



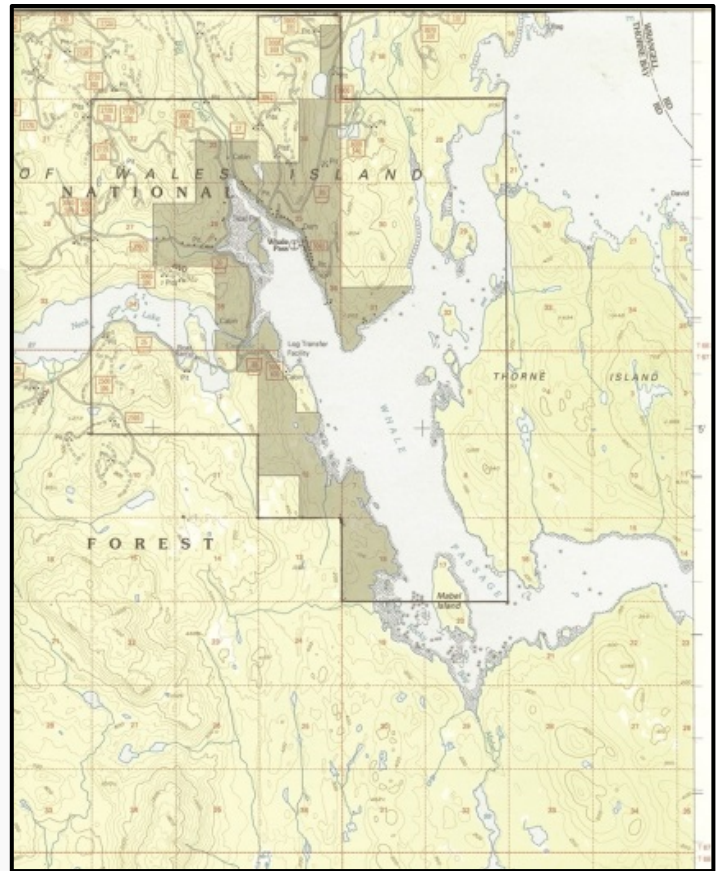
THE STATE  
*of* **ALASKA**  
GOVERNOR BILL WALKER

Department of Commerce, Community,  
and Economic Development

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640  
Anchorage, Alaska 99501  
Main: 907.269.4501/907.269.4581  
Programs fax: 907.269.4539

# Final Report to the Local Boundary Commission



Concerning the Petition to Incorporate Whale Pass as a  
Second Class City within the Unorganized Borough

June 24, 2016

550 W. 7th Avenue, Suite 1640, Anchorage, Alaska 99501

Telephone: (907) 269-4587 Fax: (907) 269-4563

Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Website: <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission.aspx>



This is the “Final Report to the Local Boundary Commission Concerning the Petition to Incorporate Whale Pass 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 (Commerce). The report can also be found at the following address:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016IncorporationPetitionforaSecondClassCityofWhalePass/Reports.aspx>

The report should be used for public review in accordance with 3 AAC 110.530 which requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

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

# Chapter I. Background

## *Local Boundary Commission*

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### **Local Boundary Commission's Constitutional Foundation**

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").<sup>1</sup> The commission is responsible for establishing and modifying proposed municipal government boundaries. Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.

### **Local Boundary Commission's Statutory Authority**

Pursuant to AS 29.06.040(a), the Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution, statutes, and commission regulations, and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.

### **LBC Duties and Functions**

The commission acts on proposals for several municipal (cities and boroughs) boundary changes. These are:

- incorporation
- annexation
- detachment
- merger
- consolidation
- reclassification
- dissolution

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<sup>1</sup> Article X, section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

In addition to acting on the above proposals for municipal boundary changes, the LBC under AS 44.33.812 shall:

- make studies of local government boundary problems; and
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

## ***Local Boundary Commission Staff***

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### **Constitutional Origin**

The Constitution of the State of Alaska calls for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as that agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (also referred to as “Commerce,” “DCCED,” or “department”). Commerce serves as staff to the commission per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency’s functions. This includes providing staff, research, and assistance to the LBC. The LBC staff works in the Division of Community and Regional Affairs within the Department of Commerce, Community, and Economic Development.

### **LBC Staff Role**

LBC staff is required by law to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. All materials are available to the public.

## ***Petition Procedures***

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal’s reasonable and timely determination. The procedures are also intended to ensure that commission decisions are based on application of the standards to the facts.

### **Preparing and Filing a Petition**

The LBC staff offers technical assistance, information, and forms to prospective petitioners. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form and content. If the staff finds that the petition contains all the required information, Commerce accepts it for filing.

### **Public Notice and Public Review**

Once a petition is accepted for filing, the staff arranges for extensive public notice. This provides ample opportunity for public comment concerning the petition.

## **Analysis**

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff can conduct public informational meetings. If the petition is for incorporation, the staff must hold at least one public meeting within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report including a recommendation to the commission. It will also issue a final report following a second public comment period after the publication of the preliminary report. The final report also includes a recommendation to the commission. Both reports are available to the public.

## **Commission Review of Materials, Public Hearings, and Decision**

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff report. The commission is not obliged to follow staff recommendations; however, it has historically considered the staff analyses and recommendations to be critical components of the record in municipal boundary proceedings. The LBC considers the entire record when it renders its decision.

## **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.<sup>2</sup> The LBC must proceed within its jurisdiction, and conduct a fair hearing.

The LBC must adopt a written decision stating the basis for its decision. Copies of the decision are issued to the petitioner, respondents, and others who request them. At that point, the decision becomes final, but is subject to reconsideration. Any person may ask the LBC to reconsider its decision under 3 AAC 110.580. The LBC may order reconsideration on its own motion. 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**

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision becomes effective. If the LBC approves a petition, the proposal is typically subject to either approval by voters, or disapproval by the legislature, depending on whether it was filed as a local action petition, or a legislative review petition, respectively. If an election was held, either the Division of Elections or the appropriate municipal official must certify the election. Once the requirements of 3 AAC 110.630(a) have been met, the department shall issue a certificate describing the effective change.

