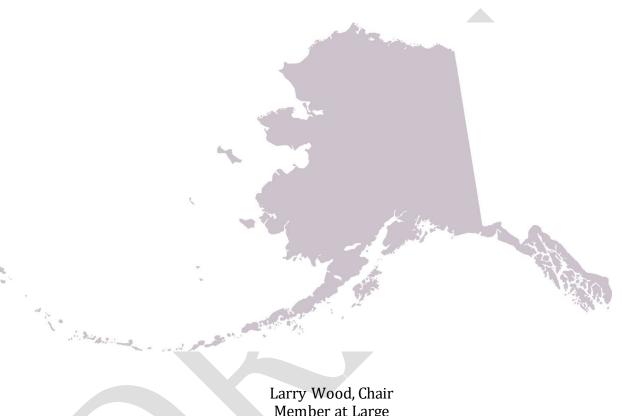
LOCAL BOUNDARY COMMISSION

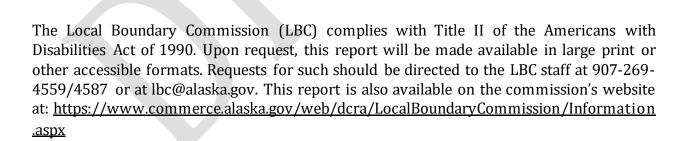
2020 ANNUAL REPORT TO THE FIRST SESSION OF THE THIRTY-SECOND ALASKA STATE **LEGISLATURE**



Member at Large

John Harrington, First Judicial District | Kenneth Gallahorn, Second Judicial District Clayton Trotter, Third Judicial District | Lance Roberts, Fourth Judicial District

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LOCAL BOUNDARY COMMISSION

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xxxxxxx, 2021

Members of the Alaska State Legislature.

On behalf of all members of the Local Boundary Commission (LBC), I am pleased to present this report of the commission to the First Session of the Thirty-Second Alaska State Legislature. This report reviews the powers and duties of the LBC and our activities during 2020. Since our last report on February 3, 2020, three new members have been appointed to the LBC. The commission met eight times in 2020, all regarding the City of Soldotna's petition to annex 2.63 square miles of territory. The commission approved the petition after amending it to require a vote of the residents of the territory proposed for annexation and a vote of the residents of the City of Soldotna.

This report presents information about the City of Soldotna's annexation petition. It also contains details about many communities that have expressed interest in pursuing boundary and classification changes, or have requested other assistance from the Local Boundary Commission staff. The report provides information about the research, analysis, and administrative work LBC staff performed for active petitions as well as for professionals and communities engaged in feasibility studies and drafting petitions. The commission also wishes to recognize the role the staff played in providing information to the many Alaskans who contacted the commission with questions or interest in pursuing boundary changes in their own communities.

The commission respectfully requests that the Legislature consider the activities and issues addressed in this report, and to contact us should you have questions or concerns.

Cordially,

The Local Boundary Commission

Larry Wood Chair, Member at Large Kenny Gallahorn Second Judicial District Lance Roberts Fourth Judicial District

John Harrington First Judicial District Richard "Clayton" Trotter Third Judicial District

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CHAPTER 1: BACKGROUND

LOCAL BOUNDARY COMMISSION'S CONSTITUTIONAL FOUNDATION

The Local Boundary Commission 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 Alaskas 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, and that "local political decisions do not usually create proper boundaries." ²

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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 chair is appointed from the state at large.³

In January, Governor Mike Dunleavy appointed two new commissioners. Richard "Clayton" Trotter, from the Third Judicial District, filled a seat that had been vacant for much of 2019. Lance Roberts, from the Fourth Judicial District, was appointed to fill a seat that became vacant when longtime commissioner and former Alaska legislator, Lavell Wilson's term expired. At the end of January, Lamar Cotten resigned as chair of the commission. He was replaced as Member at Large by Larry Wood of Eagle River. In November, John Harrington from the First Judicial District was re-appointed to another five-year term.

