



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Local Boundary Commission Staff

May 2006

Final Report to the Local Boundary Commission on Ketchikan Local Government Consolidation



This is the Department of Commerce, Community, and Economic Development's Final Report to the Local Boundary Commission on Ketchikan Local Government Consolidation. The report can also be found on the Internet at the following address:

<http://www.commerce.state.ak.us/dca/lbc/ketchikan3.htm>

3 AAC 110.530(d) requires Commerce 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. Requests for such should be directly to the local Boundary Commission staff at 907-269-4560.

Historical photos of Ketchikan shown on the cover of this report are courtesy of the Alaska State Library, Historical Collections.

This report was written by Dan Bockhorst, Local Boundary Commission Staff. Page layout was performed by Jennie Starkey.

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Part I. Introduction

As staff to the Alaska Local Boundary Commission (LBC), the Alaska Department of Commerce, Community, and Economic Development (Commerce) is required by State law (AS 29.06.110(b)) to "investigate" each proposal for consolidation of municipal governments in Alaska. Commerce is further required to prepare a preliminary report with findings and recommendations to the LBC regarding each consolidation proposal. After considering timely written comments addressing its preliminary report, Commerce must prepare a final report (3 AAC 10.530).

This constitutes Commerce's *Final Report to the Local Boundary Commission on Ketchikan Local Government Consolidation* (Final Report). The proposed Ketchikan local government consolidation would combine the City of Ketchikan (City) and the Ketchikan Gateway Borough (KGB) into a single government.¹ As reflected in the Preliminary Report, the consolidation proposal pending before the LBC is referred to by Commerce as the "Amended Petition."²

Commerce's *Preliminary Report to the Local Boundary Commission on Ketchikan Local Government Consolidation* (Preliminary Report) was published in mid-April 2006. The Preliminary Report comprised 184 pages and is incorporated into this Final Report by reference. To provide a sense of the scope of the Preliminary Report, the Table of Contents of that report is included here as Appendix A.

Approximately 60 printed copies of the Preliminary Report were distributed to the LBC, City officials, KGB officials, City of Saxman, Greater Ketchikan Chamber of Commerce, Ketchikan area news media, and others. Additionally, Commerce provided multiple copies of the Preliminary Report for public review through the Ketchikan Public Library, City Clerk, and KGB Clerk. Further, the Preliminary Report was provided in electronic format to more than 30 other individuals, agencies, and organizations. The Preliminary Report was also made available on the LBC's Website.³

¹ The government would be a home-rule borough in which only one city government (the City of Saxman, a second-class city) would exist.

² The consolidation proposal was filed with the LBC on September 30, 2004. On October 24, 2005, more than one year after the original Petition was filed, the Petitioner amended the proposal.

³ <ftp://ftp.dcbd.dced.state.ak.us/DCBD/KetchikanCons2004/PrelimRpt/Ketchikan_Preliminary_Report.pdf>.

The deadline for filing written comments on the Preliminary Report was May 18, 2006. One set of written comments, a one-page letter from the City Manager, was received. That letter, included in this report as Appendix B, stated as follows:

With regard to the above referenced subject, please be advised that the City of Ketchikan has reviewed the Department of Commerce, Community and Economic Development's April 2006 Preliminary Report to the Local Boundary Commission on Ketchikan Local Government Consolidation. As the City's designated representative, I concur with the recommendation of the Department that a thorough technical review of the proposed charter be undertaken and that City and Borough representatives be invited to participate in such a review. To that end, the City supports the May 4, 2006 request of the Ketchikan Charter Commission [KCC] Chair, Glen Thompson.

On May 31, 2006, Commerce received a copy of a memorandum from the City manager to the City Mayor and City Council. That communication, among other things, noted Commerce's review of the Charter and its request for comments on that review. The memorandum also noted that all the Commerce review materials had been provided to the City Attorney for review.⁴

Part II. Final Conclusions and Recommendations

The following is a summary of the conclusions made by Commerce in its Preliminary Report.

- The consolidation proposal would create a home-rule borough to serve all residents of the consolidated borough. The framers of Alaska's Constitution considered home-rule to be the highest form of self-government. Thus, the consolidation proposal promotes the "maximum local self-government" principle in article X, section 1 of the Alaska Constitution.

⁴ The City Manager's memorandum is available online at <ftp://www.city.ketchikan.ak.us/pub/agenda/060601V.PDF>. The matter of consolidation was on the agenda of the June 1, 2006, meeting of the City Council. Because this Final Report was completed prior to that meeting, it offers no information about any action the City Council may have taken at that meeting.

- Nearly 62 percent of the residents of the KGB are currently served by two local governments. If consolidation occurs, that figure will drop to only 3 percent (residents of the City of Saxman). That fundamental change fosters a "minimum of local government units" as favored by article X, section 1 of the Alaska Constitution.
- The boundaries of the proposed consolidated borough are identical to those of the existing KGB. Those boundaries satisfy all of the constitutional, statutory, and regulatory borough boundary standards.
- The existing population of the KGB meets the size and stability requirements for consolidation.
- The consolidation proposal is fiscally viable. The Ketchikan economy is certainly capable of supporting the consolidated borough. Accordingly, the standards regarding the human and financial resources are fully satisfied by the Amended Petition.
- The communication media and the land, air, and water transportation facilities in the KGB are well developed and integrated. The standards regarding such are fully satisfied.
- Consolidation is in the best interests of the State, not only because it promotes maximum local self-government and a minimum of local government units, but because it also provides residents throughout the borough with an equal voice in the operation of essential areawide services. Those essential services include the Port of Ketchikan, [Ketchikan Public Utilities], Ketchikan General Hospital, 911 emergency dispatch, harbors, library, and the Gateway Center for Human Services. Additionally, consolidation promotes taxpayer equity in that all residents will be equally responsible for areawide services and facilities.
- The Amended Petition provides a plan for suitable transition to a consolidated borough.
- Consolidation would not violate any provision of the federal Voting Rights Act or other laws concerning civil and political rights.

