



THE STATE
of **ALASKA**
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Preliminary Report to the Local Boundary Commission

Concerning the Petition to Incorporation Edna Bay as a Second Class City within the Unorganized Borough

February 2014

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This is the *Preliminary Report to the Local Boundary Commission Concerning the Petition to Incorporation Edna Bay as a Second Class City within the Unorganized Borough*. The report was written by staff to the Local Boundary Commission. The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address:

http://commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/7.%20Reports/#FolderHead

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

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4559, 907-269-4587, TDD at 907-465-5437, or LBC@alaska.gov.

Graphic illustration only - This publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

Chapter I. Background

Local Boundary Commission

Local Boundary Commission's Constitutional Foundation

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").¹ The commission is responsible for establishing and modifying proposed municipal government boundaries. The Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, and they also asserted their belief that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."² Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.³

Local Boundary Commission's Statutory Authority

Pursuant to AS 29.06.040(a):

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

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

² Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955).

³ *Id.*

LBC Duties and Functions

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

- incorporating municipalities ;
- annexing to municipalities';
- detaching from municipalities;
- merging municipalities;
- consolidating municipalities;
- reclassifying municipalities; and
- dissolving municipalities.

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

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

Nature of the Commission

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes, all of which are discussed below.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska gives the LBC legislative authority to make fundamental public policy decisions. The court stated that:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.⁴

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ."⁵

⁴ *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

⁵ See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

Quasi-Executive

Article X, section 12 of the Constitution of the State of Alaska placed the LBC in the state's executive branch. One example of the commission's quasi-executive duty under AS 44.33.812(a)(1) is to "make studies of local government boundary problems."

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. The LBC is mandated to apply established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

Limits on Directly Contacting the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communications with the commission concerning municipal boundary proposals are conducted openly and publicly.

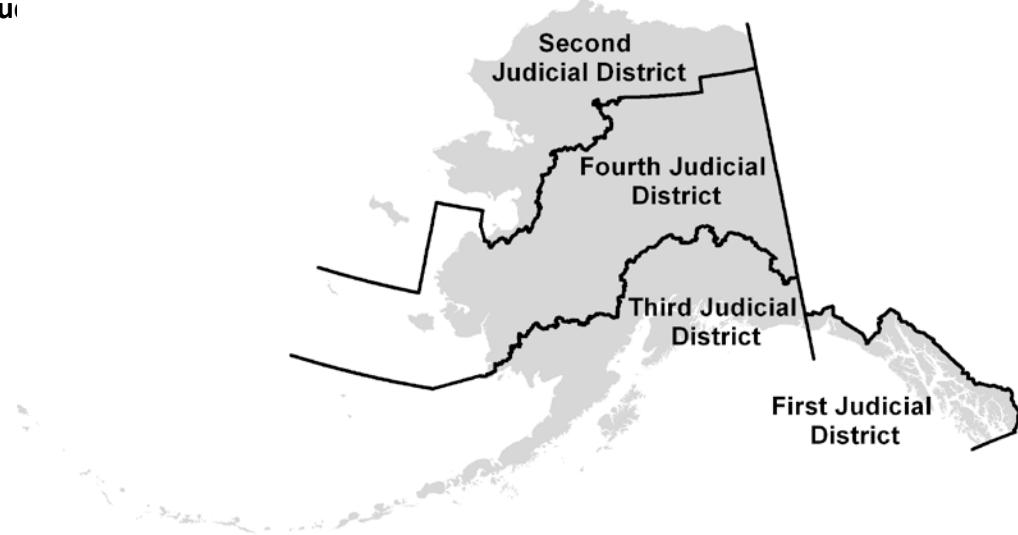
To regulate communications, the commission adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is judicially appealed, the *ex parte* limitation extends to the last date of court ordered proceedings. All communications with the commission must be submitted through its staff.

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, however, LBC commissioners serve at the governor's pleasure [AS 39.05.060(d)].

The LBC is comprised of five members (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.

Map of Alaska Judicial Districts



Member Biographies:

Lynn Chrystal, Chair, At Large Appointment, Valdez

Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009. Mr. Chrystal is a current resident and former mayor of the City of Valdez, and former member of the Valdez City Council. He has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2018.



John Harrington, First Judicial District, Ketchikan

Governor Parnell appointed John Harrington of Ketchikan as the member from the First Judicial District on the Local Boundary Commission on September 10, 2009. Governor Parnell reappointed him in April of 2011. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington state from 1972-84. He served on the Ketchikan Gateway Borough Assembly 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee, among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2016.

**Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow**

Governor Knowles appointed Robert "Bob" Harcharek as the member from the Second Judicial District on the Local Boundary Commission on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He has served as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. In 1977, he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. Commissioner Harcharek recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a member of the Barrow City Council for fifteen years, and is currently Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ended January 31, 2014

**Darroll Hargraves, Third Judicial District, Wasilla**

Governor Parnell appointed Darroll Hargraves of Wasilla to the Local Boundary Commission as the member from the Third Judicial District on June 1, 2013. Mr. Hargraves is a consultant and owner of School and Community Resources. He is a retired school superintendent of the Nome and Ketchikan Gateway Borough school districts, and has served as the executive director of the Alaska Council of School Administrators. Commissioner Hargraves is a charter member of the Alaska Council of Economic Education, Commonwealth North, and the Wasilla Chamber of Commerce. A former member and chair of the LBC, he holds a master's degree in education, an education specialist degree from University of Alaska Fairbanks, and an honorary doctorate of letters degree from Oakland City University. His term ends on January 31, 2017.

**Lavell Wilson, Fourth Judicial District, Tok**

Governor Palin appointed Lavell Wilson, a Tok resident, as the member from the Fourth Judicial District on the Local Boundary Commission, June 4, 2007. Governor Parnell reappointed him on October 6, 2010. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. His current term on the LBC ends January 31, 2015.

Local Boundary Commission Staff

Constitutional Origin

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

LBC Staff Role

LBC staff is required by law to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public as well. Staff recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC staff provides support to the commission. The LBC's staff also delivers technical assistance to municipalities, to residents of areas impacted by existing or potential petitions to create or alter municipal governments, to petitioners, to respondents, to agencies, and to the general public.

