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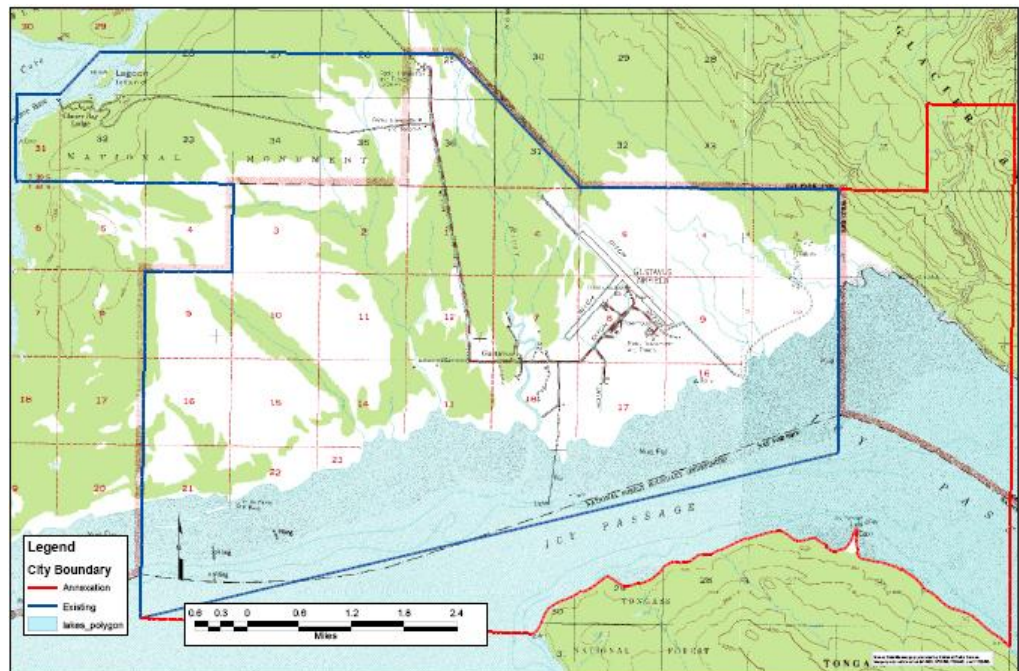
# Local Boundary Commission Decision

In the Matter of the December 16, 2010, Petition by the City of Gustavus to annex approximately 16 square miles of land and water.

## Section I Introduction

On December 16, 2010, the City of Gustavus petitioned the Local Boundary Commission (also referred to as “LBC” or “commission”) to annex approximately 16 square miles of land and water. The territory proposed for annexation is described as follows and is shown on the map below:

The City of Gustavus proposes to annex approximately 16 square miles including approximately 4 square miles of Falls Creek drainage uplands, and approximately 12 square miles of Icy Passage tidelands and submerged lands between present City limits and Pleasant Island.



## SECTION II PROCEEDINGS

- **Submission and Review of Petition**

The petition was submitted to LBC staff (also referred to as “Commerce”) on November 15, 2010, and accepted for filing on December 16, 2010.

- **Deposit of Petition**

On January 10, 2011, the City of Gustavus provided a copy of the City’s prospective petition at the following location:

City of Hoonah

Hoonah Indian Association

Richard Levitt

Commissioner Dan Sullivan

President, Gustavus Electric Company

State of Alaska, Department of  
Natural Resources

Haines Borough

- **Posting of Notice**

On January 10, 2011, notice was posted at the following locations within and surrounding the territory proposed for annexation:

Gustavus City Hall

U.S. Post Office, Gustavus

Gustavus Public Library

City of Gustavus website

Gustavus Dray

Bear Track Mercantile

Glacier Bay National Park Headquarters

- **Public Notice**

On January 10, 2011, a public service announcement was sent to the following radio stations to broadcast for 14 days:

KTOO

Notice of the petition was published in the *Juneau Empire* and *Capital City Weekly* on December 22, 2010, December 29, 2010, and January 5, 2011. The notice was also posted on the state’s *Online Public Notice System*, as well as on the Division of Community and Regional Affairs and LBC websites.