Commerce concluded in the Preliminary Report that the Amended Petition satisfies all legal standards applicable to the pending consolidation proposal. Those include article X, sections 1 and 3 of the Alaska Constitution, AS 29.06.130(a) and 29.05.031, 3 AAC 110.240 - 3 AAC 110.250, 3 AAC 110.045 - 3 AAC 110.065, 3 AAC 110.910 - 3 AAC 110.980, and provisions of the federal Voting Rights Act. Commerce recommended in its Preliminary Report that the Amended Petition be approved.

Those conclusions and recommendation remain valid and are readopted by Commerce in this Final Report. If the LBC concurs with Commerce's conclusion that the Amended

Petition meets all applicable legal standards, the LBC may approve the Amended Petition with or without condition and/or further amendments.

In its Preliminary Report, Commerce did not recommend any particular amendments or conditions regarding the pending consolidation proposal. Commerce did, however, observe that if consolidation occurs, the Charter (in whatever form is approved by the LBC) will become the organic law of the consolidated borough. Commerce encouraged a careful technical review of the Charter to ensure that such a seminal document is technically sound. Commerce further noted that it had not yet undertaken a careful review of the Charter but that, if directed by the LBC or requested by the KCC to do so, Commerce would conduct a thorough technical review of the 46-page Charter, as amended by the KCC.

On May 4 2006, the Chair of the KCC wrote a request that Commerce, in consultation with officials of the City and the KGB, undertake a technical review of the proposed Charter included with the *Amended Petition for Consolidation of the City of Ketchikan and the Ketchikan Gateway Borough*. Specifically, the KCC Chair wrote:

The Ketchikan Charter Commission met on May 3, 2006 to approve that a request be sent to DCED for a technical review of the Petition for Consolidation's charter. That agenda item passed unanimously.

In accordance with the suggestion in the Preliminary Report on the Ketchikan Charter Commission's Consolidation Petition, we respectfully request that the DCED conduct a technical review of the Charter contained within the Ketchikan Charter Commission's Petition for the proposed consolidated Municipality. We encourage the DCED to consult with staffs of the City of Ketchikan and the Ketchikan Gateway Borough during this technical review.

A copy of the letter was provided to officials of the City (City Manager, City Clerk, City Finance Director, and City Attorney), officials of the KGB (Borough Manager, Borough Clerk, Borough Finance Director, and Borough Attorney), and others.

Commerce subsequently undertook a diligent review of the Charter to offer constructive comments regarding technical aspects of the Charter. That review was completed on May 23, 2006. Details concerning that review were shared on May 23 with the KCC, City, and KGB. An overview of Commerce's review is set out in Part V of this report.

Part III. Prospective Consolidation Election(s) To Be Conducted by Mail

As noted in the Preliminary Report, if the LBC approves the Petition, consolidation would be subject to voter approval. If voters approve consolidation, a separate election would be conducted to elect the initial mayor and assembly of the proposed Municipality of Ketchikan.

The elections would be conducted by the Division of Elections in the Office of the Lieutenant Governor of the State of Alaska. The Director of the Division of Elections has advised Commerce that the prospective elections in this matter would be conducted as "by-mail elections," in accordance with AS 15.20.800 and 6 AAC 25.590 and the general provisions of AS 15 and Title 6 of the Alaska Administrative Code. A copy of AS 15.20.800 and of 6 AAC 25.590 is included in this report as Appendix C.⁵

On May 31, 2006, the Division of Elections provided the following description to Commerce regarding the manner in which the prospective elections would be conducted.

If the LBC approves the Petition, with or without amendments or conditions, it must immediately notify the Director of the Division of Elections for the State of Alaska. Within 30 days of receiving that notification, the Director of Elections shall issue an order and notice of election for the proposed municipality. The election shall be conducted within 30 to 90 days after the election order.

In order to participate in this election, a voter must be registered in and be a resident of the area included in the proposed consolidated municipality 30 days prior to the election. Voters may contact the Division of Elections Region I Office at (907) 465-3021 to update or confirm that their voter registration is current in order to ensure eligibility to participate in this election.

The Division of Elections intends to conduct the consolidation election as a "by-mail election," in accordance with AS 15.20.800 and 6 AAC 25.590,

⁵ The most recent State-conducted election involving a matter that came before the LBC was also carried out by mail. That was the April 11, 2006, election for the proposed incorporation of the City of Naukati. In that instance, 83 ballots were cast from a pool of 112 registered voters. Voter participation in that election amounted to 74.1 percent.

and the general provisions of AS 15 and Title 6 of the Alaska Administrative Code. There will be no polling places open for regular “in-person voting” on election day. However, there will be an Absentee Voting Official (AVO) available for “absentee-in-person voting” and assistance with by-mail voting during each of the 15 days prior to the election and on election day.

The location, dates, and hours for absentee-in-person voting are to be announced once the election order has been issued. The AVO, as an attesting official, may assist in witnessing a voter’s by-mail oath and affidavit, accept receipt of a by-mail-voter’s hand-delivered voted ballot, and provide general voter assistance.

