



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs

Sean Parnell, Governor
Susan K. Bell, Commissioner
Scott Ruby, Director

Preliminary Report to the Local Boundary Commission

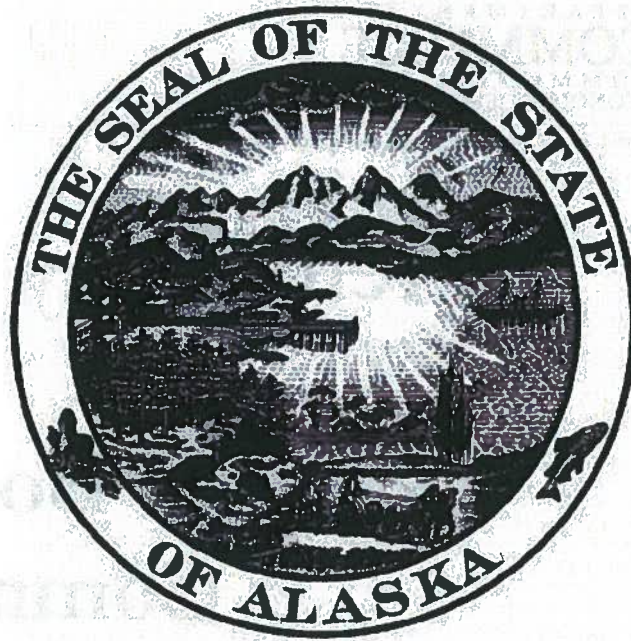
Regarding the proposal
to annex by legislative review, approximately
16 square miles of both
land and waters to the City of Gustavus

May 2011

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This is the *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Annex Approximately 16 square miles of both land and waters to the City of Gustavus*. The report was written by Brent Williams and Don Burrell, staff to the Local Boundary Commission. The staff are 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://www.commerce.state.ak.us/dca/lbc/gustavus_annex.htm

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 or lbc@alaska.gov.

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine accuracy of the illustrations.

Special thanks to others who provided information or assistance in developing the report: Steve Van Sant - State Assessor, Bill Rolfzen - Local Government Specialist, Lorence Williams - Publication Technician, George Plumley - Planner II, Cheryl Biesemeier - Office Assistant II, and others.

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CHAPTER I

BACKGROUND

Chapter I. Background

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. Those Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, but 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 arguments for and against boundary changes to be analyzed objectively, taking area wide or statewide needs into account.³

Local Boundary Commission's Statutory Authority

The Local Boundary Commission derives its statutory authority from AS 29.06.040. Pursuant to 29.06.040(a) "the Local Boundary Commission may consider any proposed municipal boundary change." AS 29.06.040(a) further reads that "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 the 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 boundary changes. These are:

- Incorporating municipalities⁴
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities
- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

In addition to the above, the LBC under AS 44.33.812 shall:

- Make studies of local government boundary problems
- Adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution

The LBC may present proposed local boundary changes to the legislature concerning boundary changes under article X, section 12 of Alaska's constitution.

⁴ The term "municipalities" includes both city governments and borough governments.

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.

Quasi-Legislative

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

[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.⁵

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. . . ." 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 Alaska's constitution placed the LBC in the state's executive branch. The commission's duty under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the LBC's quasi-executive nature.

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-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 Communicating 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. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves those rights.

⁵ *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).

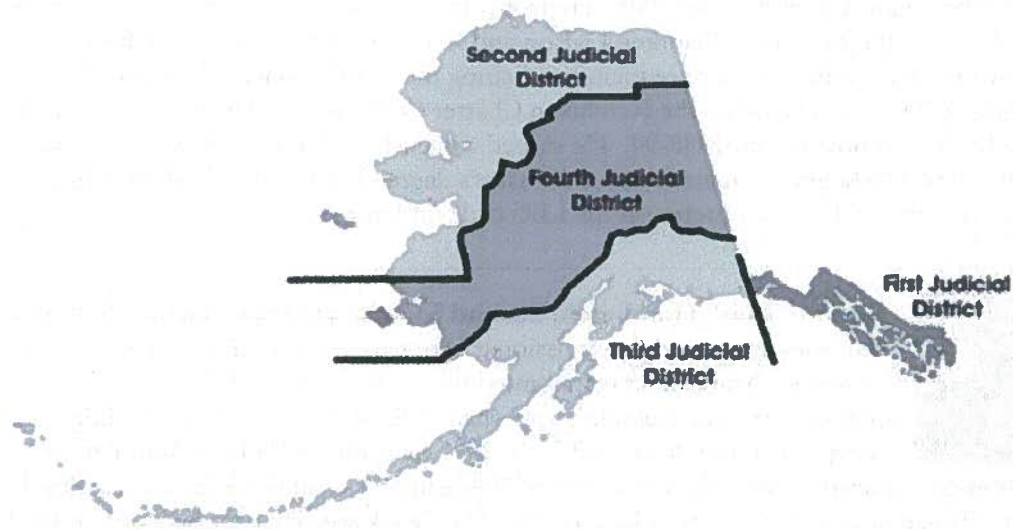
To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is appealed to the court, the *ex parte* contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC.

All communications with the commission must be submitted through the LBC's 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.



Alaska Judicial Districts

The following are the current LBC members' biographies:



Lynn Chrystal, Chair, At-Large Appointment, Valdez. Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. On September 10, 2009, Governor Parnell chose him to be the LBC's chair. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has been in Alaska since 1963, and 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. The chair has worked in Tin City, Barrow, Yakutat, and Valdez. He 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 on January 31, 2013.



John Harrington, First Judicial District, Ketchikan. Governor Parnell appointed John Harrington to the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager. He previously worked as an adult education coordinator in Ketchikan from 1985-97, and as a special education teacher and administrator in Washington from 1972-84. He has served on the Ketchikan Gateway Borough Assembly since 2005. He from 2003-04, and serving as an elected member currently chairs the Borough's Planning Liaison and Economic Development Advisory Committee. Mr. Harrington's community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission of Ketchikan Gateway Borough's school board from 1988-94. He 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 on January 31, 2016.



Robert "Bob" Harcharek, Second Judicial District, Barrow. Governor Knowles appointed Commissioner Harcharek to the LBC 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 3 years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. Dr. Harcharek served as a member of the Barrow City Council for 15 years, and is currently Barrow's mayor and chief administrative officer. His current LBC term ends on January 31, 2014.



Larry Semmens, Vice Chair, Third Judicial District, Soldotna. Governor Parnell appointed Larry Semmens to the Local Boundary Commission on September 10, 2009. Mr. Semmens is a certified public accountant and the city manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He served in the finance department of the Kenai Peninsula Borough

from 1981-1996. Mr. Semmens currently chairs the Alaska Public Entities Insurance Pool and was recently reappointed to the Alaska Municipal League Investment Pool Board. He is a member of the American Institute of Certified Public Accountants and the International City Managers Association. Commissioner Semmens served in the U.S. Air Force from 1973-76. He earned a bachelor's degree in business administration from Boise State University. His current term on the LBC ends on January 31, 2012.



Lavell Wilson, Fourth Judicial District, Tok. Governor Palin appointed Tok's Lavell Wilson to the LBC on June 4, 2007. He moved to Alaska in 1949, and has lived in the Northway/Tok area since. Mr. Wilson attended the University of Alaska Fairbanks and Brigham Young University. He became a licensed big game guide in 1963. Mr. Wilson served the area outside of the Fairbanks North Star Borough in the Alaska House of Representatives (eighth legislature). Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981- 95, retiring as the company's chief pilot and office manager. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineers' 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 Cape Newenham's radar site. Mr. Wilson has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current LBC term ends on January 31, 2015.

Local Government Agency

Constitutional Origin

Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as the constitutional local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce) pursuant to AS 44.33.020(a)(4).⁶ Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. In addition to its more general duty to aid local governments, DCRA provides staff, research, and assistance to the LBC.

LBC Staff Role

Commerce is required by 3 AAC 110.530⁷ to investigate and analyze each boundary change proposal and to make recommendations regarding it 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. Commerce follows a reasonable basis standard in developing recommendations on matters before the LBC. Its 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

⁶ AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

⁷ Also see AS 29.04.040, AS 29.05.080, AS 29.06.110; and AS 29.06.480 - 29.06.490.

proposal.

The LBC staff provides support to the commission. Also, the LBC staff 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 others.

Assistance which 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 decisional statements
- Traveling to communities to hold meetings and to answer questions about proposed local boundary changes
- Writing an annual LBC 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
- Maintaining and preserving LBC records in accordance with Alaska's public records laws

The LBC staff can be contacted at the following address, telephone numbers, fax number, or email addresses:

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
lbc@alaska.gov

Brent Williams: (907) 269-4559
brent.williams@alaska.gov

Don Burrell: (907) 269-4587
don.burrell@alaska.gov

Fax: (907) 269-4539

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 analyzing the facts and the applicable legal standards. A procedures summary follows:

Preparing and Filing a Petition

The LBC staff offers technical assistance, information, and petition forms to prospective petitioners. LBC staff routinely advises petitioners to submit draft petitions for staff to identify any technical deficiencies in the petition's form and content. This allows the petitioner to correct the petition before it is circulated for voter signatures, or before a municipal government formally adopts the petition.

Once a formal petition is prepared, it is submitted to LBC staff for technical review. If the petition contains all the required information, the LBC staff accepts the petition for filing.

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. There is ample opportunity for public comment during the process. 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 responsive briefs.

Analysis

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials. The petitioner, and the LBC staff, can conduct informational meetings. If the petition is for incorporation, Commerce must hold at least one public meeting within the boundaries proposed for incorporation. When it ends its analysis, the LBC staff issues a preliminary report which includes a recommendation to the LBC.

The preliminary report is circulated for public review and comment typically for a minimum of four weeks. After reviewing the comments on its report, the LBC staff typically issues its final report.⁸ The final report typically discusses comments received on the preliminary report, and notes any changes to the LBC staff's recommendations to the commission. The final report must be issued at least three weeks prior to the LBC's public hearing.

Commission Review of Materials and Public Hearings

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff reports. The LBC is an autonomous commission. While the commission is not obligated to follow the staff's recommendations, it has historically considered Commerce'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 at least one hearing in or near the affected area or territory. The commission must act on the petition within 90 days of its final public hearing.

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)
- Denying the petition

⁸ "Typically" refers to the fact that under 3 AAC 110.590, procedures for some kinds of local action petitions are modified. This pertains to annexations if the municipality already owns the property to be annexed, or if all the property owners and voters in the area proposed to be annexed petition the municipality's governing body.

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpreting the applicable legal standards and its evaluating the evidence in the proceeding must be rational.⁹ 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.

While the law allows the commission 90 days following its last petition hearing to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within 30 days of its decision date, the LBC must adopt a written decision stating the basis for its decision. Decision copies are provided 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. Such requests must be filed within 18 days after the decision is mailed. 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. The action must also receive favorable review under the federal Voting Rights Act of 1965. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the effective change.

⁹ 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.

Legal Standards for Annexation to Cities

The criteria to be used by the commission to evaluate the City of Dillingham's annexation proposal are set out in 3 AAC 110.090 - 3 AAC 110.140, 3 AAC 110.900 and 3 AAC 110.910. A summary of the criteria follows:

1. There must be a reasonable need for city government in the territory proposed for annexation.
2. The territory may not be annexed if essential city services¹⁰ can be provided more efficiently and more effectively by another existing city or by an organized borough.
3. The territory must be compatible in character with the annexing city.
4. The economy in the city's proposed expanded boundaries (territory within existing city, plus territory proposed for annexation) must include sufficient human and financial resources to provide essential city services on an efficient, cost-effective level.
5. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
6. The proposed city boundaries must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.
7. Absent a specific and persuasive showing to the contrary, the LBC will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.
8. The proposed boundaries of the city must be on a scale suitable for city government and include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation.
9. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards, and are otherwise suitable for city government.
10. If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, the petition must also address and comply with the standards and

¹⁰ "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."

