

White Paper on 3 AAC 110.270(e)

Including AO 360, AS 44.62.220, Staff Engagement, and the Case for Full Repeal

Prepared for: Stakeholders in Alaska local self-government and boundary-change procedure

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1. Executive Summary

This white paper documents why 3 AAC 110.270(e) should be repealed in full. The requested action is narrow: repeal the subsection. This paper does not propose replacement language, an alternate standard, or a regulatory amendment. The requested regulatory action is: 3 AAC 110.270(e) is repealed.

The record supports repeal for four principal reasons. First, subsection (e) creates a substantive prerequisite that is not found in the governing statutes. Second, it distorts Article X of the Alaska Constitution by turning the minimum-number-of-units principle into a categorical veto over maximum local self-government. Third, it is unnecessary and duplicative because existing LBC standards already protect the state against fragmentation, enclaves, noncontiguous remnants, fiscal weakness, service failure, and adverse statewide effects. Fourth, its late-disclosed threshold effect undermines citizen reliance and the practical fairness of the boundary-change petition process.

The October 27, 2025 AO 360 repeal argument framed 3 AAC 110.270(e) as unnecessary, inconsistent with constitutional and statutory intent, beyond delegated authority, internally inconsistent with the LBC regulatory scheme, and arbitrary in its effect on geographically constrained but potentially viable communities. The March 16, 2026, AS 44.62.220 petition converted that repeal argument into a formal petition for regulatory action and requested repeal in full.

The chronology also matters. Eaglexit engaged LBC staff and Department of Law counsel repeatedly concerning 3 AAC 110.270(e). The October 6, 2023 and January 15, 2026 informal technical reviews did not identify subsection (e) as a failing or unmet standard. Yet at the January 26, 2026 LBC meeting, staff publicly stated that Eaglexit's last reviewed draft would have failed 3 AAC 110.270(e). The Commission then tabled merits discussion pending ethics guidance concerning possible commissioner conflicts. That sequence makes repeal review especially important because the rule's conclusive effect was put on the record while the regulatory review of the rule itself was deferred.

The July 14, 2026 noticed meeting should therefore treat 3 AAC 110.270(e) as a repeal item under AO 360 and AS 44.62.220. Any ethics determination should resolve commissioner participation, not convert a generally applicable regulatory review into an adjudication of any Eaglexit petition. No Eaglexit petition is before the Commission for approval or denial in this regulatory-review item.

2. Purpose, Scope, and Method

Purpose. The purpose of this revised white paper is to provide a source-grounded, chronological, repeal-only explanation of why the Local Boundary Commission and the Department of Commerce, Community, and Economic Development should place 3 AAC 110.270(e) into formal repeal proceedings.

Scope. This revision relies on three principal sources: (1) this chronological white paper; (2) the October 27, 2025 AO 360 argument in support of repealing 3 AAC 110.270(e); and (3) the March 16, 2026 petition for repeal and supporting legal memorandum under AS 44.62.220. It also incorporates the January 26, 2026 meeting sequence as reflected in the prior white paper.

Method. The analysis proceeds in three steps. It first identifies the regulation and requested relief. It then explains the statutory, constitutional, procedural, and practical reasons for repeal. Finally, it

places those repeal grounds into the chronology of staff engagement, informal technical review, AO 360, and the July 14 LBC agenda.

Exclusion. This paper intentionally removes prior replacement-language discussion. It does not ask the Commission to narrow the rule, rewrite the rule, substitute a new standard, or adopt alternative wording. The relief requested is repeal only.

3. Regulation Identified for Repeal and Relief Requested

The regulation identified for repeal is 3 AAC 110.270(e), which provides:

In order to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a petition for detachment that also seeks to incorporate a new borough must propose that the new borough will encompass a substantially larger population and area than the population and area proposed for detachment.

The requested regulatory action is simple and complete:

3 AAC 110.270(e) is repealed.

The defect is not merely poor wording. The defect is the existence of a categorical relative-size prerequisite that can defeat a detachment-and-incorporation petition before ordinary record-based standards are reached. Because the defect is structural, the appropriate remedy is full repeal.

4. Governing Authority and Procedural Posture

AS 44.62.220 allows an interested person to petition an agency for the adoption, amendment, or repeal of a regulation. The March 16, 2026 submission invoked that authority and requested repeal of 3 AAC 110.270(e) in full. AS 44.62.230 provides that, after receipt of such a petition, the agency must either deny the petition in writing or schedule the matter for public hearing under the Administrative Procedure Act rulemaking procedures.