Ballots will be mailed by the Division of Elections to all eligible voters 22 days prior to election day. The ballots will be sent to the mailing address of each voter as stated on that voter’s registration record. Again, voters may contact the Division of Elections Region I Office at (907) 465-3021 to update or confirm that their voter registration is current in order to ensure eligibility to participate in this election.

Eligible voters to whom a by-mail ballot is sent will be able to return their ballots by-mail or deliver them directly to the AVO serving in the area for the election. Ballots must be postmarked no later than election day or delivered to the AVO on or before election day.

The Director of Elections will certify the election results. If a majority of the total votes cast in the election favors consolidation, the Director of Elections shall, within 10 days, set a date for election of the mayor and assembly of the consolidated municipality. The election date shall be within 60 to 90 days after the election order.

An election of initial officials will also be conducted by-mail in a fashion similar to the consolidation election. Nominating packets will be mailed to each registered voter who is eligible to participate in this election of officials. Qualified voters who wish to file a nominating petition for office will return their completed packet to the Division of Elections for processing.

Part IV. Scheduling and Notice of LBC Hearing, and Decisional Meeting in Ketchikan

The LBC will conduct a public hearing in Ketchikan regarding the consolidation proposal. The hearing is scheduled to be held in the City Council Chambers on Monday, June 26,

2006, beginning at 3:00 p.m. Following case presentation and testimony of witnesses called by the Petitioner and Respondent, the LBC will recess the hearing until 7 p.m., at which time it will reconvene to receive public comment regarding the Amended Petition. Immediately following the hearing, the LBC may convene a decisional meeting under 3 AAC 110.570 to act on the Amended Petition.

Part V. Technical Review of Home-Rule Charter

In the course of the technical review of the Charter, Commerce compiled a 107-page listing of 2005 Alaska Statutes that expressly limit home-rule powers. Home-rule limitations were found in AS 14 (Education, Libraries, and Museums), AS 21 (Insurance), AS 23 (Labor and Workers Compensation), AS 29 (Municipal Government), AS 30 (Navigation, Harbors, and Shipping), AS 42 (Public Utilities and Carriers), AS 43 (Revenue and Taxation), and AS 46 (Water, Air, Energy, and Environmental Conservation). The Charter was examined for conflicts with those limitations. The Charter was also examined for conformance with the initiative adopted by the voters of the KGB on October 7, 2003, establishing KCC and providing for the filing of the consolidation petition, including the Charter. Additionally, the Charter was compared to the 2000 Charter, as amended by the LBC.

Style, grammar, and word usage were carefully reviewed. Technical aspects of the Charter were also reviewed. An overview of these analyses is included with this Final Report as Appendix D. Under separate cover, the complete analysis (including a document tracking the changes proposed by Commerce) has been provided to the KCC, the City, the KGB, and members of the LBC.

The KCC met on May 31, 2006, to consider the suggested edits by Commerce. On June 1, 2006, Debby Otte, KCC Secretary, advised Commerce in writing that the KCC took the following actions at its May 31 meeting:

1. Voted unanimously to accept the “style, grammar, and word usage” edits suggested by Commerce as summarized in Parts I and II of Appendix D to this Final Report, and as specifically reflected in Commerce’s May 23, 2006, recommended edits to the proposed Charter.
2. Voted unanimously to accept all specific “technical” modifications suggested by the Commerce as summarized in Part III of Appendix D to this Final Report and as specifically reflected in Commerce’s May 23, 2006, recommended edits to the proposed Charter.⁶

⁶ As outlined in number 3 above, the KCC separately addressed technical matters raised by Commerce

3. With regard to technical issues raised by Commerce relating to initiative and referendum as outlined in Part III B of Appendix D, the KCC unanimously approved, in first reading, the following changes in addition to those reflected in the Commerce recommendations:⁷

A. Modify Section 6.04(e) of the Charter to read as follows

If the ordinance or resolution that is the subject of an initiative or a referendum petition affects only a service area or nonareawide portion ~~an area that is less than the entire area~~ of the Municipality, only qualified voters residing in that affected area may sign the petition. The petition must be signed by a number of qualified voters equal to at least twenty percent of the votes cast in that area at the last regular election held before the date written notice is given to the contract person and alternate that the petition is available.

B. Add a new section as Section 6.08(e) to read as follows:

If the subject matter of the proposed initiative relates only to a service area or nonareawide portion of the Municipality, the measure shall be submitted only to the electorate of that specific area.

C. Add a new section as Section 6.09(e) to read as follows:

If the subject matter of the proposed referendum relates only to a service area or nonareawide portion of the Municipality, the measure shall be submitted only to the electorate of that specific area.

The proposed changes to Sections 6.04(e), 6.08(e), and 6.09(e) of the Charter will be considered for second reading by the KCC at a meeting scheduled for June 22, 2006.

regarding provisions of the Charter relating to initiative and referendum. Additionally, the KCC noted with regard to a question raised by Commerce in Part III F of Appendix D, that it is the intention of Petitioner that omissions and errors regarding the requirements of Section 11.02(a)(1) of the Charter would be cause for the election required by Article XI of the Charter to be invalidated.

⁷ Added text is set out in bold and underlined; deleted text is in bold and stricken through.