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 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



Kenneth Gallahorn, Second Judicial District, Kotzebue Term Ends: January 31, 2024

³ AS 44.33.810

⁴ AS 39.05.060(b)

⁵ AS 39.20.180



Richard "Clayton" Trotter, Third Judicial District, Eagle River Term Ends: January 31, 2022



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

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 (Commerce 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 to make recommendations regarding each proposal to the commission. 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 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:

⁶ Article X, section 14

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

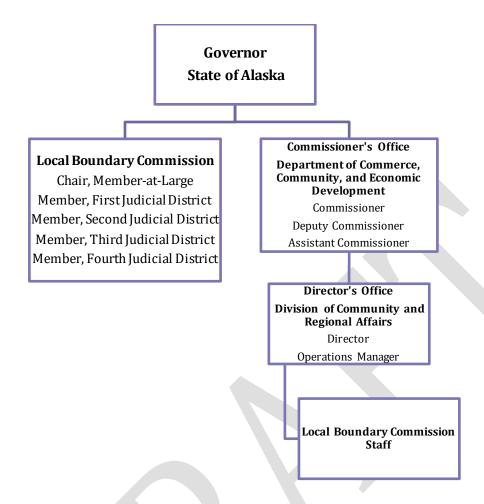
⁸ AS 44.33.020(a)(4) provides that Commerce "shall (4) serve as staff for the Local Boundary Commission."

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.

- Answering public, legislative, and other governmental inquiries relating to municipal government issues;
- 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 analysis of petitions submitted to the LBC;
- Writing preliminary and preparing final reports on petitions for the LBC;
- Drafting LBC decisions;
- Traveling to communities to conduct public meetings and answer questions about proposed local boundary changes;
- 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; and
- Developing orientation materials and providing training for new LBC members.

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, 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 by staff 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 commission may amend, approve, or deny a petition. If the LBC approves the petition, 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 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.

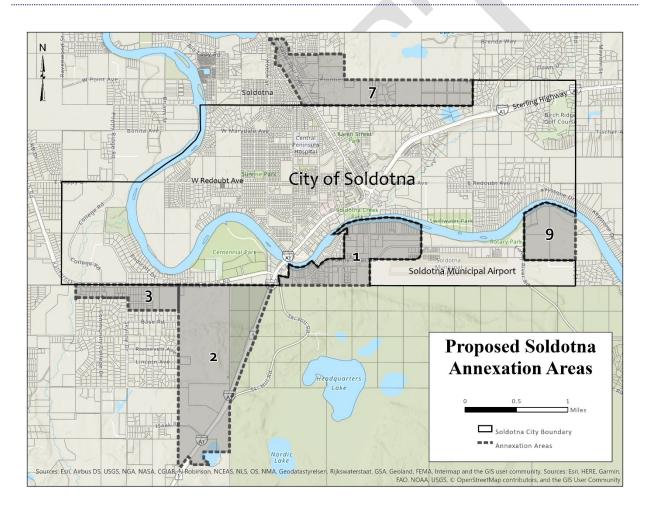


SUBMITTED PETITIONS

This section discusses each petition that has formally been submitted and accepted for filing by the Local Boundary Commission staff. 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



In December 2019, the Local Boundary Commission accepted for filing Soldotna's petition to annex 2.63 square miles by the legislative review method. Initial public comment extended through February 24, 2020. LBC staff reviewed all public comments, as well as a response brief from the city of Soldotna.

Soldotna's last boundary change was in 2007, when a 1.722-acre parcel was annexed via the unanimous consent method. Prior to that, the city annexed 1.45 square miles of land through a local action petition in 1993. However, since then, the city and the central Kenai Peninsula area in general has seen significant growth and development. Since 2000, the three census designated places immediately outside the city limits grew by 39 percent, while the city population grew by 15.5 percent.

New businesses and residential areas have developed immediately outside the current city boundary. The City of Soldotna has a three percent sales tax in addition to the borough's three percent sales tax. City officials argued that expanding the city's boundary will allow for better utility planning, road maintenance, and more equitable public safety coverage and emergency response, and that the bulk of the new revenue generated from expanded boundaries would come from sales tax, rather than property taxes. However, many business owners and residents say they do not want or need the services the city provides. The Kenai Peninsula Borough provides funding for educational services, which would largely be unaffected by the proposed boundary change.

Soldotna's current annexation effort first received attention in 2008, when its city council voted unanimously to annex 2.17 square miles of adjacent lands. However, the council's action was vetoed by the mayor. The council opted not to override that veto. In 2016, Soldotna reclassified from a first class city to a home rule city.

The LBC intended to fulfill the requirements in 3 AAC 110.550 to hold a public hearing within or near the boundary of the proposed change. However, due to the COVID-19 pandemic, Governor Dunleavy issued an emergency order suspending many regulations, including this one. On August 4, 2020, the LBC held a public hearing via Zoom technology in which more than 50 people attended. Eighteen members of the public testified during the hearing.