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<sup>2</sup> 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.

### ***Legal Standards for City Incorporation***

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The criteria used by the commission to evaluate the incorporate the Whale Pass incorporation proposal are set out in AS 29.05.011, AS 29.05.021, 3 AAC 110.005 - 3 AAC 110.042, and 3 AAC 110.900 - 3 AAC 110.990.

# Chapter II. Analysis and Recommendations

## *Introduction*

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The petition and all of the comments submitted were read and reviewed for this report. The entire record is available online:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016IncorporationPetitionforaSecondClassCityofWhalePass.aspx>.

Nine comments on the preliminary report were submitted. Seven expressed support, and two expressed opposition to incorporation. All comments received are in Appendix B. A map of the proposed boundaries is in Appendix D.

## *Petition proceedings thus far*

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Residents of Whale Pass submitted a petition to incorporate with the requisite number of signatures in late 2015. After a technical review, staff accepted it for filing on January 7, 2016. The first public comment period began when notice of the filing was published on January 8, 2016, and lasted until March 11. Only one comment was received. LBC staff held an information session on April 14, 2016 at the Whale Pass Community Library, which was attended by 17 people. The session covered the incorporation regulations, and process of filing a petition with the LBC.

There was a public comment period on the preliminary report beginning with its April 22, 2016 mailing that lasted until May 31, 2016. Nine comments were received. After reviewing comments received on this preliminary report, the LBC staff has issued this final report. A public hearing is scheduled for August 2, 2016. The public notice of this report and hearing is in Appendix A. All comments are in Appendix B. The petition schedule is in Appendix C.

## *Incorporation Standards*

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The incorporation standards are found in statutes and regulations. Where these overlap or are redundant, they will only be addressed once. Only standards relevant to the incorporation of a second class city will be addressed in this report.

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

As in the preliminary report, this final report contains a recommendation from staff to the LBC to approve the Whale Pass incorporation petition without condition or amendment.

### ***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.*

The requirements of AS 29.05.011 are addressed by and included in the regulatory standards, and so this report will not address the standards found in AS 29.05.011 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.*

A community is determined in 3 AAC 110.920(a), and defined by 3 AAC 110.990(5). See 3 AAC 110.920 and 3 AAC 110.990(5) immediately below.

### ***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.*

### **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**

Under 3 AAC 110.900, the Alaska Department of Labor and Workforce Development (DOLWD) lists a 2015 population of 46, which exceeds the required 25 permanent residents.<sup>3</sup> This estimate is determined in part by using State of Alaska Permanent Fund dividend (PFD) applications, and therefore, only counts those residents who list Whale Pass as their primary residence.

Under 3 AAC 110.920(a), the community of Whale Pass is recognized by the United States Census Bureau as a Census Designated Place (CDP), and has had a community association since 1983.<sup>4</sup> The community also hosts a library, a pre-K through 12<sup>th</sup> grade school, a church, a health clinic, as well as businesses and other community organizations. The community is accessed by a U.S. Forest Service road connecting it to larger cities such as Klawock, Craig, and Thorne Bay. Based on observation<sup>5</sup>, and community maps, staff has determined that residents live in close geographic proximity near the harbor and waterways in subdivided lots.<sup>6</sup>

In addition, as required under 3 AAC 110.920(b), public access to or the right to reside at the location of the population is not restricted, nor is the location of the community provided by an employer and occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. This factor is therefore satisfied.

After considering these factors, the LBC staff concludes all the standards above are met and that Whale Pass meets the definition of a community as defined by 3 AAC 110.990(5).

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<sup>3</sup> DOWLD data on Alaska Community Database Online. "Whale Pass." (accessed May 17, 2016).

<sup>4</sup> DCCED Division of Corporations, Business & Professional Licensing Corporations Search "Whale Pass Community Association." (accessed June 20, 2016).

<sup>5</sup> Staff personal observation, April 2016

<sup>6</sup> Department of Natural Resources Land Estate Map (accessed March 10, 2016).

### **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**

A community in the unorganized borough that actively seeks local control demonstrates a reasonable need for city government. Currently, residents of Whale Pass are represented only by the state of Alaska and have no local government. While citizens may participate in the Whale Pass Community Association (WPCA), only incorporation as a municipality allows the autonomy and local control the petition seeks. The community association is a private, nonprofit without the legal power to raise revenue, issue bonds, or represent residents adequately according to petitioners. A number of comments received by staff expressed support for incorporation and reiterated the need for local control and greater autonomy as a municipality over a community association. For these reasons, staff finds that AS 29.05.011(a)(5) and 3 AAC 110.010(a) are met.

AS 29.05.021(a) and 3 AAC 110.010(b) do not allow a city in the unorganized borough to incorporate if municipal services can be provided by annexation to another city. Although Whale Pass is in the unorganized borough, there is no nearby city that could annex Whale Pass. Hence, AS 29.05.021(a) and 3 AAC 110.010(b) do not prevent the incorporation of Whale Pass.

AS 29.05.021(b) and 3 AAC 110.010(c) are moot because Whale Pass is not in an organized borough.

For those reasons, staff affirms its finding in the preliminary report that AS 29.05.011(a)(5), AS 29.05.021(a), AS 29.05.021(b), and 3 AAC 110.010 are satisfied..

### **3 AAC 110.020 Resources**

*In accordance with AS 29.05.011(a)(3), the economy of a proposed city must include the human and financial resources necessary to provide 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 29.05.130-29.05.140 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 area within 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 of the proposed city; and*

*(2) may consider other relevant factors, including*

- (B) land use within the proposed city;*
- (C) the need for and availability of employable skilled and unskilled persons to serve the proposed city government; and*
- (D) the reasonably predictable level of commitment and interest of the residents in sustaining a city government*

### **Analysis**

The WPCA currently provides services such as the community harbor, road maintenance, the fire department, and emergency medical services (EMS). It also owns some land and buildings connected with these services including the library, fire/EMS hall, and post office.<sup>7</sup> The proposed city of Whale Pass seeks to assume control over the services, lands, and buildings now provided or owned by the WPCA. The community seeks incorporation in order to provide these services more efficiently and effectively, enter into legal agreements, contracts, and apply for grants as a city, rather than as a community nonprofit.