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 describes boundaries overlapping the boundaries of another existing city, the petition must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

11. The proposed annexation is in the best interests of the state under AS 29.06.040(a).
12. Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110-135 may be annexed to a city by the legislative review process if the LBC also determines that any of the circumstances specified in 3 AAC 110.140 exists.
13. A petition for annexation must include a practical transition plan:
 - demonstrating the annexing municipality’s intent and capability to extend municipal services to the territory proposed for annexation in the shortest practicable time after the effective date of the proposed boundary change;
 - providing 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. The plan must 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;
 - providing 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. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partly in the boundaries proposed for change. The plan 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. 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;
 - 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 annexation 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 art. X, sec. 1, Constitution of the State of Alaska, the commission will consider 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.
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 annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

Conclusion

This chapter has described the Local Boundary Commission's background, including its legal basis, powers, membership, and procedures. It also gave an overview of legal standards for annexations to cities. Chapter 2 will discuss this petition's proceedings to date.

CHAPTER II

PROCEEDINGS TO DATE

Chapter II. Proceedings to Date

Submission and Review of Petition

The petition was submitted to LBC staff on November 15, 2010 and accepted for filing on December 16, 2010.

Public Notice

Notice was published in the *Juneau Empire and Capitol City Weekly* on December 22, 2010, December 29, 2010, and January 5, 2011.

Service of Petition

The following communities were required to be served, in person or via United States Postal Service, complete copies of the petition after the date of acceptance for filing by the Local Boundary Commission. The LBC staff, however, did not receive confirmation that task was completed within the designated timeframe allotted. The City of Gustavus, however, did serve these individuals, entities, and communities on May 27, 2010 with the, then, most up-to-date version of the petition.

City of Hoonah

Hoonah Indian Association

Richard Levitt

Commissioner Dan Sullivan

President, Gustavus Electric Company

State of Alaska

Haines Borough

Department of Natural Resources

Posting of Notice

The LBC staff did not receive confirmation that the posting of the notice was completed within the designated timeframe allotted. The City of Gustavus, however, did post the notice of filing on May 27, 2010 with the, then, most up-to-date version of the petition. The notice of filing was required to be posted at the following locations surrounding the area proposed for annexation:

Gustavus City Hall

U.S. Post Office, Gustavus

Gustavus Public Library

City of Gustavus website

The LBC staff did not receive confirmation that the posting of the notice was completed within the designated timeframe allotted. The City of Gustavus, however, did post the notice of filing on May 27, 2010 with the, then, most up-to-date version of the petition. The notice of the filing of the Petition was also posted within the existing boundaries of the City at the following locations:

Gustavus Dray

Bear Track Mercantile

Glacier Bay National Park Headquarters

Deposit of Petition

On July 9, 2010, the City of Dillingham provided a copy of the City's prospective petition in notebooks at the following locations:

Location	Days and Times Open to the Public
<u>Gustavus City Hall</u>	8 am – 4 pm , T-F
Gustavus Public Library	1:30 - 4:30pm M-F 7:00 - 9:00pm M,W 10 am - 12 noon Th 11:00 am - 3:00pm Sa
City of Gustavus Website http://cms.gustavus-ak.gov/	Anytime

Deadline for Initial Comments and Responsive Briefs

The notice of filing invited written public comment concerning the proposed annexation by March 4, 2011. No public comments regarding the City of Gustavus Annexation Petition were filed.

Petitioner's Reply Brief Filed

The City of Gustavus did not file a reply brief as there were no public comments or responsive briefs filed.

Deadline for Comments on Preliminary Report

The deadline for receipt of written comments concerning this report and recommendation by LBC staff is 4:30 p.m., Wednesday, June 22, 2011. Submit written comments to:

LBC Staff
550 W. 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Fax: 907-269-4539
E-Mail: lbc@alaska.gov

Final Report

After receipt of written comments regarding LBC staff's Preliminary Report, a final report regarding the Gustavus annexation proposal will be issued at least 21 days prior to the LBC's public hearing.

LBC Public Hearing

The date, time, and location of the Local Boundary Commission's hearing on the Gustavus annexation proposal have not yet been determined. It is anticipated that the hearing will be held August 17, 2011.

Formal notice of the date, time, and place of the hearing will be published as a display ad no less than two columns by three inches in one or more newspapers of local circulation. The initial publication of the notice will occur at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations throughout the community. Additionally, notice will be mailed to the Petitioner and each of the Respondents. (3 AAC 110.550)

The hearing will begin with a summary by LBC staff of its conclusions and recommendations concerning the pending proposal. Following LBC staff's summary, the law allows the Petitioner to make an opening statement limited to ten minutes duration.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. The testimony must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

No time limit on testimony by the Petitioner is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony. Traditionally, following the testimony by the Petitioner, respondents would be allowed to make opening statements and present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. As no respondent exists for the City of Gustavus' annexation petition, no time will be allotted during this public hearing.

A member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

At the conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by LBC staff and others.

In compliance with Title II of the Americans with Disabilities Act of 1990, LBC staff will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact LBC staff to the Commission at 269-4559 at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

LBC Decisional Meeting

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the annexation proposal following the hearing, the LBC is likely to convene a decisional session shortly after the conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, Commission members may ask their staff or another person for a point of information or clarification.

Within thirty days after the Commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the City of Gustavus' annexation petition. A copy of the statement will be provided to the Petitioner, and any others who request a copy.

Reconsideration

Any interested person or organization may ask the Commission to reconsider its decision in this matter. A request for reconsideration may be filed within 18 days after the written decisional statement has been mailed to the Petitioner.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if:

- there was a substantial procedural error in the original proceeding;
- the original vote was based on fraud or misrepresentation; or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the Commission. Ten days are allotted for the filing of such briefs.

Federal Voting Rights Act Preclearance

If the Commission approves the Petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the Federal Voting Rights Act.

Federal law (43 U.S.C. 1973) subjects municipal annexations in Alaska to review under the federal Voting Rights Act. The Voting Rights Act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of Columbia. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (see 28 CFR § 51.22). Annexation will not take effect until the City provides LBC staff with evidence that the Justice Department or U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630). Commission staff is available to assist cities in meeting their obligations under the Voting Rights Act.

Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within thirty days after the last day on which the Commission may order reconsideration. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

Legislative Approval or Denial

The Alaska Legislature will review the proposed annexation if the City's Petition is granted in whole or in part by the LBC. If the Petition is approved (with or without amendments and/or conditions), the LBC will file a recommendation for the annexation with the next regular session of the Alaska State Legislature under the terms of Article X, § 12 of the Constitution of the State of Alaska. The Legislature will then have forty five days to consider the recommendation. If the Legislature takes no action within the forty five day review period, the recommendation is automatically approved. If the Senate and House of Representatives adopt a joint resolution rejecting the recommendation, the annexation is denied.

If the legislature does not deny the Commission's recommendation, the boundary change will take effect on the date that the City provides the LBC staff with documentation that the annexation has successfully passed the requisite federal Voting Rights Act of 1965 review. After such documentation is received by Commerce, a certificate of boundaries for the City reflecting the annexation will be issued.

CHAPTER II

ANALYSIS

Chapter III Analysis

Introduction

As noted before, there was no respondent, and hence no respondent's brief in this petition. Further, there were no public comments.

This report will summarize or quote segments from the petition to reflect the city's position. Then, we will list the LBC staff findings under the heading "Commerce." Use of the term "Commerce" indicates the view of LBC staff, and is used interchangeably with "LBC staff" and "we." LBC staff work in the Division of Community and Regional Affairs (DCRA) within the Department of Commerce, Community, and Economic Development.

Although the city addressed each standard by the factors which the LBC may consider, we do not because those factors are only examples for the commission to consider. They are not standards themselves. The LBC need not consider any of those factors. Further, it may consider other, unspecified factors to make a decision.

The petition comprises one contiguous territory, but it has two distinct parcels. One parcel is an upland area which generally includes the Falls Creek drainage. It is referred to as "Falls Creek." The second part is known as "Icy Passage." It largely consists of tidelands and a submerged lands portion of Icy Passage lying between the city limits and Pleasant Island.

The petition addresses Falls Creek and Icy Passage separately. We will address them together, unless a separate analysis is needed. In that case we will make separate recommendations for Falls Creek and Icy Passage.

Conditions have changed in Gustavus since or shortly before the petition was submitted. These changes are significant, and are generally favorable for the petition. First, the new dock has been completed. Secondly, Alaska Marine Highway ("ferry") service to Gustavus has started. Thirdly, the Gustavus Electric Company ("GEC") hydro power plant on Falls Creek has also commenced operations. These changes and their impact upon the petition will be discussed further below.

3 AAC 110.090. Need

(a) The territory must exhibit a reasonable need for city government.

Falls Creek

City:

The City proposes to annex the Falls Creek area because the area exhibits a need for city government as evidenced by the following factors:

- The Falls Creek area is the single area with sufficient water resources to meet most local hydroelectric power needs. Ensuring that Gustavus is able to meet most of the community's electrical demands with relatively inexpensive hydroelectric power is central to the community's long-term viability.
- Development of the Falls Creek Hydroelectric Facility significantly changed public access to the area, and altered area land use and ownership patterns. Given the importance of the Facility and the related Falls Creek drainage area to the community, these changes clearly suggest the need for municipal planning, regulation and services.
- The Falls Creek area is the only practical source of water to supply a municipal water utility, which may ultimately be necessary to resolve certain public health needs.
- The Falls Creek area includes rock resources adequate to meet local construction needs; and
- The Falls Creek area includes sites suitable for developing, expanding and otherwise supporting critical community communication services.

Although uninhabited, the Falls Creek area proposed for annexation also exhibits reasonable need for city government. Largely as a result of the recent completion of the Falls Creek Hydroelectric Facility, this area is experiencing increasing commercial, recreational, and other community related activity, which demonstrates that the area is in need of city government. These activities include those associated with the day-today operation and maintenance of the Falls Creek Hydroelectric Facility. They also include gradually increasing public use of and interest in the Falls Creek drainage. This growing public interest and use is largely due to the fact that the Falls Creek Hydroelectric Facility project included construction of the first permanent road access into the area. Significantly, this access road originates with a connection to the City's road system. Although intended to support the construction and operation of the hydroelectric plant, this road dramatically improved public access to the area as well. Improved access combined with project-related changes in land ownership have resulted in increased public and private activity and interest in the area; the City anticipates that public and private activity in the area will continue to increase with time.

All of these activities represent aspects of the community that are increasingly exerting impacts and influences upon a limited portion of Falls Creek immediately adjacent to the

City's existing borders. These impacts will occur regardless of whether annexation is approved. Passage of time will exacerbate this situation. The nature of these impacts is essentially urban in character and reflects a need for city government. The territories proposed for annexation need city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. These conditions demonstrate that the area of Falls Creek proposed for annexation "exhibit[s] a reasonable need for city government" as required by 3 AAC 110.090(a). Therefore, annexation to the City of Gustavus, as proposed, is appropriate." (*Petition, pp 4 and 5 of 17.*)

Gustavus has traditionally offered Emergency Medical Services (EMS) in the Falls Creek area. The City's EMS presently cover that area; this is an extraterritorial exercise of the City's powers. While calls to this area have been limited in the past, the City anticipates increased demand for its EMS in the area as a result of the Falls Creek Hydroelectric Facility development. Some of this increased demand will relate to operation and maintenance of the newly constructed hydroelectric facility. Some of the increase undoubtedly will reflect increased use of the area by residents and visitors for recreational and subsistence purposes made possible by improved access. Accordingly, the City believes that annexation of the project area is appropriate to provide the City with a sounder basis for providing this service. (*Petition, Ex. 6, p. 13*).

Commerce:

It is important to note that 3 AAC 110.090(a) is based on whether the territory proposed for annexation needs city government, not whether the city needs the territory.

We find that Falls Creek does exhibit a reasonable need for city government. We base that primarily, but not entirely, upon the EMS services that the city does and would presumably continue to provide.

The Gustavus Volunteer Fire Department EMS is primarily a volunteer organization, although the fire chief is one of only four city employees.¹¹ According to the city's website, "[t]he Gustavus Volunteer Fire Department provides fire response, emergency medical services (EMS), and search and rescue for Gustavus and the surrounding area. It staffs the essential Airport Rescue and Fire Fighting service at the Gustavus Airport during the summer jet service periods. The Department works with the rangers of Glacier Bay National Park and with the US Coast Guard, during in search and rescue operations in the Gustavus, Glacier Bay, and Icy Strait areas. The GVFD is prepared to respond regionally to disasters when called."¹²

Motorized vehicles are generally prohibited (GEC and EMS vehicles are permitted). This is because of the nature of the lease between the Federal Regulatory Energy Commission ("FERC") and GEC. The hydro plant was built on what had been part of Glacier Bay National Park ("GBNP"). The federal government and the state swapped land, so that the power plant was built on state land, instead of in a national park. The land's use and access are restricted because the land had formerly

¹¹ The others being the librarian, the city clerk, and the person in charge of the landfill.

