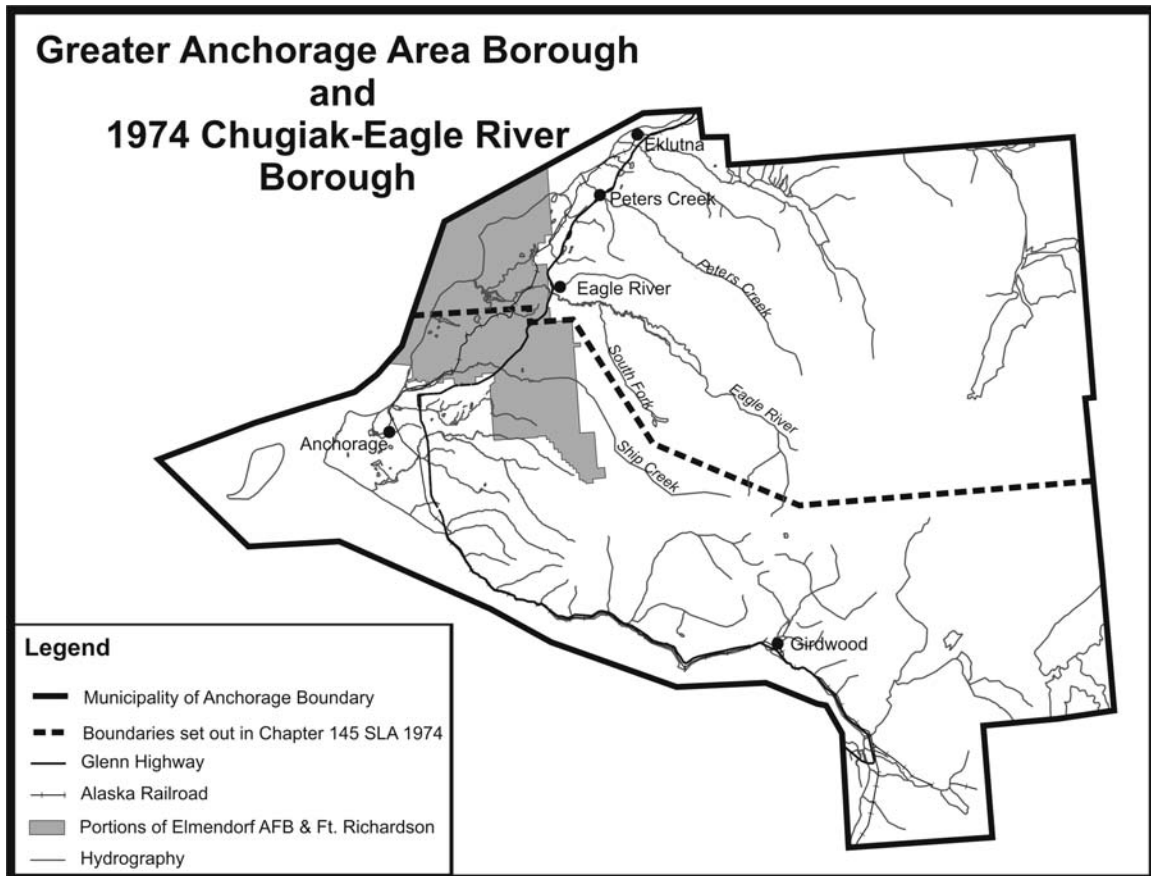


# OVERVIEW<sup>1</sup>

## PROCESS TO PETITION TO DETACH FROM THE MUNICIPALITY OF ANCHORAGE AND INCORPORATE AN EAGLE RIVER BOROUGH

Prepared by Local Boundary Commission Staff  
Alaska Department of Community and Economic Development  
March 20, 2004



<sup>1</sup>This publication is intended to be a general summary of the steps that would be involved in a petition to incorporate an Eagle River Borough. Readers are urged to confer with staff of the Local Boundary Commission and to review the laws referenced in this publication for more complete information about procedural requirements.