- **Service of Petition**  
On January 10, 2011, the City of Hoonah, the Haines Borough, Gustavus Electric Company, Hoonah Indian Association, and the Commissioner of the Alaska Department of Natural Resources were served, via United States Postal Service, complete copies of the petition and the Public Notice.
- **Deadline for Initial Comments**  
The notice of filing invited written public comment concerning the proposed annexation by Friday, March 4, 2011. Staff received no public comments during this public comment period regarding the proposed annexation.
- **Gustavus Annexation Preliminary Report Distribution**  
On Friday, May 20, 2011, Commerce distributed copies of its 84 page *Preliminary Report Regarding the Proposal to Annex by legislative review, approximately 16 square miles of land and water to the City of Gustavus* to interested parties including the petitioner, LBC members, and others.
- **Receiving Timely Comments on Preliminary Report**  
The public comment period for the preliminary report began Friday, May 20, 2011, upon mailing of the preliminary report and ended Wednesday, June 22, 2011. Commerce received one submitted comment from the petitioner regarding the Commerce preliminary report.
- **Final Report Distribution**  
On July 22, 2011, Commerce distributed copies of its final report to the Local Boundary Commission regarding the proposal to annex by legislative review, approximately 16 square miles of water and land to the City of Gustavus to interested parties including the petitioner, the LBC members, and others.
- **Notice of Local Boundary Commission Public Hearing and Decisional Meeting**  
The Local Boundary Commission chair scheduled a public hearing regarding the City of Gustavus' annexation petition. Formal notice of the hearing had been given by Commerce under 3 AAC 110.550.

Commerce published the full notice in the *Juneau Empire* on July 18, August 1, and August 15, 2011. The notice was also posted on the state's *Online Public Notice System*, as well as on the Division of Community and Regional Affairs and LBC websites.

Additionally, notice of the hearing was provided to the Petitioner's representative (Mayor Jim Mackovjak). The city posted the notice.

- **LBC Public Hearing Regarding the City of Gustavus' Annexation Petition**

In accordance with 3 AAC 110.550 and 3 AAC 110.560, the commission held a duly noticed public hearing on Wednesday, August 17, 2011, regarding the City of Gustavus' annexation petition. The hearing began at 1:00 p.m. in the Gustavus City Hall, in Gustavus, Alaska, and was teleconferenced for the city, residents affected by this annexation petition, and the city's sworn testimony.

The commission heard sworn testimony from City of Gustavus witnesses, as well as public comments supporting the proposed annexation. There were no comments in opposition. The decisional meeting immediately followed the public hearing.

- **LBC Decisional Meeting Regarding the City of Gustavus' Annexation Petition**

In accordance with 3 AAC 110.570, the LBC held a duly noticed decisional meeting on Wednesday, August 17, 2011, regarding the City of Gustavus' annexation petition. The commission voted 5 to 0 to approve the petition as submitted.

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## **SECTION III FINDINGS AND CONCLUSIONS**

The record in this proceeding includes the City of Gustavus' annexation petition and supporting materials, written comment received on the petition, Commerce preliminary and final reports, and testimony received at the LBC's August 17<sup>th</sup> public hearing on the petition.

There are city annexation standards for the legislative review method that the LBC is required to apply. They are found at 3 AAC 110.090 – 3 AAC 110.140 and 3 AAC 110.900 – 3 AAC 110.982.

Section III of this decisional statement recounts such application by the commission. Based on the evidence in the record, the LBC has reached the findings and conclusions set out in this section.

**A. 3 AAC 110.090. Need.**

Two standards relate to the need for city government in the territory proposed for annexation. First, 3 AAC 110.090(a) states that a territory may be annexed to a city provided that the commission determines that there is a reasonable need for city government in the territory. Second, 3 AAC 110.090(b) states that territory may not be annexed to a city if the commission determines that essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area.

By concurrence, the commission finds that 110.090 has been met because there is a reasonable need for city government in the territory due to at least the need for emergency services. Further, essential municipal services cannot be provided more efficiently and/or more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area.

**B. 3 AAC 110.100. Character.**

Alaska law allows a territory to be annexed to a city provided that the territory is compatible in character with the annexing city. (3 AAC 110.100).

Gustavus is a stable and well established community. The territories proposed for annexation are uninhabited. The community focuses on and relies upon the Falls Creek and Icy Passage territories for recreation (boating, hiking, camping, etc.) and actual and potential resources (source of hydroelectric power, rock, community water supply, appropriate sites for moorage, anchoring, communication facilities, etc.). The use will not only continue, but will presumably increase, which will further integrate the territories to the community. Falls Creek is also linked by the road system, which strengthens the bond between the city and the territory. Icy Passage, specifically, is essentially an extension of the city. It is used by the city for community purposes such as moorage and transportation. It is viewed by Gustavus residents as being part of Gustavus due to resources and transportation in the territory. The dock originates within the city, and extends nearly to the city boundaries.