To this end, the petition provides a budget of anticipated expenses including deferred maintenance of the dock, as well as anticipated costs associated with city government. In the event of city incorporation, a city

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<sup>7</sup> Department of Natural Resources, Land Estate Map, (accessed June 17, 2016).

of Whale Pass would receive the assets of the community association, which lists a surplus of more than \$50,000, as well as its physical assets. The budget lists expenses and potential revenue sources for three years after incorporation and includes the anticipated state organizational grant. The LBC staff finds that Whale Pass residents have anticipated the potential loss of Community Revenue Sharing and have indicated foresight in planning for the possible reduction in state aid. In each scenario calculated, the potential city of Whale Pass is projected by the petitioners' budget to see annual surpluses.

Whale Pass has about eight lodges, least two general stores, and several hunting and/or fishing guide or charter businesses in the community. A proposed second class city would allow for additional methods for revenue generation. Whale Pass indicates that it could use sales and bed taxes to supplement any reductions in community revenue sharing and serve as the primary source of city income. Concerns regarding the ability to collect taxes were raised in comments received. Many resources including DCRA and the Alaska Municipal League are available to assist new and existing cities in Alaska. In addition, a staff review of required reports for non-profit corporations in Alaska indicates that the WPCA has been in good standing since its incorporation date in 1983.<sup>8</sup> Whale Pass also has an established record with DCRA's grants administration staff<sup>9</sup>. These activities indicate sufficient organizational capacity over time. Staff believes that Whale Pass has the capacity to administer and collect sales taxes and bed taxes.

Future services including refuse collection are anticipated and could be served by the municipal land entitlement that comes with incorporation as a second class city. This land is intended for municipal purposes and the petition notes a need for land for a landfill, future recreation, and other land uses not currently available.

The petition budget forecast does not include federal payment in lieu of taxes (PILT) proceeds, shared fisheries tax revenue, or national forestry receipts, all of which a potential second class city including Whale Pass would likely be entitled to. The petition indicates the potential city's unwillingness to rely on uncertain state allocations due to forecasted budget reductions and uncertainty of state and federal appropriations year to year. Staff believes this reluctance to rely on moneys that are no longer guaranteed as a primary source of income is wise.

Whale Pass does not intend to assess property taxes due to the cost of appraisal and implementation. A rough estimate of property values by the petitioners indicates annual property taxes would likely generate less than \$100,000. As such, property taxes would only be considered if a future organized borough government in the area provided the appraisal information and infrastructure necessary to make assessment cost-effective. As stated previously, property tax is not intended to be a source of income for a potential Whale Pass second class city.

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<sup>8</sup> DCCED Division of Corporations, Business & Professional Licensing Corporations Search "Whale Pass Community Association." (accessed June 20, 2016).

<sup>9</sup> Alaska Division of Community and Regional Affairs E-Grants database, "Whale Pass." (accessed June 20, 2016).

In addition to financial resources, the petition also acknowledges the human resources necessary for a well-functioning city. The WPCA is run by a volunteer board; the fire department and emergency medical services are also volunteer forces. The petition indicates the potential city intends to hire a city clerk rather than rely solely on volunteer participation, and in order to increase stability. The city clerk is the only planned paid position indicated in the petition and will serve as the city treasurer and oversee grant applications, and other tasks previously handled by volunteers.

Population numbers indicate some growth in the Whale Pass vicinity. Anecdotal evidence in the petition indicates increased tourism in the region is a reason for residents to seek greater local control over development and the resources in their locale through ordinances and potential taxes. Logging, fishing, hunting, and mining are all present in Whale Pass and are employers as well as sources of potential revenue though in varying capacities and primarily through tourism-related endeavors<sup>1011</sup>. The only numbers from the Alaska Department of Labor and Workforce Development available for Whale Pass residents' personal incomes indicate that 46 percent of residents are employed as of 2014.<sup>12</sup> This information is not considered reliable (because of extremely small sample size) or relevant because the residents will not be levying a tax on income.

In sum and after examining the factors of 3 AAC 110.020, staff still finds 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, and that 3 AAC 110.020 and AS 29.05.011(a)(3) 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.*

### **Analysis**

Historical data indicate a declining population due in part to a closed logging camp though some logging still takes place near the community. No population data are available before the 1980 Census, which listed 90

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<sup>10</sup> DOLWD data on Alaska Community Database Online. "Whale Pass." (accessed March 11, 2016).

<sup>11</sup> Business License Database, DCCED, Division of Corporations, Business and Professional Licensing, (accessed April 18, 2016).

<sup>12</sup> DOLWD data on Alaska Community Database Online. "Whale Pass." (accessed May 17, 2016).

residents for the Whale Pass CDP.<sup>13</sup> This number has declined since, but has risen in the last five years<sup>14</sup>. While the school closed for the 1998-1999 school year, it has remained open since then, and the Whale Pass School now has 11 students and is a part of the Southeast Island School District.<sup>15</sup> While the number of students hovers at the margins of the minimum number of state-required students, conversations with school staff indicate new families and young students planning to attend for the 2016-2017 school year.<sup>16</sup>

The boundaries for the proposed City of Whale pass are slightly different from the Whale Pass CDP. In 2010, the most recent census count, the population numbered 31. The most recent DOLWD estimate lists the CDP as having a population of 46 in 2015.<sup>17</sup> This number has risen each year since 2010. These numbers are for permanent, year-round residents; there are many anecdotal indications that the population swells in the summer season. Because a PFD application requires a declaration of a verifiable, primary address in Alaska, use of these data is considered the most reliable source of population data between decennial U.S. Census counts.

