

**STATEMENT OF REASONS FOR**  
**RECONSIDERATION BY THE LOCAL BOUNDARY COMMISSION**  
**ON ITS OWN MOTION**

I, Commissioner and Vice Chair Robert Hicks, respectfully request that the Local Boundary Commission order reconsideration of the Skagway Borough Incorporation on its own motion pursuant to 3 AAC 110.580(e), for the following reasons:

**1. THE LOCAL BOUNDARY COMMISSION MAJORITY  
FAILED TO ADDRESS THE FOLLOWING  
MATERIAL ISSUES OF FACT:**

- a. The Local Boundary Commission majority failed to address and decide those material issues of facts set forth in the subject matters described at Appendix A of the Statement of Dissent.
- b. The Local Boundary Commission majority failed to cite or address the material issues of fact raised by the summary and conclusory finding in the Statement of Decision at page 31, "... that DCCED estimates [as census enumerations] are not always reliable."
- c. The Local Boundary Commission majority failed to address the material issues of fact surrounding the unreliability of unexpurgated voter registration numbers (not found as a measure in LBC regulations) as a replacement for "census enumeration" information (specifically listed as a measure in LBC regulations).
- d. The Local Boundary Commission majority failed to address the material issue pertaining to the fact that the Petitioner patently and candidly admitted in the Petition that the population in the area proposed for incorporation contains less than 1,000 people.
- e. The Local Boundary Commission majority failed to address the material issues of deleterious facts surrounding the seasonal population swings, acknowledged by the mayor of Skagway and the director of the Skagway Chamber of Commerce as being a problem, and instead concluded summarily at page 35 of the Statement of Decision, without factual support or reasoning, "We view the significant seasonal population changes as a positive characteristic in terms of the Population Standard."
- f. The Local Boundary Commission majority failed to address the material issues of fact surrounding the lack of accurate and complete anticipated budgets in the documents submitted by the Petitioner in violation of 3 AAC 110.420(b)(12), thereby rendering impossible the summary and conclusory finding by the majority at page 40 in the Statement of Decision that "the operating and capital budgets of

the proposed Skagway borough through the third full fiscal year of operation ... [are] complete, reasonable, and practical.”

g. The Local Boundary Commission majority failed to address the material issues of fact indicating that the proposed boundaries constitute a “left over” (per Petitioner) remnant, rather than a rational application of Local Boundary Commission boundary-standards set forth in law.

h. The Local Boundary Commission majority failed to address material issues of fact pertaining to the racial composition of enclaves within the Haines Borough.

i. The Local Boundary Commission majority failed to address the material issues of fact indicating that the proposed boundaries constitute economic gerrymandering and civil rights violations where undeniably (a) the Petitioner admits the area is a “left over” remnant, (b) the Local Boundary Commission majority admits the Petitioner is motivated by “fear and greed” to avoid sharing and to permanently sequester local windfall cash flows to the exclusive benefit of the City of Skagway, (c) the Alaska Supreme Court requires “a *thorough* consideration of *alternative* boundaries, and (d) the area proposed contains 92.3 percent Whites while another enclave only 17 miles away is 88.5 percent American Indian or Alaska Native.

j. The Local Boundary Commission majority failed to address material issues of fact surrounding its accurately stated but summary finding at page 48 that, “In that respect, we recognize the public policy difficulties presented by the Skagway borough Petition.”

k. The Local Boundary Commission majority failed to address the material issues of fact pertaining to the harmful precedential effect of this Decision raised by testimony indicating that Nenana will now petition to become a borough, and by the Alaska Municipal League newsletter claiming that the Skagway decision “will have great bearing on other communities and their future plans on borough formation decisions.”

l. The Local Boundary Commission majority failed to address the material issues of fact raised by the ex parte threat of a legislator, particularly in the context of the majority admitting in the December 13 transcript and again in the Statement of Decision the “lack of political will” by one or more commissioners voting in favor of borough incorporation.