Part VI. Final Recommendations

Based on the discussion in Part V of this report, Commerce recommends that the LBC modify the Charter included in the Amended Petition to reflect the recommended changes noted herein.⁸ However, if the City or KGB subsequently raise concerns or objections to those recommended changes, or if the City or KGB offer further proposed changes to the Charter, Commerce urges the LBC to consider those comments before making amendments. Following publication of this Final Report, Commerce will continue to keep in contact with the KCC, City, and KGB and will advise the LBC of any pertinent developments prior to the June 26, 2006, hearing.

After amending the Charter, Commerce further recommends that the LBC approve the Amended Petition in order that the proposal may be presented to the voters for their consideration.

In closing, Commerce sincerely praises the members of the KCC for their efforts in this matter over the past two and one-half years. KCC members Glen Thompson (Chair), Debby Otte (Secretary), Brad W. Finney, Jerry L. Kiffer, John A. Harrington, Mike Painter and Dennis McCarty exhibited diligence and a tremendous commitment in carrying out the duties of their office. The fundamental structure of local government in the greater Ketchikan area has remained unchanged for more than four decades. The efforts of the KCC, reflected in the Amended Petition now pending before the LBC, represent a credible proposal to reform and restructure local government in the greater Ketchikan area.

Commerce also offers its earnest compliments to officials of the City and KGB for their help in this matter. City and KGB officials extended every assistance, cooperation, and courtesy to both the KCC and Commerce.

⁸ It is Commerce's position that to the extent amendments to the Charter might create inconsistencies in other parts of the Amended Petition, the provisions in the amended Charter (as the organic law of the Municipality of Ketchikan) would prevail.

Appendix A

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on Ketchikan Local Government Consolidation

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Appendix B

May 17, 2006 Letter from City of Ketchikan



May 17, 2006

Local Boundary Commission Staff
Attn: Mr. Dan Bockhorst
Department of Commerce, Community and Economic Development
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Dear Local Boundary Commission Staff:

**Re: Preliminary Report to the Local Boundary Commission on Ketchikan
Local Government Consolidation – April 2006**

With regard to the above referenced subject, please be advised that the City of Ketchikan has reviewed the Department of Commerce, Community and Economic Development's April 2006 Preliminary Report to the Local Boundary Commission on Ketchikan Local Government Consolidation. As the City's designated representative, I concur with the recommendation of the Department that a thorough technical review of the proposed charter be undertaken and that City and Borough representatives be invited to participate in such a review. To that end, the City supports the May 4, 2006 request of the Ketchikan Charter Commission Chair, Glen Thompson.

Should you have any questions on this matter, please do not hesitate to contact me.

Very truly yours,

Karl R. Amylon
City Manager

cc: Mayor Weinstein and City Councilmembers
Bob Newell, Finance Director
Steve Schweppe, City Attorney
Katy Suiter, City Clerk
Roy Eckert, Borough Manager
Harriet Edwards, Borough Clerk
Mayor Joe Williams
Stefanie Bromagen, City Clerk
Glen Thompson, Ketchikan Charter Commission Chair
Deborah Otte, Ketchikan Charter Commission Chair

Appendix C

Alaska Statutes and Alaska Administrative Code Regarding Voting by Mail

Alaska Statutes Regarding Voting By Mail

Sec. 15.20.800. Voting by mail. (a) The director may conduct an election by mail if it is held at a time other than when the general, party primary, or municipal election is held.

(b) If the director conducts an election under (a) of this section by mail, the director shall send a ballot for each election described in (a) of this section to each person whose name appears on the official registration list prepared under [AS 15.07.125](#) for that election. The director shall send ballots by first class, nonforwardable mail. The ballot shall be sent to the address stated on the official registration list unless

(1) the voter has notified the director or an election supervisor of a different address to which the ballot should be sent; or

(2) the address on the official registration list has been identified as being an undeliverable address.

(c) If the director conducts an election under (a) of this section by mail, the director shall mail ballots under this section on or before the 22nd day before the election.

(d) The voter may cast the ballot under [AS 15.20.081](#)(d) - (f).

(e) The director shall review ballots voted under this section under procedures established for the review of absentee ballots under AS 15.20.201 and 15.20.203. The director shall establish the schedule for counting ballots in an election conducted by mail.

Administrative Regulations Regarding Voting By Mail

6 AAC 25.590. BY-MAIL ELECTION. (a) If the director determines that an election will be conducted by mail under [AS 15.20.800](#) , the order and notice of election calling for the election will state that the election is to be conducted by mail and that there will be no polling place open for regular in-person voting on election day. In a by-mail election, election day will be the date designated by the director as the deadline by which a voter's ballot must be voted, witnessed, mailed, and, if postmarked, date-stamped by the post office.

(b) In each election conducted by mail, the election supervisor shall appoint at least one absentee voting official to serve the jurisdiction in which the election is to be held. At the discretion of the election supervisor, appointments may be made of persons to serve within each precinct or community within the jurisdiction, or in the general geographic area immediately contiguous to the jurisdiction. Each absentee voting official shall be available at least 15 days before the election, at the hours and location specified by the election supervisor. Each absentee voting official shall be available to

(1) provide absentee voting in person, as prescribed in [AS 15.20.061](#) , and absentee voting through a personal representative as prescribed in [AS 15.20.071](#);

(2) sign a voter's by-mail oath and affidavit envelope as an authorized attesting official, except that the official may not attest his or her own ballot;

(3) accept receipt of a by-mail voter's hand-delivered voted ballot, which has been sworn to, attested, and sealed in the by-mail return envelope; and

(4) provide general voter assistance.

