



Local Boundary Commission

Statement of Decision

**IN THE MATTER OF THE
PETITION BY THE CITY OF
KETCHIKAN FOR ANNEXATION
OF 27.41 ACRES IN BEAR VALLEY**

Members

*Kevin Waring
Chairperson
At-Large*

SECTION I

BACKGROUND AND DESCRIPTION OF AREA

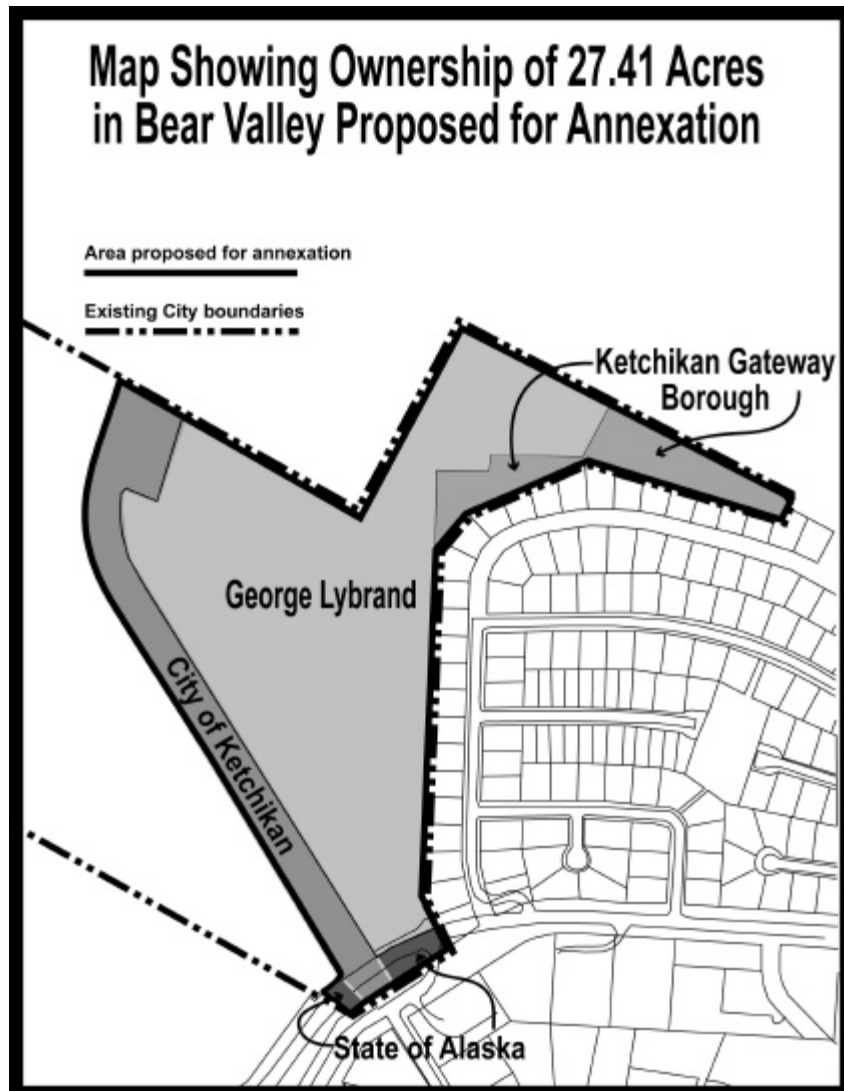
The City of Ketchikan petitioned the Alaska Local Boundary Commission for the annexation of an estimated 27.41 acres in Bear Valley. The territory proposed for annexation is uninhabited and largely undeveloped. Further, the territory is contiguous to the existing corporate boundaries of the City. All of the owners of real property within the territory petitioned the City for annexation of their respective properties. The property is owned by four individuals or entities. These consist of George Lybrand (owner of approximately 20 acres), City of Ketchikan (owner of approximately 5.06 acres), Ketchikan Gateway Borough (owner of approximately 1.83 acres), and the State of Alaska (owner of approximately 0.52 acres). A map of the territory proposed for annexation follows:

*Kathleen Wasserman
Vice-Chairperson
First Judicial District*

*Nancy Galstad
Member
Second Judicial District*

*Allan Tesche
Member
Third Judicial District*

*Ardith Lynch
Member
Fourth Judicial District*



SECTION II SUMMARY OF PROCEEDINGS

The Petition was received by the Alaska Department of Community and Economic Development (DCED) on March 13, 2000. On March 30, DCED determined that the form and content of the Petition were technically sufficient, at which time the Petition was formally accepted for filing.