Some public comments received indicate concern whether Whale Pass could sustain the requirements of a second class city. Regulations only require 25 residents and many cities in Alaska of varying sizes function at varying levels. Successful city governance depends on those residents' commitment to the city's success. A closer look at the residents reveals a stable core of year-round permanent residents who own and run the tourism-related businesses that a potential city government would rely on for tax generation. These same residents are those who have run the volunteer community association, fire service, and EMS over the years.

Staff believes Whale Pass has the required number, and capacity in terms of population, and human resources to meet the requirements of a second class city in part based upon the history of the community association, and its volunteer participation.

After consideration of these facts, as in the preliminary report, staff affirms its conclusion that Whale Pass has a sufficiently stable population to support city governance. AS 29.05.11(a)(4) is also 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;*

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<sup>13</sup> Alaska Community Database Online. "Whale Pass." (accessed April 18, 2016).

<sup>14</sup> Alaska Department of Labor and Workforce Development, "Cities and Census Designated Places (CDPs), 2010 to 2015 (Excel)." (accessed June 20, 2016).

<sup>15</sup> Alaska Community Database Online. "Whale Pass." (accessed May 17, 2016).

<sup>16</sup> Christine Cook (principal teacher, Whale Pass School), personal communication, April 2016.

<sup>17</sup> Alaska Community Database Online. "Whale Pass." (accessed May 17, 2016).

- (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.*

### ***3 AAC 110.990(28) states that “region”***

- (A) *means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors*
- (B) *includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section.*

### ***3 AAC 110.990(15)***

*defines “area” as “the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.”*

## **Analysis**

Under 3 AAC 110.040(a), the residents of Whale Pass have selected boundaries that conform to section and township lines. Staff believes these smaller proposed boundaries are more appropriate for the community than those of the CDP, where the boundaries chosen are solely for census statistical purposes.

Under 3 AAC 110.040(b)(1), staff finds the boundaries are on a scale suitable for city government. The land proposed for the municipality is close to the average size for an Alaska city at 26 square miles. These proposed boundaries have been carefully chosen to incorporate only land and water that include the present local community and reasonably expected growth and development during the 10 years following the anticipated date of incorporation. In addition, land is available for growth within these boundaries for Whale

Pass and across the bodies of water—around which most residents live. The territory proposed for incorporation encompasses the subdivided lots and roads where residents live and work, and land and water available for development and recreation as well as tourism-related businesses. All land and water proposed within the boundaries of the proposed city are necessary for Whale Pass to provide essential municipal services.

Under 3 AAC 110.040(b)(2), staff finds that the boundaries of the proposed city do not include entire geographical or unpopulated areas. The proposed boundaries do not fit the definition of “region” because those boundaries do not constitute an area, or contain multiple communities that share common attributes. The boundaries do not include an entire regional educational attendance area, state house election district, organized borough, or model borough. Staff finds that the expanded boundaries of the proposed city do not meet the definition of “area” because they do not describe a borough. As stated above, the boundaries are on a scale suitable for the proposed city of Whale Pass.

Under 3 AAC 110.040(c), the boundaries for the proposed City of Whale Pass do not contain enclaves and are contiguous.

3 AAC 110.040(d) does not apply because the petition does not describe boundaries overlapping the boundaries of an existing organized borough or city.

As stated previously, Whale Pass’s proposed boundaries are similar, but more defined and deliberate than those of the CDP. They are established by the Census Bureau using natural features and population densities as best determined by that agency in coordination with the State of Alaska. As in the preliminary report, staff affirms its finding that the boundaries meet the standards in 3 AAC 110.040, 3 AAC 110.990(15), 3 AAC 110.990(28), and thereby, also satisfy AS 29.05.011(a)(2).

### ***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.*

### ***3 AAC 110.981 Determination of Maximum Local Self-Government***

*In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

- (7) for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists;*



### **3 AAC 110.982 Minimum Number of Local Government Units**

*Among the factors to be considered in determining whether a proposed boundary change 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*

*(6) for city incorporation, whether incorporation of a new city is the only means by which residents of the territory can receive essential municipal services;*

#### **Analysis**

If formed, the city would extend local government to territory and population of the unorganized borough where no local government currently exists. Citizens of a new city of Whale Pass would be empowered and would be exercising local control over growth and development of their community, and thereby, maximizing local self-government. Staff finds that 3 AAC 110.981 is met and promotes maximum local self-government.

Because Whale Pass is in the unorganized borough, city incorporation is the only means by which residents may receive the services they desire. Whale Pass cannot reasonably receive these services by annexation to another city or service area. Because the territory proposed for incorporation is not near or overlapping any existing local governments, no duplicative or redundant service providers or municipalities will be created, and so, staff finds that 3 AAC 110.982 is met.

If a portion of the unorganized borough forms a city as Whale Pass is proposing, this relieves the state of the provision of some local services including planning and zoning. A potential city of Whale Pass is unlikely to serve any additional risk to the state in the event of dissolution. The proposed expenses and revenues for Whale Pass are similar to other cities and pose no undue risks to the state.

In conclusion and as in the preliminary report, staff affirms its finding that that the proposed incorporation is in the best interests of the state under Alaska's constitution, meets 3 AAC 110.981 and 982, and therefore satisfies AS 29.05.100(a) and 3 AAC 110.042.

### **3 AAC 110.900. Transition**

- (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*
- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing city, city, unorganized city service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized city service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing city, city, unorganized city service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing city, city, and unorganized city service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*
- (d) Before approving a proposed change, the commission may require that all cities, unorganized city service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*
- (e) The transition plan must state the names and titles of all officials of each existing city, city, and unorganized city service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*
- (f) If a prospective petitioner has been unable to consult with officials of an existing city, city, or unorganized city service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing city, city, and unorganized city service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

### **Analysis**

The petition to incorporate Whale Pass as a second class city does include a transition plan. Under 3 AAC 110.900(a) and (b), this plan includes a timeline and description of powers to be assumed by a potential City of Whale Pass. The plan also includes the process of electing a city council, as well as plans to hire a city clerk, and the process of development of a comprehensive plan by a planning commission to be appointed by the city council. The transition plan also lists the objectives for this planning commission in its first year in operation. The LBC staff finds that the transition plans demonstrates the capacity of the proposed city to extend essential municipal services in the shortest practicable time. Under 3 AAC 110.900(c), the petition

lists all monetary and physical assets of the WPCA, and a plan to transfer all assets and liabilities in a timely manner. The WPCA bylaws also include a provision for dissolution of the community organization in the event of a city being formed in Whale Pass and its transition completed. This task is listed as one that will be carried out in conjunction by the city clerk and city council. Staff believes the community of Whale Pass has the capacity, as demonstrated in its transition plan and earlier in this report, to transfer assets, and assume responsibility for municipal government if the LBC approves the petition, and voters approve the incorporation in an election.