## 2. THE LOCAL BOUNDARY COMMISSION MAJORITY FAILED TO ADDRESS THE FOLLOWING CONTROLLING PRINCIPLES OF LAW:

- a. Despite advice of legal counsel, the Local Boundary Commission majority failed to address in a legally correct manner the controlling principle of law in Art. X of the Alaska Constitution and in a consistent series of opinions of the Alaska Supreme Court that this statewide commission of municipal experts, the Local Boundary Commission, was not created to represent and implement local political opinions but rather was created specifically to avoid the errors of allowing municipal boundaries to be formed by local political opinions.
- b. Despite advice of legal counsel, the Local Boundary Commission majority refused to delete, and failed to address in a legally correct manner, the qualifying and controlling principle of law in Art. I, sec. 2 limiting governance “solely for the good of the people *as a whole*.” (Emphasis mine.)
- c. Despite advice of legal counsel, the Local Boundary Commission majority failed to address the controlling principle of law recognizing the full force and effect of Art. X as creating a statewide boundary decisional process by experts, and instead at page 9 n. 3 and page 19 the majority “places great weight on” the erroneous claim that Art. X merely “sets up the structure for the establishment of boroughs under the principles set out in Art. I, sec. 2.”
- d. Despite of advice of legal counsel, the Local Boundary Commission majority failed to address the controlling principle of law that the Alaska Administrative Code standards are equal in law and equal in enforceability with statutes and constitutions, and instead the majority unlawfully relegated all standards in regulations to “tertiary-level guidelines” (Page 9 n. 3) and “least weighty among the three sets of borough incorporation standards.” (Page 20)
- e. The Local Boundary Commission majority failed to address the paramount controlling principle of law in America that we commissioners and all public officials are entrusted to govern “by laws” and not by the arbitrary caprices of men and women, and instead the Local Boundary Commission majority voiced disdain for this controlling principle of the rule of law in America, with alarming expressions of such attitudes as
  - “... someone could sue you and win on and you did it anyway because you knew nobody was going to sue you” (Tr at 340); and
  - “... the law in your books said different and you said, but this is the right thing to do so we’re going to do it” (Tr at 340); and

- “Now I think that this requirement is a little – oh, I’m trying to think of a nice word to use, but I think it’s ridiculous.” (Tr at 42); and
- “I would commend you for that” [violating the disparity cap in education law] (Tr. 180); and again pertaining to disparity in educational funds,
- “... do that delicately and very much below the weight that the auditors make when they come into your community. That’s okay with me” (Tr. 180) and
- summarily discarding the requirement in AS 14.12.025 for prior approval from the Commissioner of DEED as “a mere formality” (Page 33 of Statement of Decision); and
- summarily discarding laws in the Alaska Administrative Code pertaining to the population standard as “an unreasonable measure of a community” (Page 26 of Statement of Decision) and;
- summarily discarding census enumerations as listed in the Alaska Administrative Code as “not always reliable.” (Page 31 of Statement of Decision) despite the fact that they comport with the numbers admitted by the Petitioner in the Petition.

f. The Local Boundary Commission majority failed to address the controlling principle of law in 3 AAC 110.420(b)(12) requiring a petitioner to submit “a three year projection of revenue, operating expenditures, and capital expenditures for a proposed municipality...” in light of the fact that that the Petitioner in this matter failed to comply fully and accurately with that requirement despite early notice and ample opportunity for compliance.

g. The Local Boundary Commission majority failed to address the controlling principle of law in AS 14.12.025 that a Skagway borough school district cannot be formed by this Local Boundary Commission unless the Commissioner of DEED *first* determines that “formation of a new school district with less than 250 pupils would be in the best interests of the state and the proposed school district.”

h. The Local Boundary Commission majority failed to address the controlling principle of law in 3 AAC 110.060(c) that whenever any proposed borough boundaries fail to conform to REAA boundaries the Local Boundary Commission will consult with the Commissioner of DEED *before* making a determination of whether a different size is better suited for borough incorporation.

- i. The Local Boundary Commission majority failed to address the controlling principle of law in 3 AAC 110.420(b)(12) that a petition must include “a three year projection of revenue, operating expenditures, and capital expenditures ....”
- j. The Local Boundary Commission majority failed to address the controlling principles of law set forth in Appendix A of the Statement of Dissent.
- k. The Local Boundary Commission majority failed to address the controlling principles of law setting forth the standards for delineating boundaries of a borough but instead accepted as a fait accompli what the Petitioners admitted was simply a “left over” remnant not rationally designed and delineated.
- l. The Local Boundary Commission majority, by the admission of the Chair on the Record of January 11, 2007, failed to address the controlling principles of law at 3 AAC 110.910 requiring that no person is denied the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex or national origin.
- m. The Local Boundary Commission majority failed to address the controlling principles of law in the federal Voting Rights Act of 1965 requiring that no incorporation can have either the purpose or the effect of discrimination based on race or color.
- n. The Local Boundary Commission majority failed to address the controlling principles of law in regulations pertaining to the best interests of the State of Alaska, as applied to the majority’s accurate finding at page 48 of the Statement of Decision that, “In that respect, we recognize the public policy difficulties presented by the Skagway borough Petition.”
- o. The Local Boundary Commission majority failed to address the controlling principles of law stated by the Alaska Supreme Court that adequate consideration of the standards for boundary determinations “presupposes a thorough consideration of alternative boundaries and a decision as to what boundaries would be optimal,” where this Local Boundary Commission has promulgated in regulations a Model Borough Boundary for the Haines-Skagway area that is presumptively “optimal” absent evidence and reasoning by the majority to the contrary.
- p. The Local Boundary Commission majority failed to address the controlling principles of law regarding civil and political rights, public policy, and the best interests of the State, that should apply to the candid and correct admission of fact by the majority that
  - “The Skagway borough proposal will reserve the sizeable fiscal resources of the existing City of Skagway for the exclusive benefit of the residents of the proposed Skagway borough. Additionally, it will preserve the local political autonomy of a first-class city in the unorganized borough by

granting it borough status. In that regard, we candidly observe that the Petition is motivated by a desire to prevent annexation of Skagway into an adjacent borough.” (Statement of Decision at 50) “In that respect, we again recognize the public policy difficulties presented by the Skagway borough Petition.” (Statement of Decision at 48)

