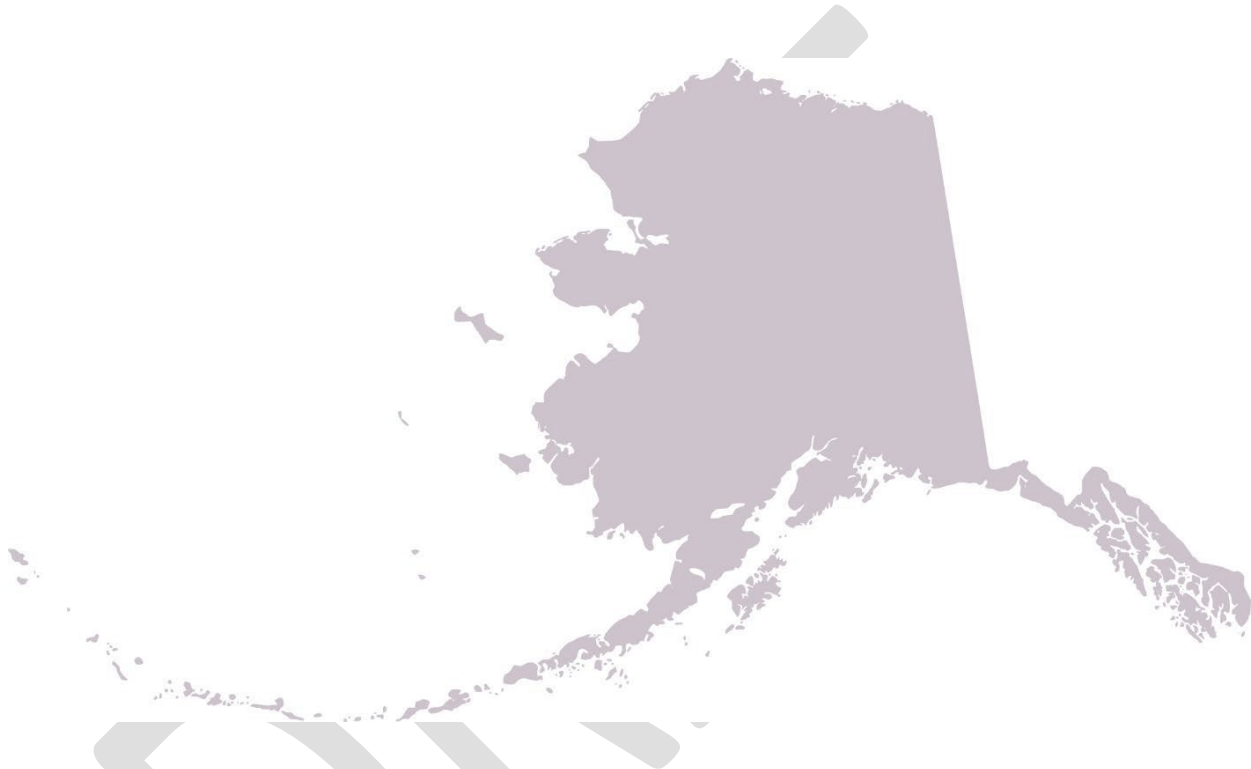


LOCAL BOUNDARY COMMISSION
2022 ANNUAL REPORT TO THE FIRST
SESSION OF THE THIRTY-THIRD ALASKA
STATE LEGISLATURE



Larry Wood, Chair
Member at Large

John Harrington, First Judicial District

Ely Cyrus, Second Judicial District

Clayton Trotter, Third Judicial District

Lance Roberts, Fourth Judicial District

Local Boundary Commission | Division of Community and Regional Affairs
Department of Commerce, Community, and Economic Development
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This publication was released by the Department of Commerce, Community, and Economic Development (DCCED) in January 2023. The report is required by AS 44.33.812 and does not constitute an official position or opinion by DCCED.



LOCAL BOUNDARY COMMISSION

550 WEST 7TH AVENUE, SUITE 1640
ANCHORAGE, ALASKA 99501, 907-269-4559/4587, FAX: 907-269-4563

January 2x, 2023

Members of the Alaska State Legislature,

On behalf of all members of the Local Boundary Commission (LBC or “Commission”), we are pleased to present this report of the commission to the First Session of the Thirty-Third Alaska State Legislature. This report reviews the powers and duties of the LBC and our activities during 2022. Since our last report on January 26, 2022, one member of the LBC has been reappointed to a five-year term, and one member has been appointed to fill a vacant seat. The LBC met one time in January 2022 to approve last year’s annual report to the Legislature, and once during a work session to review the LBC’s Constitutional, statutory and regulatory standards.