Public notice of the filing of the petition was given in accordance with the requirements of 3 AAC 110.450. On April 3, 2000, the Petitioner mailed or delivered a copy of the notice of filing of the Petition to the Ketchikan Gateway Borough; City of Saxman; George Lybrand; Alaska Department of Transportation and Public Facilities, Right-of-Way and Utilities, Design and Engineer Services Division; Natural Resources, Division of Mining, Land & Water; Alaska Department of Transportation and Public Facilities, Southeast Regional Director; and Alaska Department of Transportation and Public Facilities, Southeast Regional Preconstruction Engineer.

On March 13, 2000, the City deposited a full set of Petition documents for public review at the Offices of the Ketchikan City Clerk. A second set of Petition documents was deposited for public review on the same day at the Ketchikan Public Library. Further, a copy of the Petition was served on both the Ketchikan Gateway Borough and the City of Saxman by the City of Ketchikan by April 21, 2000. These actions satisfied the requirements of 3 AAC 110.460.

In accordance with 3 AAC 110.480 and 3 AAC 110.640, the Chairman of the Local Boundary Commission set the deadline for filing responsive briefs and comments in this matter for June 5, 2000. No responsive briefs or comments regarding the matter were received by the deadline.

The public notice described earlier also indicated that DCED proposed that the Commission suspend the requirements of 3 AAC 110.550(a) for the LBC hearing in or near the territory proposed for annexation. Instead, DCED proposed that the LBC conduct the hearing by teleconference. Further, DCED proposed that requirements of 3 AAC 110.550(b) for notice of the hearing be suspended. Instead, DCED proposed to provide written notice of the hearing to the property owners in question and to anyone submitting written comments or a responsive brief in this matter. No objections were received regarding DCED's proposal.

Suspensions of the nature proposed are typical for local action annexations and are allowed by 3 AAC 110.590 and 3 AAC 110.660. They are designed to allow the speedy and inexpensive determination of matters that come before the LBC. The LBC considered DCED's request to suspend the regulations in question at its meeting of June 27, 2000, at which time the Commission unanimously approved DCED's request.

On July 27, 2000, the DCED Preliminary Report and Recommendation was issued to 23 interested individuals and organizations. Deadline for comment on the report was August 28, 2000. On August 28, 2000, DCED received one comment from the City of Ketchikan agreeing with DCED's recommendation. On August 29, 2000, DCED issued its final report and recommendation confirming the recommendation of the preliminary report to 21 interested individuals and organizations.

The Local Boundary Commission conducted a duly-noticed public hearing regarding the Bear Valley annexation on October 30, 2000 via teleconference at 9:00 am. Commissioners Waring and Tesche were present at the DCED conference room in Anchorage. Commissioners Galstad, Wasserman, and Lynch participated via teleconference from Kotzebue, Pelican, and Fairbanks, respectively. Karl Amylon and Jim Voetberg, respectively the City Manager and Assistant City Manager of the City of Ketchikan, participated at the hearing from a teleconference site at the Ketchikan City Hall. The hearing was very brief.

Immediately following the teleconferenced public hearing, the Commission briefly deliberated on the matter. Following deliberation, the Commission unanimously approved the Petition without modification or conditions.

SECTION III FINDINGS AND CONCLUSIONS

Based on the evidence in the record of this proceeding, the Local Boundary Commission has reached the findings and conclusions set out below.

The 27.41-acre territory proposed for annexation exhibits a reasonable need for city government. [3 AAC 110.090(a)]

The Commission noted that because of the need for sewer and water utility services, the City of Ketchikan had already extended such utilities to the twenty-acre portion of the territory owned by George Lybrand. The extension of utilities was carried out under the terms of a November 1998 agreement with Mr. Lybrand. Properties owned by the City, Borough, and State of Alaska that adjoin the Lybrand property were included in the annexation proposal in order to create appropriate boundaries.

A need for City public works services (e.g., street maintenance) will result from pending development in the area.

The State of Alaska has contracted for the extension of Third Avenue, which transects the southern portion of the territory proposed for annexation. Work on that project is currently underway. Originally scheduled for completion in September 2001 at a cost of \$12 million, the Third Avenue extension project has encountered some unexpected difficulties. The complications will substantially increase the construction cost and delay completion of the project until 2002.

The Third Avenue extension project is intended to relieve traffic congestion on Tongass Avenue. Once completed, the extension is projected to serve 6,900 vehicles daily. The Alaska Department of Transportation and Public Facilities has indicated that the City of Ketchikan has agreed to maintain the Third Avenue extension once it is completed.