## **I. Step One: Petition the Local Boundary Commission.**

A proposal to detach the greater Eagle River area from the Municipality of Anchorage and incorporate that same area as the Eagle River Borough is formally initiated by petitioning the Alaska Local Boundary Commission (hereinafter "the Commission" or "LBC").<sup>2</sup> The petition must be prepared using forms provided by the Commission's staff, the Department of Community and Economic Development (DCED).<sup>3</sup>

As outlined in part I-A below, two distinct approaches may be used to initiate such a proposal. One is to address both boundary changes (i.e., detachment from the existing borough and incorporation of a new borough) in a single petition. That approach is termed the "comprehensive petition approach." The alternative is to deal initially with just the detachment proposal and address the incorporation proposal only if detachment is granted. That approach is referred to as the "sequential petition approach."

As addressed in part I-B below, State law allows eight different groups, entities, or individuals to initiate a petition to the LBC. Voters may be the most likely of any of those to initiate a petition to detach an area from an existing borough and incorporate that area as a new borough.

If the Commission grants a comprehensive or sequential petition, it would be subject to additional approval. There are two options; one is to make detachment and/or incorporation subject to approval by a majority of the voters in the area proposed for detachment or incorporation. The first option is referred to as the "election method." The alternative is to make detachment and/or incorporation subject to review by the Alaska Legislature. The second option is referred to as the "legislative review method." Additional information about the two options is provided in part I-C below.

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<sup>2</sup>Once a petition is submitted to the DCED, members of the LBC are prohibited from *ex parte* (private) contact and communication with any person, except the staff of the Commission, concerning that matter.

<sup>3</sup>The multitude of options to petition for the boundary change is addressed in this publication. In sum, there are two distinct approaches to petition for an Eagle River Borough. Additionally, three fundamentally different types of boroughs can be formed. There are also eight different entities, groups, and individuals that could petition for the boundary changes. Lastly, there are two different methods to petition for the boundary changes. Given those circumstances, there are 96 different possible variations with regard to forms to petition for establishment of an Eagle River Borough. If a prospective petitioner wishes to pursue formation of an Eagle River Borough, DCED will prepare forms based on the particular approach, type of borough, nature of petitioner, and petition method. The required contents of a petition are set out in 3 AAC 110.420. As outlined in 3 AAC 110.440, a petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the Commission's hearing on the petition under 3 AAC 110.550.

## **A. Petition Approach (Comprehensive vs. Sequential)**<sup>4</sup>

- 1. Comprehensive Petition Approach.** Under this approach, two related boundary changes are proposed in a single petition: in this case, detachment of the greater Eagle River area from the Municipality of Anchorage and incorporation of that identical area as the Eagle River Borough. If the comprehensive petition approach is utilized, the petitioner

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<sup>4</sup>Each approach has important advantages. Three seem evident in the comprehensive petition approach. First, only it will allow consideration of details about the nature and viability of the proposed Eagle River Borough during deliberations over detachment. Arguably, such details will be needed by the Commission, taxpayers and citizens of the area proposed for detachment, taxpayers and citizens of the proposed remnant Municipality of Anchorage, Municipality of Anchorage government, and other interested individuals and entities in order to engage in well-informed deliberations regarding detachment. Indeed, details regarding the type and level of services proposed to be provided by the Eagle River Borough may be critical in determining whether certain detachment standards are even satisfied. Specifically, in judging whether a borough detachment proposal meets the requisite best-interests standard, 3 AAC 110.270(a)(10) specifically provides for consideration of “whether the territory’s requirements for local government services will be adequately met following detachment.” Moreover, details such as the type and level of taxes, transition measures (including details about transfer of assets of and liabilities from the existing government), composition and representation of the assembly, and other fundamental characteristics of the proposed borough will influence political and economic viability of the proposed borough.

A second fundamental advantage of the comprehensive approach is that it will not delay consideration of incorporation in the event that detachment is granted. In contrast, if the sequential petition approach is utilized and the detachment proposal is approved, incorporation could be delayed by 12 to 18 months or even longer until the borough incorporation petition is prepared and processed.

The third advantage of the comprehensive approach is that it is less expensive for the petitioner and others involved to process one petition compared to two sequential petitions.