By concurrence, the commission finds that the territories proposed for annexation in the petition satisfies 3 AAC 110.100's requirements.

**C. 3 AAC 110.110. Resources.**

Alaska law allows a territory to be annexed to a city if the commission determines that the economy within the proposed expanded boundaries of the city has the human and

financial resources necessary to provide essential city services on an efficient, cost-effective level (3 AAC 110.110).

The city has six municipal functions: Library, recycling and refuse disposal, fire and EMS, road maintenance, internet service, and small boat facilities and services. By petitioning to add these two territories, the city has not taken on more than it can fiscally sustain. As a second class city, Gustavus does not operate a school system. It does not have a police department, and only employs four paid staff. The city's population is 442. While it is not large, it is one of the state's largest second class cities, and larger than several first class cities.

The economy within the proposed expanded boundaries of the city does include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level because Gustavus' minimal government, potential tax revenue, reasonably sound economy, expected lower shipping costs and increased visitation due to the new dock and the start of ferry service, low financial impact of the proposed annexation, and its population size provide those resources.

By concurrence, the commission finds that the territory described in the petition meets 3 AAC 110.110.

#### **D. 3 AAC 110.120. Population.**

3 AAC 110.120 states that "[t]he population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government."

The proposed expanded boundaries will require little additional services from the city, and hence not require an increase in the city's population to support those services. Gustavus' population is stable, and shows marginal increase. By concurrence, the commission finds that Gustavus' proposed post-annexation population is sufficiently large and stable to support extending city government.

#### **3 AAC 110.130. Boundaries.**

There are five standards related to boundaries that the commission must consider.

##### **1. 3 AAC 110.130(a)**

3 AAC 110.130(a) states that the proposed expanded boundaries of the city must include all land and water necessary to provide for the development of essential municipal services in an efficient, cost-effective manner.

The LBC finds that the proposed expanded boundaries of the city do include all land and water necessary to provide for the development of essential municipal services in an efficient, cost-effective manner.

**2. 3 AAC 110.130(b)**

3 AAC 110.130(b) states that territory that is noncontiguous to the annexing city or that would create enclaves in the annexing city, does not include all land and water necessary to develop essential municipal services in an efficient, cost-effective manner (absent a specific and persuasive contrary showing).

Both territories are contiguous to the city. Annexation would not create enclaves. The commission did inquire about why the petitioner did not include Pleasant Island, an island frequently used for recreation and other potential municipal purposes by the City of Gustavus. The petitioner indicated that it was previously suggested during the incorporation petition that that would be “overreaching” and may preclude the petition from being approved, if included.

**3. 3 AAC 110.130(c)(1)**

The expanded boundaries of the City of Gustavus must be on a scale suitable for city government, and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following the effective date of annexation.

The proposed expanded boundaries of the city are on a scale suitable for city government because the city presently encompasses 29.2 sq. miles of land and 10.0 sq. miles of water. If annexation is approved, the city would grow from 39.2 to 55.2 square miles of land and water. This is an adequate amount of land and water to provide the development of all essential municipal services.

**4. 3 AAC 110.130(c)(2)**

The proposed expanded boundaries of the City of Gustavus may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of standards in 3 AAC 110.090 – 3 AAC 110.135 and are otherwise suitable for city government.

The proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. If, *arguendo* they did, these boundaries are justified by the applying the standards in 3 AAC 110.090 – 3 AAC 110.135, and are otherwise suitable for city government. They are otherwise suitable for city government.

#### **5. 3 AAC 110.130(d)**

3 AAC 110.130(d) states that “if a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.”

The proposed expanded boundaries of the City of Gustavus do not overlap either an existing borough or an existing city and so 3 AAC 110.130(d) is not applicable to the petition.

By concurrence, the commission finds that the petition has met 3 AAC 110.130(a), 3 AAC 110.130(b), 3 AAC 110.130(c), and 3 AAC 110.130(d) collectively.

#### **E. 3 AAC 110.135. Best Interests of the State.**

3 AAC 110.135 examines AS 29.06.040(a)’s best interests of the state requirement. Alaska’s constitution promotes maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. (Article X, §1).