The report provides information about the research, analysis, and administrative work LBC staff performed for professionals and communities engaged in feasibility studies and drafting petitions.

The LBC recognizes and expresses its appreciation for the key role its staff plays in expertly and courteously providing essential information to the many Alaskans who contact the Commission with questions or interest expressed in pursuing boundary changes in their communities.

The Commission respectfully requests that the Legislature consider the activities and issues addressed in this report. Please contact us with any questions or concerns.

Cordially,

The Local Boundary Commission

Larry Wood
Chair, Member at Large

Ely Cyrus
Second Judicial District

Richard “Clayton” Trotter
Third Judicial District

John Harrington
First Judicial District

Lance Roberts
Fourth Judicial District

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CHAPTER 1: BACKGROUND

LOCAL BOUNDARY COMMISSION'S CONSTITUTIONAL FOUNDATION

The Local Boundary Commission (LBC) is one of only five state boards or commissions established in the Constitution of the State of Alaska. Article X, section 12 of Alaska's constitution created the LBC, stating:

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.

The commission is responsible for establishing and modifying proposed municipal government boundaries. The framers of the state constitution asserted their belief that the state should set municipal boundaries. The advantage of the method, in the words of the local government committee developing the state constitution, "lies in placing the process at a level where areawide or statewide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively."¹

The Alaska Supreme Court has upheld this position, holding that the subject of expansion of municipal boundaries is of legitimate concern of the state as a whole and not just that of the local community. The Court quoted the Alaska Constitutional Convention committee on local government that "local political decisions do not usually create proper boundaries."²

LBC DUTIES AND FUNCTIONS

The LBC acts on petitions for several different municipal (city and borough) boundary changes, including:

- Incorporating municipalities;
- Annexing territory to municipalities;
- Detaching territory from municipalities;
- Merging municipalities;
- Consolidating municipalities;
- Dissolving municipalities; and
- Reclassifying cities.

¹ Alaska Constitutional Convention, Commentary on Proposed Article on Local Government, Dec. 19, 1955 at 6.

² Fairview Public Utility District No. 1 v. City of Anchorage, 268 P. 2d 540, 543 (Alaska 1962)

LBC MEMBERSHIP

The LBC is an independent commission with five members. The governor appoints commissioners for five-year overlapping terms. One member is appointed from each of Alaska's four judicial districts. The member at large also serves as LBC chair.³

In March, Governor Mike Dunleavy appointed commissioner Ely Cyrus, from the second judicial district, to fill the remainder of a term ending in January 2024. In August, Governor Dunleavy reappointed chair Larry Wood to a term ending in 2028.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership."⁴ LBC members receive no pay for their service. However, they are entitled to travel expense reimbursement and per diem authorized for members of state boards and commissions.⁵ A biographical summary of current members can be found on the LBC website: <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission.aspx>.

Members:



**Larry Wood, Chair,
Member At Large, Eagle River**
Terms Ends: January 31, 2028



**John Harrington,
First Judicial District, Ketchikan**
Term Ends: January 31, 2026



**Ely Cyrus,
Second Judicial District, Kiana**
Term Ends: January 31, 2024



**Richard "Clayton" Trotter,
Third Judicial District, Eagle River**
Term Ends: January 31, 2027



**Lance Roberts,
Fourth Judicial District, Fairbanks**
Term Ends: January 31, 2025

³ AS 44.33.810

⁴ AS 39.05.060(b)

⁵ AS 39.20.180

CONSTITUTIONAL ORIGIN OF THE LOCAL GOVERNMENT AGENCY

Alaska's constitution establishes an executive branch agency to advise and assist local governments.⁶ That agency is the Division of Community and Regional Affairs (DCRA) within the Department of Commerce, Community, and Economic Development (DCCED or department).⁷ DCRA performs the local government agency's functions, including providing staff, research, and assistance to the LBC.⁸

LBC STAFF ROLE

LBC staff is required by law to investigate and analyze each boundary change proposal and make recommendations regarding each proposal to the commission.⁹ For each petition, staff will write at least one report for the commission detailing its findings. Staff recommendations to the commission are based on properly interpreting the applicable legal standards and rationally applying those standards to each petition. Due process is best served by providing the commission with a thorough, credible, and objective analysis of every local boundary change proposal. Staff's recommendations to the commission are not binding on the LBC.

