

LOCAL BOUNDARY COMMISSION
2021 ANNUAL REPORT TO THE SECOND
SESSION OF THE THIRTY-SECOND ALASKA
STATE LEGISLATURE



Larry Wood, Chair
Member at Large

John Harrington, First Judicial District | (Vacant), Second Judicial District

Clayton Trotter, Third Judicial District | Lance Roberts, Fourth Judicial District

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LOCAL BOUNDARY COMMISSION

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January 19, 2022

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 Second Session of the Thirty-Second Alaska State Legislature. This report reviews the powers and duties of the LBC and our activities during 2021. Since our last report on January 26, 2021, one member of the LBC has been reappointed to a five-year term, and one member has resigned. The LBC met one time in January 2021. At that meeting, it also approved last year’s annual report to the Legislature.

This report describes the City of Soldotna’s judicial appeal of the commission’s 2020 decision converting the City’s petition for annexation of territory from the legislative review method to the local option method. annexation petition appeal process. It also describes interest expressed by many communities in 2021 in pursuing boundary and classification changes, as well as their requests for related information or technical assistance from LBC staff. 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

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

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 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.

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 November, Governor Mike Dunleavy re-appointed commissioner Richard “Clayton” Trotter for a term ending in January 2027.

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, 2023



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



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."

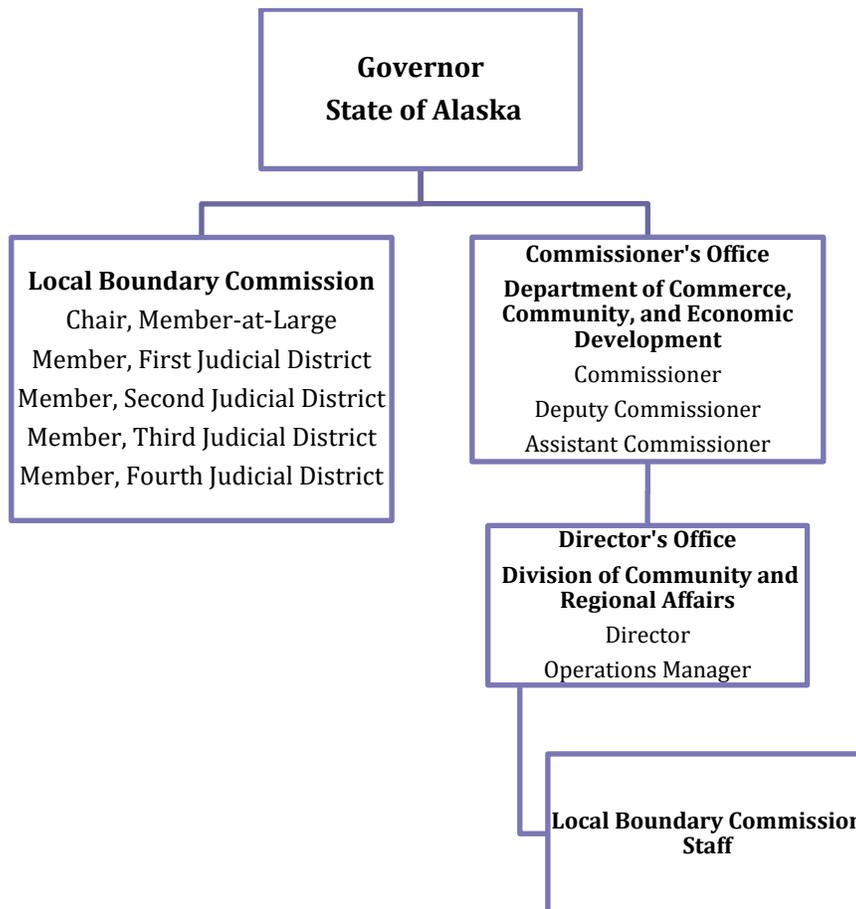
⁸ AS 44.33.020(a)(4) provides that DCCED "shall (4) serve as staff for the Local Boundary Commission."

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.