The members of the WPCA overlap with the petitioners and signers of this petition. The need to consult with the community association as an interested entity in the territory is relevant, but redundant in this case. In this final report, staff affirms its finding that the provisions of 3 AAC 110.900 are met.

### **3 AAC 110.910 Statement of Nondiscrimination**

*The commission will not approve a petition 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.*

### **Analysis**

Nothing in these proceedings suggest that the proposed incorporation will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Staff affirms that the standard of 3 AAC 110.910 is met.

### **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.*

## Analysis

Staff found that 3 AAC 110.920(a) and (b) was met in its analysis of 3 AAC 110.005. 3 AAC 110.920(c) is not pertinent. In this final report, staff affirms its finding in the preliminary report that the standard of 3 AAC 110.920 is met.

### ***3 AAC 110.970. Determination of essential municipal services***

*(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.*

## Analysis

Whale Pass intends to undertake several municipal services including harbor maintenance, EMS, fire service, taxing authority, with the possibility of future additional services such as refuse collection. A paid city clerk will oversee these projects and their finances according to the petition. As there is no municipality in this area proposed for incorporation, staff finds these services essential to Whale Pass. They are essential 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.

As in the preliminary report, staff affirms its finding that this standard is met.

## Conclusion

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Staff finds that the city incorporation standards are met for the proposed incorporation of a second class city of Whale Pass. The staff recommends that the petition be approved as presented. Approval of this petition will allow residents of Whale Pass the opportunity to vote on whether the proposed territory becomes a second class city. The Local Boundary Commission will hold a public hearing on this petition on August 2, 2016 in Whale Pass. A decisional meeting will immediately follow. If the petition is approved, voters of Whale Pass will have the opportunity to vote on incorporation later this year.

# Appendices

Appendix A: Notice for final report and public hearing

Appendix B: All Comments Received on Preliminary Report

Appendix C: Petition Schedule

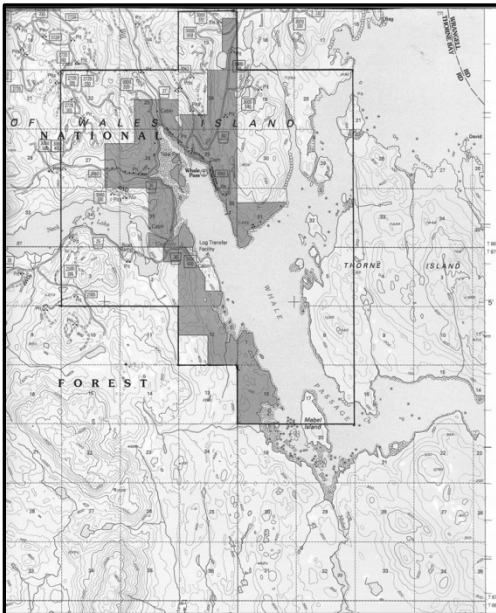
Appendix D: Map of Proposed Boundaries

## Appendix A. Notice of Final Report and Hearing

### State of Alaska Local Boundary Commission (LBC)

#### Notice of Final Report, Public Hearing, and Decisional Meeting Regarding the Petition to Incorporate Whale Pass as a City

The LBC staff final report concerning the local action petition to incorporate the community of Whale Pass as a second class city was released on June 24, 2016. The proposed city includes approximately 26 square miles of land and water on the north end of Prince of Wales Island. The report recommends that the LBC approve the Whale Pass incorporation petition without amendment or condition. The report, petition, and related materials will be available on the LBC website at: <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016IncorporationPetitionforaSecondClassCityofWhalePass/Reports.aspx>. If the report is not immediately available on the LBC website, contact the LBC staff to request a copy. All petition materials are also available for public review at the Whale Pass Community Library, the Whale Pass Facebook page, and the Whale Pass community website.



will be held at:

**Whale Pass Community Library**  
**August 2, 2016**  
**Time: 10:00 a.m.**

The commission will convene a decisional meeting for the petition under 3 AAC 110.570 immediately following the hearing, in the same location. Once prepared, hearing and decisional meeting materials will be available at <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016IncorporationPetitionforaSecondClassCityofWhalePass/Hearings.aspx>. The hearing and decisional meeting will be available via teleconference by calling **1-800-315-6338** and using access code **94587**. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate should contact LBC staff by July 22, 2016.

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

It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/soalists/DCED-LocalBoundaryCommission/jl.htm>, and following the instructions.

## Appendix B. All Comments for Whale Pass

**From:** [Rick Watson](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Re: NOTICE OF FILING A PETITION RE: WHALE PASS  
**Date:** Thursday, February 04, 2016 12:37:47 AM

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To: State of Alaska - Local Boundary Commission

RE: Petition to Incorporate Whale Pass as a second class city

I have taken the time to review this petition and would like to add my comments and concerns.

Although I am a resident and registered voter of Ketchikan, my property in Whale Pass is my second home. I understand that under Alaska Statutes local registered voters have the right to file this petition but the law to me is unfair. This type of petition affects all property owners not just the registered voters in the area. To suggest or present that a significant amount or percentage of registered voters are in support of this petition does not represent the true facts. Also if just the registered voters can accept this by majority vote once approved by the LBC, as a property owner, I am left out. How can I be left out of the decision process if something like this can affect me just as much as a registered voter in the area? I do see this type of approval acceptable in a larger population base. One that has a majority of local voting residents vs. non-voting property owners. In the case of Whale Pass if you look at the facts there are more property owners than voting residents. Therefore this does not represent a majority rule when only the voting residents can make the decision. However if the conditions were that a significant amount or percentage of property owners were able to decide, that would signify a proper display of justification.