(c) The director will give public notice of a by-mail election in accordance with [AS 15.15.070](#) . The director may select a manner reasonably calculated to give actual knowledge of the election to the voters. The notice shall be given by publication at least twice in a newspaper of general circulation in the area where the election will be held. If there is no paper of general circulation in the area where the election will be held, then a notice will be mailed to each registered voter in the jurisdiction. The newspaper and mailed notice must specifically include

(1) the date of election;

(2) disclosure that the election will be conducted by mail and that no polling place will be available for regular in person voting on election day;

(3) designation of the office to which candidates are to be nominated or elected, and a statement of the subject of the propositions and questions that are to appear on the ballot;

(4) designation of the date on which ballots are expected to be mailed to voters;

(5) instructions to voters who will not be at their current mailing addresses when the ballots are to be mailed, or who do not receive their ballot through the mail;

(6) a listing of appointed absentee voting officials, their office hours, and locations of their offices; and

(7) a statement of when the ballot may be voted.

(d) Repealed 8/23/2001.

(e) Specific instructions for voting a by-mail ballot, and a list of the appointed absentee voting officials and their hours and locations, will be mailed to each voter with the ballot.

Appendix D

Commerce Staff Review of Proposed "Municipality of
Ketchikan" Charter

PART I: INTRODUCTION, SCOPE OF REVIEW, AND DISCLAIMER

On May 4, 2006, the Chair of the Ketchikan Charter Commission wrote to Local Boundary Commission (LBC) Staff requesting that LBC Staff, in consultation with officials of the City of Ketchikan and the Ketchikan Gateway Borough, undertake a technical review of the proposed Charter included with the Amended Petition for Consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.¹ Specifically, the Chair wrote:

The Ketchikan Charter Commission met on May 3, 2006 to approve that a request be sent to DCED for a technical review of the Petition for Consolidation's charter. That agenda item passed unanimously.

In accordance with the suggestion in the Preliminary Report on the Ketchikan Charter Commission's Consolidation Petition, we respectfully request that the DCED conduct a technical review of the Charter contained within the Ketchikan Charter Commission's Petition for the proposed consolidated Municipality. We encourage the DCED to consult with staffs of the City of Ketchikan and the Ketchikan Gateway Borough during this technical review.

A copy of the letter was provided to officials of the City of Ketchikan (City Manager, City Clerk, City Finance Director, and City Attorney), officials of the Ketchikan Gateway Borough (Borough Manager, Borough Clerk, Borough Finance Director, and Borough Attorney), and others.

LBC Staff undertook a diligent review of the Charter to offer constructive comments regarding technical aspects of the Charter. In the course of the review, LBC compiled a 107-page listing of 2005 Alaska Statutes that expressly limit home-rule powers. Home-rule limitations were found in AS 14 (Education, Libraries, and Museums), AS 21 (Insurance), AS 23 (Labor and Workers Compensation), AS 29 (Municipal Government), AS 30 (Navigation, Harbors, and Shipping), AS 42 (Public Utilities and Carriers), AS 43 (Revenue and Taxation), and AS 46 (Water, Air, Energy, and Environmental Conservation). The Charter was examined for conflicts with those limitations. The Charter was also examined for conformance with the initiative adopted by the voters of the Ketchikan Gateway Borough on October 7, 2003, establishing KCC and

¹ On April 20, 2006, LBC Staff Supervisor Dan Bockhorst wrote to officials of the City of Ketchikan and Ketchikan Gateway Borough inviting input on the proposed Charter. The note stated:

The [LBC Staff Preliminary Report on the proposed consolidation] encourages the LBC to direct and/or the KCC to invite this agency to undertake a technical ("non-policy") review of the proposed home-rule charter in cooperation with the Ketchikan Gateway Borough and the City of Ketchikan. In anticipation that such a review will occur, I would welcome any readily available existing written materials expressing technical concerns on the part of the Borough over provisions in the proposed charter."

providing for the filing of the consolidation petition, including the Charter. Additionally, the Charter was compared to the 2000 Charter, as amended by the LBC.

Style, grammar, and word usage were carefully reviewed. Recommended changes regarding those aspects of the Charter are summarized in Part II. Technical aspects of the Charter were also reviewed. Issues regarding technical elements of the Charter are outlined in Part III.

LBC Staff stresses that the review was provided as a professional courtesy. The Petitioner remains responsible for the content of the Charter. As such, the Petitioner is urged to carefully review the summary of changes outlined here and the specific changes recommended in the Charter.

PART II: SUMMARY OF CHANGES REGARDING STYLE, GRAMMAR, AND WORD USAGE

A. Table of Contents.

The Table of Contents did not precisely reflect the contents of the Charter. For example, no descriptive title was listed in the Table of Contents for Article XVI “General Provisions” even though a title was provided in the Charter. Additionally, words and punctuation in the Table of Contents did not always match that in the article headings (e.g. Article IV “Municipal Manager & Administrative Departments” v “Municipal Manager and Administrative Departments”). Lastly, some page numbers in the Table of Contents were incorrect. LBC Staff crafted a Table of Contents to remedy those matters.

B. Article Headings.

Edits were made to provide for consistency in article headings. Some headings in the Charter were in all capital letters, while others were in “title case” (i.e., first letter of each word was capitalized). In some instances, colons or dashes were used to separate the article number (e.g., “Article II”) and the descriptive title of the article (e.g., “The Assembly”), in some cases spacing was used to separate the two, and in other instances there was no punctuation or spacing to separate the article number from the descriptive title. LBC Staff used the Constitution of the State of Alaska as a guide for article headings. The number of the article appears on the first line of each article, followed by a blank line, followed by the descriptive title of the article. Title case was used for all article headings. No descriptive title was provided for Article I; so LBC Staff added one.