¹² <http://cms.gustavus-ak.gov/government/committees/GVFD>

been wilderness. Still, a number of local residents go to the territory to hike, bike, jog, or ski. Further cell phone coverage from Falls Creek is reported to be good.¹³

There is infrequent use of the EMS in Falls Creek. It is estimated that EMS services were necessary two times in the last three to four years. One time involved a chainsaw accident, and the other involved a heart problem. The EMS can access the road and has the combination to the locked gate. It is not anticipated that the EMS use would decrease. The city reports that it does not know of the fire department ever turning down a request for EMS services. The fire chief reports that the fire department provides both fire fighting and EMS service to Falls Creek, and that the services would continue.¹⁴

Two times in the past three to four years is not a great quantity of service, but the importance of each of those EMS calls is vital. The potential saving of a life cannot be underestimated. More importantly, if use of the Falls Creek territory increases, then the need for EMS there would also increase. As the cell phone coverage from Falls Creek is good, person who needed EMS service could call and request emergency service.

Commerce finds that construction of the access road has increased public access to the Falls Creek territory, primarily for recreational purposes. We expect that the Falls Creek usage will increase and would spur increased demand for EMS services. The city would then provide more EMS services in the Falls Creek territory. This is based upon both the road's existence and last year's advent of ferry service to Gustavus. Staff expects that this will increase visitation to Gustavus, particularly from Juneau (as of May 6, 2011, an adult one way ferry rate was \$33, and airfare was \$97 from Juneau to Gustavus).

The city has also stated that the Falls Creek territory would benefit from city planning. The city has not yet adopted planning powers. Its planning committee is more responsible for fiscal planning and strategies. The committee does not have land use planning, but it does plan for city projects and property.¹⁵

But, we believe Gustavus will adopt planning powers due to increased growth and visitation. The next few years will bring considerable change to Gustavus because there will be an influx of people, at least visiting, and possibly relocating, even if only seasonally. With that growth and resulting change to Gustavus, it is reasonably anticipated that planning would follow. As increased visitation and possible development of Falls Creek occurs, the territory would need the city government function of planning, in addition to EMS services.

This growth will result from the opening of the hydro plant, the opening of the new dock, and the advent of ferry service. All of these events have happened in the past year. That is substantial change for a city the size of Gustavus. These changes will bring about less expensive power, less

¹³ Personal communication with Greg Streveler, in May of 2011. Mr. Streveler chairs the Gustavus borough committee. The borough committee, name notwithstanding, was the committee responsible for preparing the Gustavus annexation petition.

¹⁴ Personal communication with fire chief Steve Manchester on May 10, 2011.

¹⁵ *Id.*

expensive shipping of goods, and less expensive transportation which will “open up” Gustavus because it will be easier to visit and less expensive to live in.¹⁶

The city has offered a number of other reasons for need. These include reliance upon Falls Creek as a reliable water source, the supply of available rock in the territory, and that Falls Creek is a potential site for a telecommunications tower. These changes are possible, but speculative. These however, are a need by the city for the territory to be annexed, but not a need by the territory for city government. While these examples do not meet the 3 AAC 110.090(a) standard, they might be pertinent for other standards.

In conclusion, the LBC staff finds the 3 AAC 110.090(a) is satisfied for Fall Creek because the territory exhibits a reasonable need for fire and EMS service which the city provides extraterritorially, and will likely continue to provide. This is a crucial service. Further, Gustavus’ anticipated growth will reasonably likely spur formal planning. While some of the uses for the territory are speculative, Commerce finds that Falls Creek needs this planning because reasonably anticipated change will occur there in the next 10 years.

Icy Passage

City:

The City proposes to annex an approximate 12 square mile portion of Icy Passage tidelands and submerged lands lying between the southern boundary of the City of Gustavus and the northern shore (mean high tide) of Pleasant Island. The City's interest in annexing this portion of Icy Passage is three-fold. First, Icy Passage is the sole corridor for accessing the community via water-based modes of transportation, and for residents and visitors to access nearby natural resources, particularly Pleasant Island and nearby Icy Strait. Second, Icy Passage enjoys recognized potential to be a source of hydrokinetic-generated electric power. Third, Icy Passage is a rich marine habitat; the community depends upon the bounty of both for recreation and sustenance. (*Petition, Ex. 6, p. 16*).

Because the mudflats are so extensive, the navigable portion of Icy Passage serving Gustavus is actually quite limited.

For the community, the consequences are clear: the portion of Icy Passage that is within the current City limits is impassable except by small boats during any but the higher stages of the tide. For all practical purposes, the generally navigable portion of Icy Passage and the only portions of Icy Passage suitable for a community anchorage are outside the current City boundaries. Accordingly, the City effectively has no control over the only marine access to the community. The City's proposed annexation will rectify that problem. (*Petition, Ex. 6, p. 18*).

All these approaches are relatively free form and somewhat haphazard; boaters anchor or install mooring buoys wherever they please as they attempt to maximize operational convenience without jeopardizing vessel safety. These arrangements have worked, more or

¹⁶ See “Icy Passage” below for further discussion.

less successfully, for many years, in part because the community's size did not generate enough traffic to cause serious conflicts or warrant other solutions. Together, these approaches offer a "meets minimum requirements," status quo "solution" at best; they do not offer any genuine potential for effectively facilitating community growth and development over the long term.

In fact, pressure is building to find better long-term solutions. The community faces increasing interest in and dependence on recreational and commercial boating in the area, and, as a result, growing pressure on the available moorage resources of Icy Passage. Part of this projected growth in demand comes from within the community itself, from its residents and its businesses. Another important component of increased demand comes from transient boaters, especially those visiting GBNP. (*Petition, Ex. 6, p. 20*).

Commerce:

We find that the Icy Passage territory ("Icy Passage") exhibits a reasonable need for city government. We base that primarily upon the need for controlled anchorage that the city would provide.

The city argues that Icy Passage needs city government for several reasons, including the potential for tidal power, the rich marine habitat, and access to Pleasant Island (where residents hunt deer and use for other subsistence activities), but most importantly in Commerce's view, to control the anchorage around the dock.¹⁷

As one can see from the photos in Exhibit 4, the new dock is longer and wider than the old dock. It also has a ramp, and more space.

The new dock can handle larger barges and bigger cargo than the old dock. The new dock can accommodate the freighters and the ferry. The ferry in turn, can carry flatbeds or Connex vans.¹⁸ Both the barge and the ferry will make it easier and less expensive to ship goods to Gustavus.

Gustavus does not have the natural deep water port that most Southeastern communities have. Deep water begins some distance from the shore. Some of the water indicated on the Figure 1 map is water when the tide is high, and mudflats when the tide is low. Also, the dock does not offer slips for most boats to tie up to, so boats often moor to a fixed anchorage in the "harbor." This creates a problem when large vessels need to get through.

If the Icy Straits territory was part of the city, the city could regulate the usage. The city could stipulate who may moor when and where. Staff believes that this moorage situation will only worsen because ferry service has started now, and there will be more traffic from large vessels. Some barge traffic that used to go to GBNP's Bartlett Cove headquarters will now be going to the Gustavus harbor. This will create more traffic in Gustavus harbor.

¹⁷ The new dock was built last year. The old dock has been torn down. See Report Exhibit 4 (not to be confused with the petition's exhibits) for a photo of both docks. The new dock is on the left.

¹⁸ Personal communication with Greg Streveler on May 10, 2011.

Further, as we indicated above, we expect that boat traffic will only increase in the harbor as more people come to visit. Gustavus will receive more independent travelers, as opposed to cruise ship passengers (who go to GBNP). Many of those people will arrive by plane or ferry. But as Gustavus itself grows as a tourist destination, more people will arrive in their own boats.

The city is considering getting a Village Public Safety Officer (VPSO), who would also act as the harbormaster.¹⁹ This would put some teeth into the city's oversight of the harbor. The city provides EMS services to the harbor.

Regarding the other reasons as to why Icy Passage needs city government, many of them seem speculative to Commerce, or are needs by the city, rather than by the territory. The tidal power application was withdrawn, and Commerce does not find that tidal power in Icy passage can be reasonably anticipated in the near future. As far as the community's interest in preserving rich fish habitat, that management would seem to be more of a state function. The use of Pleasant Island by city residents seems to reflect a need by the city, and not by the territory (although Fire Chief Manchester said that the city would respond to emergencies on Pleasant Island).

In conclusion, the LBC staff finds the 3 AAC 110.090(a) is satisfied for Icy Passage because the territory exhibits a reasonable need for harbor planning, and for fire and EMS service which the city provides extraterritorially, and will likely continue to provide. Gustavus' anticipated growth will likely increase that need. These reasons alone support the need of Icy Passage for city government.

(b) Territory may not be annexed to a city if 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 that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.

Falls Creek and Icy Passage

City:

Accordingly, the City of Gustavus contends that this petition meets the requirements of 3 AAC 1 10.090(b), because essential municipal services cannot be provided more efficiently or more effectively by another existing city or organized borough. Further, the City of Gustavus contends that this petition meets the requirements of 3 AAC 1 10.090(b), because the City is now and probably always will be the only municipality appropriately situated or able to provide municipal services in the territory proposed for annexation. . . . [t]he proposed annexation is essential to enable the City to continue to provide properly for the immediate and the long-term social, cultural and economic well being of community residents and businesses. (*Petition, Ex. 6, p. 32*).

Commerce:

¹⁹ Id.

First, Commerce agrees with the city's tacit suggestion that for 3 AAC 110.090(b), Falls Creek and Icy Passage can be considered together. Secondly, Commerce finds that Gustavus is in the unorganized borough. There are no borough services provided in the territory proposed for annexation. Further, the nearest city, Hoonah, is 25 miles away. Commerce finds it unlikely that Hoonah might expand to include Falls Creek and Icy Passage.

In short, there is no other local government that can provide essential municipal services. Commerce finds that 3 AAC 110.090(b) is met because essential municipal services cannot 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 that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.

Conclusion: Commerce finds for the above reasons that 3 AAC 110.090(a) and (b) are met.

3 AAC 110.100. Character

The territory must be compatible in character with the annexing city.

Falls Creek:

City:

To construct, operate and maintain this electric generation facility, Gustavus Electric Company built approximately four miles of limited access road. This road enjoys a direct connection to the City's road network via Rink Creek Road. The terms of existing project permits allow restricted public access from the City's road system to the farther reaches of the area proposed for annexation. Even with those limitations in place, the project road dramatically improves community access to and use of the resources (fish, wildlife, plant life, rock, etc.) of the area.

As a result, the Falls Creek area is becoming increasingly integrated into the community. . . .

Regardless of future development activity, if any, the fact that the Falls Creek area includes the only developable area immediately adjacent to the present City boundary speaks to the fact

that the area proposed for annexation is compatible with territory inside the City. (*Petition, Ex. 6, p. 35*).

Further, the area proposed for annexation integrates compatible natural geographical area and features into the City. The area rises gradually to form the Falls Creek watershed, and as such, it forms a natural eastern backdrop to the community. The portion of the Falls Creek area upland

of Icy Passage is similar in character and development potential to some other areas within the City; in addition it adds resources such as rock and old-growth timber that are scarce within present city boundaries. (*Petition, Ex. 6, p. 36*).

Commerce:

In order to evaluate character, it is necessary to determine how similar the territory is with the city. Falls Creek is unpopulated. While it has allotments, only one allotment is populated, and even then only used as a cabin by a Hoonah resident.²⁰ Falls Creek is also undeveloped, with the significant exception of the hydro plant, and the access road leading to it. Falls Creek is also significantly higher than the city.

While these factors do not indicate similarity in character between the city and Falls Creek, there are other factors that do.

First, the city uses and depends on Falls Creek now and potentially in the future. It gets its electricity from Falls Creek. This recent change is significant for a community that formerly generated electricity through diesel fuel. The city uses the territory by hiking, biking, running, skiing,

²⁰ *Id.*

and other activities. As pointed out above, it is likely that those activities will only increase with time. The city could possibly extract other resources such as rock and drinking water. While these activities are subject to the lease between FERC and GEC, we believe that it is reasonable that Falls Creek will be tapped as a source of drinking water. Further, that use is reasonably compatible with the use of Falls Creek for a hydro plant. These recent and potential future activities all show similar character between the city and Falls Creek.

