAC 110.120. Population.

The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. The city's population has increased from 69 in 1970 to 2,039 in 2013. That indicates that the city's population is healthy, growing, and stable. It will not change due to the annexation because the territory is unpopulated. After considering all of the record and arguments, the commission concludes that 3 AAC 110.120 is met because the proposed expanded boundaries of Houston are sufficiently large and stable to support the extension of city government.

3 AAC 110.130. Boundaries.

In determining under 3 AAC 110.130(a) whether the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level, the commission finds the territory proposed for annexation is approximately 2.42 square miles, more or less.¹ The existing city is 22.9 square miles, more or less. The size of the city after annexation would be 25.28 square miles, more or less. The commission finds that this is large enough to provide the development of essential municipal services on an efficient, cost effective level. After considering all of the record and arguments, the commission finds the petition meets the standard of 3 AAC 110.130(a).

¹ The size of the territory proposed for annexation, the size of the city before annexation, and the size of the city after annexation have been recalculated by the staff of the Division of Community and Regional Affairs. They are specified in this decision, and differ slightly from the sizes mentioned in the petition.

In determining whether 3 AAC 110.130(b) is met, the commission finds that the legal description and map show the territory proposed for annexation is contiguous to the annexing city, and that it does not create enclaves in the existing city. After considering all of the record and arguments, the commission finds that 3 AAC 110.130(b) is met.

In determining whether 3 AAC 110.130(c)(1) is met, the commission finds that the proposed expanded boundaries of the city are on a scale suitable for city government. The city's size after annexation would be 25.28 square miles, which is suitable for a city. Further, Houston comprises a community by virtue of it being an incorporated city. Commercial development exists in the city and territory, and is planned for the territory. We find that Houston's proposed expanded boundaries only include that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. After considering all of the record and arguments, the commission finds that 3 AAC 110.130(c)(1) is met.

In determining whether 3 AAC 110.130(c)(2) is met, the commission finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. But even if they did, the LBC concludes that the petition meets the standards of 3 AAC 110.090 - 3 AAC 110.135, and that the boundaries are otherwise suitable for city government. After considering all of the record and arguments, the commission finds that 3 AAC 110.130(c)(2) is met.

In determining whether 3 AAC 110.130(d) is met, the commission finds that this annexation petition does not describe boundaries overlapping the boundaries of an existing organized borough or another existing city. For that reason the petition does not need to address the standards and procedures for annexation or detachment of the enlarged city to the existing organized borough, or detachment of territory from an existing city, merger of cities, or consolidation of cities. After considering all of the record and arguments, the commission finds that 3 AAC 110.130(d) is satisfied.

3 AAC 110.135. Best Interests of the State.

3 AAC 110.135 examines AS 29.06.040(a)'s best interests of the state requirement. The proposed annexation is in the best interests of the state because the city is the appropriate government for the territory. Alaska's constitution encourages maximum local government with a minimum of local government units. (Article X, §1). The annexation promotes maximum local self-government because the property owner can take advantage of city services. The proposed annexation would also promote a minimum of local government units because no additional units would be formed. Instead, an existing second class city's boundaries would expand. After considering all of the record and arguments, the commission finds that Houston's proposed annexation is in the best interests of the state, and so the petition satisfies 3 AAC 110.135.

3 AAC 110.900. Transition.

3 AAC 110.900(a) asks whether the petition includes a transition plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practical time after the effective date of the proposed change. The transition of services will be immediate. The commission finds that 3 AAC 110.900(a) has been satisfied because the petition does include such a transition plan.

3 AAC 110.900(b) asks whether the petition includes a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The commission finds that there is a practical plan.

3 AAC 110.900(b) also asks if the plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. The commission finds that the transition plan was prepared in consultation with the Matanuska-Susitna Borough manager.

3 AAC 110.900(b) further asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The city's plan indicates that the transition would be completed within a few months. For those reasons the commission finds that 3 AAC 110.900(b) is met.

3 AAC 110.900(c) requires that the petition must include a practical plan to transfer and integrate all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity within the boundaries proposed for annexation.

3 AAC 110.900(c) also asks if the plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change.

3 AAC 110.900(c) also asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change.

3 AAC 110.900(c) further asks whether the plan specifically addresses procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

Here, a plan to transfer assets and liabilities is a moot subject because the City would assume no assets or liabilities due to the annexation. For that reason the commission finds that 3 AAC 110.900(c) is satisfied.