That being said, amongst several others reasons as stated in the justification, a primary reason for the petition to become a second class city is to avoid the area being adopted by a future "Prince of Whales Borough" . Although I do agree this possibility does exist, I do not see this as proper justification.

The projected value to the residents and property owners is not justifiable. This is clearly present when considering the budget they have presented clearly shows over 60% of all future 1 year revenue will be allocated to administrative costs. The remaining 40% shows very little increase in spending for things that benefit the community such as road maintenance, EMS, Fire, Etc over current expenditures as a non second class city.

There are no facts supporting such statements as increased residency, tourism, etc. The projected income has no factual support and there is no support for this petition presented from the local industries such as lodging, bed and breakfasts, tourism whom are projected to fund a major portion of this form of government.

I find it very hard to justify all this in a community of less than 50 year round residents that based on the staffing levels projected for the City Council, Planning Commission, Administration and others which would require a very large percentage of these residents could not be considered biased in such a small population base.

I fear that due to the lack of sustainable funding. Future funding issues will progress to a state of affairs that dictates some form of property tax being assessed even though the stated initial intent is to not incorporate a property tax.

In conclusion I do not see any real significant benefits to the residents and property owners , other than a select few who will now become financially compensated rather than volunteers, that are not already available and ask the LBC to deny this petition on lack of merit.

Sincerely,

Richard R. Watson

Nami M. Watson

Property / Home Owners

Lot 11 block 5 Whale Pass

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**From:** Williams, Brent R (CED) <brent.williams@alaska.gov> on behalf of Commission, Boundary (CED sponsored) <lbc@alaska.gov>  
**Sent:** Wednesday, February 3, 2016 2:40 PM  
**To:** Rick Watson  
**Cc:** McGee, Marty (CED); Collins, Eileen M (CED); Commission, Boundary (CED sponsored)  
**Subject:** RE: NOTICE OF FILING A PETITION RE: WHALE PASS

Hello Mr. Watson,

Thank you for your note. We appreciate your concerns. I'll try to address them for you. Any petition must go through a long public process, which has only just started for Whale Pass. The petition process requires providing certain public notice. The petition followed that required process, including printing in the *Ketchikan Daily News* the notice of the petition's acceptance for filing. Now the petition is in a public comment period that lasts until March 11. You are very welcome to send us any comments that you have concerning the petition at the below address, or at this email address. The staff and the Local Boundary Commission (LBC) will consider them seriously. The role of the LBC is to consider any proposed local boundary changes.

I respectfully urge you to look at the Whale Pass petition and related documents (including the notice and a schedule), which are available at <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016IncorporationPetitionforaSecondClassCityofWhalePass/petition.aspx>. Looking at the petition might answer your questions about the proposed incorporation. Additionally, the LBC staff will hold an informational meeting in Whale Pass, probably in April. Notice of that meeting will be

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[Petition, 2016 Incorporation Petition for a Second Class City of Whale Pass, Current Petitions, Local](#)

## Boundary Commission, Division of Community and Regional Affairs

www.commerce.alaska.gov

Division of Community and Regional Affairs, other key words

.....

provided. Persons interested in receiving future notices from the LBC are encouraged to sign up for the email list serve at <http://list.state.ak.us/soalists/DCED-LocalBoundaryCommission/jl.htm>. We hope that you will be able to attend.

No incorporation can occur without the LBC's approval. After the second public comment period, the LBC will hold a hearing and vote on whether or not to approve the petition. *If* the LBC approves the petition, then there will be an election by the voters of Whale Pass as to whether to incorporate or not. This petition cannot be approved without the residents voting on it.

I hope that I have answered your questions. Please feel free to contact us if we can be of further service.

Thank you,

**Brent Williams**

Local Boundary Commission  
Alaska Department of Commerce, Community, and Economic Development  
550 W. 7th Avenue, Suite 1640  
Anchorage, AK 99501  
(907) 269-4559

Please be sure to send all email correspondence regarding Local Boundary Commission matters through the following email address: [lbc@alaska.gov](mailto:lbc@alaska.gov). This ensures that all LBC staff receive your correspondence in a timely manner. Thank you.

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**From:** Rick Watson [mailto:n55w131@live.com]  
**Sent:** Wednesday, February 03, 2016 12:54 PM  
**To:** Commission, Boundary (CED sponsored)  
**Subject:** NOTICE OF FILING A PETITION RE: WHALE PASS

Hello,

As a concerned property owner in Whale Pass I just happened to run across this proposal on the internet and I am concerned as to how something like this can take place without due diligence. For example, I have never been contacted, nor have I seen any public notices referring to this proposal.

How am I supposed to voice my concerns if I don't know about it and proper reasonable methods have not been addressed to contact affected property owners. In this case it seems two people came up with an idea to change the status of Whale Pass. I have many questions. Why? Who will benefit? What are the pro's & con's? and many more.

I see now, after the fact they held a meeting at the library in Whale Pass. Well I live in Ketchikan, Whale Pass is my second home. Even if I had known, to travel to Whale Pass is expensive and I should be give an opportunity to attend remotely or to be able to respond.

How can this be approved with the residents voting on this?

Richard R. Watson  
Property Owner  
Block 5 Lot 11  
Whale Pass



**From:** [SEalaskaGIRL](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass Incorporation  
**Date:** Wednesday, May 25, 2016 6:43:12 PM

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Our family moved to Whale Pass permanently in May 2003. We raised our three children here and now we have four grandchildren residing next door. I share all this to show that we have lived here long enough to have a pretty good feel for the dynamics of our community and that we are committed to staying here.

I feel that the benefits to Whale Pass to become more self governing outweigh any disadvantages and I support incorporation.