Secondly, the territory and the city are linked by a road. The city's Rink Road leads to the access road. While the access road is gated and bars most motorized vehicles, there is an indisputably transportation link. More importantly, the link is used, not only by GEC vehicles, but also by recreational users not in motorized vehicles. This link and its use strengthen the compatibility between the city and Falls Creek.

In conclusion, Commerce finds that the Falls Creek is compatible in character with the city because it is being used by city residents for both recreational and developmental purposes. The use will not only continue, but will also increase. Commerce believes that there will be future development in Falls Creek. We agree with the city that consequently, Falls Creek is becoming increasingly integrated into the community. The territory is linked by the road system, which strengthens the bond between the city and the territory. For all of these reasons, Commerce finds that the Falls Creek territory is compatible in character with the city.

Icy Passage:

City:

The community views the territory proposed for annexation as an inextricable *part* of Gustavus. It includes essential resources that are part of the community's daily life. Therefore, annexation of these areas is critically important to the City's ability to continue providing adequately for its residents and businesses. (*Petition, Ex. 6, pp. 29-30*).

Thus, with completion and use of this new public dock, a larger portion of Icy Passage effectively becomes an integral part of the community.

In addition, Icy Passage offers a rich marine habitat. It offers many subsistence and recreational opportunities for the community; residents and visitors enjoy and rely upon these resources. But, community use of Icy Passage does not stop at the City limit. The near waters of Icy Passage between the Gustavus mainland and Pleasant Island are essentially one area in character and use from a community perspective. (*Petition, Ex. 6, p. 37*).

The Icy Passage area proposed for annexation includes only submerged lands between the present southern City boundary and Pleasant Island. Therefore, it is similar to and fully compatible with the character of the immediately adjacent tidelands and marine channel area within the City's boundary. (*Petition, Ex. 6, p. 37*).

Commerce:

Like Falls Creek, Icy Passage is unpopulated. It is all water or submerged lands. Commerce finds that Icy Passage is compatible in character with the city because it is essentially an extension of the city. The dock is connected to the land, and extends nearly to the city boundaries. The moorage, however, goes beyond the dock and into the territory. That moorage is important to the city because many residents and visitors moor there. It would be illogical to include the dock in the city limits, but not the moorage. Commerce finds that the moorage usage will increase over time.

Icy Passage is also used by boats and barges to get to Gustavus. Icy Passage is used by city residents to get to Pleasant Island.

Secondly, we are struck by the very first sentence in the city's comments above: "The community views the territory proposed for annexation as an inextricable *part* of Gustavus." The city views Icy Passage as a part of Gustavus because of the territory's resources, and because of transportation in the territory. The city extends into the water now. Commerce finds that all of the territory is compatible in character because of Icy Passage's importance to the city.

In conclusion, Commerce finds that Icy Passage is compatible in character with the city because the territory is a natural extension of the city. It is used by the city for community purposes such as moorage and transportation. Also, the community feels that Icy Passage is a part of the city and should be inside the city limits.

Conclusion: Commerce finds that 3 AAC 110.100 is met.

3 AAC 110.110. Resources

The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

Falls Creek and Icy Passage:

City:

Upon incorporation, the City offered five primary services and facilities including library, recycling and refuse disposal, emergency response, road maintenance, and Internet service. In 2007, the City added small boat facilities and services as its sixth primary municipal service. (*Petition, Ex. 6, p. 42*).

It also clearly highlights the careful, prudent manner in which the community and its city government conducts the public's business. Thus it is clear that Gustavus has adequate human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level, and that the City has managed those resources in a sound and prudent manner. In this way, too, the City has demonstrated the capacity of those resources and its own capability to support the proposed extension of city government into the area proposed for annexation.

The territory proposed for annexation is uninhabited presently; therefore, the initial demands on the City to provide services, beyond those it presently offers through extraterritorial powers, will be minimal. The City is not proposing to add new functions as a result of this annexation. The proposed annexation will only extend existing functions into the new territory. For all practical purposes, this extension of existing functions represents a minimal increase in city responsibility. . . . (*Petition, Ex. 6, p. 42*).

The City does not anticipate that it would receive any significant adjustments to its revenues as a result of the proposed annexation. (*Petition, Ex. 6, p. 43*).

Commerce:

Commerce finds that the proposed expanded boundaries of the city have the human and financial resources necessary to provide essential municipal services on an efficient, cost effective level based upon a minimal government, potential tax revenue, a reasonably sound economy, expected lower shipping costs and increased visitation, the low financial impact of the proposed annexation to the city, and Gustavus' population.

The city has merely six municipal functions. They are: Library, recycling and refuse disposal, fire and EMS, road maintenance, internet service, and small boat facilities and services. Commerce finds that the city has not taken on more than it can fiscally sustain. As Gustavus is a second class city, it does not operate a school system. It does not have a police department, and has only four paid employees.

Gustavus has a 2% sales tax, a 4.0% bed tax and a \$10.00/per fish box tax. It has no property tax, yet is financially sound. The city has adequate revenue now without having to impose additional taxes. If there came a time when Gustavus needed or wanted more tax revenue, it is reassuring to know that it has a potential property tax.

Exhibit 5 of the petition states that the total encumbered finds are \$593,777.74, and the total unencumbered funds at that time were \$456,691.39. The city states in Exhibit 5 of this report that: "Unencumbered reserves are getting low especially after spending \$219,000.00 as part of the local match for the new floats located by our new dock. We are at the point where the city feels it is best to not budget reserves unless absolutely necessary." While we note the health of those funds, we are concerned that the city does not plan to budget reserves unless absolutely necessary. We ask if, if the city intends to build up its encumbered reserve again after spending \$219,000.

After examining Petition Exhibit 5 (budget), Commerce finds that the city is in sound financial shape.²¹ It runs no deficit, has minimal expenses and services, and has a healthy economy. The economy is largely based on tourism, which has decreased during the current recession, but which we expect to recover. Further, we have every reason to believe that the economy will improve, not only as the recession recedes, but due to growth from less expensive local electricity, lower shipping costs, and lower transportation costs discussed above.

To quote the DCRA Community Information Summary for Gustavus²²:

Gustavus has a seasonal economy; the Glacier Bay National Park attracts a large number of tourists and recreation enthusiasts during the summer months. Gustavus has three kayaking companies and a 9-hole golf course. There are several sport fishing guides, and some commercial fishing occurs. Over 50% of working locals are employed by the National Park Service. The lodge, airport, school, and small businesses also offer employment. The number of residents during the summer approximately doubles from the current population estimates of year-round residents. Gardening is a prevalent activity during the summer. In 2009, 31 residents held commercial fishing permits.

The 2005-2009 American Community Survey (ACS) estimated 187 (MOE +/-67)¹ residents as employed. The ACS surveys established that average median household income (in 2009 inflation-adjusted dollars) was \$45,833 (MOE +/--\$19,972). The per capita income (in 2009 inflation-adjusted dollars) was \$27,808 (MOE +/--\$5,008). About 2.2% (MOE +/-2.5%) of all residents had incomes below the poverty level.

Further, although the standard asks if the city can provide essential municipal services in the entire expanded city, it is relevant that the proposed annexation will provide no real expenses, and no real revenue. The annexation, while important to the city, will have little impact in the near future upon the city coffers, or its ability to provide essential municipal services to the expanded city.

²¹ DCRA local government specialist Bill Rolfzen provided analysis. Mr. Rolfzen is based in Juneau and is knowledgeable about the financial status of Southeast communities.

²² <http://www.commerce.alaska.gov/dca/commdb/CIS.cfm>.

Gustavus has a population of 442. While it is not large, it is bigger than many second class cities, and larger than some first class cities. The city cites its volunteerism, and indeed, there seem to be many volunteers in Gustavus. For example, the library has one full time librarian, and all the other staff are volunteers. Its website states: “At the Gustavus Public Library, **Volunteers Are Our Foundation**. We are staffed almost exclusively by volunteers.”²³

Commerce finds that 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, a reasonably sound economy, expected lower shipping costs and increased visitation, the low financial impact of the proposed annexation, and its population size provide those resources.

As the regulation examines a city’s ability to efficiently provide essential municipal services, we must examine what are essential municipal services. 3 AAC 110.970(c) states that:

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.

3 AAC 110.970(d) gives examples of what the LBC may find to include essential municipal services. With that as a basis, and using independent judgment, Commerce finds that at a minimum, recycling and refuse disposal, fire and EMS, and road maintenance are bare bones necessary services that any municipality should provide. We further find that the library, internet service, and small boat facilities and services might not be absolutely necessary, but benefit any community. Further, tax levying ability, while not a universally beloved function, is an essential municipal service which any city needs. We find that Gustavus levies taxes.

We further find that all of these services promote maximum local self government because they develop a sense of community, and probably would not be otherwise provided, at least not by any other government. They also promote maximum local self-government because they empower the populace to take care of its own needs.

Thirdly, as we found in our analysis of 3 AAC 110.090(b), we find that these services cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state because there is no other nearby political subdivision of the state.

Commerce finds that the requirements of 3 AAC 110.970(c) are met for the above reason.

²³ <http://cms.gustavus-ak.gov/services/library>.

Conclusion: Commerce finds that 3 AAC 110.110 is met because 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. That is because Gustavus' minimal government, potential tax revenue, a reasonably sound economy, expected lower shipping costs and increased visitation, the low financial impact of the proposed annexation, and its population size provide those resources.

We further find that Gustavus' essential municipal services 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.

3 AAC 110.120. Population

The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government.

Falls Creek and Icy Passage

City:

Gustavus continues to see modest growth since its incorporation. Based upon the DCCED certified estimate of 448 residents in 2008, Gustavus grew approximately four percent since it filed its incorporation petition. (*Petition, Ex. 6, p. 52*).

2000 U.S. Census Bureau figures indicate Gustavus' total population is 429. DCCED's 2007 certified population estimate similarly reports 448 residents. U.S. Census Bureau figures indicate steady population growth from 98 to 429 residents during the past 30 years (Figure 1). In recent years, Gustavus has experienced less robust population growth fluctuating between 418 and 459 residents (Figure 2). Long-term projections indicate Gustavus' local population will grow to nearly 725 residents by 2020 (Figure 1).¹⁴

The time period of largest population growth (1980 - 1990, 163% increase) likely occurred due to the establishment of a centralized electric utility, upturn in commercial fishing, and transition of Glacier Bay from monument status to a national park (Gustavus Strategic Plan, 2005). As long-term projections indicate, Gustavus will likely experience moderate future population growth. The establishment of a hydro power facility and subsequent lower power rates, new dock, and potential Alaska Marine Highway System (AMHS) service will all likely support long-term future population growth.

Gustavus' population is highly seasonal - peaking during the summer months. While exact monthly population counts are unavailable, it is estimated Gustavus' population may fluctuate up to 50% depending on the season (McDowell Group, 2008). (Emphasis added.) (*Petition, Ex. 6, pp. 53-54*).²⁴

Commerce:

In 2000 the population was 429. In 2007 it was 448. In 2008 it was 448. In 2009 it was 451. In 2010 it was 442. The 10 year census figures are considered more accurate than the annual estimates. The census figure increased from 429 in 2000 to 442 in 2010, or .69%. This is a very marginal increase, but it is an increase.

The proposed annexation will not increase Gustavus' population, as nobody lives in either Falls Creek or Icy Passage. But, Commerce reiterates that the anticipated future growth in Gustavus will come due to the hydro plant (lower electrical costs), the new dock (lower shipping costs), and the start of ferry services (less expensive shipping and increased visitation). This increase in visitation

²⁴ Quoting DCRA's 2008 publication City of Gustavus: Three-Year Anniversary Review.

would likely result in growth for local businesses, and possibly a population increase, at least seasonally.

Conclusion: The proposed expanded boundaries will require little additional services from the city, and hence not require an increased population. Commerce finds that Gustavus' population is stable, and shows marginal increase. We predict future growth for Gustavus. For those reasons, Commerce finds that 3 AAC 110.120 is met because the population within the proposed expanded boundaries of the city is sufficiently large and stable to support the extension of city government.

3 AAC 110.130. Boundaries

(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

Falls Creek and Icy Passage

Commerce:²⁵

Few municipal services will be extended to Falls Creek and Icy Passage. Fire and EMS are and will be provided to both Falls Creek and Icy Passage. The city will control the moorage situation in Icy Passage, if the annexation is approved. No taxation is planned in the territory proposed for annexation. As there are no residents in either Falls Creek or Icy Passage, the annexation will not bring additional residents into the city who would strain the existing land and water necessary to provide the development of essential municipal services.