The commission finds that the proposed annexation would have no effect upon the number of local government units. The annexation meets the best interests of the state requirement because the city is the appropriate government for the territory.

We find that the petition satisfies 3 AAC 110.135’s requirement for annexation because, *inter alia*, it would promote a minimum number of local government units, it would promote maximum local self-government, and it would minimize conflicts and impediments to marine traffic. Further, the state would need to be less involved in local matters. The annexation is in the best interests of the state. 3 AAC 110.135 is met.



**F. 3 AAC 110.140. Legislative Review.**

For territory to be annexed under the legislative review method the commission must determine that at least one of eight circumstances enumerated in 3 AAC 110.140 exists. Here, we find that several circumstances are met.

By concurrence, the commission finds that the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions. The LBC further finds that the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city. The commission finds that residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits. The LBC finds that the annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city.

The commission further finds that annexation of the territories will promote maximum local self-government, as determined under 3 AAC 110.981; and 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. Additionally, the commission finds annexation of the territory will enhance the extent to which the city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and in 3 AAC 110.005 - 3 AAC 110.042, and is in the best interests of the state. The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.

For these reasons, the commission finds that 3 AAC 110.140 has been met.

**G. 3 AAC 110.900. Transition.**

3 AAC 110.900 concerns whether the transition plan contains all the required information, and that all required actions were undertaken to prepare for a smooth transition. There are six parts to 3 AAC 110.900 that the commission reviewed.

The commission considers the prospective transition of extending essential city services into the territories proposed for annexing to be elementary and uncomplicated. In

particular, the commission notes that annexation would not involve the transfer of assets or liabilities from one local government to another.

The commission finds that 3 AAC 110.900's requirements have been satisfied with respect to the current annexation proposal based on the rationale below.

**1. 3 AAC 110.900(a)**

3 AAC 110.900(a) requires the petition to include a practical plan demonstrating the capacity of the annexing city to extend essential city services into the territories proposed for annexation in the shortest practical time after the effective date of the proposed annexation. The LBC deems that 3 AAC 110.900(a) has been satisfied because the petition includes such a transition plan, and that the plan was well developed.

**2. 3 AAC 110.900(b)**

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

The commission finds that there is a transition plan and that the city indicates in its transition plan when the transition would occur. The commission finds that the city would be formally assuming duties that it already provides. The commission finds that there is very little external transition to be done, but that the transition plan was prepared in consultation with the officials of each existing borough, city, and organized borough service area. We find that the plan was designed to affect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. We find no reason that the transition would not take effect in under two years. We find that 3 AAC 110.900(b) has been satisfied.

**3. 3 AAC 110.900(c)**

3 AAC 110.900(c) requires that the petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for annexation. The commission finds that 3 AAC 110.900(c) is met due to the quality of the plan. The LBC further finds that officials were consulted, and that the transition would take effect in under two years. The LBC finds that 3 AAC 110.900(c) is met.

**4. 3 AAC 110.900(d)**

3 AAC 110.900(d) is not a requirement, but it's an option that the LBC may exercise to require an agreement for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. We do not exercise that option here.

**5. 3 AAC 110.900(e)**

The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough 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. The commission finds that 3 AAC 110.900 is moot.

**6. 3 AAC 110.900(f)**

If a petitioner has requested consultation, and borough officials have declined to consult or were unavailable during reasonable times, the petitioner may ask the LBC to waive that requirement. As no such request was received, no such waiver was granted.

**H. 3 AAC 110.910. Statement of Nondiscrimination**

As provided by 3 AAC 110.910, an annexation proposal may not be approved by the commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

We find no evidence that the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

**I. 3 AAC 110.970. Determination of Essential Municipal Services.**

Essential municipal services were discussed under 3 AAC 110.090. The essential municipal services must be 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.

The commission finds that essential municipal services could not be provided more efficiently and more effectively by the creation or modification of some other political

subdivision of the state. The nearest municipalities are the Haines Borough and the City of Hoonah.

For those reasons, we find that the petition has met 3 AAC 110.970's requirements.

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

The approval of this petition extends city government to the territory proposed for annexation where borough government does not currently exist. The annexation would bring local government to a part of the unorganized borough where no local government currently exists. Annexation would also promote maximum local self-government by empowering Gustavus in the potential development of Falls Creek, and local control of the harbor in Icy Passage.