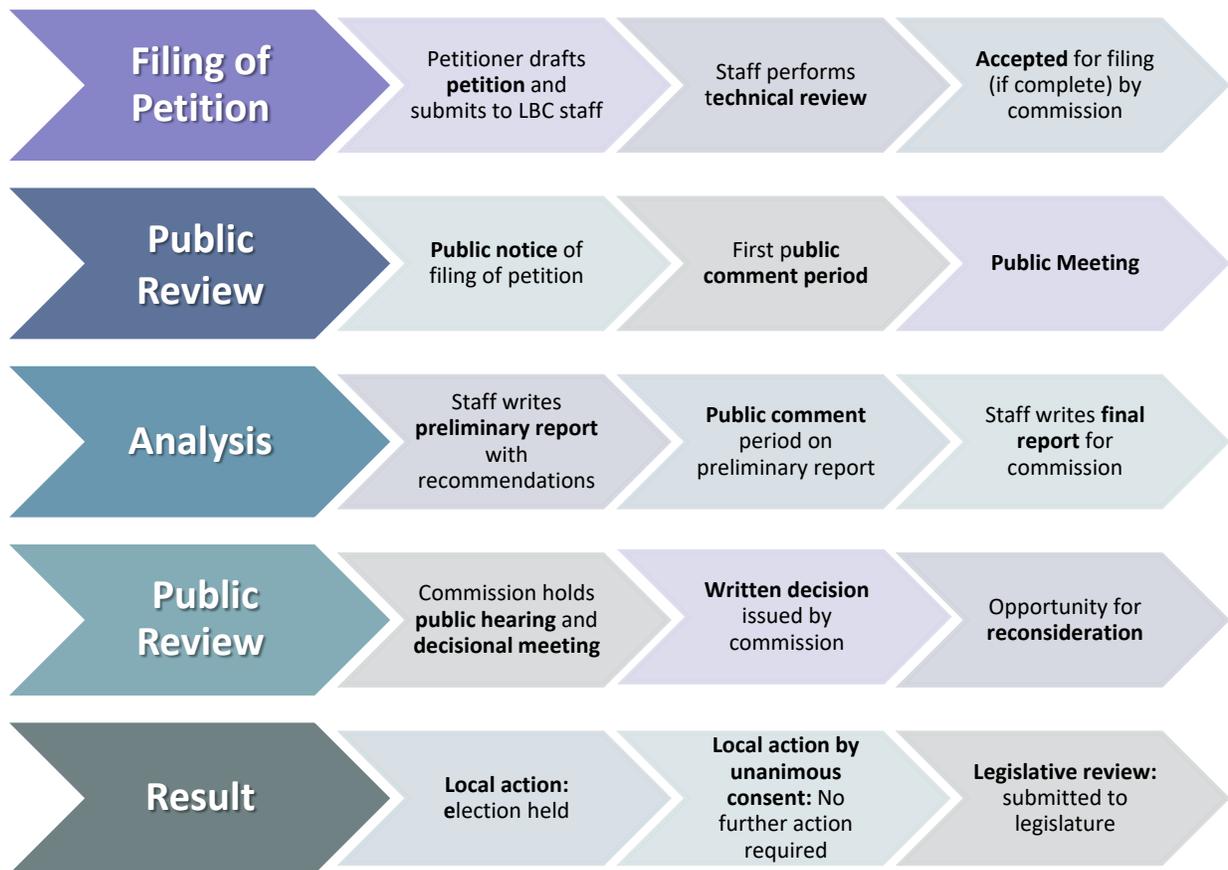
ORGANIZATIONAL CHART FOR LBC STAFF

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

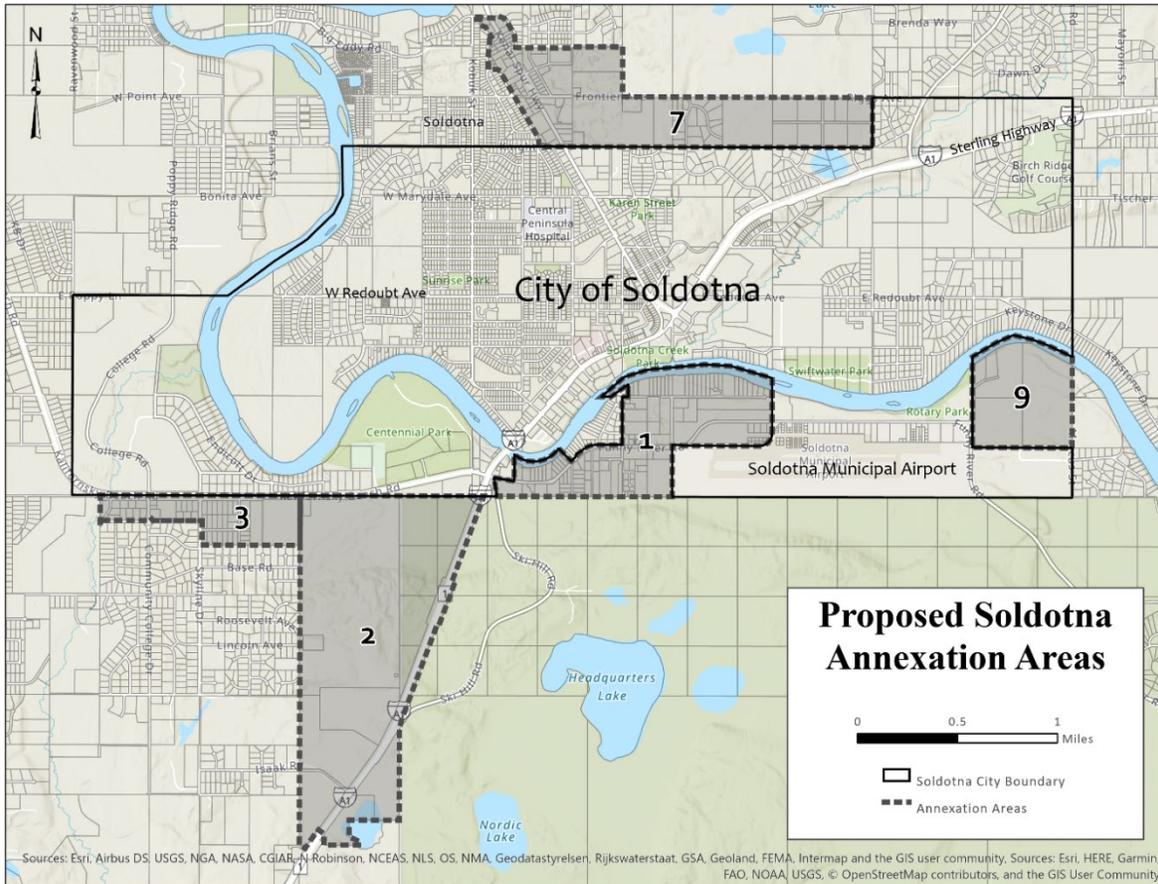
This section discusses each petition that has formally been submitted and accepted for filing by the Local Boundary Commission staff over the reporting period. Petitions and other inquiries that have not yet reached this stage can be found in the next section of this report. All formally submitted reports 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 December 29, 2020, the Local Boundary Commission issued its written decision in the City of Soldotna's petition to annex 2.63 square miles of territory by the legislative review method. The commission approved the annexation petition, but converted it from the legislative review method to the local option method, requiring approval from a majority of voters from the city, as well as the area to be annexed. Two commissioners dissented from the majority's action and submitted a separate written dissent. This decision marked the first time that the LBC has converted an annexation petition by the legislative review method to an annexation petition by the local option method. On January 26, 2021, the City of Soldotna filed an appeal of the Local Boundary Commission's decision in Alaska Superior Court at Kenai.

Local Boundary Commission staff assisted the Alaska Attorney General's Office in preparing the administrative record for the appeal, compiling meeting documents, transcripts, reports, and other related information.

On August 20, 2020, following extension requests filed by both the City and the LBC, Soldotna filed its brief in support of its appeal. The Local Boundary Commission filed its brief through the Office of Attorney General on October 20, 2021. On November 24, 2021, Soldotna filed its reply brief and, on December 3, 2021, its request for oral argument. Court argument will likely be scheduled early in 2022.