Besides providing support to the commission, the LBC staff also provides information and technical assistance to municipalities, petitioners, residents of areas affected by existing or potential petitions, respondents, agencies, and the general public. Assistance provided by LBC staff includes:

- Answering public, legislative, and other governmental inquiries relating to municipal government boundary and related matters;
- Facilitating the petition and/or local boundary change process from start to finish, including technical reviews, publishing public notifications, accepting public comments, and much more;
- In depth analyses of petitions submitted to the LBC;
- Writing preliminary and preparing final reports on petitions for the LBC;
- Preparing draft LBC decisions;
- Traveling to communities to conduct public meetings and answer questions about proposed local boundary changes;

⁶ Article X, section 14

⁷ AS 44.33.020(a)(1) provides that DCCED "shall (1) advise and assist local governments."

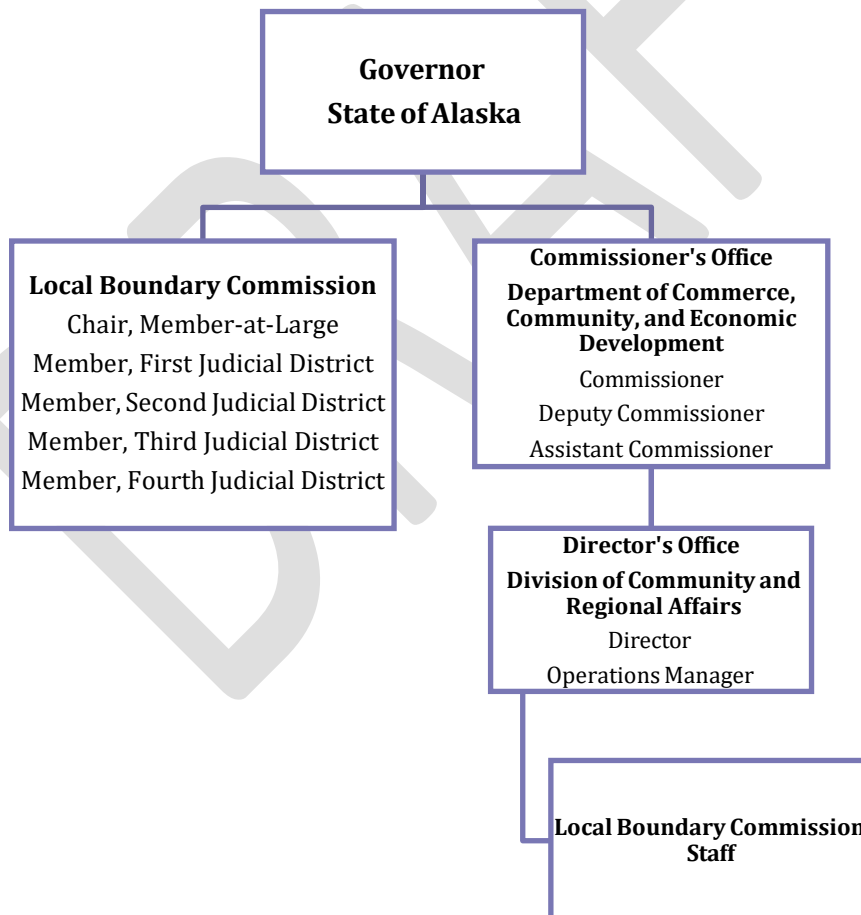
⁸ AS 44.33.020(a)(4) provides that DCCED "shall (4) serve as staff for the Local Boundary Commission."

⁹ AS 29.04.040, AS 29.05.080, AS 29.06.110, and AS 29.06.480 - 29.06.490; 3 AAC 110.530.

- Developing and updating incorporation or boundary change petition forms;
- Sending local boundary change petition forms and materials to interested persons and municipalities;
- Providing a link between the LBC and the public;
- Maintaining and preserving Alaska municipal incorporation and other boundary change records in accordance with Alaska’s public records laws;
- Coordinating, scheduling, and facilitating LBC public meetings and hearings;
- Developing orientation materials and providing training for new LBC members;
- Providing regular reports of its activities to LBC commissioners; and
- Preparing draft annual Legislative and other LBC reports.