On August 5, 2020, the commission met in a decisional meeting, as required by 3 AAC 110.570. The commission convened to consider if the City's proposed boundary change satisfied the standards reflected in Alaska's Constitution, statutes, and regulations for approval of annexation petition by a city relying upon the legislative review method. During this meeting, a majority of commissioners agreed that Soldotna had satisfied standards for annexation of the territory to be annexed and that it had also satisfied one or more of the circumstances described in 3 AAC 110.140 for annexation of territory by the legislative review process.

The original motion to approve the City's annexation petition was amended by a majority of three commissioners to convert the City's petition for annexation of territory to the local action method. On October 29, 2020, the majority approved the City's petition to annex 2.63 square miles of territory relying upon the local option method. An affirmative vote of the registered voters within the City of Soldotna, as well as the registered voters in the

territory proposed for annexation will thus be required. In its 60-year history, this is the first occasion that LBC has amended a legislative review petition for annexation to the local action method. The commission approved its written decision on December 29, 2020. Two commissioners dissented from it and presented a Statement of Dissent to explain their reasons.

CHAPTER 3: ADDITIONAL 2020 ACTIVITIES

ACTIVITIES OF THE BOARD AND STAFF

COMMISSION

In March, Local Boundary Commission staff held a one day in-person training for all five commissioners. The training focused on LBC's history, commissioners' duties, and the commission's responsibilities and procedures which have been established by Alaska's constitution, statutes, regulations, and case law One member of the public attended to observe the training.

EAGLE RIVER

LBC staff answered numerous questions regarding Eagle River detachment proposed by a group of area residents. A community committee has formed to explore the idea of detachment from the Anchorage municipality and the formation of a separate borough. The "Eaglexit" committee has requested historical documents on past detachment petitions, minutes and transcripts from past LBC proceedings: for example, the Northwest Arctic Borough detachment from the North Slope Borough and the City of Port Alexander's detachment from the City and Borough of Sitka.

The Eaglexit committee has explored other questions, such as whether the LBC has any authority over the current assets or liabilities of the Municipality of Anchorage or what action the commission could take if Eaglexit files a detachment petition, or whether Eagle River could incorporate as a third class borough. Note that a third class borough has only areawide powers of education and tax assessment. Other powers are exercised by service areas. LBC staff also provided to Eaglexit other historical documents and past presentations on detachment that had been shared with Girdwood and Eagle River residents over the years.

FAIRBANKS

In June, members of the Greater Fairbanks Chamber of Commerce contacted LBC staff requesting information on second class borough powers and the process for reclassification. The Fairbanks North Star Borough is a second class borough. Powers not

granted in state law to second class boroughs may only be acquired through an areawide election.

The Matanuska Susitna Borough Assembly likewise briefly considered asking voters to approve a measure reclassifying the Matanuska Susitna Borough as a first-class borough. However, the assembly ultimately tabled the discussion, along with a question about moving from a borough manager form of government to a "strong mayor" structure.

The Fairbanks Chamber also expressed some interest in the city/borough unification process, and asked whether another incorporated city could reside within a unified borough. LBC staff suggested that a merged or consolidation process would likely be the most appropriate process which would allow the City of North Pole to remain incorporated, even if the City of Fairbanks were merged with the borough.

In August, LBC staff received a question from the City of Fairbanks' attorney regarding a proposed boundary change and the differences between annexation of territory by the local action method versus the legislative review method. The attorney specifically asked about three parcels being replatted into a single parcel, a third of which would lay outside of the city boundary. LBC staff advised that unanimous consent is a form of local action, and the vote may be waived if all property owners consent with the annexing municipality. The attorney suggested the property could be taxed at a rate consistent with the amount of property laying inside the city limits. LBC staff recommended contacting the Office of the State Assessor as to the methods for assessment on property that transects municipal boundaries.

GLENNALLEN

In September, LBC staff responded to the Copper Valley Community Library Association's request for information regarding a map used in reference to the administration of CARES Act funding. LBC staff provided a map used by the Department of Transportation and Public Facilities that coincided with the Census Designated Place boundaries. Glennallen is an unincorporated community and the CDP boundary served as a proxy to help facilitate public funding requirements.

HOONAH

In February, LBC staff responded to a question from the administrator for the City of Hoonah. In October, 2019, the city submitted a draft of a borough formation petition to the LBC and requested an informal technical review. LBC staff provided feedback in a written memorandum to the administrator. The suggested boundaries of the borough excluded a number of existing communities in the area, but proposed annexing lands and waters that are already within the Haines Borough, as well as substantial waters in the Gulf of Alaska beyond the three -mile offshore limit. LBC staff advised the administrator that any petition on borough formation would have to address annexation as well as detachment, and also include information on whether and how the other communities on Chichagof Island were

consulted and why they were excluded. The administrator said he would continue to work on a draft petition and contact staff for any other further information.