CHAPTER 3: ADDITIONAL 2021 ACTIVITIES

ACTIVITIES OF THE BOARD AND STAFF

TUNUNAK

In April, a consultant contacted LBC staff to request information regarding city incorporation. LBC staff provided a packet that included a template for an incorporation petition. The consultant said board members with the Tununrmiut Rinit Corporation, the Alaska Native village corporation for Tununak, were interested in discussing reviving the municipal government in the community. A history of the community of Tununak reflects that the municipal government was first incorporated in 1975. However, in 1989, the city became “inactive” and by 1994, the Department of Community and Regional Affairs had conducted an investigation into the city’s activities and recommended dissolution per AS 29.06.450(b). The LBC approved the department’s petition for dissolution that year, and the petition was tacitly approved by the legislature in 1995. Residents in Tununak ratified the dissolution by a vote of 69-61 later that year, and all assets and liabilities, including \$110,000 in unpaid taxes to the IRS, were transferred to the successor entity, the Tununak Traditional Elders Conference.

In 2010, LBC staff drafted a memo to the commissioner of DCCED presenting a request from the Tununak Traditional Council to convey by quit claim deed all municipal assets to the Native Village of Tununak. The memo states the Tununak Traditional Council also dissolved and questioned the state's role since the municipal government had already been dissolved.

In December 2021, LBC staff, along with staff from the Municipal Land Trust section, met with the Tununrmiut Rinit Corporation executive board to discuss the process of incorporation and the ANCSA 14(c)3 program. LBC staff stressed the rigorous incorporation petition process and urged the members to meet with the community to discuss the need for a municipal government, including a robust discussion of services and needs that are currently not being met in the community.