Gustavus presently encompasses 29.2 sq. miles of land and 10.0 sq. miles of water. It seeks to annex about 16 square miles. If annexation is approved, the city would grow from 39.2 to 55.2 square miles of land and water, or an increase of 40.81%. Commerce finds this to be an adequate amount of land and water to provide the development of all essential municipal services.

The city is examining piping water from Falls Creek to supply the city water system, but has no firm plans to date. A change to the lease agreement between FERC and GEC would be necessary to do so. The idea is being examined because Gustavus has ground water, and there are concerns about the future safety of the water system. There is also discussion about the city hiring a contractor to pump out individual septic tanks. For now, however, it appears that Gustavus has adequate water to provide for the development of essential municipal services.

We further note that Gustavus offers few municipal services, essential or otherwise, at this time. We find that Gustavus already provides its essential municipal services on an efficient, cost effective level. It does not spend a great deal of money, has few paid employees, and relies heavily upon volunteerism.

In conclusion, we find that annexation would bring no additional residents into the city. We find that Gustavus has adequate water and land to provide for the development of essential municipal services. Commerce finds that Gustavus efficiently provides limited essential municipal services. For those reasons, Commerce finds that the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

²⁵ We included no comments from the petitioner here because its comments seemed to us to address need, and not the relevant point as whether there was sufficient land and water.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

Falls Creek and Icy Passage

City:

Inspection of the map showing the boundaries of the proposed annexation (Exhibit 3) clearly demonstrates that this petition meets the requirements of 3 AAC 110.130(b).

The boundaries of the area proposed for annexation are simple extensions of the City's existing boundaries. These extensions generally follow section lines, natural drainages and other geographic features. The territory so described forms a single contiguous area, which totals approximately 16 square miles, and which wraps around the southern and eastern sides of the City. The proposed boundaries do not include or create enclaves in the annexing city. *(Petition, Ex. 6, p. 63)*

Commerce:

We agree with the city that the territory proposed for annexation is contiguous, and does not create enclaves. Commerce finds that 3 AAC 110.130(b) is met.

(c) To promote the limitation of community, the proposed expanded boundaries of the city

(1) 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 10 years following the effective date of annexation; and

Falls Creek and Icy Passage

City:

The territory, which the City proposes to annex, is a modest, compact and contiguous addition to the area currently within the boundaries of the City of Gustavus. This territory is not regional in scope; it is directly related to and limited to existing City services, and to present and long-term community needs.

The territory proposed for annexation is comprised of two distinct areas - a portion of the Falls Creek drainage and a portion of Icy Passage. As discussed in the "Need for City Government" portion of this Brief, both areas are integral parts of Gustavus, and they

exhibit a need for city government at this time. Also as discussed earlier, the City anticipates that this need will increase with time. Thus the purpose of this proposed annexation is to address immediate and longer-term needs for *city* services in those areas by extending *city* services into the areas as soon as possible. (*Petition, Ex. 6, p. 64*).

The City also anticipates possible development of a municipal water utility tapping Falls Creek resources, siting new City-managed Internet service and emergency services communication facilities, and accessing construction rock as permitted by the State in the area within the next ten years. . . .

Most immediately, the City must begin soon to extend its port and harbor functions into this area. Further, the City is mindful of the fact that the most likely uses and developments in Icy Passage within the upcoming decade would likely affect and could possibly conflict with other uses equally important to the community. Therefore, community interest dictates that the City position itself as an effective player to guide and influence federal and state agencies as they consider decisions affecting Icy Passage and Gustavus. (*Petition, Ex. 6, p. 65*).

Commerce:

Commerce finds that Gustavus, as an incorporated city, and with a population of 442, is an existing local community.

The city would increase from 39.2 square miles of land and water to about 55.2 square miles of land and water. While it is proportionally a large increase, it is not an undue size for a city, and is indeed smaller than many other cities. Some city services will be extended to the territory. Based on those reasons, Commerce finds that the proposed expanded boundaries are on a scale suitable for city government.

Commerce finds that there is reasonably predictable growth, development, and public safety needs during the 10 years after annexation in both Falls Creek and Icy Passage. While we believe that some of the proposed uses (e.g. rock quarrying, a communications tower, and tidal power) are speculative, we find that Falls Creek will experience growth over the next 10 years because the number of recreational users is increasing. Commerce believes that with time, and particularly with the advent of ferry services bringing tourists into Gustavus, that Falls Creek's use will grow. We also we believe that it is reasonably likely that Falls Creek will be tapped as a source of drinking water. If that occurs, further growth will occur in Falls Creek.

The city currently provides fire and RMS services to Falls Creek. Commerce finds that this service likely could increase as visitation increases. We predict that visitation will increase with the advent of ferry service. LBC staff finds that public safety needs in Falls Creek will occur over the next ten years.

Commerce finds that there is reasonably predictable growth and development in Icy Passage. The new dock can handle increased traffic, and larger barges. The ferry will use the dock. Freight that used to go by water to GBNP's Bartlett Cove dock will instead now go to the city's new dock. Further, with the visitation growth that we predict for Gustavus, increased small boat traffic in the

harbor is reasonably predictable. With the increased boat traffic from all kinds of vessels, it is reasonably likely that there will be increased need for EMS service in Icy Passage.

For all of the above reasons, we find that the proposed expanded boundaries of the city are on a scale suitable for city government and 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 annexation, and that this promotes the limitation of community.

(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 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

Falls Creek and Icy Passage

City:

The City's proposal does not include entire geographic regions. Rather, the boundaries of the area proposed for annexation represent extensions of existing boundaries that generally follow section lines, natural drainages and other geographic features, and that facilitate extension of city services into territory requiring those services. The City's proposal judiciously seeks annexation of only territory that the City requires to address known and reasonably anticipated community, not regional, needs. The City tailored the proposed annexation to include the minimum territory required by the City of Gustavus to provide appropriately for the long-term social, cultural and economic well being of community residents and businesses, and to include only that territory that demonstrates a reasonable need for city government. (*Petition, Ex. 6, p. 66*).

Commerce:

As above, the proposed expanded boundaries of the city do are on a scale suitable for city government. 3 AAC 110.990 (28) defines "region" as:

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.

We find that the proposed expanded boundaries of the city do not fit any of the above regulatory criteria, and hence do not comprise an entire geographical region. Nor do they fit the common sense definition of an "entire geographical region." Instead, the proposed expanded boundaries are relatively small, and are more appropriate for a city than for a borough.

We do not find that they comprise large unpopulated areas, either. 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 proposed expanded boundaries of the city do not comprise large unpopulated areas because again, they are more suitable for a city than for a borough. Although the proposed expanded boundaries of the city are unpopulated, they are relatively small, and do not comprise an "area."

In conclusion, Commerce finds that the territory proposed for annexation is suitable for city government. Commerce further finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. Even if the proposed expanded boundaries of the city did include entire geographical regions or large unpopulated areas, we find that those boundaries are justified by the application of the standards in 3 AAC [110.090](#) - 3 AAC [110.135](#). As above, we find that they are otherwise suitable for city government.

(d) 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.

Falls Creek and Icy Passage

City:

The City of Gustavus is located within the Unorganized Borough. The area proposed for annexation is contiguous to the current boundaries of the City of Gustavus. Further, the boundaries of the area proposed for annexation are not contiguous to, and do not overlap, the boundaries of an existing organized borough or city. Finally, this petition does not propose an annexation that involves detachment of territory from an existing municipality. (*Petition, Ex. 6, p. 67*).

Commerce:

We agree with the city. The proposed expanded boundaries of the city overlap neither an existing organized borough nor another existing city, so 3 AAC 110.130(d) is moot and does not apply.

Conclusion: We find that the requirements of 3 AAC 110.130 are met.

3 AAC 110.135. Best Interests of State

(a) *In determining whether annexation to a city is in the best interests of the state under AS 29.06.040. . . .*

Sec. 29.06.040 states that:

(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

Falls Creek and Icy Passage

City:

The city argues that the proposed annexation promote the best interests of the state because it promotes maximum local self government, promotes a minimum number of local government units, and will relieve the state of the responsibility of providing local services. (*Petition, Ex. 6, pp. 69-72*).

Commerce:

We find that the petition meets the best interests of the state requirements for several reasons.

First, we find that it does promote maximum local self-government. Please see our analysis under 3 AAC 110.981.

Second, we find that it does promote 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. Please see our analysis under 3 AAC 110.982.

Thirdly, the annexation is in the best interests of the state for other reasons. For example, as traffic in Icy Passage increases because of the new dock and the start of ferry service, demand for moorage space will increase. Competition for the moorage and jeopardizing of marine traffic could result. It is in the state's best interests to minimize conflicts and impediments to marine traffic.

Counter to the city's contention, we do not find that the annexation would relieve the state of the responsibility of providing local services. We did not see any specific services mentioned by the city, nor are aware of any which the state currently provides and the city would then assume. This differs from the situation when the city incorporated, and perhaps assumed state functions.

Conclusion:

The annexation is in the best interests of the state because it would promote a minimum number of local government units, because it would promote maximum local self-government, and because, *inter alia*, it would minimize conflicts and impediments to marine traffic.

3 AAC 110.140. Legislative review

Territory that meets the annexation standards specified in 3 AAC [110.090](#) - 3 AAC [110.135](#) may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:

- (1) the territory is wholly or substantially surrounded by the annexing city;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) repealed 5/19/2002;
- (7) annexation of the territory will promote
 - (A) maximum local self-government, as determined under 3 AAC [110.981](#); and
 - (B) 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;
- (8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, [AS 29.05](#), and 3 AAC [110.005](#) - 3 AAC [110.042](#), and is in the best interests of the state;
- (9) 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.

Falls Creek and Icy Passage

City:

3 AAC 110.140 identifies eight circumstances under which a proposal to annex territory by the legislative review process can be considered appropriate. 3 AAC 110.140 requires that a petition meet at least one of those eight circumstances to be considered "appropriate" for consideration under the legislative review process. This section will demonstrate that the City's proposal to annex the described territory via the legislative review process is appropriate, because it meets five of those circumstances. (*Petition, Ex. 6, p. 73*).

Commerce:

We address all eight circumstances whether or not the city addressed them because the LBC need find that only one of the eight circumstances is met for 3 AAC 110.140. We do not know in advance which circumstance(s), if any, the LBC will find is met. Therefore, we address each one.

- (1) the territory is wholly or substantially surrounded by the annexing city;

Falls Creek and Icy Passage:

City:

The city offered no comments on this point.

Commerce:

We find that this circumstance does not apply.

- (2) 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;

Falls Creek and Icy Passage:

City:

The city offered no comments on this point.

Commerce:

We do not find that the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in Falls Creek, and annexation will enable the city to regulate or control the detrimental effects of those conditions.

Gustavus' harbor is changing with the opening of the new dock and the start of ferry service. More traffic and larger vessels (barges and ferries) will increase marine traffic congestion. With an

increased number of vessels mooring there will be more traffic for the barges and ferry to navigate around unless there are city specified moorages outside the traffic lanes. The city has discussed regulating and enforcing the moorage sites.

We find that the health, safety, or general welfare of city residents is or will be endangered by moorage and marine traffic conditions existing or potentially developing in Icy Passage. Annexation will enable the city to regulate or control the detrimental effects of those conditions.

We find that 3 AAC 110.140(2) is met for Icy Passage, but not for Falls Creek.

(3) 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;

Falls Creek:

City:

[T]he extension of city services or facilities into the territory proposed for annexation is necessary to enable the city to provide adequate potable water 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. (*Petition, Ex. 6, p. 75*).

Commerce:

3 AAC 110.140(3) is not met for Falls Creek because we find that it is possible for a potable water system to be delivered to the city without the water source being within the city. Currently the hydro plant provides electricity to the city, and it is outside of the city. We do not find that it is impossible or impracticable for the city (assuming that it is a municipal function, and not private) to have a water system unless it is in city limits.

Icy Passage

City:

[T]he extension of city services or facilities into that territory is necessary to enable the City to provide adequate small boat harbor services and facilities to City residents, and it is impossible or impractical for the City to extend those facilities or services unless the territory is within the boundaries of the City. (*Petition, Ex. 6, p. 77*).