3 AAC 110.900(d) permits the LBC to condition approval upon all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change executing an agreement to assume powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. The commission finds that it is not necessary to require that agreement.

3 AAC 110.900(e) asks if the transition plan states the names and titles of all the officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. It also asks for the subjects discussed and the consultation dates. The transition plan specifically named borough manager John Moosey as the official consulted, mentioned the subjects addressed, and specified November 13, 2013 as the consultation date. For those reasons the commission finds that the requirements of 3 AAC 110.900(e) have been met.

3 AAC 110.900(f) asks if the prospective petitioner was unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective

petitioner. If so, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The commission finds that 3 AAC 110.900(f) is not applicable because the petitioner was able to consult, and it is not necessary to address any potential waiver request.

After considering all of the record and arguments, the commission finds that 3 AAC 110.900 is met.

3 AAC 110.910. Statement of Nondiscrimination

As provided by 3 AAC 110.910, an annexation proposal may not be approved by the commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. The territory is uninhabited. The city's population will not change upon annexation of the territory. The commission finds no evidence that 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. After considering all of the record and arguments, the commission finds that 3 AAC 110.910 is met.

3 AAC 110.970. Determination of Essential Municipal Services.

3 AAC 110.970(c) asks whether a provision of this chapter calls for the identification of essential municipal services for a city. If yes, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the city, 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.

Several regulations discussed essential municipal services. The commission determines essential municipal services for Houston to include the levying and collection of taxes. That function is reasonably necessary because without it a municipality cannot operate. Houston levies a two percent sales tax and a three mill rate property tax. Land use, planning, and zoning are also essential municipal services and reasonably necessary to the community because of the potential development in the community. Other essential municipal city services such as road maintenance are also reasonably necessary to the community.

All of these services promote maximum local self-government because they empower Houston to run more of its own affairs and generate the revenue to do so, as opposed to either having no services, or having the services provided by the borough or state.

No evidence has been presented that the essential municipal services can be provided more efficiently and effectively by creating or modifying another political subdivision of the state. Houston is in the Matanuska-Susitna Borough. As the borough and the city already exist, and Houston already provides essential municipal services, it is unnecessary to modify or create another political subdivision to provide these services.

The commission finds that there are essential municipal services that are reasonably necessary to the community, that promote maximum local self-government, and that cannot be provided more efficiently and more effectively by creating or modifying another political subdivision of the state. After considering all of the record and arguments, the commission concludes that 3 AAC 110.970 is met.

3 AAC 110.981. Determination of Maximum Local Self-Government.

3 AAC 110.981(8) asks for city incorporation or annexation in an organized borough, whether the proposed change promotes maximum local self government under art. X, sec. 1, Constitution of the State of Alaska. It states that the commission will consider if the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an [another] existing city, or through an existing borough service area.

The annexation would extend city government to the territory. As Houston is already providing essential municipal services in the current city, it can provide them to the territory more effectively than another municipality. The borough offices are further away and there is no city closer to the territory than Houston. No other local government can meet the territory's governmental needs. After considering all of the record and arguments, the commission concludes that 3 AAC 110.981 is met because the proposed change promotes maximum local self-government.

3 AAC 110.982. Minimum Number of Local Government Units.

3 AAC 110.982(7) states among the factors used in determining whether a proposed city annexation promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area. Annexing the territory would enlarge the city's boundaries, but not increase the number of local government units. After considering all of the record and arguments, the commission concludes that 3 AAC 110.982 is met.

Section IV Order of the Commission

After considering all of the record and arguments, the LBC finds that the petition meets all the relevant standards. The commission approves the petition with no conditions or amendments. The territory proposed for annexation consists of 2.42 square miles, more or less. With the commission's approval of the petition, the City of Houston's size increases from 22.9 square miles, more or less to 25.28 square miles, more or less. The metes and bounds of the post-annexation City of Houston boundaries are described as follows:²

Commencing at the northwestern corner of Section 18, T18 North, Range 3 West, Seward Meridian, Alaska, the True Point of Beginning;

thence south to the southwest corner of Section 18, Township 18 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of Section 18, Township 18 North, Range 3 West, Seward Meridian;

thence south to the southwest corner of Section 20, Township 18 North, Range 3 West, Seward Meridian;

² While the petition correctly described the metes and boundaries of the territory proposed for annexation, the petition did not accurately describe the pre-annexation and post-annexation boundaries. This decision does indicate the correct post-annexation boundaries.