In addition to City water service, sewer service, and public works, the territory will need police and fire protection once it develops. The character and zoning of the twenty-acre parcel owned by George Lybrand allow it to be readily developed for commercial or residential purposes. According to the Petition, the 1.83-acre parcel owned by the Borough in the territory proposed for annexation has been identified as a potential site for a school.

Officials of the City of Ketchikan indicated that they have no plans for the use of the 5.06-acre City-owned parcel of land within the area proposed for annexation. That parcel was originally purchased by the Borough to be used as a road corridor around the more congested parts of the community. However, the bypass project was abandoned and the property was conveyed to the City. The long, narrow configuration of the City-owned parcel may limit its use to that of a road corridor or for utility access to adjacent properties.

Conclusion. Based on the foregoing, the Commission concludes that the 27.41-acre territory proposed for annexation exhibits a reasonable need for city government. Therefore, the standard set out in 3 AAC 110.090(a) is fully satisfied.

The City of Ketchikan is best able to serve the territory's need for essential city government services identified with respect to the previous standard. [3 AAC 110.090(b)]

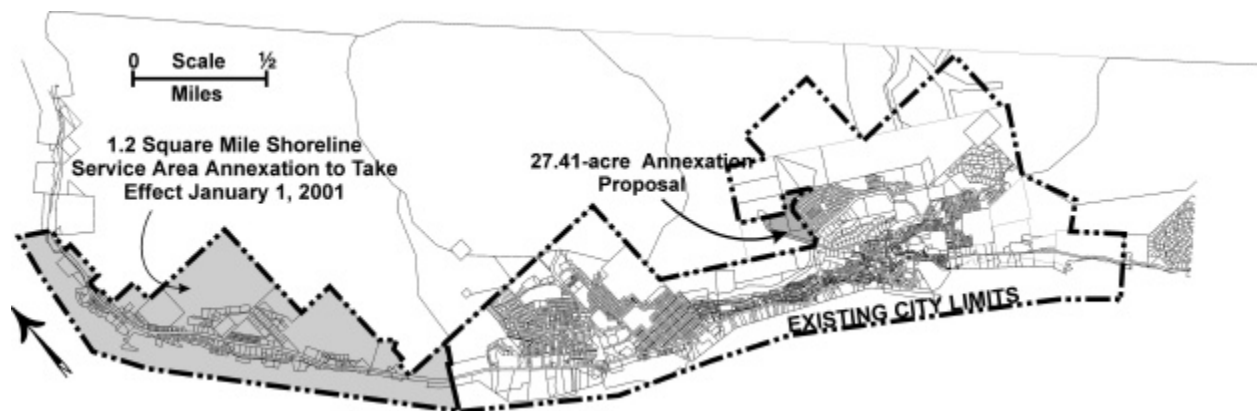
The Local Boundary Commission considers water utility service, sewer utility service, public works, police, and fire protection to be "essential city services" as defined by 3 AAC 110.990(8). Further, the Local Boundary Commission finds that the City of Ketchikan is best able to provide those essential services to the territory. That finding reflects the fact that the Ketchikan Gateway

Borough does not provide any of the noted essential services to the territory on an areawide, nonareawide, or service area basis. Additionally, as noted, the Alaska Department of Transportation has already reached an agreement with the City that the City will maintain the Third Avenue extension once it is constructed. Further, the Alaska State Troopers do not presently patrol the area.

Conclusion. Based on the foregoing, the Local Boundary Commission concludes that the City can provide essential city services more efficiently and more effectively to the territory proposed for annexation than any other existing city or any organized borough. Consequently, the standard set out in 3 AAC 110.090(b) is satisfied.

The 27.41-acre territory proposed for annexation and the five-square mile area within the approved boundaries of the City are compatible in character. [3 AAC 110.100]

The present corporate boundaries of the City of Ketchikan encompass approximately 3.8 square miles. In a separate proceeding concluded in March of this year, the Local Boundary Commission and State legislature approved the expansion of the City's boundaries to include the adjoining Shoreline Service Area comprising an additional 1.2 square miles. That annexation has a deferred effective date of January 1, 2001. Together, those two areas encompass approximately five square miles. A map showing the current boundaries of the City, the pending Shoreline annexation, and the territory proposed for annexation in Bear Valley follows.



The 27.41-acre territory proposed for annexation would represent a modest increase (eight-tenths of one percent) to the five square miles in question. Each of the various parcels comprising the 27.41 acres proposed for annexation is contiguous to the existing corporate boundaries of the City.

Conclusion. Given the relatively small size of the territory proposed for annexation and its proximity to the existing boundaries of the City, the Local Boundary Commission finds that the territory proposed for annexation and the area within the current boundaries of the City are compatible in character. Thus, the standard set out in 3 AAC 110.100 is satisfied.