Assistance the LBC staff provides includes:

- answering citizen, legislative, and other governmental inquiries relating to municipal government issues;
- writing reports on petitions for the LBC;
- drafting LBC decisions;
- traveling to communities to hold meetings and to answer questions about proposed local boundary changes;
- drafting for the LBC an annual report to the legislature;
- developing and updating municipal incorporation or alteration forms;
- sending local boundary change forms and materials to interested persons;
- providing a link between the LBC and the public;
- maintaining incorporation and boundary records for Alaska's municipal governments;
- coordinating and scheduling LBC public meetings and hearings;
- developing orientation materials and providing training for new LBC members; and
- Maintaining and preserving LBC records in accordance with Alaska's public records laws.

The LBC staff contacts:

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Brent Williams: (907) 269-4559
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Brice Eningowuk: (907) 269-4587
brice.eningowuk@alaska.gov

Petition Procedures

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

Preparing and Filing a Petition

The LBC staff offers technical assistance, information, and forms to prospective petitioners. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form and content. This can allow petitioners to correct the draft before it is either circulated for voter signatures or adopted by a municipal government. If the staff finds that the petition contains all the required information, Commerce accepts it for filing.

Public Notice and Public Review

Once a petition is accepted for filing, the staff arranges extensive public notice. This provides ample opportunity for public comment concerning the petition. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief replying to public comments and responsive briefs.

Analysis

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff can conduct public informational meetings. If the petition is to incorporate, the staff must hold at least one public meeting within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report including a recommendation to the commission.

Commission Review of Materials, Public Hearings, and Decision

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff report. The LBC is an autonomous commission. While the commission is not obligated to follow the staff's recommendations, it has historically considered the LBC staff's analyses and recommendations to be critical components of the record in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

The commission may tour the area before the hearing to better understand the area. Following extensive public notice, the LBC conducts a hearing. After the hearing, the LBC holds a decisional meeting. At the decisional meeting, the LBC may act by:

- approving the petition as presented;
- amending the petition (e.g., expanding or contracting the proposed boundaries);
- imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability); and
- denying the petition.

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.⁶ The LBC must proceed within its jurisdiction, conduct a fair hearing and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

The LBC must adopt a written decision stating the basis for its decision. Decision copies are issued to the petitioner, respondents, and others who request them. At that point the decision becomes final, but is subject to reconsideration. Any person may ask the LBC to reconsider its decision under 3 AAC 110.580. For unanimous consent petitions, such requests must be filed within 10 days after the decision is mailed per 3 AAC 110.590(a)(9). The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

Implementation

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a petition, the proposal is typically subject to approval by voters or disapproval by the legislature, depending on whether it was filed as a local action petition, or a legislative review petition, respectively. A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election was held, certification of the legally required voter approval of the LBC's final decision is needed from the director of elections or the appropriate municipal official. If all of 3 AAC 110.630(a)'s requirements have been met, the

⁶ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.

department shall issue a certificate describing the effective change.

Legal Standards for Incorporation of Cities

The criteria to be used by the commission to evaluate the incorporate the City of Edna Bay incorporation proposal are set out in AS 29.05.011, AS 29.05.021, 3 AAC 110.005 - 3 AAC 110.042, 3 AAC 110.900 - 3 AAC 110.990. A summary of the criteria follows:

1. The territory proposed for incorporation as a city must encompass a community.
2. There must be a reasonable need for city government in the territory proposed for incorporation.
3. The territory in the unorganized borough may not incorporate if essential city services⁷ can be provided more efficiently and more effectively by annexation to an existing city.
4. The economy of a proposed city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.
5. The population of a proposed city must be sufficiently large and stable enough to support the proposed city government.
6. The boundaries of a proposed city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.
7. The boundaries of the proposed city must be on a scale suitable for city government and may include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation.
8. The boundaries may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified and are otherwise suitable for city government.
9. All the land and water necessary for development of essential municipal services in the territory, that is contiguous or does not include enclaves, are described in the petition for incorporation
10. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
11. The proposed city boundaries for incorporation must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.
12. The proposed incorporation is in the best interests of the state under AS 29.05.011(b).

⁷ "Essential city services" are defined by 3 AAC 110.990(8) to mean "those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; 'essential city services' may include: (A) assessing, levying, and collecting taxes; (B) providing primary and secondary education in first class and home rule cities in an unorganized borough; (C) public safety protection; (D) planning, platting and land use regulation; and (E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community."

13. A practical transition plan for city incorporation must:
 - include and demonstrate the incorporating municipality's intent and capability to extend municipal services to the territory proposed for incorporation in the shortest practicable time after the effective date of the proposed boundary change;
 - provide for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, unorganized borough service area, or other entity located in the territory proposed for change;
 - be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. It must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change;
 - provide for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change;
 - must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change;
 - must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities;
 - stating 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.
14. The commission cannot approve incorporation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
15. If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.
16. In determining whether a proposed boundary change promotes maximum local self-government under article X, section 1, Constitution of the State of Alaska, the commission will consider for city incorporation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.

17. Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation, whether incorporation of a new city is the only means by which residents of the territory can receive essential municipal services.

Conclusion

This chapter has described the Local Boundary Commission's background, the role of the LBC staff, and petition procedures. Chapter 2 will discuss this petition's proceedings to date.

Chapter II. Analysis

Introduction

The petition, briefs, and all of the comments submitted were read and reviewed for this report. The comments are available at

http://www.commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/.

The report uses the term “Commerce” interchangeably with “LBC staff” and “we.” LBC staff works in the Division of Community and Regional Affairs (DCRA) within the Department of Commerce, Community, and Economic Development.

This is a preliminary report. There will be a public comment period on this report until March 17, 2014 (see notice in Appendix A). After reviewing the comments on the preliminary report, Commerce will issue a final report.

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

In this report, LBC staff cited people who have expertise in their respective fields. Their contribution to this report is appreciated. Those citations, or the information provided, should not be construed as those individuals taking a position on the petition.