thence east to the north $\frac{1}{4}$ corner of Section 29, Township 18 North, Range 3 West, Seward Meridian;

thence south to the southwest corner of the northeast $\frac{1}{4}$ of Section 29, Township 18 North, Range 3 West, Seward Meridian;

thence east to the east $\frac{1}{4}$ corner of Section 29, Township 18 North, Range 3 West, Seward Meridian;

thence south to the northeast corner of the south $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of Section 32, Township 18 North, Range 3 West, Seward Meridian;

thence west to the northwest corner of the south $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of Section 32, Township 18 North, Range 3 West, Seward Meridian;

thence north to the north $\frac{1}{4}$ corner of Section 32, Township 18 North, Range 3 West, Seward Meridian;

thence west to the northwest corner of Section 32, Township 18 North, Range 3 West, Seward Meridian;

thence south to the east $\frac{1}{4}$ corner of Section 31, Township 18 North, Range 3 West, Seward Meridian;

thence west to the west $\frac{1}{4}$ corner of Section 31, Township 18 North, Range 3 West, Seward Meridian;

thence south to the southwest corner at Section 6, Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of Section 6, Township 17 North, Range 3 West, Seward Meridian;

thence north to the southwest corner of northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 5 Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 5, Township 17 North, Range 3 West, Seward Meridian;

thence north to the northeast corner of northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 5, Township 17 North, Range 3 West, Seward Meridian;

thence west to the west $\frac{1}{4}$ corner of Section 5, Township 17 North, Range 3 West, Seward Meridian;

thence north to the northeast corner of Section 6, Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of Section 33, Township 18 North, Range 3 West, Seward Meridian;

thence south to the southwest corner of Section 3, Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of Section 3, Township 17 North, Range 3 West, Seward Meridian;

thence south to the southwest corner of Section 11, Township 17 North, Range 3 West, Seward Meridian;

thence east to the south $\frac{1}{4}$ corner of Section 11, Township 17 North, Range 3 West, Seward Meridian;

thence south to the northern right-of-way boundary of Big Lake Road in Section 14, Township 17 North, Range 3 West, Seward Meridian;

thence northeasterly along the northern right-of-way boundary of Big Lake Road to the western boundary of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence south to the southwest corner of the northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of the northwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence north to the northeast corner of the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence west to the northwest corner of the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence north to the north $\frac{1}{4}$ corner of Section 13, Township 17 North, Range 3 West, Seward Meridian;

thence east to the southeast corner of Section 12, Township 17 North, Range 3 West, Seward Meridian;

thence north to the northeast corner of Section 24, Township 18 North, Range 3 West, Seward Meridian;

thence west to the northwest corner of Section 23, Township 18 North, Range 3 West, Seward Meridian;

thence north to the northeast corner of Section 15, Township 18 North, Range 3 West, Seward Meridian;

thence west to the northwest corner of Section 18, Township 18 North, Range 3 West, Seward Meridian, the True Point of Beginning, containing 16,115 acres (25.28 sq. miles), more or less.

Note: The above description is based on USGS quadrangle Anchorage C-8, 1950, with minor revisions 1971.

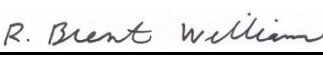
All land is located within the Palmer Recording District, Third Judicial District, State of Alaska.

Approved in writing this 5th day of May, 2015.

LOCAL BOUNDARY COMMISSION

By:  **x**
Lynn Chrystal, Chair

Attest:

By:  **x**
Brent Williams, Staff

Section V Reconsideration by the Commission

Per 3 AAC 110.580(a) “within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of the decision, describing in detail the facts and analyses that support the request for reconsideration.”

But 3 AAC 110.590(9) applies for petitions using the 3 AAC 110.590 modified procedures for certain local action annexations. 3 AAC 110.590(9) states in part that that “a request for reconsideration must be filed within 10 days after a written statement of decision is mailed.” As this petition was filed using 3 AAC 110.590’s modified procedures, 3 AAC 110.590(9) applies, and any reconsideration request must be filed within 10 days after the written decision is mailed.

Per 3 AAC 110.580(e) “the commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that

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

Additionally, per 3 AAC 110.580(f) “if the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied.” Also per 3 AAC 110.580(f) “if the commission orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered.”

Section VI Judicial Appeal

Per 3 AAC 110.570(g), this is the final decision of the commission, unless reconsideration is timely requested or the commission orders reconsideration. A decision of the Local Boundary Commission may be appealed to the Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2). A claimant has 30 days to file an appeal with the Superior Court.