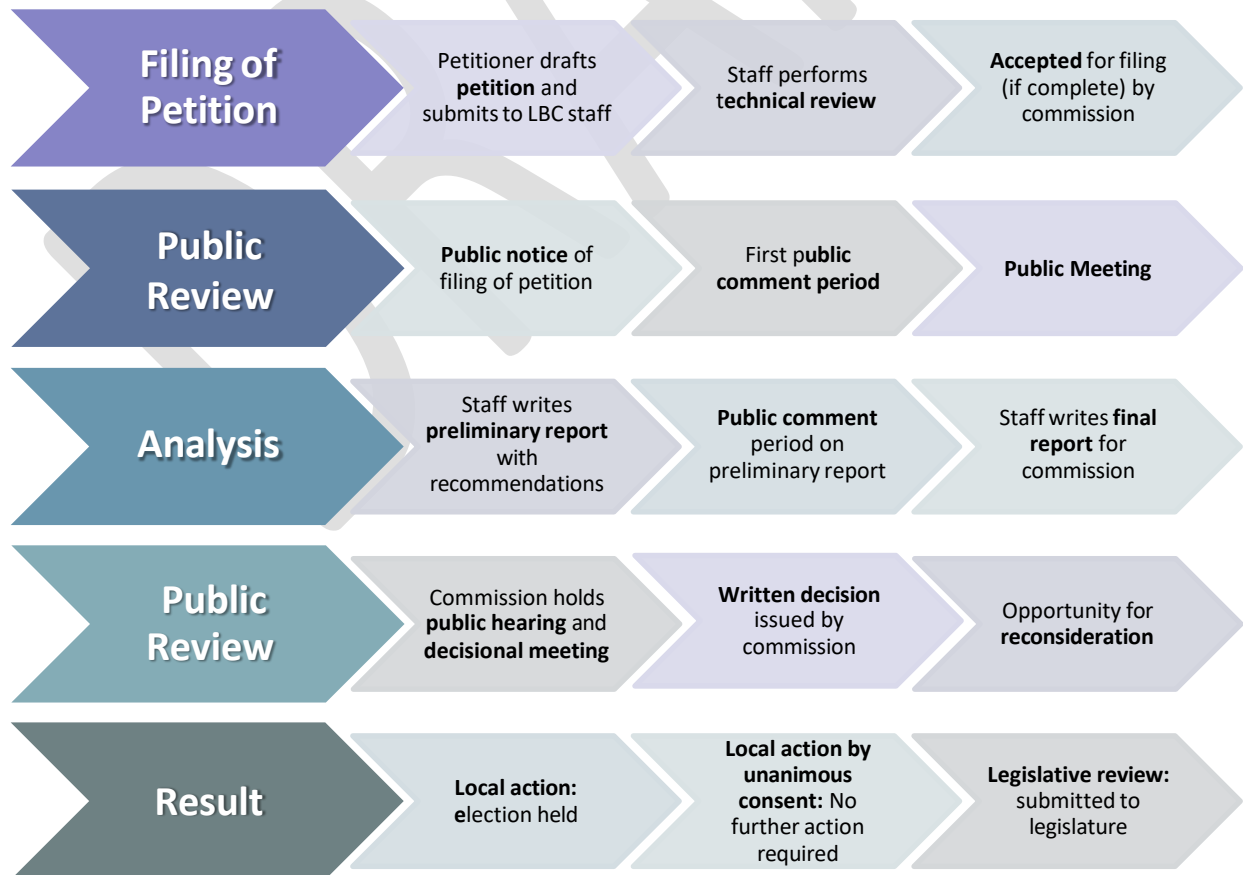
ORGANIZATIONAL CHART FOR LBC STAFF

The Local Boundary Commission is currently served by a single Local Government Specialist IV located in the Anchorage DCRA office.



LOCAL BOUNDARY COMMISSION PETITION PROCESS

When the department receives a petition, LBC staff performs a technical review to ensure that it contains all required elements. This review is not an analysis of the merits of the petition. If the petition does not include all necessary information, staff sends it back to the petitioner for completion. When a petition passes the initial technical review, it is accepted for filing. At this stage, staff works with the petitioner to ensure that the public is notified, and the petition is available for review as required by regulations. There are typically two public comment periods and two publicly available staff reports before the matter comes before the LBC in a public hearing. The reports contain recommendations for the commissioners. At the public hearing, the LBC listens to the petitioners, any responding parties, and any public comments and related information. At the decisional meeting, the commission discusses and considers testimony, public comments, and relevant information before it reaches a decision. The LBC may amend, approve, or deny a petition. If the petition is approved, the next step depends on the type of petition. If a petition is a legislative review petition, the proposed boundary change is submitted to the Legislature within the first 10 days of its regular session. The proposed boundary change takes effect after 45 days, unless the Legislature adopts a concurrent resolution disapproving it. If the petition is a local action petition, the boundary change question is placed on the ballot for approval by residents of the territory proposed for annexation and by the residents of the annexing municipality.