On the other hand, an important fundamental advantage of the sequential approach is that it could save potentially significant resources on the part of the petitioner if the matter were to be decided solely on the issue of detachment. In other words, if the Commission determines that the detachment proposal does not meet the applicable legal standards, the Commission may never address the incorporation proposal. Such, in fact, occurred previously with regard to the proposed Eagle River Borough. In 1975, the Commission received two separate boundary petitions dealing with the 738-square mile “Chugiak-Eagle River area” extending from the northeast boundaries of the then City of Anchorage to the Knik River Bridge. One petition sought to detach the area from the Greater Anchorage Area Borough, the other sought to incorporate that same area as the Chugiak-Eagle River Borough. In effect, the Commission received a comprehensive petition. The Commission addressed only the detachment petition. In that case, the Commission held that detachment was a prerequisite to incorporation. When the Commission denied detachment, the incorporation proposal became moot and was never considered.

must decide what fundamental type of borough government will be proposed for incorporation. The following three options exist:

- a. General-law borough;<sup>5</sup>
- b. Unified home-rule borough;<sup>6</sup> and
- c. Non-unified home-rule borough.<sup>7</sup>

2. **Sequential Petition Approach.** Under this approach, only the first of two related boundary changes is initially proposed in a petition – in this case, detachment of the greater Eagle River area from the Municipality of Anchorage. If that petition is granted, a subsequent petition is prepared and filed seeking incorporation of the detached area as the Eagle River Borough.

## **B. Groups, Entities, or Individuals Eligible to Petition.**<sup>8</sup>



### **1. Voters of the proposed Eagle River Borough.**<sup>9</sup>

- a. Using the comprehensive petition approach, the petition must be signed by at least 25 percent of the persons registered to vote in the proposed Eagle River Borough.

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<sup>5</sup>There are two classes of general law boroughs – first-class and second-class. Of the existing 16 organized boroughs, there are no first-class boroughs. There are seven second-class boroughs. Those are the Matanuska-Susitna Borough, Kenai Peninsula Borough, Fairbanks North Star Borough, Ketchikan Gateway Borough, Kodiak Island Borough, Aleutians East Borough, and Bristol Bay Borough.

<sup>6</sup>Three of the 16 organized boroughs in Alaska are unified home-rule boroughs (a/k/a unified municipalities). Those are the Municipality of Anchorage, City and Borough of Juneau, and City and Borough of Sitka.

<sup>7</sup>Six of the 16 organized boroughs in Alaska are non-unified home-rule boroughs. Those are the Haines Borough, Lake and Peninsula Borough, Northwest Arctic Borough, Denali Borough, City and Borough of Yakutat, and North Slope Borough.

<sup>8</sup>Where they exist, distinctions applicable to petitioners for comprehensive and sequential approaches are noted. Otherwise, a group, entity, or individual listed may petition for either approach.

<sup>9</sup>Voters in an area proposed for detachment are authorized file a detachment petition under AS 29.06.040(c)(1) and 3 AAC 110.410(a)(9). Voters in an area proposed for borough incorporation are authorized file a borough incorporation petition under AS 29.05.060(7).

b. Using the sequential petition approach:

- (1) the petition for detachment of the greater Eagle River area from the Municipality of Anchorage must be signed by at least 25 percent of the persons registered to vote in the area proposed for detachment;
- (2) the petition for incorporation of the Eagle River Borough must be signed by a number of the persons registered to vote equal to at least 15 percent who voted in the proposed Eagle River Borough in the last State general election.

**2. Voters of the Municipality of Anchorage (regarding detachment) and voters of the proposed Eagle River Borough (regarding incorporation).**<sup>10</sup>

At least 10 percent of the persons registered to vote in the Municipality of Anchorage may petition for detachment of the greater Eagle River area (either as part of a comprehensive petition or part of a sequential petition). The proposal to incorporate must be signed by a number of the persons registered to vote within the proposed Eagle River Borough that is equal to at least 15 percent of the number who voted in the proposed new borough in the last State general election.