Sincerely,

--

Tyra Huestis

**From:** [carole kraemer](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass  
**Date:** Thursday, May 26, 2016 9:31:23 AM

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As a resident of Whale Pass for 29 years, I am writing in support of the second-class city petition. This would benefit all of us and I know that most, if not all, of my neighbors agree.  
Thank you for your consideration.

**From:** [Josiah Huestis](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass Petition.  
**Date:** Sunday, May 29, 2016 10:35:38 AM

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To whom it may concern.

My name is Josiah Huestis, I am a full time resident of the community of Whale Pass. I have lived here since 2003 and am now married with 4 children, 3 of which were born in Whale Pass. I was originally in favor of Whale Pass becoming a second class city, espicially with the potential threat of becoming a bourough. I felt that it was a "darned if you do, darned if you don't" situation. With the possibility of borough formation somewhat lessened, and with the States massive cutbacks and lack of funding, I feel it would be a bad idea.

I live here for the relative freedom and lack of interference in my personal affairs. I value my ability to do what I want on my property without taxes, regulations and restrictions. I feel that if Whale Pass were to gain second class city status that these things will eventually fall into place.

I therefore oppose second class city formation of Whale Pass at this time. Feeling that the State of Alaskas financial position is not in need of yet more expenditures, and that the freedom we enjoy here should not be jeopardized.

Thank you for your time.

Josiah Huestis (voter # [REDACTED])  
Lot 3a block 15  
Whale Pass, AK 99950

**From:** [RALPH & JOY GREGORY](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass City Petition  
**Date:** Saturday, May 28, 2016 3:59:49 PM

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I am in favor of becoming a second class city at Whale Pass.

Please consider this as my response to the effort to obtain formal agreement with the process.

I have two parcels of land in Whale Pass and try to spend part of the year there.

Ralph C. Gregory  
Wanda J. Gregory

PO Box 773212  
Eagle River, AK 99577  
(907)622-5435

From: [Sharon Hillis](#)  
To: [WPCA GOOGLE GROUP](#); [Whale Pass Community Association](#); [Commission, Boundary \(CED sponsored\)](#)  
Subject: Whale Pass Petition Comments  
Date: Saturday, May 28, 2016 1:36:54 PM

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## Whale Pass Petition Comments

The comments on the Whale Pass website about becoming a second-class city gives compelling positive arguments – get money, get grants, get land, control our own destiny, etc.

None of the negative aspects have been addressed.

### Seven Council members

One of the requirements in the petition is to have a seven member council. Right now, the Whale Pass Community Association has a five member board of directors. Two of these members are not Whale Pass residents. One member was elected and he was not even at the annual meeting when he was elected. As far as I can determine, he has never attended a board meeting, even though meeting access is usually available by phone conference. This member has never been replaced although he has been on the board for a couple years. The current board has problems in the winter holding a meeting because of absent board members. How are we going to elect **seven** people to be on the city council that will live here on a permanent basis and will hold monthly meetings? I believe the people that run the city government should be full-time residents who understand what is needed and have first hand knowledge of the activities in Whale Pass. Will the council members be paid to attract more candidates? Council member pay is not in the budget.

### We will get free land that is like money in the bank.

We may get the land, but it will be very expensive to subdivide it. Those of us who live here bought our land knowing what borders our property. Land that will be granted to the city will border current subdivisions. When land is subdivided into new lots they will border current subdivisions. One of the reasons we live here is because our land borders state land. I personally don't want people living on the state land behind us. How will they gain access to their property? Will the city of Whale Pass build roads into the new property? There are easements along the edge of most lots. But these easements are for utilities not roads. The Whale Pass Community Assn bylaws state that property owners are responsible for building their own access roads. Will this now become a city responsibility? Where will we get the money to subdivide the land or build the roads? Will an environmental impact study be required before land is subdivided? That is not included in the proposed budget. Selling more land means a higher population. This puts more demand on services and requires more money. Our natural resources (deer, firewood, etc.) are becoming harder to access because the Forest Service has closed most of the spur roads in the Tongass National Forest. The road to Neck Lake is paved, and more people are concentrated in smaller areas for the same resource. More people living in Whale Pass stresses these resources even more.

## **Our money will come from the state and the tourist industry.**

The state is in a budget crisis. The revenue-sharing for communities like ours will be gone in a couple years. The revenue-sharing for cities is being cut. The state is also cutting important programs like education. If these budget woes continue, the cities may shoulder more of the financial burden and not receive much, if any, money. Grants are becoming scarce. That will mean higher taxes of some kind on the people here. It has been stated that we will not have property taxes until a borough takes over and assesses the value of our property. The borough will collect the property tax and return it to the city. There is no guarantee that a Prince of Wales borough formation will be passed by the voters of Prince of Wales Island. The scare tactics that the Ketchikan Gateway borough will annex Prince of Wales has been exposed as the fraud that it is. In order for Ketchikan to annex Prince of Wales into their borough, the Ketchikan voters would have to approve the acquisition. The Prince of Wales voters **in a separate vote** would have to approve the acquisition as well. If we become a city there will be those who will be in favor of forming a Prince of Wales borough simply to get the money that it will generate from property taxes. Many of the people who live here are on limited or fixed incomes and barely get by. Our property taxes will be high because Whale Pass has one of the highest property values on the island.

Much of our tourist industry is based on the SSRAA coho run. A fish box tax is one of the proposed income generators. How is this going to be enforced? Which businesses will be responsible for reporting and submitting the tax?

Another proposed tax is the bed tax. Many businesses take reservations even years in advance. Is it fair to the customer to pay extra money for a tax that may not have been in place when they made the reservation? How is this going to be enforced on the businesses?

Another tax is the sales tax. Does this apply to only things sold? Does it apply to services rendered? Will it apply to resident businesses or include businesses that do services here? (such as sewage pumping) How will this be enforced?

Will taxes paid be public knowledge? I don't think anyone's business income or number of guests should be public knowledge. Even if it is not available to the public the city administrator will have access to this information. This is a small community, and there is no guarantee that personal information will not be vocalized to other members of the community.