For those reasons, the commission finds that the proposed boundary change promotes maximum local self government under art. X, sec. 1, Constitution of the State of Alaska.

**K. 3 AAC 110.982. Minimum Number of Local Government Units.**

The commission finds that Alaska's constitution promotes minimizing the number of local government units unless creating additional units is found to serve the best interests of the state. Annexing the territory would not increase the number of local government units. Annexation would only change the size of the existing city. By annexing this territory, the city would not enlarge its boundaries to such a degree that it would be better to incorporate a new city. The 16 miles of land and water proposed for annexation would be highly unlikely to be self sustainable if it were to incorporate as its own local government unit.

The commission finds that this annexation proposal will enlarge the city, would not create new local government units, and has met the requirements of 3 AAC 110.982.

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**SECTION IV  
ORDER OF THE COMMISSION**

The commission concludes that all of the relevant standards and requirements have been met for annexing the territory consisting of the original 16 square miles of territory described in the petition. If approved, the city of Gustavus would encompass the existing 39.2 square miles plus the additional 16 square miles to a combined 55.2 square

miles of land and water. The commission approves the City of Gustavus annexation petition annexing approximately 16 square miles of land and water.

## **CITY OF GUSTAVUS CORPORATE BOUNDARIES**

The territory of the City, should the proposed annexation be approved, is generally described as all lands and waters contained within the following metes and bounds:

Beginning at the northeast corner of Section 3 (T40S, R59E), Copper River Meridian; as shown on USGS Quadrangle Juneau (B-5) (minor revisions 1966), the true point of beginning;

Thence east along the north boundary of Section 2 (T40S, R59E);

Thence along the west and north boundaries of Section 36 (T39S, R59E);

Thence south along the eastern boundaries of Section 36 (T39S, R59E), Section 1 (T40S, R59E) and Section 12 (T40S, R59E), approximately 2.75 miles to the north shore of Icy Passage;

Thence south across Icy Passage to the mean high tide line of Pleasant Island;

Thence westerly along the mean high tide meander line following the north shore of Pleasant Island to the island's westernmost tip, in Section 31 (T40S, R59E) near National Geodetic Survey Monument "Ant";

Thence westerly across Icy Strait to a point in Icy Strait 1.2 miles south of the mean high tide line along the common boundaries of Sections 20 and 21 (T40S, R58E);

Thence continuing north along said section line to the northwest corner of Section 9 (T40S, R58E);

Thence east to the northeast corner of Section 9 (T40S, R58E);

Thence north to the northwest corner of Section 3 (T40S, R58E);

Thence west along the township line dividing T39S and T40S, to the mean high tide line of Glacier Bay;

Thence continuing west approximately 375 feet to a point (protracted quarter corner of Section 31 (T39S, R58E) in Glacier Bay;

Thence north 1 mile to a point (protracted quarter corner of Section 31 (T39S, R58E) in Bartlett Cove;

Thence east 1/2 mile to a point (protracted northeast corner of Section 31 (T39S, R58E) in Bartlett Cove;

Thence northeast (N45 degrees east) approximately 3/4 mile to the protracted center of Section 29 (T39S, R58E) in Bartlett Cove;

Thence east approximately 1/4 mile to a point where the line of mean high tide meets the south boundary of the northeast 1/4 of Section 29 (T39S, R58E);

Thence continuing east to the protracted center of Section 25 (T39S, R58E);

Thence southeast to the northwest corner of Section 5 (T40S, R59E);

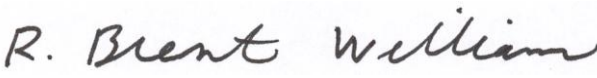
Thence east to the northeast corner of Section 3 (T40S, R59E), the true point of beginning.

Approved in writing this 15<sup>th</sup> day of September, 2011.

**LOCAL BOUNDARY COMMISSION**

By:  \_\_\_\_\_ x  
Lynn Chrystal, Chair

**Attest:**

By:  \_\_\_\_\_ x  
Brent Williams, Staff

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**RECONSIDERATION BY THE COMMISSION**

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

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

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

Additionally, per 3 AAC 110.580(f) “if the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied.”

Also, per 3 AAC 110.580(f) “if the commission orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered.”

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## **JUDICIAL APPEAL**

A decision of the LBC may be appealed to the Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2).