Standards

AS 29.05.011. Incorporation of a city

(a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;*
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;*
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;*
- (4) the population of the community is stable enough to support city government;*
- (5) there is a demonstrated need for city government.*

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city. (§ 4 ch 74 SLA 1985; am § 6 ch 58 SLA 1994)

As [AS 29.05.011](#)'s requirements are addressed by and included in the regulatory standards, this report will not address [AS 29.05.011](#)'s standards separately.

AS 29.05.021. Limitations on incorporation of a city

(a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city. (§ 4 ch 74 SLA 1985)

The analysis of [AS 20.05.021](#) is included within the analysis of [3 AAC 110.010](#).

3 AAC 110.005 Community

Territory proposed for incorporation as a city must encompass a community.

Per 3 AAC 110.005, the territory proposed for incorporation must encompass a community [as determined in [3 AAC 110.920\(a\)](#), and defined by [3 AAC 110.990\(5\)](#)].

3 AAC 110.920. Determination of community

- (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the*
- (1) settlement is inhabited by at least 25 permanent residents;*
 - (2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and*
 - (3) the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial or industrial establishments, community services, and service centers.*
- (b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if*
- (1) public access to or the right to reside at the location of the population is restricted; or*
 - (2) repealed 1/9/2008;*
 - (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.*
- (c) A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.**

3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

- (5) *a "community" means a social unit comprised of 25 or more permanent residents as determined under [3 AAC 110.920](#);*

Analysis

Commerce finds that Edna Bay comprises a community for several reasons. First, according to the latest Estimate from the Alaska Department of Labor and Workforce Development, Edna Bay has 49 people as of July 2013. A population of 49 residents is nearly double that of the 25 permanent residents mentioned in the regulations.

Further, Edna Bay has existed for several decades. It is the only community on Kosciusko Island. It has a church, a store and post office, a school, a harbor and seaplane dock. The residents primarily reside on or near a single road that wraps around the bay and connects the seaplane dock to the school. This proximity allows for frequent personal contacts and interaction.

Also, under [3 AAC 110.920](#)(b), public access to or the right to reside at the location of the population is not restricted, nor is the location of the population provided by an employer and occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. Thus, Edna Bay still constitutes a community.

After analyzing [3 AAC 110.005](#), [3 AAC 110.920](#), and [3 AAC 110.990](#)(5), Commerce finds that Edna Bay comprises a community, and that the standard is met.

3 AAC 110.010 Need

(a) *In accordance with [AS 29.05.011](#)(a)(5), a community must demonstrate a reasonable need for city government. In this regard, the commission may consider relevant factors, including*

- (1) existing or reasonably anticipated social or economic conditions;*
- (2) existing or reasonably anticipated health, safety, and general welfare conditions;*
- (3) existing or reasonably anticipated economic development; and*
- (4) adequacy of existing services.*

(b) *In accordance with [AS 29.05.021](#)(a), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a community in the unorganized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively by annexation to an existing city.*

(c) *In accordance with [AS 29.05.021](#)(b), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a community within an organized*

borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively

- (1) by annexation to an existing city;
- (2) by an existing organized borough on an areawide or nonareawide basis; or
- (3) through an existing borough service area.

Analysis

Commerce finds that Edna Bay demonstrates a reasonable need for city government several reasons. While there is an existing community organization now ("Edna Bay Community"), it is a nonprofit corporation (# 31165D) registered with the state of Alaska. It formed on October 21, 1983. It serves as the *de facto* government for the unincorporated community because it provides services such as fire and EMS, maintains roads, and owns and maintains at least part of the harbor facilities. There are limits, however, to its authority. It has no police powers. There are grants and matching funds that only municipalities can obtain. Also, a city would be eligible for more revenue sharing than an unincorporated community would be. Most importantly, though, a city of Edna Bay could potentially obtain site control of the road and harbor.

DOT&PF State Ports and Harbor Engineer Michael Lukshin said that while the state owns the L-shaped main float, the community association owns the breakwater, the tidal grid, the gangway and its supporting float, the stall finger flats, and the seaplane float. He said that the harbor needs to be replaced soon. Mr. Lukshin said if Edna Bay incorporated and asked the state (DOT&PF) to turn over control of the harbor to the city, DOT&PF would do so according to AS 35.10.120. DOT&PF has transferred control of similar harbor facilities to other municipalities about 75 times since 1986. DOT&PF cannot transfer control of harbors to community associations. If the city passes a resolution of support to take over the harbor, then DOT&PF would then ask the Legislature for the community harbor transfer funds. Mr. Lukshin could not guarantee that such funds would be appropriated, but DOT&PF has received favorable responses in the past from the Legislature because such transfers save the state money. DOT&PF saves money too because it would no longer be responsible for any Edna Bay harbor deferred maintenance costs.

After the transfer the city would be responsible for operating, maintaining and improving the harbor. Besides income from harbor user fees, the city can seek state and federal grants. The city could apply for matching grants for future harbor improvements under AS 29.60.080, or ask for legislative grants. There are also federal programs. The Small Business Administration which has an economic loan program which can be used at a municipal harbor. The Denali Commission has also funded harbor projects.⁸

In Commerce's analysis the community has demonstrated a reasonable need to incorporate in order to get a new harbor facility.

⁸ Based on February 3, 2014 conversation with Mr. Luskin.

Regarding the roads and bridges, DOT Land Survey Manager Randal Davis said that it is unclear at this point who owns the road and hence the bridge, but the land that the road transits is owned by DNR. Regardless of ownership, the bridge is believed to be in need of repair and/or replacement. This is a general public safety issue. That necessitates at the very least an inspection and analysis by an appropriate engineering agency. Regardless of whether the city or DNR owns the roadway, DOT could undertake designing and contracting for bridge replacement or renovation if funding is appropriated. The funding could come from legislative appropriations, grants, or federal funding sources. He said that designing and contracting of bridge building is one of many construction projects that DOT undertakes. If the roadway is owned by DNR, at a future date the City of Edna Bay could petition to gain title to the road.⁹

In the affidavit of Richard Perkins in Sealaska's responsive brief, Sealaska states that the United States Forest Service (USFS, FS, or Forest Service) has an easement to the road. The petitioners counter in Exhibit 1 of their reply brief with a December 5, 2013 email from Tongass National Forest Supervisor Forrest Cole. In that email, Mr. Cole says that DNR owns the road right of way. He encourages the city to incorporate so that the community could then qualify for federal highway funding. He further points out that if the log stringer bridges fail, it would effectively sever the road.