Commerce:

We agree with the city. We find that there is a need for the city to control the moorage and marine traffic in the harbor. We find that the extension of city services or facilities into that territory is necessary to enable the city to provide adequate small boat harbor services and facilities to city residents, and it is impossible or impractical for Gustavus to extend those facilities or services unless the territory is within the city limits.

We find that 3 AAC 110.140(3) is met for Icy Passage, but not for Falls Creek.

(4) 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;

Falls Creek and Icy Passage

City:

The city offered no comments on this point.

Commerce:

We find that 3 AAC 110.140(4) is not met for either Falls Creek or Icy Passage. The city currently provides fire and EMS to Falls Creek and Icy Passage. While there are no residents, there are owners in both Falls Creek and Icy Passage. There are allotments in Falls Creek, with one cabin which is infrequently occupied. There are also GEC owned facilities. Icy Passage has the state owned dock and city owned floats. There are privately and publicly owned boats.

All of these owners do receive and can reasonably expect to receive fire/EMS service. But, a practical or equitable alternative method is available to offset the cost of providing these benefits. The city could simply charge those who receive benefits, and offset the cost of providing these benefits. For that reason, although benefits of city services are received, 3 AAC 110.140(4) is not met.

(5) 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;

Falls Creek:

City:

Annexation of the Falls Creek area will allow the City, by planning, controlling and otherwise exercising its powers, to actively support GEC's efforts to operate the hydro facility at the lowest possible cost and thereby to contribute to community economic development and diversification. (*Petition, Ex. 6, p. 78*).

The recently completed Falls Creek Hydroelectric Facility introduces new and predictable activities related to construction and operation of the hydroelectric facility; these activities will affect the area and the community's interrelationship with the area. It also introduces an element of uncertainty about cumulative and long-term effects. Those changes, known and unknown, in an immediately adjacent and integral part of the Gustavus community clearly demonstrate the need to extend city government planning and control into the area proposed for annexation. (*Petition, Ex. 6, p. 79*).

Annexation of the Falls Creek area would bring the probable source of water for a municipal

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water system within the City limits and best enable the City to plan, provide and regulate adequate potable water services for City residents. (*Petition, Ex. 6, p. 79*).

Accordingly, the City believes that annexation of the project area is appropriate to provide the City with a more solid basis for planning, controlling and providing this important EMS service. (*Petition, Ex. 6, p. 80*).

Annexation of the Falls Creek area will facilitate community planning, access to, control, and use of those resources, which are critically important for economical community development. (*Petition, Ex. 6, p. 80*).

Again, annexation of the Falls Creek area will facilitate local planning, development, and control of sites necessary for vital community communication services. (*Petition, Ex. 6, p. 80*).

Commerce:

Commerce agrees with the city that annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory. We do not agree that all of the uses cited are “reasonably anticipated,” particularly given that the lease between FERC and GEC limits uses in Falls Creek. We find that a water system is reasonably anticipated, but that the other uses are speculative. Also, we are not quite sure how annexing “the Falls Creek area will allow the City, by planning, controlling and otherwise exercising its powers, to actively support GEC's efforts to operate the hydro facility at the lowest possible cost and thereby to contribute to community economic development and diversification.” How would city planning powers (when adopted) help GEC lower its costs?

Further, the city’s analysis seems to miss the second point of 3 AAC 110.140(5), that the reasonably anticipated growth or development in the territory . . . may adversely impact the city. We understand the city’s point that the possible development would help the city. But, no showing has been made of possible development that might hurt the city.

For those reasons, we do not find that 3 AAC 110.140(5) is not met for Falls Creek.

Icy Passage:

City:

The City is facing increasing pressure to develop safe moorage and anchoring solutions to meet community needs; however options for solving those problems are limited to locations that lie outside the current City boundaries. The City's proposed annexation will address that problem.
(*Petition, Ex. 6, p. 81*).

The City anticipates increased use of this new dock, especially due to the GBNP's decision to shift its supply barge shipments to the new State dock; therefore, the City anticipates increasing occurrences of these use conflicts over time. . . Annexation, as proposed, will

allow the City to regulate and control harbor use for the overall benefit of the community. (*Petition, Ex. 6, p. 81*).

[T]he demand for other competing uses of Icy Passage, including requirements for vessel transit, moorage and anchoring, hydrokinetic power generation, subsistence and recreation, all important but potentially competing interests, demonstrate that the City needs to annex the area to ensure that decisions affecting Icy Passage reflect a balance appropriate to Gustavus. (*Petition, Ex. 6, p. 82*).

Commerce:

We have found above that annexation of Icy Passage will enable the city to plan and control reasonably anticipated growth or development in the territory. Commerce finds that marine traffic in the harbor will increase, and that such increased marine traffic and demand for moorage is reasonably anticipated growth or development. This reasonably anticipated growth or development may adversely impact the city because city residents and businesses may be hurt if boats cannot get to the dock easily, and moorage is not controlled. There is a need for the city to control the moorage and marine traffic in the harbor to enable the city to provide adequate harbor services and facilities to city residents and visitors. For those reasons, we find that 3 AAC 110.140(5) is met for Icy Passage.

(6) repealed 5/19/2002;

(7) annexation of the territory will promote

(A) maximum local self-government, as determined under 3 AAC [110.981](#); and

(B) 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;

Falls Creek and Icy Passage

City:

[T]he annexation of territory to the City of Gustavus "would extend local government to territory and population of the unorganized borough where no local government current exists."

The City's annexation proposal meets the condition established under 3 AAC 110.981(7). (*Petition, Ex. 6, p. 84*).

The effect of the City's proposed annexation would be to enlarge the jurisdictional boundaries of an existing local government rather than to promote the incorporation of a new city or creation of a new borough service area. (*Petition, Ex. 6, p. 84*).

Commerce: Please see our analysis under 3 AAC 110.981 and 3 AAC 110.982, respectively, as well as under 3 AAC 110.135. Annexation will promote maximum local self government and a minimum number of local government units. We find that 3 AAC 110.140(7) is met for both Falls Creek and Icy Passage.

(8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, [AS 29.05](#), and 3 AAC [110.005](#) - 3 AAC [110.042](#), and is in the best interests of the state;

Falls Creek and Icy Passage:

City:

The annexation of the Falls Creek and Icy Passage areas through the legislative review process, as proposed, satisfies 3 AAC 110.140(8) because it would enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042.

The city has thoroughly addressed 3 AAC 110.140(8). Please see the petition, Exhibit 6, pages 84 through 98 for its position.

Commerce:

Art. X, sec. 7 states that “[c]ities shall be incorporated in a manner prescribed by law.” As below, we find that the city statutory and regulatory incorporation standards are met. Commerce finds that the constitutional requirements for city incorporation are met.

The requirements of AS 29.05 are included within 3 AAC 110.090 – 3 AAC 110.140. As 3 AAC 110.090 – 3 AAC 110.140 are satisfied, so is AS 29.05. For that reason, 3 AAC 110.140(8)’s requirement that the annexation must enhance the incorporation standards of AS 29.05 is met.

A city annexation must meet the 3 AAC 110.005 – 3 AAC 110.042 requirements for city incorporation. Commerce finds that those regulatory requirements are also included within 3 AAC 110.090 – 3 AAC 110.140. We have found or are finding that the 3 AAC 110.090 – 3 AAC 110.140 requirements for city annexation were met. For that reason, 3 AAC 110.140(8)’s requirement that the annexation must enhance the city incorporation standards set out in 3 AAC 110.005 – 3 AAC 110.042 is met.

Regarding the requirement that the annexation must be in the best interests of the state, we found in our analysis of 3 AAC 110.135 that the best interests of the state were met by this proposed annexation.

Commerce finds that 3 AAC 110.140(8) is met for both Falls Creek and Icy Passage.

(9) 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.

Falls Creek and Icy Passage:

City:

[T]he City's petition promotes maximum local self-government and a minimum number of government units. Therefore, the City's petition serves the policies expressed in art. X, sec. 1 of the Constitution. (*Petition, Ex. 6, pp. 98 -99*).

Consequently, the City's proposal to pursue the subject annexation through the legislative review process serves the policies of AS 29.06. (*Petition, Ex. 6, p. 99*).

[T]he proposed annexation is in the best interests of the state. (*Petition, Ex. 6, p. 99*).

Commerce:

Commerce finds that the 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. We find that the proposed annexation promotes maximum local self-government and a minimum number of government units, and is in the best interests of the state. Commerce finds that 3 AAC 110.140(9) is met for both Falls Creek and Icy Passage.

Conclusion: We find that the requirements of 3 AAC 110.140 (7), (8), and (9) are met for both Falls Creek and Icy Passage. We further find that the requirements of 3 AAC 110.140 (2), (3), and (5) are met for Icy Passage, but not for Falls Creek.

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.

Falls Creek and Icy Passage:

City:

The City intends to extend all existing City functions to the annexed territory immediately upon the effective date of the annexation. However, the City does not require an elaborate transition plan to accomplish this goal. The essential features of the City's transition plan follow.

The territory proposed for annexation is uninhabited; it does not require the City to extend or add immediately significant City services or facilities. . . .

Further, the City already provides EMS services on an extraterritorial basis in the territory proposed for annexation. The City would continue offering existing levels of EMS service throughout the territory after annexation. The transition in this regard would be seamless and immediate.

Although the City does not anticipate any immediate or short-term need to extend other services and functions to the territory proposed for annexation, it is prepared to do so on an as-needed basis. (*Petition, p. 11 of 17*).

Commerce:

Gustavus has shown that it will extend few services to Falls Creek and Icy Passage. 3 AAC 110.900(a) requires that the petitioner demonstrate the capacity to extend essential municipal services. Commerce has shown that it has the capacity to extend those services. For that reason, Commerce finds that 3 AAC 110.900(a) is met.

(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 borough, city, unorganized borough 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 borough, city, and unorganized borough 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.

Falls Creek and Icy Passage:

City:

However, there are no existing boroughs, cities, unorganized borough service areas or other appropriate entities currently exercising any powers, duties, rights, or functions in the territory proposed for annexation. Accordingly, the City did not prepare the plan that would otherwise be required under 3 AAC 110.990(b). (*Petition, p. 12 of 17*).

Commerce:

As no organized borough, city, or other entity exists from which Gustavus would be assuming powers, duties, etc., it was not possible to prepare a plan to assume such powers, etc., or consult with officials of such non-existent entities. Commerce finds that 3 AAC 110.900(b) is moot.

(c) Each 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 change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough 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.

Falls Creek and Icy Passage:

City:

However, there are no existing boroughs, cities, unorganized borough service areas or other appropriate entities currently exercising any powers, duties, rights, or functions in the territory proposed for annexation. As a result, there are no apparent assets or liabilities to be transferred from any such entity. Accordingly, the City did not prepare the plan that would otherwise be required under 3 AAC 110.990(c). (*Petition, pp. 11 – 12 of 17*).

Commerce:

As no organized borough, city, or other entity exists from which Gustavus would transfer and integrate all relevant and appropriate assets and liabilities, it was not possible to prepare a plan, or to consult with officials of such non-existent entities. Commerce finds that 3 AAC 110.900(c) is moot.

(d) is omitted because it is an additional requirement that the LBC may later require

(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.

Falls Creek and Icy Passage:

City:

There are no existing boroughs, cities, or unorganized borough service areas wholly or partially included within the boundaries proposed for change. Accordingly, the City did not consult with any official representatives of boroughs, cities, or unorganized borough service areas in preparing its transition plan.

Commerce:

As no organized borough, city, or other entity exists which Gustavus could consult, it was not possible to consult with officials of such non-existent entities. Commerce finds that 3 AAC 110.900(e) is moot.

(f) is omitted because it does not apply.

Conclusion: We find that 3 AAC 110.900, while not a standard, 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.

Falls Creek and Icy Passage:

City:

The area to be annexed is uninhabited. Further, the City of Gustavus conducts its municipal elections on an at-large basis. The proposed annexation would not alter the basis for municipal elections. Therefore, there are no voting districts that could create the potential for gerrymandering or other manipulation that could deny any person enjoyment of any civil or political rights.

Commerce:

There is no evidence that the effects of the proposed annexation denies 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 3 AAC 110.910 is met.

Conclusion: We find that the requirements of 3 AAC 110.910 are met.

3 AAC 110.970. Determination of essential municipal services

(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;

Falls Creek and Icy Passage:

City:

The petition did not directly address 3 AAC 110.970, but did discuss essential municipal services in several places in the petition.

Commerce:

Please see 3 AAC 110.110 (“Resources”) for a discussion of this requirement.