JUNEAU

LBC staff provided information on the status of a City and Borough of Juneau annexation petition that was submitted in 2019, but ultimately not accepted by LBC staff because it had not fulfilled all LBC pre-filing requirements. The president of the Alaska Lighthouse Association contacted LBC staff to inquire about the status of the Hoonah borough formation petition and the Juneau annexation petitions. The Point Retreat Lighthouse on Admiralty Island could potentially be affected by either petition. Neither petition is currently active before the LBC.

KAKTOVIK

LBC staff responded to a question regarding powers of a fourth class city. LBC staff worked with the legislative law library to research old statutes and responded with text from 1962 Alaska statutes. From 1957 to 1972, Alaska Statute had a classification for fourth class cities, also known as "incorporated villages." The fourth class cities had limited powers, mainly the ability to levy a sales tax up to two percent, provide necessary water, sewer, fire protection, and electrical services, and zoning and land use powers. In 1972, the Alaska legislature eliminated the fourth class city classification, and many smaller municipalities were either dissolved or converted to second or first class cities. In 1996, Kasigluk was the last fourth class city to be dissolved in a petition initiated by the Commissioner of the Department of Commerce and Economic Development (DCCED). Since then, only two other fourth class cities have been dissolved without being reincorporated into another type of city or borough

KIVILINA

In January, LBC staff responded to a request for information about the statutory requirements and standards for dissolution for a city within a borough. According to AS 29.06.450, a city within a borough may dissolve in one of three ways. The city may submit a dissolution petition to the LBC; a local option method dissolution petition may be submitted by voters of the city, and ratified by voters of the borough; and the commission may recommend to the legislature that a city be dissolved. If the petition is accepted for the legislative review method by the LBC and not disapproved by the legislature, or if the dissolution petition is approved by the voters of the municipality, the municipality's assets and liabilities would be assumed by the borough.

LBC staff also responded to a question about whether the powers, duties, assets and liabilities of the city could be transferred to a tribal government. The standards for dissolution require that the municipality be free of debt or have an agreement with creditors to satisfy repayment of pending debts. Further, the statutes and regulations imply that the borough government would assume a dissolved city's rights, powers, duties, assets and liabilities. A tribal government would likely need to work out an agreement with the

borough by, which the LBC could impose, as a condition of approving a dissolution petition, that a tribal government receive a city's assets.

Kivilina is located on a barrier island on the Chuckchi Sea and part of the Northwest Arctic Borough. It has been battling coastal erosion and flooding. In 2011, the Alaska Supreme Court in the <u>Kasayulie</u> case required that the state fund a new school in the community. Two years ago, the legislature appropriated \$50.5 million for construction of a new school in Kivilina. The school construction is contingent on the construction of a seven mile road and evacuation route to the school site. The site sits inland and at a higher elevation than the current townsite

KODIAK

LBC staff continues to provide information to officials from the City of Kodiak on possible annexation of territory, and to the Kodiak Island Borough on city/borough consolidation. Recently, the Kodiak City Council approved \$125,000 for an annexation feasibility study for two areas (north and south of city limits). The deputy manager expressed the city's desire to do adequate outreach to residents, and to resolve any lingering issues associated with its past annexation efforts.

Since 1959, the City of Kodiak has attempted to annex territory on 16 occasions, either by the local action method or by the legislative review method. Two of the local action petitions were rejected by voters and one of the legislative review petitions approved by LBC was rejected by the legislature. The deputy city manager believed there had been other annexation attempts too. LBC staff advised the deputy manager to create a map using the current certificate with a legal description of the city. Then, the city could identify any parcels it believes were previously incorporated into city boundaries by city ordinance. Then, LBC staff could assist in researching possible annexation actions previously approved by the commission.

For several years, the Kodiak Island Borough and the City of Kodiak have explored consolidation to varying degrees. LBC staff researched and provided information on the differences between consolidation and unification of municipalities to several stakeholders, including borough and city elected officials. The deputy manager indicated that a city/borough consolidation could render any city annexation moot. LBC staff advised that the two processes are separate and independent of one another, and that any speculation of a consolidation should not hinder annexation efforts.