C. Section Headings.

Edits were made to provide for consistency in section headings. Most section headings ended with a period. Where that was not the case, periods were

added. Also, most section headings used title case capitalization. Where that was not the case, the headings were changed to title case capitalization.

D. Consistency in Spelling.

In a few instances, different spellings of the same words were found in the Charter (e.g., “assemblymembers” v “assembly members”. If a particular term has a technical meaning (e.g., “nonareawide”), LBC Staff used appropriate technical material (e.g., Alaska Statutes) as a spelling guide. Otherwise, the Merriam-Webster Dictionary was used as a spelling guide.

The following spelling inconsistencies were addressed in the LBC Staff edits.

- **“Assemblymembers” v “assembly members”**: Based on the Merriam-Webster Dictionary, “assembly members” and “assembly member” were used. The Alaska Statutes do not contain the term “assemblymember” or “assembly member”; however, they do contain the similar word “council member.”
- **“Nonareawide” v “non-areawide”**: Based on the Alaska Statutes, “nonareawide” was used in lieu of “non-areawide.”

E. Other Spellings. Spelling changes were also made regarding the following words:

- **“benefitted”** was changed to **“benefited”**;
- **“de minimus”** was changed to **“de minimis”**;
- **“un-expired”** was changed to **“unexpired”**; and
- **“re-certify”** was changed to **“recertify.”**

F. Consistency in Capitalization

Inconsistencies in capitalization of a number of terms were found in the Charter (e.g., “Mayor” and “mayor.”) Most often, the inconsistencies related to the governing body or other officials of the Municipality of Ketchikan. *The Chicago Manual of Style* (Chicago Manual) was used as a guide. While the Chicago Manual “generally prefers . . . the parsimonious use of capitals,” it stresses that writers and editors have discretion in capitalization, particularly in official contexts:

[No pattern of capitalization] can be universally applied. In certain official (as opposed to literary contexts, *the College* or *the President*

may appropriately be capitalized. Writers and editors must use discretion and judgment in deciding when to follow the guidelines.

Chicago Manual, 15th Edition, pp. 311 – 312.

Thus, it would generally be acceptable to either capitalize the words or use lower case. However, whatever style is used, it should be consistently applied. Because most of the words in question seemed to be capitalized, that style was consistently applied by LBC Staff. The following inconsistencies in terms of capitalization were addressed in the LBC Staff edits.

- **“Article” v “article”**: The term “article” was edited so that it is capitalized in all instances.
- **“Assembly” v “assembly”**: The term “assembly” was edited so that it is capitalized in all instances.
- **“Charter” v “charter”**: The term “charter” was edited so that it is capitalized in all instances except where reference was made to a charter commission.
- **“Governor” v. “governor”**: The term “governor” appears only once in the Charter. Therefore, there is no inconsistency in capitalization of that word. However, it was not capitalized in the Charter. Since the titles of other officials are capitalized, LBC Staff also capitalized the term “governor.”
- **“Manager” v “manager”**: The terms “manager” and “municipal manager” were edited so that they are capitalized in all instances.
- **“Mayor” v “mayor”**: The term “mayor” was edited so that it is capitalized in all instances.
- **“School District” v “school district”**: The term “school district” was never capitalized in the Charter. However, since the titles of other agencies, departments, and the like were capitalized, the term “school district” was edited so that it is capitalized in all instances.
- **“School Board” v “school board”**: The term “school board” was never capitalized in the Charter. However, since the title of the other elected body, the assembly, is capitalized, the term “school board” was edited so that it is capitalized in all instances.
- **“Section” v “section”**: When referring to a specific section in the Charter, the word was edited so that it was always capitalized.

- **“State” v “state”**: When referring to the State of Alaska, the word was edited so that “state” was always capitalized.
- **“Subsection” v “subsection”**: When referring to a specific subsection in the Charter, the word was edited so that it was always capitalized.
- **“Vice Mayor” v “vice mayor”**: The term “vice mayor” was never capitalized in the Charter. However, since the titles of other officials were capitalized, the term “vice mayor” was edited so that it is capitalized in all instances.

G. Consistency in Titles of Officials. Inconsistencies were found in certain titles of municipal officials. LBC Staff made the following suggested edits:

- **“Clerk” v “Municipal Clerk”**: The Charter was edited so that all references to “Clerk” were changed to “Municipal Clerk.”
- **“Manager” v “Municipal Manager”**: The Charter was edited so that all references to “Manager” were changed to “Municipal Manager.”
- **“Superintendent” v “Superintendent of Schools”**: The Charter was edited so that all of those references were changed to “School District Superintendent.”

H. Consistency in the Style of Numbers.

In some instances cases, a redundant style of numbering was used (e.g., “at least twenty (20) qualified voters”); however, that style was not used consistently. The State of Alaska *Drafting Manual for Administrative Regulations* states “[t]he older, redundant style sometimes used in legal documents (e.g., ‘five (5)’) should not be used.” Therefore, those redundancies were eliminated in the LBC Staff edits.