CHAPTER 2: LOCAL BOUNDARY CHANGES AND ACTIVITIES

SUBMITTED PETITIONS

No petitions were submitted or accepted for filing during 2022. The last petition submitted and accepted for filing was the City of Soldotna's petition to annex 2.63 square miles by the legislative review method in 2019. The Local Boundary Commission approved the petition, but converted it to the local action method. The City of Soldotna has appealed that decision. Petitions and other inquiries that have not yet reached this stage can be found in the next section of this report. All formally submitted reports and documents can be found on the LBC website:

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

CITY OF SOLDOTNA ANNEXATION PETITION

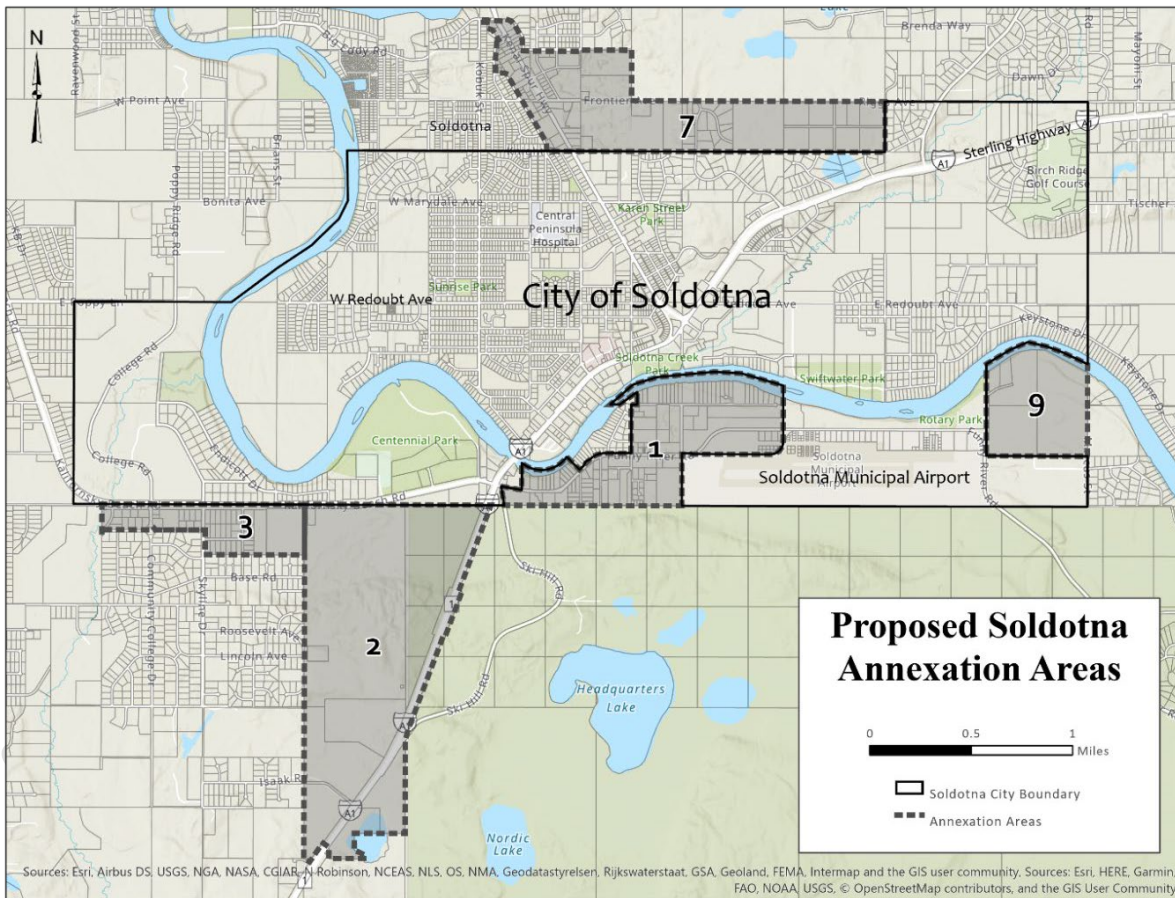
On August 27, Kenai Superior Court Judge Lance Joanis issued a decision upholding the Local Boundary Commission's conversion of the City of Soldotna's annexation petition from the legislative review method to the local action method. The City of Soldotna argued that the LBC's discretion to convert the petition to local action is limited because it conflicts with the purpose of Article X, Sec. 12 of the Alaska Constitution. In November of 2019, the City of Soldotna submitted a petition to annex five different territories totaling 2.63 square miles, by the legislative review method. In December of 2020, the Local Boundary Commission issued a decision approving the petition, but converting it from the legislative review method to the local action method, requiring a vote of approval by the residents of the City, and of the territory.