NEWTOK

A Department of Law attorney requested documentation related to dissolution of the City of Newtok. In December of 1994, the Local Boundary Commission issued a decision dissolving the City of Newtok. An investigation by LBC staff determined that the city had not been active since 1989, and had not received community revenue sharing payments. AS 29.06.450 requires LBC staff to investigate inactive city governments and to recommend to the legislature that an inactive municipality be dissolved.

NIGHTMUTE

In January, LBC staff responded to questions from a member of the Nightmute community regarding the process by which a city can be dissolved. The resident advised that Nightmute has not been functioning the way a city should. It has not held a public meeting in over a year. However, DCRA has received both a budget as well as certified financial statements from the City of Nightmute, and the city government was issued Community Assistance Payments in FY20 and FY21.

NUNAPITCHUK

A grants administrator from the Alaska Native Tribal Health Consortium requested information regarding the community of Akolmiut. Specifically, the grants administrator came across an ANCSA agreement between the former city of Akolmiut and the Akolmiut Village Corporation and sought to determine the community's succeeding entity.

LBC staff advised the grants administrator that in 1983, the commission determined that the City of Nunapitchuk should be detached from the City of Akolmiut, and agreements were drawn up to divide the assets and liabilities of the two communities. Akolmiut later was renamed Kasigluk, and was incorporated as a second class city. The City of Kasigluk was dissolved in a petition initiated by the commissioner of Commerce in 1996.

REGIONAL EDUCATION ATTENDANCE AREAS

Every ten years, the Division of Community and Regional Affairs compiles a report recommending the reapportionment of Regional Educational Attendance Area school districts. The project uses data collected during the recent U.S. Census, and is done in cooperation with the Alaska Department of Education and Early Development. The report helps determine from which community members are chosen for the 19 school boards in the REAA districts in the unincorporated borough.

In 2018, LBC staff was directed by the office of the commissioner of DCCED to assist the community of Rampart with moving from the Yukon Flats REAA to the Yukon-Koyukuk district. The Department of Law determined the statute does not provide authority to the department to change REAA boundaries. However, the Department of Law is exploring whether the department may promulgate new regulations to allow for REAA boundary changes. LBC has implicitly granted these boundary changes whenever it approves new municipal boundaries.

SCAMMON BAY

The city administrator for the City of Scammon Bay contacted LBC staff in February to discuss the process for annexation of territory. The administrator's review of city boundaries when updating information for the U.S. Census indicated that several community assets and potentially some individuals are located outside city boundaries since the last census. LBC staff sent the administrator an information packet explaining how cities may request boundary changes. The petition process for a city annexation is

resource intensive and may prove challenging for a small community. However, having an accurate count of community residents is important to various state and federal agencies and could impact the community's eligibility for funding or projects. Per 3 AAC 110.410, numerous individuals and entities may submit a petition for annexation of territory to LBC. That is, in addition to a city submitting its own petition, the Legislature, the commissioner of the Department of Commerce, Community, and Economic Development, or a person designated by the commission may also submit a petition to the LBC for its review and consideration.

TANANA

LBC staff discussed the standards for reclassification of a municipality with a Local Government Specialist (LGS) in the Fairbanks office. The LGS had earlier been in contact with officials from the City of Tanana, a first class city in the unincorporated borough. The question focused on the standards for a city proposing to reclassify from a first class city to a second class city. The population of Tanana has fallen below 400 residents (the minimum population requirement for incorporation of a first class municipality), and the city is straining to come up with resources to support its single site school district. LBC staff sent the LGS the standards for reclassification under 3 AAC 110. 350, and encouraged the City of Tanana to contact the LBC directly.

YAKUTAT

As part of the recent U.S. Census, a mapping contractor with the City and Borough of Yakutat contacted LBC staff to request a description and history of the original City of Yakutat boundaries. The City of Yakutat was initially incorporated in 1948. In 1976, the city completed an annexation by the legislative review method and a new certificate of incorporation was issued. In 1992, the city dissolved and the LBC approved new boundaries of a non-unified home rule borough. The boundary changes were not disapproved by the Legislature. In 1997, the LBC approved borough annexation of additional territory, and the boundaries were amended again. LBC staff located old certificates of incorporation. LBC staff could not find service area boundaries for the original City of Yakutat.

CHAPTER 3: CONCLUSION

The Local Boundary Commission focused most of its time in 2020 on the Soldotna annexation petition. Using a Zoom platform, the Commission held a public hearing in which 19 members of the public testified. The commission held a decisional meeting in three sessions over the course of three months.

LBC staff has effectively transitioned to working remotely from department offices, responding to requests for information, and researching archived 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 process, culminating in a presentation of sufficient information to the Local Boundary Commission 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.