I. Consistency in Legal Citations.

Legal citations were not consistent. For example, in one instance a constitutional provision was cited as “section 5 of Article XII, Constitution of the State of Alaska.” In another instance, a constitutional citation was given as “Article XI, Section 7, of the State constitution.” All legal citations were edited to conform to the style set out in the State of Alaska *Manual of Legislative Drafting*, 2003 (Legislative Drafting Manual).

J. And/or, And, Or.

The Legislative Drafting Manual (p. 55) cautions against using “and/or,” because it is “too ambiguous.” “And/or” was used seven times in the Charter (Sections

2.06, 8.03(e), 9.05(b), 10.09(b), twice in 11.01(c), and 11.04). LBC Staff edited the Charter to eliminate those uses. The KCC and other local officials are urged to carefully review those edits to ensure that proper intent was maintained.

K. May, Shall, Must.

Legislative Drafting Manual, p. 62, discusses use of the words may, shall, and must:

Use the word "shall" to impose a duty upon someone. The Alaska Supreme Court has stated that the use of the word "shall" denotes a mandatory intent. ... **Use the word "must" when describing requirements related to objects such as forms or criteria.** (Use "must" sparingly, however, because most sentences using it can probably be written more clearly to impose a duty on a person, in which case "shall" would be the proper word.) Use the word "may" to grant a privilege or discretionary power. . . . **Use the words "may not" to impose a prohibition upon someone.**

LBC Staff made changes to these words throughout based on the above criteria. With regard to the caution regarding use of "must," Staff simply made the change from "shall" to "must" rather than attempting to rewrite a provision. There were a few instances where "shall be" was not changed.

L. Such and Said.

The Legislative Drafting Manual cautions against legalese and cites to Reed Dickerson's The Fundamentals of Legal Drafting for a list of words or phrases to avoid in that regard. Among them are "such" and "said". Preferred usage is "the" or "that" or "those". LBC Staff made several changes throughout the Charter to that effect.

M. Present Tense

The Legislative Drafting Manual at p. 65 discusses the preference for using the present tense. Where LBC Staff believed that use of the present tense was appropriate, it made changes. For example, if consolidation passes, the Municipality "is" a home rule borough.

N. Dates.

The Legislative Drafting Manual (p. 61) states, "[w]hen referring to the date by month and day only, use "July 1" (instead of July 1st, July one, or July first). Edits were made accordingly.

O. Miscellaneous

LBC Staff also made other minor grammatical suggested changes where it believes the wording was inconsistent with other provisions. In addition, where wording could suggest that the Charter was not law, Staff made suggested rewording. For example, Staff suggests that the phrase, “authorized by law or by this Charter or by forfeiture of office” be reworded to “by this Charter, other law, or forfeiture of office”. A few suggested changes were made to avoid legalize, such as “deem.” Staff suggests a change to “consider”.

PART III: TECHNICAL MATTERS

A. Article I: Name, Type and Class of Government, Boundaries, and Powers.

The initiative approved by the voters on October 7, 2003, that established the Ketchikan Charter Commission and authorized the filing of the consolidation petition expressly provided that, “The proposed consolidated borough shall be named the ‘Municipality of Ketchikan’.” Sections 1.01 and 1.02 were modified to conform to that requirement.

B. Article VI: Initiative, Referendum, and Recall.

Section 6.04(e) of the Charter provides that an initiative or referendum may be proposed for a portion of the Municipality. Specifically, it states:

If the ordinance or resolution that is the subject of an initiative or a referendum petition affects only an area that is less than the entire area of the municipality, only qualified voters residing in the affected area may sign the petition. The petition shall be signed by a number of qualified voters equal to at least twenty percent of the votes cast in that area at the last regular election held before the date written notice is given to the contract person and alternate that the petition is available.

While similar provisions exist in Alaska Statutes with respect to general law municipalities (AS 29.26.130(e)), the State law and the provisions in the Charter are ambiguous in two significant respects.

First, the wording is vague in terms of what portion of the Municipality may be the subject of an initiative or referendum. Must it be some legally defined jurisdictional part of the Municipality such as the nonareawide portion of the Municipality or a service area of the Municipality; or could it be *any* portion of the

Municipality, including a single lot or parcel of land inhabited by just one individual?

LBC Staff notes that AS 29.26.130(e) is not a home-rule limitation. Thus, a home rule borough is not required to provide for an initiative or referendum on less than an areawide basis. Some home-rule boroughs (e.g., the Municipality of Anchorage) make no provision for an initiative or referendum involving only a portion of the borough. Others (e.g., the City and Borough of Juneau) allow an initiative or referendum affecting a portion of the borough, but limit that option to a formally established borough service area. Specifically, Section 7.03 of the Charter of the City and Borough of Juneau states, in part, as follows:

If the subject matter of the petition relates only to a service area, the petition shall be signed by a number of qualified voters residing within the service area equal to at least twenty-five percent of the votes cast in the service area at the preceding regular municipal election.

The second fundamental ambiguity in the Charter and AS 29.26.130(e) regarding an initiative or referendum affecting a portion of the Municipality is who would be eligible to vote on the matter. Both the Charter and AS 29.26.130(e) provide that when a proposed initiative or referendum would affect only a portion of the borough, only voters in that portion may petition for the referendum or initiative. However, neither the State law nor the Charter address who may vote on those initiatives or referenda. In the case of the Juneau Charter, it is clear that an initiative or referendum involving only a service area may be voted on only by voters in that service area. Specifically, Section 7.10(a) of the Juneau Charter states in relevant part as follows:

If the subject matter of the proposed initiative or referred measure relates only to a service area, the measure shall be submitted only to the electorate of the service area.