In the 46 years since Tununak was incorporated as a municipality, no other second-class city outside a borough has been dissolved and later reincorporated. Alaska Statute provides for a \$50,000 organizational grant to newly incorporated municipalities in the first year, and \$25,000 for the second year.

SELDOVIA

In September 2021, a resident of Seldovia, and member of the Seldovia Chamber of Commerce submitted a letter to Governor Mike Dunleavy requesting he issue an executive order directing the Local Boundary Commission to examine the city's boundaries and provide a legislative remedy for annexation. The resident said he did not believe the LBC would approve an annexation petition on its own, and that the city was unlikely to commit to submitting a petition due to limited available resources.

The resident, who is a former Seldovia city council member and city manager, claimed half of the assessed property in the city limits is exempt from property tax and that the population that resides just beyond the city limits has grown to nearly equal the size of that living within the city limits. The resident asserted that the combination of these two factors are contributing to the city potentially experiencing a major revenue shortfall in the near future.

The petition for annexation that the resident submitted to the governor was incomplete and did not contain adequate information or signatures to be accepted for filing with the Local Boundary Commission. LBC staff had several telephone conversations with the resident, as well as with the current city manager, and offered to provide information to the Seldovia city council regarding the city annexation process in the future, if requested. The resident has continued to express interest in the annexation effort.

KAKE

The city administrator for Kake contacted LBC staff following up on a draft petition submitted in December 2019. At the time, LBC staff replied to the administrator that the draft petition was inadequate and would not pass the technical review stage based on a number

of significant flaws and deficiencies. The administrator contacted LBC staff three times in 2021 to continue to advocate for the annexation and justify the boundary change.

The proposed annexation would extend the city of Kake's boundary from 14 square miles to 2,347 square miles. Developing such an ambitious petition would require substantial coordination, noticing, and compiling of significant socio-economic data, in order to address the rigors of a technical review. LBC staff recommended the administrator and the city hire a contractor to assist with preparing a petition. The administrator said that was cost-prohibitive for the city. LBC staff offered to give a presentation to the Kake community regarding the municipal annexation petition process but received no further follow up.

EAGLE RIVER

LBC staff responded to several questions throughout the year regarding the potential detachment of Eagle River from the Municipality of Anchorage. A primary interest and concern presented by the Eaglexit committee to LBC staff are the signature requirements expressed in the Alaska Administrative Code. The chair of the Eaglexit committee has asserted that 3 AAC 110.410(a)(9), which requires the collection of signatures from at least 25 percent of voters in an area proposed for municipal detachment, is an onerous requirement because of the transient nature of the Joint Base Elmendorf-Richardson military personnel and their families who reside in Eagle River. This regulatory requirement differs from ballot initiative signature requirements that typically set a threshold based on the number of voters that participated in a previous election, rather than all voters whom are registered. LBC staff advised the Eaglexit representative that the commission could not simply relax or suspend this regulatory requirement because it is substantive, not simply procedural, in nature.

The Eaglexit committee also expressed interest in whether the Municipality of Anchorage could submit a detachment petition. LBC staff cited the regulations for eligible petitioners listed in 3 AAC 110.410, which provide that a petition may be initiated by a political subdivision of the state, including the Municipality of Anchorage

MISCELLANEOUS

LBC staff was contacted by an attorney looking for information on the dissolution of a first-class city. The attorney did not specify which community he was working with. LBC staff provided historical information on municipal dissolutions and noted that no first-class city in the unorganized borough has successfully dissolved. The attorney asked what entities would assume liabilities and assets of a dissolved municipality: they are conveyed to the State of Alaska as provided in state law. In turn, the State may contract with another entity, such as a tribal government or a non-profit community association, to assume management of such assets and liabilities.

The executive director of the Alaska Municipal League contacted LBC staff to inquire about criteria for a community to reclassify from a first-class city in the unorganized borough to a second-class city. LBC staff advised him that there are no population thresholds, and that a

petition to reclassify is of primary statewide interest and concern due to the funding of education, one of the primary responsibilities of a first-class city. Reclassifying "downward" would require coordination with the Regional Education Attendance Area, as well as careful consideration by the Local Boundary Commission about potential costs that would thereafter be assumed by the State of Alaska.

CHAPTER 4: CONCLUSION

The Local Boundary Commission staff focused most of its time in 2021 on responding to various community requests for boundary change and other information and assisting the Alaska Department of Law with compiling the administrative record for the City of Soldotna's judicial appeal of LBC's decision.

LBC staff continued to effectively work remotely, responding to requests for information and technical assistance, and researching archived LBC documents. 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.