**3. Municipality of Anchorage.**<sup>11</sup> The Assembly of the Municipality of Anchorage could initiate a petition by adopting a resolution or ordinance.



**4. Alaska Legislature.**<sup>12</sup> The Alaska Legislature could initiate a petition by adopting a resolution or law.



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<sup>10</sup>At least 10 percent of the persons registered to vote in any political subdivision of the state, a regional educational attendance area, or a coastal resource service area are authorized to petition for detachment under 3 AAC 110.410(a)(7), which was adopted under AS 44.33.812(a)(2).

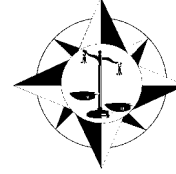
<sup>11</sup>AS 44.33.812(a)(3) and 3 AAC 110.410(a)(4) authorize a political subdivision of the State to initiate a petition for any boundary change. 3 AAC 110.410(a)(4) was adopted under AS 44.33.812(a)(2). The courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation.

<sup>12</sup>AS 44.33.812(a)(3) and 3 AAC 110.410(a)(1) authorize the Alaska Legislature to initiate a petition for any boundary change. As noted above, the courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation. The provisions of 3 AAC 110.410(a)(1) were adopted under AS 44.33.812(a)(2). Senate Concurrent Resolution Number 17 introduced in the 23rd Alaska Legislature, proposes the establishment of an Eagle River Borough. If adopted, SCR 17 would initiate formal proceedings for incorporation of an Eagle River Borough.

5. Commissioner of the DCED.<sup>13</sup>



6. LBC staff or a person designated by the LBC.<sup>14</sup>



7. Regional educational attendance area (REAA).<sup>15</sup>

8. Coastal resource service area (CRSA).<sup>16</sup>

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<sup>13</sup>AS 44.33.812(a)(3) and 3 AAC 110.410(a)(2) authorize the Commissioner of the DCED to initiate a petition for any boundary change. The provisions of 3 AAC 110.410(a)(2) were adopted under AS 44.33.812(a)(2). As noted above, the courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation.

<sup>14</sup>The provisions of 3 AAC 110.410(a)(3) authorize the staff of the Local Boundary Commission or a person designated by the Local Boundary Commission to initiate a petition for any boundary change. The Commission must first determine that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or 3 AAC 110; and direct the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the Commission. The provisions of 3 AAC 110.410(a)(3) were adopted under AS 44.33.812(a)(2) and Article X, Section 12 of the Constitution of the State of Alaska. The latter provides that the Commission “may consider any proposed local government boundary change.” As noted above, the courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation.

<sup>15</sup> An REAA is a service area established by the State of Alaska under AS 29.03.020 and AS 14.08.031(a) to provide educational services in the unorganized borough. The provisions of 3 AAC 110.410(a)(5) authorize an REAA to initiate a petition for any boundary change. As noted above, the courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation. The provisions of 3 AAC 110.410(a)(5) were adopted under AS 44.33.812(a)(2).

<sup>16</sup> A CRSA is a service area established by the State of Alaska under AS 29.03.020 and AS 46.40.110 – 46.40.180 to provide for coastal management in certain instances within the unorganized borough. The provisions of 3 AAC 110.410(a)(6) authorize a CRSA to initiate a petition for any boundary change. As noted above, the courts, the LBC, State Attorney General, and others have broadly construed the term “boundary change” to include incorporation. The provisions of 3 AAC 110.410(a)(6) were adopted under AS 44.33.812(a)(2).

**C. Petition Methods (by Election or Legislative Review).**

A petition for detachment from a borough and/or incorporation of a borough granted by the Commission would be subject to approval at an election or review by the Alaska Legislature. The petitioner proposes which particular method when the petition is filed; however, the Commission may amend the petition to alter that method if circumstances warrant.