The Court found the LBC does have the authority to convert a petition, and further, had a reasonable basis for doing so when it claimed the conversion would be in the best interest of the state. The Court affirmed the LBC's reasoning, citing the City's history of four previous annexations by unanimous consent.

The City of Soldotna has appealed the Superior Court decision to the Alaska Supreme Court. Soldotna's brief was due on January 3, 2023. The city may request additional extensions and once a deadline is set, the LBC's brief will be due 30 days thereafter. LBC's council may also request an automatic 30 day extension. In any case, legal briefs will be submitted during the first quarter of 2023. No oral arguments have yet been scheduled.

In 2022, two individuals contacted LBC staff separately inquiring about the Soldotna annexation for the sole purpose of extending piped water service. One caller identified as living in one of the areas proposed for annexation, said he was interested in pursuing a unanimous consent petition for annexation of his property, though the City remains reluctant to initiate a new boundary change petition while the current petition is being litigated. The

other, a representative of a small college that had recently completed construction of a new gymnasium, is not in the territory proposed for annexation. Both parcels are within the city utility’s service area. The city maintains it will not extend utilities outside of its municipal boundary because past practice has led to what the city characterizes as “unwittingly facilitating development” outside of its boundaries, while not requiring development to meet city or even borough standards. LBC staff referred both contacts to the Regulatory Commission of Alaska.



CHAPTER 3: ADDITIONAL 2022 ACTIVITIES

ACTIVITIES OF THE BOARD AND STAFF

TANANA

In February, a member of the Tanana City Council contacted LBC staff to inquire about the process for reclassification from a First Class City to a Second Class City. While several municipal governments have dissolved over the years, most have been Second Class Cities. A reclassification of this nature is unprecedented. There are three other First Class Cities with fewer than 400 residents: Pelican, Seldovia, and Hydaburg. Nenana is a Home Rule City with a population of 374. Of those, only Seldovia is inside a borough. This is noteworthy because

First Class Cities outside of boroughs are required to make a minimum local contribution to the funding of their school district (the equivalent of 2.65 mill tax levy on the full and true value of taxable real and personal property in the district). Second Class Cities are not required to make a similar contribution, and are part of Regional Education Attendance Area school districts, which derive their operating funds entirely from the State.

Tanana incorporated as a Fourth Class City in 1961. In 1982, the residents voted 60-34 in favor of reclassifying as a first class city and a new certificate was issued on May 8, 1982. Historic population data for Tanana indicates the community has experience population swings from as low as 120 in 1970, to as high as 414 in 1988. By 1990, the population was back down to 345 and has declined in every decadal census since. Currently the population is approximately 231 residents. Generally, a community must have a population of more than 400 to incorporate as a First Class City. However, there is no mechanism that automatically reclassifies a community if the population drops below that threshold.

Compounding the complexity of the matter, Tanana appears to lack the administrative capacity to draft a petition. On April 27, LBC staff attended a virtual joint-work session with the Yukon Koyukuk and Tanana City School Districts. The purpose of the work session was to discuss a shared services agreement between the two school districts. Officials with the City of Tanana were not in attendance. In a telephone conversation after the meeting, LBC staff learned YKSD would not sign a shared services agreement until a reclassification petition had been initiated. The superintendent said she did not believe the City of Tanana currently has the capacity to draft such a petition, and that the school district or school board would consider filing the reclassification petition.

LBC staff have also learned, through officials with the Department of Education and Early Development, that the City of Tanana has not paid its annual required local contribution in several years. AS 14.17.410(d) provides, "State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made." The official with DEED said the city recently satisfied its obligation by signing over the ownership of teacher housing to the school district, an agreement that will obviously not be an option in future years.

Tanana's fate remains unclear due to the lack of administrative capacity to draft a petition. It is unclear what the Department of Education and Early Development's strategy or policy is toward communities that are unwilling or unable to support their school district. If Tanana is able to submit a petition and is permitted to reclassify downward, it would then join the Yukon-Koyukuk School district, which is one of the largest REAAs in the state, consisting of 13 other communities.