Larry Dunham, USFS, Tongass Forest Engineer, in Petersburg, has been working for 10 years to replace the bridges and resurface the Edna Bay road, however with no ownership or authority. There are now specific federal highway funds available to do so available through the Federal Lands Access Program (FLAP) in competition with other projects submitted state wide. But they can't be given to the USFS because the Forest Service doesn't own the road and doesn't have an easement on it. He stated that the patents that Sealaska's Mr. Perkins referred to apply to other roads in the area. Mr. Dunham said that the road was built by residents using state (probably DNR) funds many years ago to very low standards utilizing native log stringer bridges that are well past safe design life.

In order to get those federal highway funds, there are three options.

Option 1; DNR asserts ownership of the road in the application process, works with the FS to implement the project to upgrade the road and continues to own and maintain the road.

Option 2; DNR asserts ownership of the road in the application process, works with the Forest Service to implement the project and gives the Forest Service an easement or road use permit to assist in the long term maintenance of the road.

Option 3; IF the city incorporates, it could assume road authorities and request DNR to transfer the road to city ownership. The city could then apply for project funding through the FLAP process (if funding is still available outyear), with assistance from the Forest Service. The community association would not have the legal status to apply for those funds at this time. In

⁹ Based on communications with Mr. Davis.

either case, the cost to replace the bridges (4) and improve the road would be about \$1.5 million.¹⁰

In Commerce's analysis, if the bridges fail it would be particularly difficult to get to and from the harbor containing the seaplane dock. It would not be impossible, because there is another road that could be used, but that road is over 30 miles long. It would take a long time to travel it because of the low speed necessary to drive on it.

The community demonstrates a reasonable need for city government so that it can assume ownership of the road. That scenario might not be necessary if DNR asserts ownership of the road, and then applies for those funds. That scenario has not yet occurred. If DNR does not assert ownership of the road, then the best way for the bridges to be replaced would be for the city to apply for the funds. The petition indicates that the would be city would like to assume ownership of the road.

Commerce finds that city ownership of the road is reasonably anticipated that the city would petition to assume ownership of the road. If the city did not, the bridges would not be replaced and they would ultimately fail, so the city has every incentive to do so. For that reason, the city demonstrates a reasonable need for city government.

The city has discussed refuse management as a municipal service. To do so, the city would need to pass ordinances to enforce any such applicable law. If incorporated, the city could choose 10% of the vacant, unappropriated, unreserved land owned by the state within the municipal borders. The city might also be able to use some of its land section for the site of a landfill, incinerator, or other municipal purpose.

For the above reasons, the community demonstrates a reasonable need for city government because the social and economic conditions of the community necessitate a road and bridges that are safe and provide a reliable link. Without such a road and bridges the community would be severed. This would adversely impact health, safety, and general welfare conditions because without a reliable road, EMS would not be reliable, and because the community cannot interact, flourish, and grow without a reliable road. A reliable road is also necessary to facilitate the existing and reasonably anticipated economic development, particularly if logging is done in the near future. The state, Sealaska, and the USFS are all contemplating such logging.

The condition of the harbor also indicates a reasonable need for city. It appears unlikely to Commerce that any other entity but a City of Edna Bay is likely to replace the harbor. The community needs the harbor to be replaced so that boats, including Edna Bay's fishing fleet, can use the harbor, and so the seaplanes can dock safely. A replaced harbor is necessary for the same reasons as a reliable road and bridge system – the community relies on the harbor as a link, in this case to the outside world. A replaced harbor is necessary for Edna Bay because without it there can be no economic development. The community needs the harbor to be replaced because that is how most people and the mail travel to

¹⁰ Based on February 6, 2014 email from Mr. Dunham.

Edna Bay. The “mail” is not just letters and bills; it is also how groceries and supplies reach the island. Injured persons are flown out to hospitals. For those reasons, a replaced harbor is necessary for existing and reasonably anticipated social, economic, health, safety, and general welfare conditions. As a city of Edna Bay appears to be the only candidate to replace the harbor, the community shows a reasonable need for city government.

For the above reasons, Commerce finds that the community of Edna Bay demonstrates a reasonable need for city government, and that [AS 29.05.011\(a\)\(5\)](#) and [3 AAC 110.010\(a\)](#) are met.

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

[AS 29.05.021\(b\)](#) and [3 AAC 110.010\(c\)](#) do not allow a city in an organized borough to incorporate if municipal services can be provided by annexation to another city, by an existing borough, or through a borough service area. As Edna Bay is not in an organized borough, [AS 29.05.021\(b\)](#) and [3 AAC 110.010\(c\)](#) do not prevent the incorporation of Edna bay.

For those reasons, Commerce finds that [AS 29.05.011\(a\)\(5\)](#), [AS 29.05.021\(a\)](#), [AS 29.05.021\(b\)](#), and [3 AAC 110.010](#) are met.

3 AAC 110.020 Resources

In accordance with [AS 29.05.031\(a\)\(3\)](#), the economy of a proposed city must include the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission

(1) will consider

- (A) the reasonably anticipated functions of the proposed city;*
- (B) the reasonably anticipated expenses of the proposed city;*
- (C) the ability of the proposed city to generate and collect revenue at the local level;*
- (D) the reasonably anticipated income of the proposed city;*
- (E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date*
 - (i) for receipt of the final organization grant under [AS 29.05.180](#);*
 - (ii) for completion of the transition set out in [AS 29.05.130](#) - [AS 29.05.140](#) and [3 AAC 110.900](#); and*
 - (iii) on which the proposed city will make its first full local contribution required under [AS 14.17.410](#) (b)(2) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;*
- (F) the economic base of the proposed city;*

- (G) valuations of taxable property within the proposed city;*
- (H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and*
- (I) personal income of residents within the proposed city; and*

(2) may consider other relevant factors, including

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

Analysis

In this section, Commerce will analyze the numerous factors of [3 AAC 110.020](#), in accordance with [AS 29.05.011\(a\)\(3\)](#). With those analyses in this report before it, the commission can consider the numerous factors of [3 AAC 110.020](#), in accordance with [AS 29.05.011\(a\)\(3\)](#).