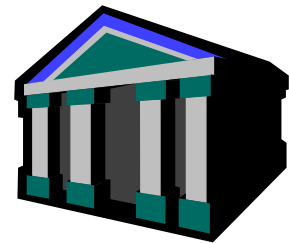


The Commission may also impose conditions on a petition. Such conditions may include a requirement that a petition become subject to both an election and review by the Alaska Legislature. The Commission may also impose a condition to require voter approval throughout the entire borough from which detachment is proposed.<sup>17</sup>

- 1. Detachment and Incorporation by Election.** Upon approval of a petition seeking detachment and/or incorporation subject to an election among voters in the area proposed for detachment and/or incorporation, the Commission must notify the clerk of the municipality from which detachment is proposed (for the detachment election) and/or the Director of the Division of Elections in the Office of the Lieutenant Governor (for the incorporation election).<sup>18</sup> (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c)(1), and 3 AAC 110.600(b).)



- 2. Detachment and Incorporation by Legislative Review.** Upon approval of a petition seeking detachment and/or incorporation subject to legislative review, the Commission must present the proposed boundary change(s) (e.g., detachment and/or incorporation) to the Legislature during the first ten days of the next regular legislative session. If a majority of the members of the House and Senate each adopt a resolution disapproving the proposed boundary change within 45 days after the Commission presented it or at



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<sup>17</sup> Article X, Section 12 of Alaska’s Constitution provides that the Commission “may consider any proposed local government boundary change.” AS 29.05.100(a) provides specific authority to amend and condition detachment petitions; AS 29.06.040(a) provides specific authority to amend and condition incorporation petitions. The Alaska Supreme Court specifically recognized that a borough detachment petition “may also be conditioned upon electoral approval within the existing borough” (see *Abrams v. State*, 534 P.2d 91, 93 (Alaska 1975)).

<sup>18</sup> Presumably, the two agencies would cooperate to conduct a single election on the related issues.

the end of the regular legislative session, whichever is earlier, the proposed boundary change is rejected. Otherwise, the proposed boundary change is approved by the Legislature. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (b), AS 44.33.812(b)(2), and 3 AAC 110.610(b).)

## II. Step Two: Technical Review of the Petition (3 AAC 110.440).

The DCED reviews the form and content of the petition and supporting materials to determine whether they include a budget and transition plan sufficient for review by the Commission and other information required by law. When applicable, the DCED also determines whether the petition contains the legally required number of valid signatures. If the form and content of the petition and supporting materials are proper and complete, the petition is accepted for filing. Otherwise, the petition is returned to the petitioner for correction or completion.



## III. Step Three: Public Notice of the Filing of the Petition (3 AAC 110.450).

After a petition is accepted for filing, the petitioner must provide notice of the petition to the public in accordance with 3 AAC 110.450. The DCED will prepare the public notice to be given by the petitioner. Requirements include publication of the notice in at least one newspaper designated by the DCED, posting the notice in places designated by the DCED, providing notice to certain municipal governments and potentially interested persons and entities designated by the DCED, and submission of a request for a public service announcement of the filing of the petition to broadcast media serving the area.



## IV. Step Four: Service of the Petition (3 AAC 110.460); Proof of Notice and Service (3 AAC 110.470).

The petitioner must provide one complete set of petition documents to every municipality within 20 miles of the area proposed for detachment and/or incorporation. A copy of the petition documents must also be provided to any other interested persons or entity designated by the DCED.



The petitioner must also make a full set of petition documents, including public notices, responsive briefs, the reply brief, and the DCED reports, available for

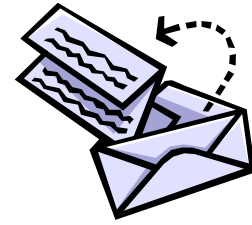
review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner must accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days.

The petitioner must also provide the DCED with five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied.

## **V. Step Five: Responsive Briefs and Written Comments (3 AAC 110.480).**

An interested person or entity may file with the DCED written comments supporting or opposing the petition.

An interested person or entity with the capacity to sue and be sued may file with the DCED an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. Two copies of the brief must also be served on the petitioner.



Unless otherwise ordered by the Commission, for good cause shown, the Commission will not, and the DCED may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

## **VI. Step Six: Reply Brief (3 AAC 110.490).**

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480.