If the provisions allowing a referendum or initiative in only a portion of the Municipality are retained, it is recommended that a new subsection be added to Sections 6.08 and 6.09 to define who may vote on those initiatives and referenda.

C. Section 8.03(f).

Section 8.03(f) referred to the audit requirements of Section 10.14 of the Charter. The reference appears to be in error and was changed to Section 10.15.

D. Section 10.07: Property Tax Limit.

Section 10.07 of the Charter was found to be ambiguous. For example, the first sentence states, “The increase in the rate of the areawide property tax levy from one year to the next shall not exceed two-tenths (.0.2%) percent 2 mils of the assessed valuation of the property to be taxed, two (2 mills) above the rate levied in the prior fiscal year.”

A two-tenths of one percent increase in the property tax rate would not equal a 2 mill tax increase. For example, if the tax rate were 10 mills, a two-tenths of one percent increase in that rate would result in a tax rate to 10.02 mills (10 mills x 1.002 = 10.02 mills). However, an increase of two-tenths of one percentage **point** in the tax rate would equal two mills. The reference in the same sentence to “(.0.2%)” only adds to the ambiguity. Section 10.07 was rewritten as follows in an attempt to eliminate the ambiguities.

Section 10.07 Property Tax Limit.

- (a) Except as otherwise provided in this Article, an increase in the areawide property tax levy from one year to the next may not exceed two mills.
- (b) An increase in the areawide property tax levy from one year to the next may exceed two mills if the increase is:
 - (1) approved by at least two-thirds of the total membership of the Assembly at a second meeting regarding the proposed increase, the first of which meetings must have been advertised for at least 30 days; or
 - (2) approved by a majority of the voters voting on the question at a special or regular election.
- (c) The property tax levy during a year may not exceed 30 mills, except that no limitation applies to property taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

E. Section 10.08: Taxation: Supermajority Requirement to Raise Taxes.

This section of the Charter was found to be unclear. Changes outlined in footnote 56 of the LBC Staff Preliminary Report (pp. 111 – 112) were included in

the recommended changes. Additionally, when Section 10.08 of the Charter was reviewed in the context of the remainder of the Charter, further changes were made. For example, Section 10.08 stated that an increase in the rate of taxation would “require the affirmative vote of two-thirds (2/3) of the Assembly.” Similar language appeared in Section 10.07. However, Sections 2.09 and 3.03 of the Charter contain language that may appear to be similar, but that contains potentially significant and perhaps unintended distinctions in language found in Sections 10.07 and 10.08. Sections 2.09 and 3.03 of the Charter state, “An affirmative vote of at least two-thirds (2/3) of the total membership of the Assembly shall be required ...” (emphasis added). The Legislative Drafting Manual (p. 59) stresses the importance of consistency:

Be consistent. See Dickerson, The Fundamentals of Legal Drafting, 2d ed. (1986), sec. 2.3, pp. 15 - 18, where it is pointed out that “the competent draftsman . . . always expresses the same idea in the same way and always expresses different ideas differently.”

Given the rules for statutory construction, the courts could readily conclude that the drafters of the Charter intended different requirements for Section 2.09 and 3.03 compared to Section 10.08. For example, the courts could conclude that while Sections 2.09 and 3.03 clearly provide that at least two-thirds of the seven members of the Assembly must vote for a measure for it to pass, Sections 10.07 and 10.08 could pass with a two-thirds vote among the members present at the meeting.

Section 10.08 was rewritten as follows in an attempt to eliminate the ambiguities.

Section 10.08 Requirement to Raise Taxes

An ordinance or resolution that will increase the rate of levy of a sales tax, use tax, or property tax on an areawide, nonareawide or service area basis requires the affirmative vote of at least two-thirds of the total membership of the Assembly or a majority of the qualified voters who vote on the ordinance or resolution at a regular or special election. If the increase in the rate of levy of the sales tax, use tax, or property tax is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in that area.

F. Section 11.02(b): Notice of Bond Indebtedness.

Section 11.02(b) provides that omissions or errors regarding information required by Section 11.02(a)(2), (3), and (4), and (5) shall not invalidate any election. That language suggests to LBC Staff that omissions or errors regarding information required by Section 11.02(a)(1) would be cause to invalidate an election. Is that the intent?

G. Section 12.03(b): Services Provided by Service Area.

Section 12.03(b) specifies that the powers described in Section 12.03(a)(1)-(5) are the Charter are to be exercised in the Gateway Service Area. However, Section 12.03(a) lists six powers, not five. On the assumption that the reference should be to Section 12.03(a)(1)-(6), the Charter was edited to include (6).

H. Section 12.04(d): Expansion or Reduction of Powers in Service Areas.

Section 12.04(d) is unclear. It states that, “. . . any power, other than those listed in Section 12.02, that was previously exercised by the City of Ketchikan may, without approval of the voters, be exercised by the Municipality on a nonareawide basis within the Gateway Service Area.” On the assumption that the reference should be to “service area basis” rather than “nonareawide basis”, the Charter was edited to “service area basis.”

I Section 16.01: Personal Financial Interest; Nepotism.

Section 16.01 is ambiguous. It states that unless approved by the “body,” an elected municipal officer may not participate in any official action in which the officer or a member of the officer's household has a substantial financial interest. It is unclear whether the body will always be the Assembly, or whether it would be the School Board where the officer is a member of the School Board. .The Charter was amended to substitute the term “Assembly” for “body.”