(A) the reasonably anticipated functions of the proposed city;

The community association currently pays for postal service, for EMS, and for road and harbor maintenance. The petition states that if incorporated, the city would assume those services. The petition states that the city would appoint a volunteer harbormaster, who could collect the harbor fees. Given that the association is already providing most of those functions (except for the harbormaster), and as the city would have essentially the same functions as the association, and given the proposed budget and current association surplus, Commerce finds that the reasonably anticipated functions of the proposed city show that it has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(B) the reasonably anticipated expenses of the proposed city;

The petition lists both the association's and the proposed city's budgets, including revenue, expenses, and balance. The petition states that the association has a FY budget balance of \$91,969.63. The petition states that the assets of the association, including that balance, would be transferred to the city upon an incorporation.

If approved, the proposed city will get \$75,000 in organization grants from the state over a two year period. The grants will be \$50,000 in the first year and \$25,000 in the second year. The petition states revenues of \$173,754 in the first year, \$148,754 in the second year, and \$123,754 in the third and fourth years (after the organization grants stop). The petition states expenses of \$34,220 each year. According to those figures, that would leave balances of \$139,534 in the first year, \$114,534 in the second year, and \$89,534 for the third and fourth years.

The listed expenses are low, and consist mainly of road and harbor maintenance. In the third and fourth years the income to expenses ratio is 3.62. While the proposed city's apparent thrift is to be lauded, Commerce is concerned that the expenses are static, and do not take into account inflation or any other factor that could cause the expenses to rise. Further, a second class city would have greater legal duties and resulting paperwork that are greater than those of a community association. Commerce feels that it is reasonably likely that at least a part time city clerk would be needed. Due to the hours necessarily involved, that clerk would need to be paid. There is no item for that in the budget.

Further, it is not definite that funds for the bridges replacement will materialize. Whether they do would depend upon entities, budgets, and politics that could be beyond Edna Bay's control in an era of state and federal belt tightening. Sealaska correctly points out in its brief that after the transition grants cease, most of the proposed city's revenue come from revenue sharing and PILT (payment in lieu of taxes). There is no guarantee that they will continue either - the brief cites the petition in stating that revenue sharing might not always be available.

On the other hand, Edna Bay has managed a surplus when many associations or municipalities have not. The community has no long term debt. The dedication of committed people has produced an incorporation petition, something that much larger municipalities have opted to hire attorneys or consultants to produce. The same dedication has also resulted in a harbor, EMS, and other services at a level that a community association can provide. Commerce finds persuasive the Petitioner's assertion that "given our past performance we have shown that we can sustain through years when revenue sharing funds are waning or unavailable." Commerce concludes that the same dedication and performance will continue.

After considering the budget provided and the comments and briefs regarding the proposed city's financial position, Commerce finds that the community is in sound fiscal shape. Commerce further finds that the reasonably anticipated expenses of the proposed city show that it has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(C) the ability of the proposed city to generate and collect revenue at the local level;

The proposed city does not plan to levy property taxes, although second class cities have the ability to levy property taxes. Under AS 29.45.590, a second class city may by referendum levy property taxes. If levied, a property tax must be assessed, levied, and collected per the requirements of AS 29.45.010 – AS 29.45.500. To do so, each property needs to be researched to be assured of proper ownership and taxable status would need to be ascertained and the property needs to be properly appraised so it may be assessed correctly. Generally, smaller municipalities hire a contracting firm to accomplish the assessment procedures.

Edna Bay could by referendum pass a measure to levy taxes. Edna Bay could hire a contracting assessment firm to do the research and value the properties. While the initial start-up costs

would be high, collecting subsequent years' assessment data would not need as much work, given the limited number of properties and improvements to them in the proposed city.

Commerce finds that the proposed city has the ability to generate and collect revenue at the local level because the transition grants could be used to pay for the initial assessments, and the assessment costs would drop afterwards. Commerce finds that while the proposed city would have that ability, the question is likely moot because the petitioners, who comprise a majority of the population, do not plan to levy taxes.

The proposed city could conceivably also levy a sales tax on the store, lodges, and other businesses. Most cities with less than 100 people do not levy sales taxes, but Clark's Point with 59 people and Larsen Bay with 93 people do levy a 5% and 3% sales tax, respectively. A city can approve a sales tax on sales, rents, and services. Such a tax must be approved by ordinance and referendum. The ordinance could require each business to register with the city, and then for each business to collect and remit the tax. Commerce finds that while the proposed city would have that ability, the question is likely moot because the petitioners, who comprise a majority of the population, do not plan to levy taxes.

After analyzing the financial data, Commerce finds that the ability of the proposed city to generate and collect revenue at the local level shows that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(D) the reasonably anticipated income of the proposed city

The budget shows revenue sharing, the transition grants, PILT, shared fisheries tax, and harbor fees as municipal sources of income. For the first four years of operation. The budget does not include the balance (listed as \$91,969.63) from the community association that the petition states will be transferred to the city if incorporated. As stated above, revenue sharing is not set in stone, but it exists. The loss of it is speculative. The loss of revenue sharing would affect most, if not all communities.

Regarding Payment in Lieu of Taxes (PILT), President Obama sign into law the Agriculture Act of 2014 (the Farm Bill) on February 7. The farm bill included a one-year extension of the PILT.

It is difficult to predict the future income levels of the proposed city, but Commerce finds no reason why the reasonably anticipated income of the proposed city should not remain at a rate necessary for city sustainability. Commerce further finds that the reasonably anticipated income of the proposed city shows that it has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date

- (i) for receipt of the final organization grant under [AS 29.05.180](#);*
- (ii) for completion of the transition set out in [AS 29.05.130 - 29.05.140](#) and [3 AAC 110.900](#); and*
- (iii) on which the proposed city will make its first full local contribution required under [AS 14.17.410](#) (b)(2) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;*

The proposed city appears to have an immediate transition because no other entity beyond the community association provides services. The city would assume the services that the association provides.

If the proposed city is formed, the city would receive grants for two years totaling \$75,000. As discussed in (B), the proposed city would have balances of \$139,534 in the first year, \$114,534 in the second year, and \$89,534 for the third and fourth years after the organization grants have stopped.