## **VII. Step Seven: Informational Sessions and Meetings (3 AAC 110.510 and 3 AAC 110.520).**

If the DCED determines that persons or entities within or near the area of the proposed detachment and/or incorporation have not had adequate opportunity to be informed about its scope, benefits,



or detriments, the DCED must require the petitioner to conduct informational sessions.

During its investigation and analysis of an incorporation proposal, the DCED must convene at least one public meeting in the area proposed for incorporation.

### **VIII. Step Eight: DCED Reports (3 AAC 110.530).**

The DCED is required to investigate and analyze every petition filed with the LBC.

Based on its analysis, the DCED must prepare a preliminary report to the LBC with recommendations regarding each boundary proposal. At least 28 days (measured from the date the preliminary report was mailed) must be allowed for the receipt of comments on the preliminary report



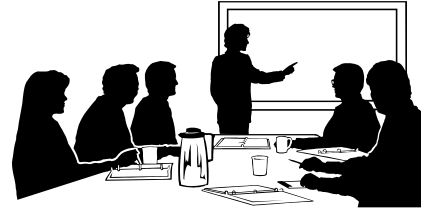
After it considers timely submitted written comments addressing the preliminary report, the DCED must prepare a final report regarding the proposal.

### **IX. Step Nine: Commission Public Hearing(s) (3 AAC 110.550 and 3 AAC 110.560).**

The LBC will convene one or more public hearings within the area proposed for detachment and/or incorporation. In the case of the detachment, the Commission might also hold one or more public hearings within the proposed remnant municipality. The hearing procedures may include the following:

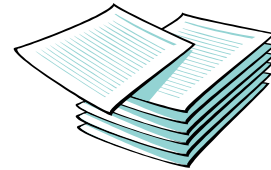
- (1) a report with recommendations from the DCED;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses with expertise in matters relevant to the proposed detachment and/or incorporation who are called by the petitioner;
- (5) sworn testimony of witnesses with expertise in matters relevant to the proposed detachment and/or incorporation who are called by each respondent;

- (6) sworn responsive testimony of witnesses with expertise in matters relevant to the proposed detachment and/or incorporation who are called by the petitioner;
- (7) a period of public comment by interested persons, not to exceed three minutes for each person;
- (8) a closing statement by the petitioner, not to exceed 10 minutes;
- (9) a closing statement by each respondent, not to exceed 10 minutes; and
- (10) a reply by the petitioner, not to exceed 5 minutes.



## **X. Step Ten: LBC Decisional Meeting (3 AAC 110.570).**

Within 90 days after the last Commission hearing, the Commission must convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The Commission may (1) approve the petition as presented; (2) approve the petition with amendments and/or conditions; or (3) deny the petition.<sup>19</sup>



Within 30 days after its decision, the Commission must file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy.

## **XI. Step Eleven: Opportunity to Seek Reconsideration (3 AAC 110.580).**

Within 18 days after a written statement of decision is mailed to a petitioner or respondent under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for

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<sup>19</sup> The Commission has powers to amend a petition and impose conditions under its authority in Article X, Section 12 of Alaska's Constitution to consider "consider any proposed local government boundary change." Those powers are expressly recognized with respect to incorporations and detachments, respectively, in AS 29.05.100(a) and AS 29.06.040(a).

reconsideration. The Commission may, on its own motion, order reconsideration of all or part of that decision if it determines that

1. a substantial procedural error occurred in the original proceeding;
2. the original vote was based on fraud or misrepresentation;
3. the commission failed to address a material issue of fact or a controlling principle of law; or
4. new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission does not act on a request for reconsideration within 20 days after the decision was mailed to a petitioner or respondent under 3 AAC 110.570(f), the request is automatically denied.

If it orders reconsideration or grants a request for reconsideration, the Commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. Within 90 days after DCED receives timely filed responsive briefs, the Commission will issue a decision on reconsideration.

A final decision of the Commission may be appealed to the superior court in accordance with the Administrative Procedure Act.

## **XII. Step Twelve: Election or Legislative Review**

As outlined under part I-C, if the Commission approves the petition, with or without amendments and/or conditions, it becomes subject to approval by the Alaska Legislature or voters in the area proposed for detachment and/or incorporation.