BETTLES

A member of the Bettles City Council contacted LBC staff to request information regarding city dissolution. The council member stated the mayor had resigned, leaving four members on the council. He said the city has not filed a tax return in six years. There are currently approximately 14 registered voters in the community, which abuts the unincorporated

community of Evansville. The school building is being sold, and the city has had challenging relations with Alaska DOT regarding airport leasing. LBC staff sent the council member a lengthy city dissolution information packet and encouraged him to review it. In November, LBC staff learned that voters in the community turned down an advisory ballot question whether to dissolve the city.

HOONAH

An attorney representing the City of Hoonah contacted LBC staff in March with technical questions about borough incorporation. LBC staff have had several conversations and have provided in-depth responses to numerous technical questions related to borough incorporation in 2022.

LBC staff conducted an informal technical review of a borough formation petition for Hoonah in February 2020. That review consisted of several recommendations for improvement, noting that the current draft would not be accepted due to the omission of critical details such as election dates and lack of a transition plan and a legal brief that did not address incorporation standards. Additionally, the draft petition proposed to omit several of the surrounding incorporated and unincorporated communities, and also argued for detachment of areas currently inside the Haines and Sitka Borough boundaries.

3 AAC 110.060 (b)(1) provides the commission may consider the model borough boundaries for an area within a proposed borough. The Glacier Bay Model Borough Boundaries, which were adopted by reference in the Alaska Administrative Code, includes the communities of Tenekee Springs, Gustavus, Pelican and Elfin Cove. Exclusion of those communities from a Hoonah borough could prevent future incorporation of a separate borough. LBC staff also advised the attorney the petitioner would need to consult with the Chatham REAA despite the exclusion of the aforementioned communities, because the area would still include property and residents of the unincorporated portion of the borough.

The contracted law office has been drafting a new incorporation petition with several changes based on the previous LBC staff review, and the city hopes to submit a draft for another informal technical review by January 2023.

NORTH POLE

In March an executive administrative assistant with the Governor's office in Fairbanks contacted Local Boundary Commission staff to inquire about the 45-day technical review period for an annexation petition. The assistant was joined on the phone by a special assistant to the Governor, who identified herself as a member of the Fairbanks North Star Borough Assembly. The Assembly member said the City of North Pole is considering extending water and wastewater utilities to a subdivision outside of the city limits for the development of military housing. She was concerned the annexation process timeline would be too long to fulfill commitments the city had made with the developer, the Alaska Industrial Development and Export Authority. The Assembly member asked whether LBC staff would need the full 45 days to complete a technical review. LBC staff clarified that the 45-day technical review is merely the first step in a lengthy process to change municipal boundaries, and that any petition must eventually be approved by the Local Boundary Commission after a period of

public notice, public comment, a preliminary report, final report and recommendation, and a public hearing. She suggested the city could simply bypass the process by contacting the legislature directly. LBC staff noted that even a legislative review petition must first be approved by the Local Boundary Commission after it has followed the public process.

In April, the Mayor of North Pole contacted LBC staff to follow up on correspondence regarding the municipal annexation process. Officials with AIDEA and the City were under the impression that a parcel under the city's ownership could be annexed simply by city ordinance. LBC staff clarified in addition to the ordinance, the city would still need to follow the process for any municipal boundary change and submit a petition to the Local Boundary Commission. The mayor explained to LBC staff that AIDEA was asking the city to purchase a 36 acre undeveloped parcel, for approximately \$250,000, and turn it over to AIDEA, along with a 10 year property tax abatement. The mayor said he recognized the LBC process would take 10-12 months minimum, which LBC staff confirmed.

In August, the Mayor and his wife, who is also on the North Pole City Council, stopped by the division of community and regional affairs Anchorage office to review the annexation timeline and process again and to update LBC staff on the city's intention to pursue the annexation. LBC staff affirmed that approval of an annexation petition would take a minimum of 9-12 months from the date it is received, and if the commission approves, a legislative review petition must be submitted during the first 10 days of a regular legislative session. A petition of this nature would almost certainly need to be submitted under the legislative review method since the territory proposed for annexation is uninhabited, and therefore unable to vote under the local action method.