The city is not required to make a local contribution under [AS 14.17.410](#)(b)(2) because the proposal does not seek to incorporate a home rule or first class city in the unorganized borough.

The petition only lists an operating budget, not a capital budget. The annual income after receiving the final organization grant and the completion of the transition is \$123,754. The petition states expenses of \$34,220 each year. According to those figures, that would leave balances of \$89,534 for the third and fourth years (after the transition and after the organization grants end).

In sum, the anticipated operating budget of the proposed city is feasible and plausible through the period extending one full fiscal year beyond the reasonably anticipated date of receiving the final organization grant and for completing the transition. Commerce finds that the budgets of the proposed city through that period show that it has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(F) the economic base of the area within the proposed city;

Edna Bay's economic base rests upon fishing, logging, lodges, and internet based businesses. Subsistence also plays a large part in the community's economy. There is also the possibility of logging on a larger scale by the state on state land, Sealaska, or on USFS land.

Commerce finds that Edna Bay's economy is typical of other small Southeast communities – predominately natural resources based. People either extract the resource to use it, or they pay to look at it and enjoy it. While their economic base is not large, it need not be to support a community (or city) of Edna Bay's size. Commerce finds that the economic base is sufficient so that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(G) valuations of taxable property within the proposed city;

The levy of an ad valorem tax may not exceed two percent of the value of the property taxed (except for bonds and their indebtedness).

The property values of the proposed city would approximate between \$2 - \$3 million. At a 5 mil rate, a property tax could generate approximately \$15k/year in tax revenue.¹¹

If the mill rate were raised to the maximum two percent, the tax revenue generated could be up to \$60,000 per year. As said above, that is likely a moot point, because the petitioner does not plan to levy such a tax, which would need to be approved by referendum at any rate. Also, there would be costs, particularly initially, of assessing such properties that the return would be considerably lower.

Nonetheless, Commerce finds that the valuations of taxable property within the proposed city are such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and

There is the possibility of logging on a larger scale by the state, Sealaska, or on USFS land. That might involve construction of a new state log transfer facility. There is an existing harbor, and if incorporation is approved, then the odds of replacing the facility increase, as discussed above. Edna Bay is also in Phase 2 of building a bulk fuel facility through the Alaska Energy Authority. Phase 2 indicates that the project is in final design. Funding for such projects comes through the Denali Commission. Commerce finds that the existing and reasonably anticipated industrial, commercial, and resource development within the proposed city is such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

(I) personal income of residents of the proposed city; and

The Alaska Department of Labor and Workforce Development, Research and Analysis Section, has economic and other data for Edna Bay available on its website at

<http://live.laborstats.alaska.gov/alaris/details.cfm?yr=2012&dst=01&dst=03&dst=04&dst=06&dst=07&r=5&b=21&p=83>. As respondent Sealaska correctly points out, the website shows that only 13 residents were employed [in 2012]. According to that website, the total community wages for 2012 were \$368,872. That, however, does not take into account the large number of retirees that commenters refer to, and their income from Social Security, pensions, or investments. If people are retired, that income would not be included as wages. Nor does it take into account the fact that the Edna Bay economy partly depends on subsistence living. If people depend on subsistence for part of their livelihood, their need for cash would lessen. Further, PFD checks, which are distributed per person,

¹¹ Based on conversations with State Assessor Steve Van Sant

would not be included in that wages figure either, but would be part of the community's income. Thus, the residents' collective income can be much larger than the wages figure indicated.

Further, the income that fishers derive as fishers is not likely included in the total wages for Edna Bay. Department of Labor and Workforce Development data indicate that 18 people in Edna Bay have fishing permits. Also, the figure of 13 workers might not include all of the workers in Edna Bay (e.g. self-employed fishers).¹²

Further research shows that the 100% of residents 25 or older held at least a high school diploma, compared to 90.7% statewide. In 2010 the estimated per capita income was \$19,619, and the average median household income was \$75,385. They were consistent with the 2000 values in terms of real dollars.¹³

Those figures appear to Commerce to indicate reasonable financial situation. Commerce finds that the personal income of residents of the proposed city is such that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.

In sum, Commerce finds that the proposed city has the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, and that [3 AAC 110.020](#) is met.

3 AAC 110.030 Population

- (a) *In accordance with [AS 29.05.011\(a\)\(4\)](#), the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including*
- (1) census enumerations;*
 - (2) durations of residency;*
 - (3) historical population patterns;*
 - (4) seasonal population changes;*
 - (5) age distributions;*
 - (6) contemporary and historical public school enrollment data; and*
 - (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*
- (b) *To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.*

¹² Data provided by the Alaska Dept. of Labor and Workforce Development, Research and Analysis section

¹³ http://www.afsc.noaa.gov/REFM/Socioeconomics/Projects/profile_drafts/Edna_Bay_Profile_2000_2010.pdf

Analysis

The US Census Bureau estimated Edna Bay's 2010 census population to be 42. Every July the Alaska Department of Labor and Workforce Development estimates each community's population. Its July 2011 estimate for Edna Bay was 50, its 2012 estimate was 39, and its 2013 estimate was 49. A spreadsheet showing those figures can be found at <http://laborstats.alaska.gov/pop/popest.htm>. In the period from 2000 to 2009 the estimate population ranged from 40 – 49.¹⁴ The population seems to have stabilized sometime between 1990 and 2000, and remained so to the present.

Going back further in time, Edna Bay had its first recorded population in 1950. It was 41. In 1960 it was 135. In 1970 it was 112. In 1980 it was six. In 1990 it was 86. In 2000 it was 49. Please visit the Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs' website at

<http://commerce.alaska.gov/cra/DCRAExternal/community/Details/27583caa-0784-431a-b104-743eff982074> for that data. The earlier higher populations for Edna Bay can be attributed to the large scale logging operations that existed at the time and then ended. The community then transitioned to a more permanent residential community sometime in the 1980s after DNR had a land lottery.

According to the 2013 estimates, there are several other Alaska second class cities with populations under 75. Bettles has 15 people; Clark's Point has 59; False Pass has 39; Kasaan has 69; Kupreanof has 34; Pilot Point has 68; Platinum has 74; Port Alexander has 66; and Shageluk has 69. While Edna Bay would be in the lower range of second class city populations, it is not alone in having a small population.