(2) promote maximum, local self-government; and

Falls Creek and Icy Passage:

City:

Please see 3 AAC 110.140 (7)(A) for the city’s position on this requirement.

Commerce:

Please see 3 AAC 110.981 for a discussion of this.

(3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

Falls Creek and Icy Passage:

City:

Please see 3 AAC 110.090(b) for a discussion of this.

Commerce:

Please see 3 AAC 110.090(b) for a discussion of this. We would add that we do not see that essential municipal services would 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. It would be a stretch, literally and figuratively, to expand

either municipality to include Falls Creek and Icy Passage. Gustavus is much closer than either of these entities. Nor do we see the feasibility of creating a new city when Gustavus is right there.

Conclusion:

We find elsewhere that the factors comprising 3 AAC 110.970 were met. Consequently, Commerce finds that 3 AAC 110.970's requirements are met.

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;

Falls Creek and Icy Passage:

City:

The city addressed this in 3 AAC 110.135 and 3 AAC 110.140(7)(A).

Commerce:

Falls Creek and Icy passage are in the unorganized borough. The annexation, if approved, would bring local government to a part of the unorganized borough where no local government currently exists. Further, when examining maximum local self-government, the annexation would promote maximum local self-government in the territory because it would greatly empower the second class city of Gustavus. If the annexation is approved, Gustavus will have within the city limits the hydro plant and the access road leading to it. If and when development (e.g. a water supply) occurs in Falls Creek, the city would have a greater say in the development because the proposed development would be in the city limits, instead of outside them. While the city is not a party to the lease between FERC and GEC, the city would have a greater influence in any possible Falls Creek development if Falls Creek is in the city. As art. X, sec. 1 of Alaska's constitution specifically calls for maximum local self-government, empowering Gustavus by giving it a bigger say in local potential development would certainly promote maximum local self-government. The city services that are now provided to Falls Creek would become in-city services, rather than extraterritorial services.

As the new dock is primarily for cargo, and provides little if any small boat docking, it is necessary for most boats to moor in the harbor. They do so not by anchoring, but by attaching the vessel to a float which itself is anchored. Presently the moorage is outside of city limits, and outside of city control. It is not state regulated either.

Placing the moorage area inside city limits would empower the city by giving it control over the harbor, rather than letting disputes over moorage and right of way develop. As art. X, sec. 1 of Alaska's constitution specifically calls for maximum local self-government, empowering Gustavus by allowing it to control the harbor moorage and marine traffic would promote maximum local self-government. Also, the fire and EMS services that the city now provides would become in-city services, rather than extraterritorial services.

As traffic in Icy Passage increases with the new dock and the start of ferry service, demand for moorage space will increase. Possible competing for the moorage and possible jeopardizing of the

marine traffic could result. It is in the state's best interests to minimize conflicts and impediments to marine traffic.

Conclusion: If approved, the annexation would bring local government to a part of the unorganized borough where no local government currently exists. Further, it would promote maximum local self-government by empowering Gustavus because the city could then have a say in possible development in Falls Creek, and local control of the harbor in Icy Passage (which is a local government function). 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

(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;

Falls Creek and Icy Passage:

City:

The city addressed this elsewhere in the petition.

Commerce:

The annexation, if approved, would expand Gustavus. It would not create more local government units. This is consistent with art. X, sec. 1, Constitution of the State of Alaska.

Conclusion: The annexation would not add any more local government units, thus emphasizing a minimum number of local government units. Commerce finds that 3 AAC 110.982 is met.

GENERAL CONCLUSION AND RECOMMENDATION

Chapter IV General Conclusion and Recommendation

After carefully reviewing the petition, Commerce finds that the standards have been met. We recommend to the Local Boundary Commission that it approve the annexation petition in its present form.

Based on our findings and conclusions, the LBC staff concludes that all of the relevant standards and requirements for annexation are satisfied by the city of Gustavus' petition. Commerce's recommendations are that of the LBC staff alone.

Commerce finds that the requirements of 3 AAC 110.090(a) are met because the territory exhibits a reasonable need for city government. Commerce finds that the requirements of 3 AAC 110.090(b) are met because the petitioner has also demonstrated its ability to provide essential municipal services more efficiently and more effectively than any other municipality or organized borough.

Commerce finds that the petition does meet the requirements of 3 AAC 110.100 because Gustavus is compatible in character with the territory proposed for annexation.

Commerce concludes that 3 AAC 110.110 is met because the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

Commerce concludes that 3 AAC 110.120 is met because the population within the proposed expanded boundaries of the city is sufficiently large and stable to support the extension of city government.

Commerce concludes that the 3 AAC 110.130(a) is met because the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

Commerce concludes that the 3 AAC 110.130(b) is met because the territory is contiguous to the annexing city, and does not create enclaves in the annexing city.

Commerce concludes that 3 AAC 110.130(c)(1) is met because the proposed expanded boundaries of the city promote the limitation of community. We find this because the proposed expanded boundaries of the city are on a scale suitable for city government.

Further, we find 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 annexation.

Also, Commerce concludes that 3 AAC 110.130(c)(2) is met because the proposed expanded boundaries do not include entire geographical regions or large unpopulated areas. If *arguendo*, they did include entire geographical regions or large unpopulated areas, those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

Also, Commerce concludes that the annexation has successfully met 3 AAC 110.130(d) because the petition for annexation to a city does not describe boundaries overlapping the boundaries of an existing organized borough, or another existing city.

The annexation is in the best interests of the state because it would promote a minimum number of local government units, because it would promote maximum local self-government, and because, *inter alia*, it would minimize conflicts and impediments to marine traffic. For those reasons Commerce finds that the annexation meets 3 AAC 110.135.

We find that the requirements of 3 AAC 110.140 (7), (8), and (9) are met for both Falls Creek and Icy Passage. We further find that the requirements of 3 AAC 110.140 (2), (3), and (5) are met for Icy Passage, but not for Falls Creek.

Commerce finds that the annexation meets the requirements of a transition plan under 3 AAC 110.900.

There is no evidence that the effects of the proposed annexation denies 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 3 AAC 110.910 is met.

We find that elsewhere that the factors comprising 3 AAC 110.970 were met. Consequently, Commerce finds that 3 AAC 110.970's requirements are met.

The annexation if approved, would bring local government to a part of the unorganized borough where no local government currently exists. Further, it would promote maximum local self-government by empowering Gustavus because the city could then have a say in possible development in Falls Creek, and direct local control of the harbor in Icy Passage (which is a local government function). Commerce finds that 3 AAC 110.981 is met.

The annexation would not add any more local government units, thus emphasizing a minimum number of local government units. Commerce finds that 3 AAC 110.982 is met.

Commerce recommends that the Local Boundary Commission approve the City of Gustavus' annexation petition.