## **Government**

The money budgeted for the salary of the as city administrator is low. Will this be a part-time position? Will someone from Whale Pass be the administrator? Will someone from outside Whale Pass be recruited? It is unlikely that someone would move here for that particular job. If they have experience as a city administrator in another place, they would most likely expect Whale Pass to perform services that other cities provide meaning more money will be required.

This is a big step in creating local government control over Whale Pass. The intentions may be good, and the promise of no property tax is probably proposed honestly. Government only breeds more control and more government, meaning more control and more government growth, requiring more money. It is the nature of the beast.

People have been trained to expect the government to provide and care for them.

Self responsibility and self reliability are becoming scarce qualities.

### **Questions**

Few of my questions can be answered at this time. We will have to wait and see what our council decides to put in our city charter. When Coffman Cove became a city there were major growing pains. Many people regretted that Coffman Cove had chosen to become a city. Becoming a city is easy compared to dissolving one. If the registered voters of Whale Pass vote no on the second-class petition, in two years they can vote to become a city again. Postponing this big decision would give us a better idea of where the state budget and economy are headed. We would still be receiving revenue-sharing money in the next two years.

My recommendation is to think hard and long and realize what you are voting for when you cast your ballot. This vote can put Whale Pass on a path that will fundamentally change our community.

Sharon Hillis  
Box WWP Whale Pass  
Ketchikan, AK 99950

[northendcabins.com](http://northendcabins.com)

Integrity is doing the right thing when no one is watching.

**From:** [Don and Sue Hull](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass second class city  
**Date:** Monday, May 30, 2016 4:34:25 PM

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To whom it may concern,

I am very much in favor of Whale Pass becoming a second class city. I want our community to have a say in how our tax money is spent when we are taxed.

Thank you,

Sue Hull



**From:** [Jean Giesel](#)  
**To:** [Commission, Boundary \(CED sponsored\)](#)  
**Subject:** Whale Pass Second Class City  
**Date:** Tuesday, May 31, 2016 3:40:43 PM

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To whom it may concern:

We are very in favor of Whale Pass, POW, becoming a Second Class City. It will help Whale Pass plan for the future and allow the community to find funds to support and maintain community infrastructure such as docks and roads. This is becoming more important with possible growth of the area in the near future. Although officers of the Community Association, have worked and continue to work diligently, it will also allow the community to better governed. Ted and Jean Giesel, Whale Pass

Robert And Marjorie Meyer  
PO Box WWP  
Whale Pass  
Ketchikan, AK 99950  
(907) 846-5356  
rmmeyer@att.net

16 April 2016

Local Boundary Commission  
550 West 7<sup>th</sup> Ave. Suite 1640  
Anchorage, AK 99501

Phone: 907-269-4587/4559

Re: Comments on 2<sup>nd</sup> Class City Application.

Dear Sirs:

Thank you for visiting our community and giving us an opportunity to comment on the Second Class City Proposal. Both Marjorie and I support the Communities' application.

Our primary reasons for supporting to become a 2<sup>nd</sup> class city are two fold, one is to have more control over the future of our community and to be in a better position to secure the funding necessary to provide services for community residents.

Previously, we have been able to obtain support for community services through various State funded programs and with the State's current fiscal problems, we expect funds obtained through these sources to be problematical.

Thank you for the opportunity to comment.

Sincerely,

Robert M Meyer



# WPCA



## WHALE PASS COMMUNITY ASSOCIATION

PO Box WWP  
Ketchikan, Alaska 99950

16 April 2016

Local Boundary Commission  
550 West 7<sup>th</sup>. Ave. Suite 1640  
Anchorage, AK 99501

Phone: 907-269-4587/4559

Re: Comments on 2<sup>nd</sup> Class City Application.

Dear Sirs:

Thank you for visiting our community and giving us an opportunity to comment on the Second Class City Proposal. Our community association supports the application.

Our primary reasons for seeking to become a 2<sup>nd</sup> class city are two fold, one is to have more control over the future of our community and to be in a better position to secure the funding necessary to provide services for community residents.

Previously, we have been able to obtain support for community services through various State funded programs and with the State's current fiscal problems, we expect funds obtained through these these sources to be problematical.

Thank you for the opportunity to comment.

Sincerely,

Robert M Meyer, President  
Whale Pass community Association  
[rmmeyer@att.net](mailto:rmmeyer@att.net)

## **Appendix C**

### **Whale Pass Incorporation Petition Schedule (Subject to change by LBC chair) June 15, 2016**

#### **January 7, 2016**

LBC accepts petition for filing.

#### **January 8, 2016**

Petition public comment period starts on this first date of publication of notice.

#### **March-April, 2016**

Staff conducts information session in Whale Pass. This session which will be conducted in person by LBC staff will be scheduled before the preliminary report is issued—as early as February and as late as April, but residents will be given adequate notice.

#### **March 11, 2016**

Deadline to file comments or responsive briefs concerning the petition.  
Petitioner has 21 days after receiving a responsive brief to file a reply brief.

#### **April 22, 2016**

Staff issues a preliminary report.  
Public comment period on the preliminary report begins.

#### **May 31, 2016**

Public comment period ends. Staff then considers the comments and writes a final report.

#### **June 24, 2016**

Staff mails the final report.  
Staff issues a notice of public hearing.

#### **August 2, 2016**

LBC holds a public hearing.  
LBC holds a decisional meeting immediately following the hearing.

#### **August 17, 2016**

Staff drafts a written decision and sends it to the commissioners.

#### **August 24, 2016 (TBD)**

LBC meets to approve or amend a written decision.

#### **August 26, 2016**

Staff issues the written decision.  
An 18-day period for the public to request reconsideration of decision begins. LBC has 30 days, on its own motion, to reconsider. If reconsideration is granted, then petitioner or respondent has 10 days to file a brief.

## Appendix D

### Map of Proposed Boundaries for Whale Pass

Approximately 26 square miles of land and water