3 AC 110.030(b) does not apply because the petition is to incorporate Edna Bay as a second class city, not as a first class city.

3 AAC 110.040. Boundaries

(a) *In accordance with AS 29.05.011(a)(2), the boundaries of a proposed city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*

- (1) *land use, subdivision platting, and ownership patterns;*
- (2) *population density;*
- (3) *existing and reasonably anticipated transportation patterns and facilities;*
- (4) *natural geographical features and environmental factors;*
- (5) *extraterritorial powers of cities;*
- (6) *salability of land for residential, commercial, or industrial purposes; and*
- (7) *suitability of the territory for reasonably anticipated community purposes.*

(b) *To promote the limitation of community, the boundaries of the proposed city*

¹⁴ http://www.afsc.noaa.gov/REFM/Socioeconomics/Projects/profile_drafts/Edna_Bay_Profile_2000_2010.pdf

- (1) *must be on a scale suitable for city government and may include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation; and*
 - (2) *may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in [3 AAC 110.005 - 3 AAC 110.042](#) and are otherwise suitable for city government.*
- (c) *Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*
- (d) *If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough or city, the petition for incorporation must also address and comply with all standards and procedures to alter the boundaries of the existing organized borough or city to remove the overlapping territory. The commission will consider that petition for incorporation as also being a petition to alter the boundaries of the existing borough or city.*

In analyzing [3 AAC 110.040](#)(a), the size of the proposed city would be 27.5 square miles, consisting of 23 square miles of land and 4.5 square miles of tidelands and submerged lands. The boundaries include Charlie Creek, Survey Creek, and other streams. Survey Creek is mentioned by the petitioners to be a potential source of a hydroelectric plant. For those reasons, Commerce finds that the boundaries of the proposed city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

In analyzing [3 AAC 110.040](#)(b)(1), LBC staff examined whether the proposed expanded boundaries of the city include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

In its analysis of [3 AAC 110.005](#) above, LBC staff found that Edna Bay is an existing local community.

Regarding reasonably predictable growth, development, and public safety needs, the regulations do not specify, maximum sizes or specific formulas determining square mileage for cities. The size of the proposed city would be 27.5 square miles, consisting of 23 square miles of land and 4.5 square miles of tidelands and submerged lands. LBC staff finds that the proposed expanded boundaries of the city are on a scale suitable for city government.

While the proposed city would be large, it is not without comparison or precedent. Other Alaskan cities are reasonably large, but are still on a scale suitable for city government. St. Paul, for example, has a land area of 40 square miles, and 255.2 of water, for a total of 295.2 square miles. Togiak has 45.2 square miles of land, and 183.3 of water, for a total of 228.5 square miles. Valdez has 222 square miles of land, and 55.1 square miles of water, totaling 277.1 square miles. Skagway comprises 464.3 square

miles. That was Skagway's size when it was a city, as well as its present size after the city dissolved and became a borough. Those present or former cities are all larger than the proposed city of Edna Bay. For those reasons, LBC staff finds that the boundaries of the proposed city are on a scale suitable for city government.

Further, the LBC staff finds there are reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation. Those needs exist throughout all of the proposed city boundaries, not just the existing community. The proposed city would consist mainly of state lands and federal lands (including the proposed Sealaska selection lands). Based on conversations that LBC staff has had with federal and state officials, Commerce finds that it is reasonably predictable that there will be logging in the USFS and state lands during the next 10 years. Such logging would constitute growth and development. There is also a proposed state logging transfer facility within the proposed city boundaries. Further, there is a bill pending before Congress that would convey to Sealaska some of the federal land within the proposed city borders. Commerce finds that passage of the bill is reasonably predictable. Commerce further finds that it is reasonably predictable that the selection land would be logged, given the value of the land for timber. Such logging would constitute reasonably predictable growth and development.

Edna Bay is also in Phase 2 of a building a bulk fuel facility through the Alaska Energy Authority. Phase 2 indicates that the project is in final design. Given that such a project is progressing, Commerce finds that it is reasonably predictable that such development will occur within the next ten years. It is also possible that a small scale hydroelectric plant could be built in the uphill watershed of Survey Creek, similar to what was built recently in Gustavus.

In sum regarding 3 AAC 110.040(b)(1), LBC staff finds that the proposed boundaries of the city are not only on a scale suitable for city government, but that they include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

Regarding 3 AAC 110.040(b)(2), Commerce finds that the boundaries of the proposed city do not include entire geographical regions or large unpopulated areas. Commerce further find that even if the proposed boundaries did, they are justified by the application of the standards in [3 AAC 110.005 - 3 AAC 110.042](#), and are otherwise suitable for city government.

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

“(A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;

(B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section.”

Commerce finds that the boundaries of the proposed city do not fit the definition of “region” because those boundaries do not constitute an area, or contain multiple communities that share common attributes. Nor do they include a regional educational attendance area, a state house election district, an organized borough, or a model borough.

[3 AAC 110.990](#)(15) defines “area” as “the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.”

Commerce finds that the expanded boundaries of the proposed city do not meet the definition of “area” because they do not describe a borough. As stated above, the boundaries are of a size suitable for a city.

Even if, *arguendo*, the boundaries of the proposed city did include entire geographical regions or large unpopulated areas, Commerce finds in this report that the boundaries are justified by the application of the standards of [3 AAC 110.005 – 3 AAC 110.042](#), and are otherwise suitable for city government.

[3 AAC 110.040](#)(c) does not apply because presume that territory proposed for incorporation that is not noncontiguous, and does not contain enclaves. Even if *arguendo* it did, Commerce found above that the boundaries proposed for change do include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

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

3 AAC 110.042. Best interests of state

In determining whether incorporation of a city is in the best interests of the state under [AS 29.05.100](#)(a), the commission may consider relevant factors, including whether incorporation

- (1) *promotes maximum local self-government, as determined under [3 AAC 110.981](#);*
- (2) *promotes a minimum number of local government units, as determined under [3 AAC 110.982](#) and in accordance with art. X, sec. 1, Constitution of the State of Alaska;*
- (3) *will relieve the state government of the responsibility of providing local services; and*
- (4) *is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.*

The petition to incorporate Edna Bay is in the best interests of the state because it promotes maximum local self-government, as determined under [3 AAC 110.981](#) and Alaska’s constitution. The incorporation will allow Edna Bay residents to govern themselves. Currently the local government is the state, although the community association fulfills many of those functions. Incorporation can lead to the city taking over operation and maintenance of the harbor, and possibly the road and bridges as well.