The area within the City's proposed post-annexation boundaries includes the human and financial resources necessary to provide essential services on an efficient, cost-effective level. [3 AAC 110.110]

At least until the property is developed, annexation per se will result in virtually no demands on the human and financial resources of the City. Water and sewer utilities have already been extended to the territory. Additionally, the City has agreed to maintain the Third Avenue extension irrespective of annexation.

The territory proposed for annexation is presently uninhabited. The twenty-acre privately-owned portion of the territory is used as a storage area for a construction company owned by George Lybrand.

As was noted with respect to the previous standard, the territory proposed for annexation would represent a very modest increase in the size of the area that will be under the jurisdiction of the

City of Ketchikan at the beginning of next year. In terms of tax base, the character of the territory proposed for annexation, again, exhibits a modest relationship to the area within the existing City. The territory carries an assessed value of \$200,000. That figure is 0.04 percent of the \$491,550,200 assessed value of the City. When the \$62,880,600 taxable value of the Shoreline Service Area (1999 figure) is factored in, the relative taxable value of the territory drops to 0.036 percent of the value of the area to be within the City on January 1, 2001.

Conclusion. Based on the foregoing, the Local Boundary Commission finds that the economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard at 3 AAC 110.110 is met.

The population within the proposed expanded City boundaries is both large and stable enough to support the extension of City services. [3 AAC 110.120]

In the recently-concluded proceedings for annexation of the Shoreline Service Area, the Local Boundary Commission concluded that this standard had been met. There have been no significant changes in the size or stability of the City's population since then.

Conclusion. As noted previously, the territory proposed for annexation is uninhabited. Because the annexation will impose virtually no demands on the resources of the City, the Local Boundary Commission finds that the population within the proposed post-annexation boundaries of the City is sufficiently large and stable to support the extension of city government. As such, the standard set out in 3 AAC 110.120 is met.

The proposed boundaries are inclusive of all areas needed to provide essential city services on an efficient, cost-effective level. [3 AAC 130(a)]

The standard at issue concerns whether areas outside the 5.04 square miles encompassed by the proposed post-annexation boundaries of the City (including the Shoreline Service Area and the territory proposed for annexation in Bear Valley) are crucial to the City's ability to provide essential city services efficiently and cost-effectively.

The Local Boundary Commission concluded on December 16, 1999, with respect to the previously noted Shoreline Service Area annexation that, “*cursory evidence suggests that in addition to Shoreline, other areas outside the City might also meet the standards for annexation to the City. These include the Ward Cove area, Ketchikan International Airport, and other areas. While the City's proposed post-annexation boundaries may not be perfect, the Commission finds the boundaries proposed by the City are logical and reasonable in light of the imminent significant commercial development in the territory.*”

Conclusion. Findings made by the Commission in the Shoreline annexation also included a determination that it had not been demonstrated that “*areas outside the five square miles in question are essential to the capacity of the City to operate efficiently and effectively.*” The Local Boundary Commission concludes from the foregoing that the proposed boundaries of the City include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. This satisfies the standard set out in 3 AAC 110.130(a).

The five square miles within the City's proposed post-annexation boundaries do not extend beyond the existing community plus reasonably predictable growth, development, and public safety needs over the next decade. [3 AAC 110.130(c)]

In its December 16, 1999 decision concerning the Shoreline annexation, the Commission stated:

“ . . . cursory evidence suggests that the City's proposed new boundaries may be under-inclusive. However, the Commission finds that conformance, on land, with the Shoreline boundaries is a logical and appropriate approach at this particular time.

The Commission finds further that the same evidence that led to its conclusion that the territory and city are compatible in character (3 AAC 110.100) supports the satisfaction of this particular standard.”

Conclusion. The nature of the current proceeding is a routine local action annexation. The Local Boundary Commission finds that the proposed post-annexation boundaries of the City encompass only that area comprising the existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. Thus, the standard set out in 3 AAC 110.130(c) is satisfied.

The proposed post-annexation boundaries of the City do not include entire geographical regions or large unpopulated areas. [3 AAC 110.130(d)]

As noted previously, the territory proposed for annexation comprises 27.41 acres. The boundaries already approved effective January 1, 2001 encompass approximately 5 square miles.

The Commission observed with regard to the Shoreline Service Area annexation, that the City's proposed new boundaries would encompass an area that is 82% smaller than the average jurisdictional territory of all 145 city governments in Alaska. Further, the City's expanded boundaries would encompass an area that is 93% smaller than the average of the other ten most populous cities in Alaska.