SELDOVIA

In February, LBC staff attended remotely, a meeting of the Seldovia City Council to discuss the municipal annexation process. The City of Seldovia has a number of financial sustainability concerns regarding its water utility and delivery of some basic services. It has also seen noticeable growth adjacent to, but beyond its current boundaries. Officials with the city say it does not have the capital to initiate an annexation petition. LBC staff received two calls from residents regarding annexation: one in favor, and the other opposed. Officials with the city said they are uncertain how much support there would be from city residents or the council to pursue annexation.

EAGLE RIVER

LBC and DCRA staff continue to respond to questions regarding efforts to detach Eagle River from the Municipality of Anchorage. In February, a member of the EaglExit board of directors contacted LBC staff regarding the petition signature requirement for detachment and re-incorporation. LBC staff advised the board member that the two processes, detachment and incorporation, are separate, and require two separate actions and sets of signatures.

For detachment, per 3 AAC 110.410(a)(9), a petition for a proposed action by the commission under this chapter may be initiated by, “at least 25 percent of the persons registered to vote in (A) the area proposed for borough detachment by election under AS 29.06.040(c)(2).”

For incorporation, per AS 29.05.060(7), a municipal incorporation petition must include “for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in (A) home rule and first class cities in the area of the proposed borough or unified municipality; and (B) the area of the proposed borough or unified municipality outside home rule and first class cities.

Department staff have determined that each signature requirement must be fulfilled, since it is theoretically possible some voters may wish to detach from the municipality of Anchorage, but not incorporate as a new municipality. A consolidated approach to the petition does not exempt the petitioner from fulfilling all of the petition requirements, nor does it replace certain requirements or standards with other requirements or standards. A “consolidated approach” simply means the two proposed actions may be submitted simultaneously, and considered by the commission as distinctly separate but related actions.

A representative from EagleExit contacted the division of community and regional affairs’ Help Desk in October. Local Government Specialist Lynn Kenealy provided general information on public records requests and designated legislative grants.

TUNUNAK

In January, Local Boundary Commission staff and Municipal Land Trust staff were contacted by a consultant working with the community of Tununak on possible re-incorporation of the city. MLT staff sent the consultant several historical documents, including the dissolution petition and relevant quit claim deeds for city assets that were transferred when the city dissolved in 1994. In 2021, MLT and LBC staff were in contact with members of the Tununak village corporation, and presented information on the MLT and LBC processes. That work continued in early 2022, but LBC staff is not aware of a petition and have not heard from the community since early 2022.

OTHER LBC ACTIVITY

The Local Boundary Commission met twice in 2022. The first meeting was held telephonically on January 19, when the LBC approved its annual report to the legislature. No other business was conducted during the meeting. The Commission also met in person in a day-long work session on May 12. The work session included information on the Constitutional, Statutory and Administrative regulation requirements specific to the Commission's work. All five members of the Local Boundary Commission (Larry Wood, Lance Roberts, Ely Cyrus, John Harrington, and Clayton Trotter) were in attendance. Also present via teleconference, was Assistant Attorney General Gene Hickey. Local Government Specialist Lynn Kenealy and DCRA

Operations Manager Nicole Tham also attended and presented portions of the work session. Four members of the EagleExit group also observed the work session. Resource Desk staff provided a presentation to the Local Boundary Commission on holding meetings and Open Meetings Act.

DRAFT

CHAPTER 4: CONCLUSION

The Local Boundary Commission staff focused most of its time in 2022 on responding to various community requests for boundary change and other information. Two issues emerged that could attract the attention of the commission in the coming year. The first is exemplified by Tanana, and whether reclassifying “downward” is in the best interest of the state.

Undeniably, the community no longer meets the standard of becoming a first class city. But there are a handful of communities that also do not meet the standard. The question of whether the State of Alaska is willing to take over the responsibility of completely funding the school district may need to be resolved. If the community does not have the capacity to draft a petition, to whom will that responsibility fall?

The second issue that may arise is whether the LBC will continue to emphasize or uphold the model borough boundaries. Formation of single city boroughs at the exclusion of other nearby communities could inhibit further borough formation in the future.

LBC staff will continue to provide communities and members of the public with technical assistance as they prepare petitions or have questions about the municipal boundary change process.

LBC staff is dedicated to ensuring communities understand the boundary change process and guiding them through that comprehensive process, culminating in a presentation of sufficient information to the LBC to complete their constitutional mandate of considering and acting on proposed boundary changes.

The LBC is pleased to serve the people of Alaska by fairly and fully exercising its constitutional and statutory authority to consider and to act on proposed boundary changes.