The petition to incorporate Edna Bay is in the best interests of the state because it promotes a minimum number of local government units, as determined under [3 AAC 110.982](#) and in accordance

with art. X, sec. 1, Constitution of the State of Alaska. Edna Bay is not in a borough, and cannot be annexed to an existing city. Incorporation does not duplicate services or government, and so maintains a minimum number of local government units.

The petition to incorporate Edna Bay is in the best interests of the state because it could relieve the state government of the responsibility of providing local services such as the operation of the harbor.

The petition to incorporate Edna Bay is in the best interests of the state because it is not likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution. Commerce does not see the likelihood of the state being exposed to any unusual and substantial risks.

In conclusion, Commerce finds that the proposed incorporation is in the best interests of the state under Alaska's constitution, [AS 29.05.100\(a\)](#) and [3 AAC 110.042](#).

3 AAC 110.900. Transition

(a) *A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under [AS 29.06](#), or a city reclassification under [AS 29.04](#), must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*

(b) *Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing city, city, unorganized city service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing city, city, and unorganized city service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*

(c) *Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing city, city, unorganized city service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing city, city, and unorganized city service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*

(d) *Before approving a proposed change, the commission may require that all cities, cities, unorganized city service areas, or other entities wholly or partially included within the boundaries of the proposed*

change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

(e) The transition plan must state the names and titles of all officials of each existing city, city, and unorganized city service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.

(f) If a prospective petitioner has been unable to consult with officials of an existing city, city, or unorganized city service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing city, city, and unorganized city service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.

There is not a formal transition because the proposed city would take over no functions from a municipality. The services that funds to the community association would be transferred to the city if incorporated. The petition has a plan to take over the harbor operations from the state. Commerce finds that [3 AAC 110.900](#) is met.

3 AAC 110.910 Statement of Nondiscrimination

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

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

3 AAC 110.920. Determination of community

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 permanent residents;*
- (2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and*
- (3) the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial or industrial establishments, community services, and service centers.*

(b) *Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if*

- (1) *public access to or the right to reside at the location of the population is restricted; or*
- (2) *repealed 1/9/2008;*
- (3) *the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.*

(c) *A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.*

Commerce found that [3 AAC 110.920\(a\)](#) was met in its analysis of [3 AAC 110.005](#). [3 AAC 110.920\(a\)\(b\)](#) are not pertinent. Commerce finds that the standard of [3 AAC 110.920](#) is met.

3 AAC 110.970. Determination of essential municipal services

(a) *and (b) only apply to borough incorporation*

(c) *If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*

- (1) *are reasonably necessary to the community;*
- (2) *promote maximum, local self-government; and*
- (3) *cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.*

(d) *The commission may determine essential municipal services for a city to include*

- (1) *levying taxes;*
- (2) *for a city in the unorganized borough, assessing the value of taxable property;*
- (3) *levying and collecting taxes;*
- (4) *for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in [AS 14.14.065](#);*
- (5) *public safety protection;*
- (6) *planning, platting, and land use regulation; and*
- (7) *other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

Commerce finds that road service, harbor maintenance, EMS, and postal service are essential municipal services for this community because they are reasonably necessary to the community, promote maximum, local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. The city plans to offer these services.

3 AAC 110.981 Determination of Maximum Local Self-Government

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

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

If formed, the city would extend local government to territory and population of the unorganized borough where no local government currently exists. Commerce finds that 3 AAC 110.981 is met.

3 AAC 110.982 Minimum Number of Local Government Units

Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

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

As discussed above, Commerce finds that Edna Bay resident can only receive the essential municipal service of harbor maintenance if the community incorporates. While it is possible that DNR could assume ownership of the roads and bridges, that not yet occurred and is speculative. Commerce finds that city incorporation might well be the only means in which residents can receive the essential service of bridge replacement.

Commerce finds that [3 AAC 110.982](#) is met.

Conclusion

Commerce finds that the city incorporation standards are met. It recommends that LBC approve the petition as presented.

APPENDIX: A

LOCAL BOUNDARY COMMISSION PUBLIC NOTICE

Notice of Public Comment Period on the Preliminary Report Concerning the Edna Bay Incorporation Petition

The Local Boundary Commission (LBC) staff preliminary report concerning the petition to incorporate Edna Bay as a second class city by local action has been released. The petition and related documents, including a map of the territory proposed for incorporation, are available for public review 24 hours a day, 7 days a week at the following locations:

In plastic binders at the Edna Bay Post Office, 203 W. Davidson, Edna Bay, AK 99950, and the Edna Bay State Harbor, 101 Kosciusko Dr., Edna Bay, AK 99950. The report will be posted as soon as possible on the LBC website: commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition, and on the Edna Bay website: www.ednabayalaska.net/. If the report is not immediately available on the LBC website, contact the LBC staff, and the staff can email you the report.

Any interested person, party, or entity may file with the LBC written comments regarding the preliminary report. Written comments must be received in the LBC office by 4:30 pm on Monday, March 17, 2014. Questions concerning the proposed incorporation may be directed to LBC staff at the below mailing address, email address, fax number, or phone numbers. See 3 AAC 110.480 and 3 AAC 110.700 for the procedural requirements to file written comments. Comments should be sent to:

Local Boundary Commission staff, 550 West Seventh Avenue, Suite 1640, Anchorage, AK 99501
Phone: 907-269-4559/4587 Fax: 907-269-4539 Email: LBC@alaska.gov

The LBC has waived 3 AAC 110.700(d)'s requirement that commenters send a paper original of an electronically submitted comment. Commenters may instead submit comments either electronically or by hard copy. Following receipt and consideration of comments on the preliminary report, LBC staff will issue its final report. Procedures governing departmental reports are set out in 3 AAC 110.530.