### 3. NEW EVIDENCE EXISTS THAT WAS NOT AVAILABLE AT THE TIME OF THE HEARING AND THAT RELATES TO MATTERS OF SIGNIFICANT PUBLIC POLICY:

After the hearing in Skagway, in an ex parte contact at the Juneau airport, a legislator threatened two commissioners with total elimination of the budget of the Local Boundary Commission if the majority voted against incorporation of a Skagway borough.

One commissioner (in the minority on the vote in this matter) walked away from the legislator immediately, without comment. The other commissioner (in the majority on the vote in this matter) remained in conversation with that legislator about unknown matters for at least 10 minutes after this ex parte threat was made.

During the subsequent decisional meeting of December 13, 2006, following the 3-2 vote favoring Skagway borough incorporation, the legislator who had previously made this ex parte threat spoke on the record directly – on a first-name basis – to that commissioner in the majority who had remained in conversation with him earlier,

**“I told you** that I was going to try to work on a borough issue bill. **And it was an incentive.”** (Tr. At 190-91. Emphasis added.)

During a break in that decisional meeting of December 13, 2006, following the vote on the Skagway matter, the same commissioner in the majority stated to a commissioner in the minority that, now that the Skagway matter was decided, this same legislator had assured him (the majority commissioner) that he would get legislation enacted this year to create boundaries throughout the rest of the unorganized borough.

In a campaign ad letter in the Cordova Times, Nov. 2, 2006, one of the Skagway Borough petitioners (who also was the registered lobbyist for the City of Skagway in 2006) wrote in praise of this same threatening legislator, that he advocated for the Skagway community on “the Borough issue” and was described in the Alaska Legislative Digest as **“capable of bare knuckles negotiation”** and **“a natural born trader.”** (Emphasis added.)

During the meeting of January 11, 2007, another commissioner presently forming the majority stated that he too had been approached by a legislator ex parte, and that he immediately admonished that legislator against ex parte contact. (The legislator who made the ex parte threat to two commissioners earlier had previously been the lobbyist for the North Slope Borough, where this other commissioner presently works.)

The Statement of Decision by the majority correctly notes that, during the decisional meeting of December 13, 2006, the commissioner who earlier had continued to talk with the threatening legislator after the ex parte contact, and who was addressed by that legislator on a first-name basis during the official decisional meeting, stated publicly that no **“hotter hot-potato could have been**

**handed to this Commission,”** and conceded by the majority **“lack of political will”** to form a different borough boundaries for Skagway. (Emphasis added.)

All of the above is new evidence since the Skagway public hearing, raising extremely serious issues of significant public policy regarding

- undeniable, corroborated evidence of an illegal ex parte contacts with commissioners,
- undeniable, corroborated evidence of unethical threats in “bare knuckles negotiation,”
- a characterization in the transcript of desirable borough-boundary legislation as an “incentive” for Local Boundary Commission vote(s) favoring Skagway borough incorporation, by a Skagway legislator campaigning as a “natural born trader,”
- admitted and written (in the Statement of Decision) capitulation to such unethical and illegal political pressures, or, “lack of political will” by one or more local boundary commissioners forming the majority in this matter, and
- oddly coincidental, but admittedly circumstantial, evidence warranting further investigation of the appearance of deal-making by a commissioner in the majority who
  - remained in a confab with the offending legislator following the ex parte threat,
  - was addressed directly, on a first-name basis, by the offending legislator during the decisional meeting with “I told you...” and “It was an incentive...”,
  - conveyed during a break in that official meeting the claim that this same first-name friendly legislator now (following a favorable vote on Skagway) would achieve desirable legislation for borough incorporations, and
  - stated orally in the transcript and endorsed in the Statement of Decision a frame of mind and attitude suggesting he experienced heavy political pressures (“no hotter hot potato...” “lack of political will...”) in a quasi-judicial matter that should have been decided on its merits by statewide municipal experts independent of such local political opinions and pressures.

In order to ensure that all commissioners have ample opportunity to study this document in detail prior to my making a motion for reconsideration at the meeting of February 8, 2007, I request that the LBC staff distribute this Statement of Reasons in the same

manner and to the same extent that the Request for Reconsideration of Fischer and Sturgulewski was distributed.

Dated this 4<sup>th</sup> day of February, 2007.

/s/ \_\_\_\_\_  
Robert Hicks, Vice Chair, Local Boundary Commission