Conclusion. The Local Boundary Commission concludes from the foregoing that the territory proposed for annexation does not include entire geographical regions or large unpopulated areas. This satisfies the standard established at 3 AAC 110.130(d).

The territory does not overlap the boundaries of any other city. [3 AAC 110.130(e)]

The 27.41 acres proposed for annexation are wholly within the Ketchikan Gateway Borough and lie outside any incorporated city government.

Conclusion. The standard set out in 3 AAC 110.130(e) is satisfied.

The City has provided an adequate transition plan. [3 AAC 110.900]

The City's annexation petition includes a two-page transition plan that outlines its proposal for the assumption of appropriate powers, duties, rights, functions, assets, and liabilities relating to annexation. The small size of the territory proposed for annexation coupled with its uninhabited and undeveloped nature will result in an uncomplicated transition.

It appears that the City at least implicitly conferred with the Borough in terms of the annexation proposal. The Petition was filed with support from the Borough, a copy of the Petition was served upon the Borough, and the Borough has not objected to the proposal.

Conclusion. The Local Boundary Commission concludes that the City has provided a transition plan that meets the requirements of 3 AAC 110.900.

Annexation will not deny civil or political rights to anyone because of race, color, creed, sex, or national origin. [3 AAC 110.910]

The Local Boundary Commission found no evidence in the record suggests that annexation will breach civil or political rights in a discriminatory manner.

Conclusion. Based on the finding above, The Local Boundary Commission concludes that the pending proposed annexation will not infringe on the enjoyment of any civil or political rights because of race, color, creed, sex, or national origin. Thus, the standard established by 3 AAC 110.910 is met.

The 27.41 acres proposed for annexation are contiguous to the existing boundaries of the City. [3 AAC 110.130(b) and 3 AAC 110.150]

The maps included in the Petition and DCED's preliminary report clearly indicate that the territory proposed for annexation adjoins the existing boundaries of the City. In fact, as noted previously, each of the various individual parcels comprising the 27.41 acres is contiguous to the current boundaries of the City.

Conclusion. The Local Boundary Commission concludes that the territory proposed for annexation is contiguous to the current corporate boundaries of the City of Ketchikan. As such, the standards established in 3 AAC 110.130(b) and 3 AAC 110.150 are met.

All voters residing in the territory and all owners of property in the territory have petitioned the City for annexation. [AS 29.06.040(c)(3) and 3 AAC 110.150]

The Petition includes evidence that each of the four individuals and organizations owning property in the territory proposed for annexation has petitioned for annexation of their respective properties. No one lives in the territory.

Conclusion. The requirements of AS 29.06.040(c)(3) that "all property owners and voters in the area petition the governing body" for annexation is satisfied. Virtually identical provisions in 3 AAC 110.150 are also satisfied.

The City's annexation proposal is in the best interests of the state. [AS 29.06.040]

AS 29.06.040 requires that in order for the Local Boundary Commission to approve an annexation, it must determine that the annexation "*is in the best interests of the state.*"

The pending matter is a routine local action annexation proposal. It carries the endorsement of the two local governments serving the community. It is also endorsed by all property owners in the territory proposed for annexation. No one has objected to the proposal during the opportunity allowed for public comment on the matter. In sum, the record indicates that the pending annexation proposal is devoid of any public policy concerns.

Alaska's Constitution ensures that the boundaries of municipal governments in Alaska will be flexible to accommodate growth and development. See Article X, Section 1 2 of the Constitution of the State of Alaska. The boundary change in question is being undertaken to accommodate such growth and development.

Alaska's Constitution also promotes strong local governments. See Article X, Section 1 of the Constitution of the State of Alaska. In that the pending proposal is endorsed by both affected local governments, it is reasonable to assume that the annexation proposal is in the best interest of each.

Conclusion. The Local Boundary Commission concludes from the foregoing that the annexation proposal serves the constitutional principles set out in Article X, §§ 1 and 12, albeit in a minimal fashion. In the absence of overriding considerations to the contrary, such is sufficient to permit the Local Boundary Commission to determine that the pending annexation proposal serves the best interests of the state. Thus, the requirement set out in AS 29.06.040 is satisfied.

**SECTION IV
ORDER OF THE COMMISSION**

Based on the findings and conclusions set out in Section III of this decisional statement, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied by the annexation proposal filed by the City of Ketchikan. Accordingly, the Commission hereby approves the March 13, 2000 petition of the City of Ketchikan without modification or conditions.

Approved in writing this 17th day of November, 2000.

LOCAL BOUNDARY COMMISSION

BY: *Kathleen Wasserman*
Kathleen Wasserman, Vice-Chairperson

Attest:

Dan Bockhorst
Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.