CHAPTER V

EXHIBITS

Chapter V Exhibits

Exhibit 1 - City Of Gustavus Topographical Map

See next page for map

Exhibit 1: City Of Gustavus Topographical Map

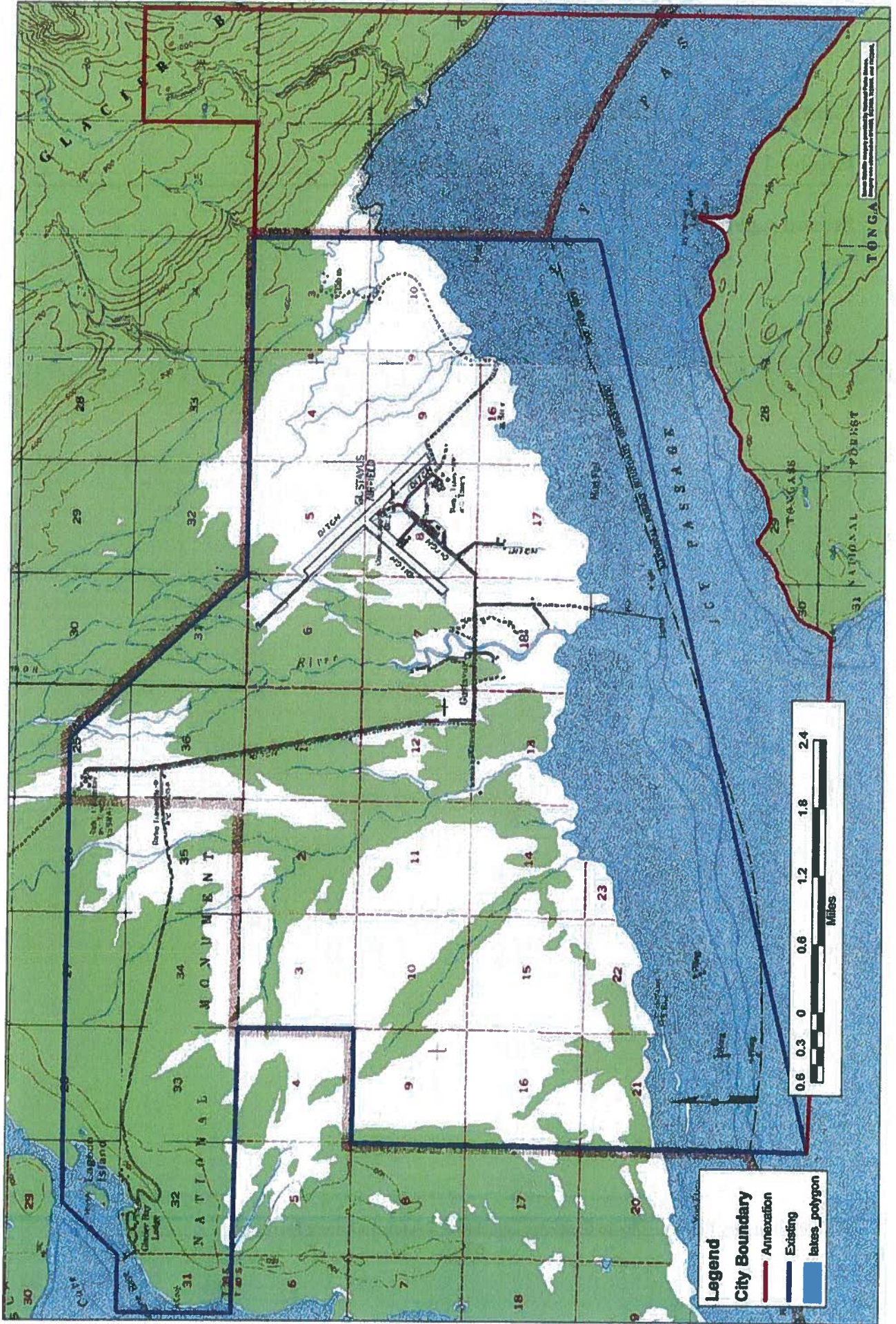


Exhibit 2 - City of Gustavus Aerial Photo

See next page for map

Exhibit A: Aerial A Gustavus Aerial Photo

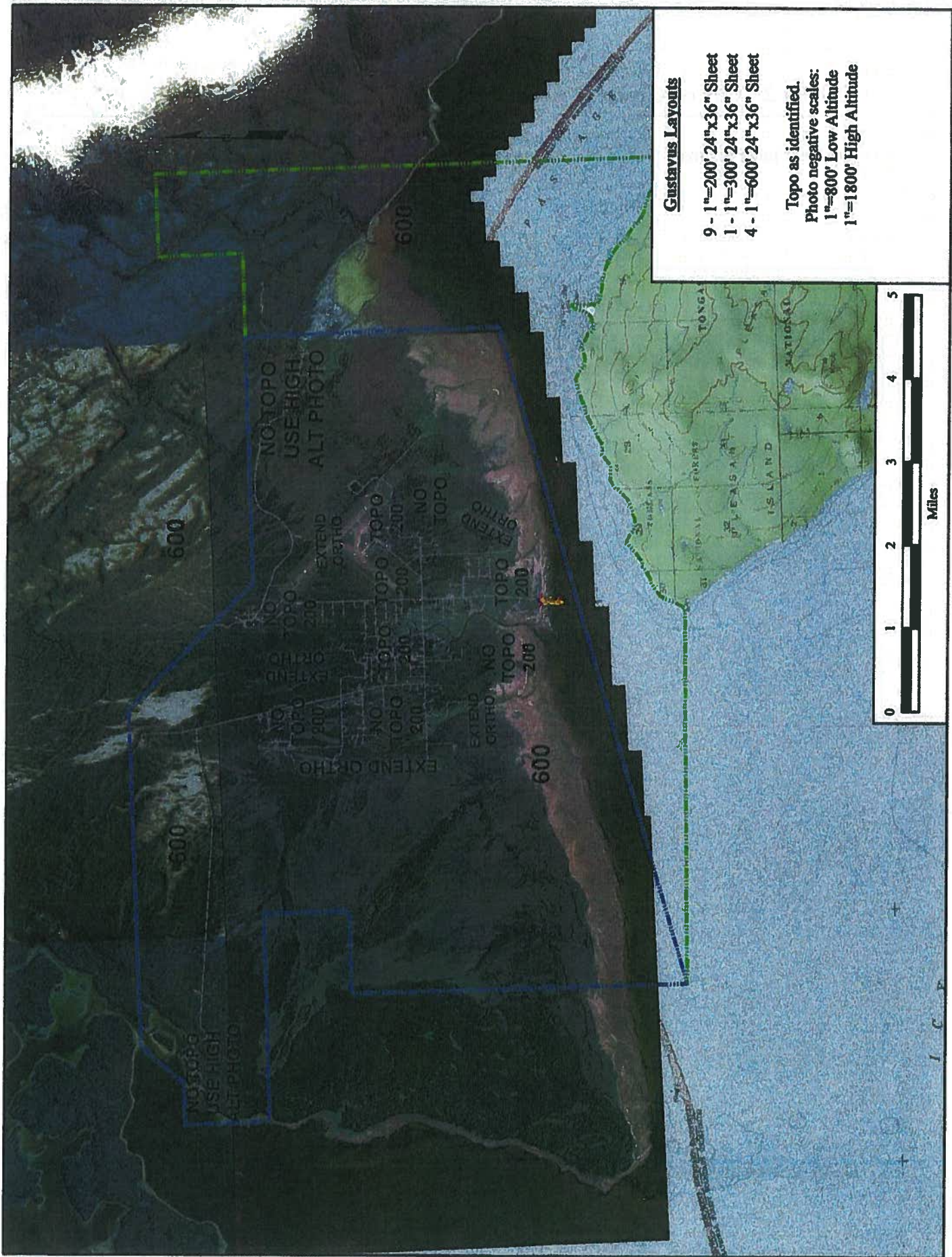
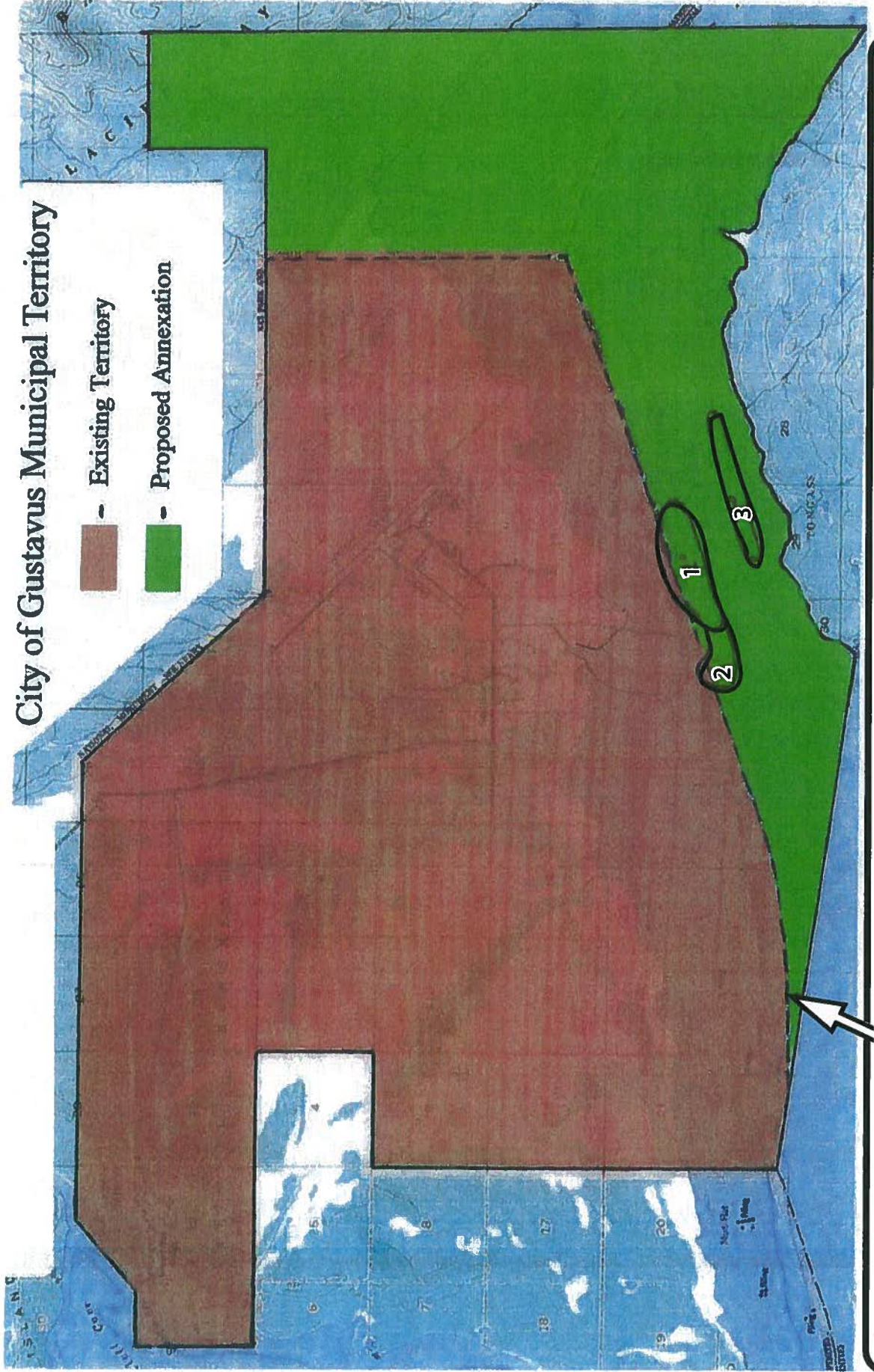


Exhibit 3 - City of Gustavus Map w/ Moorage Area

See next page for map

Exhibit 3: City of Gustavus Map w/ approximate anchorage / moorage areas

- 1 - NPO% of moorages
- 2 - One to several moorages
- 3 - A couple of larger boats and barges



NOTE: This boundary is an approximation. It is indefinite in metes and bounds as it is in this depiction. - G. Streveler April 5, 2011

Exhibit 4 - Photo of Gustavus Docks

See next page for map

Exhibit 4: Photo of Gustavus Docks

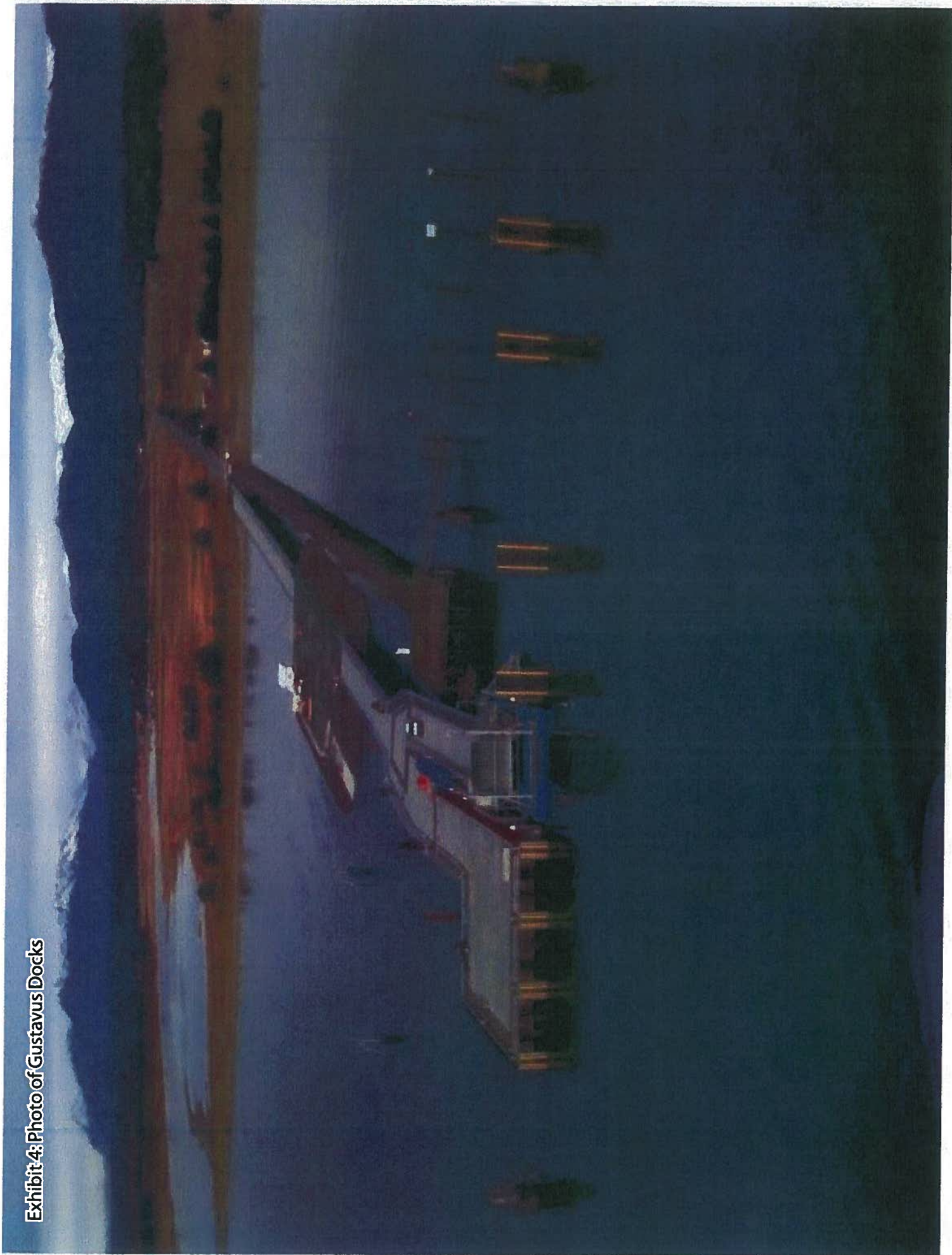


Exhibit 5 - City of Gustavus Budgetary Answers

See next page for correspondence

Williams, Brent R (CED)

From: Greg Streveler [greg.streveler@starband.net] on behalf of Greg Streveler/Judy Brakel [grigori@gustavus.ak.us]
Sent: Tuesday, May 10, 2011 10:07 PM
To: Williams, Brent R (CED)
Cc: Sean Neilson; Mike Taylor; Karen Taylor; Kapryce Manchester; Joe Lassiter; Bruce Tedtsen
Subject: FW: Gustavus Annexation Petition - Follow-up to Fax LBC Staff Sent with Budget Questions

Brent,

Here are Bruce Tedtsen's answers to your queries. He was our budget guru on Exhibit 5. Greg

-----Original Message-----

From: Bruce Tedtsen [mailto:bkted153@yahoo.com]
Sent: Tuesday, May 10, 2011 3:12 PM
To: Greg Streveler/Judy Brakel
Subject: Re: Gustavus Annexation Petition - Follow-up to Fax LBC Staff Sent with Budget Questions

Greg:

Here we go!

#1. Payment in lieu.

This is a federal line item that provides the city with monies for federal land not taxed. This amount is generated by the feds and we can only speculate as to its amount in the out years. This is especially true since we do not have a long history of being incorporated to anticipate some kind of formula.

#2. Legislative Grant

This was from the state legislature to be used as needed. The city used this grant to help in the matching amount for the grant requirements in building new floats adjacent to our new dock.

#3. Sales Tax

Due to economic conditions in the last few years the city budgeted a 30% decline in sales tax revenue. A large percentage of tax income is derived from tourism thus the budgeted difference.

#4. City Reserves

Unencumbered reserves are getting low especially after spending \$219,000.00 as part of the local match for the new floats located by our new dock. We are at the point where the city feels it is best to not budget reserves unless absolutely necessary.

#5. Municipal Energy

This grant was given in 08 and has been used each year to lower cost for the city departments. The monies were included in each committee's yearly budget.

#6. Capital Expense

Money was used to update Marine facilities in the city of Gustavus.

This should answer concerns so let me know if otherwise.

Bruce