The Local Boundary Commission has statutory authority to adopt regulations providing standards and procedures for municipal incorporation, detachment, and related boundary changes. That authority does not mean every existing regulation is valid, necessary, or immune from repeal. Regulations must remain grounded in statutory authority, consistent with Article X, and reasonably necessary to carry out the governing laws.

Administrative Order 360 supplies an additional policy framework for review. AO 360 directs state agencies and commissions to examine existing regulations for continued necessity, clarity, legal soundness, duplication, unnecessary burden, inconsistency with statute, and overreach beyond delegated authority. The October 27, 2025 repeal argument squarely placed 3 AAC 110.270(e) within that review framework.

Therefore, the July 14 discussion should not be treated as a petition adjudication. It is a regulatory-review and repeal-request item. The Commission may decide whether to move the subsection into formal repeal proceedings or deny the request in writing. But the question presented by this paper is repeal of a generally applicable regulation, not approval or denial of a boundary-change petition.

5. Why Full Repeal Is Warranted

A. The subsection creates a prerequisite not found in the governing statutes.

The governing statutes authorize the LBC to adopt standards and procedures for municipal boundary changes. They do not impose a categorical requirement that a newly incorporated borough be substantially larger in both population and area than the territory proposed for detachment. By inserting that prerequisite, subsection (e) adds a substantive barrier that the Legislature did not enact.

A regulation may implement statutory purpose; it may not add a free-standing threshold condition untethered to legislative command. Detachment and incorporation standards properly examine service delivery, fiscal capacity, community of interests, transition planning, geography, education, public administration, and best interests. The relative-size comparison in subsection (e) is different. It can defeat a proposal without reaching those actual viability questions.

B. The subsection distorts Article X by converting balance into veto.

Article X, section 1 requires maximum local self-government with a minimum number of local government units. The two principles must be read together. Subsection (e) elevates only one principle, minimum number of units, and turns it into a categorical veto against certain comprehensive petitions. That structure is inconsistent with Article X's case-by-case balance.

Article X does not say that local self-government must yield whenever a new local government unit is proposed. Nor does it state that relative population and area are the decisive measures of constitutional validity. It calls for local government design that promotes meaningful self-government while avoiding unnecessary governmental proliferation. Existing LBC standards are capable of performing that balancing function. Subsection (e) displaces the balance.

C. The subsection is not reasonably necessary.

The LBC already has adequate safeguards to prevent harmful boundary changes. The best-interests standards, service-feasibility standards, fiscal-capacity standards, transition-plan requirements, rules addressing enclaves and noncontiguous remnants, and the ability to condition approval all protect the state's legitimate interests. Detachment into the unorganized borough is also separately addressed. These narrower, record-based tools make subsection (e) unnecessary.

AO 360 favors repeal of regulations that are unnecessary, duplicative, unclear, unsupported by demonstrated need, or unduly burdensome. Subsection (e) meets those repeal criteria because it adds a blunt categorical screen where the existing LBC framework already supplies tailored review.

D. The subsection is arbitrary in operation.

A detachment-and-incorporation proposal may be fiscally sound, geographically coherent, administratively workable, and consistent with community-of-interest principles, yet still fail subsection (e) solely because the new borough is not substantially larger in both population and area than the detaching territory. That makes relative size conclusive even when functional viability is strong.

The phrase "substantially larger" adds to the arbitrary effect. It does not provide a clear ratio, threshold, or method of calculation. It therefore creates uncertainty for petitioners, staff, commissioners, voters, respondents, and reviewing courts. When applied to a geographically

constrained community, the rule can become impossible to satisfy regardless of actual governmental capacity.

E. The subsection is internally inconsistent with the LBC's broader regulatory framework.

The LBC's own regulatory structure generally relies on contextual review. Maximum local self-government and minimum number of local government units are addressed in 3 AAC 110.981 and 3 AAC 110.982. Detachment review includes best-interests factors, remnant viability, transition planning, service continuity, financial stability, and education-related considerations. Subsection (e) departs from that structure by creating an automatic relative-size barrier.

A common misinterpretation is to treat “maximum local self-government” and “minimum number of local government units” as separate, competing commands, with the minimum-units principle operating as an independent veto. That is not what Article X, Section 1 says. The Constitution provides for maximum local self-government **with** a minimum of local government units, meaning the two principles must be read together and balanced in context. The LBC’s own regulatory structure generally reflects that contextual approach through 3 AAC 110.981 and 3 AAC 110.982. The error in 3 AAC 110.270(e) is that it converts the minimum-units concept into a categorical population-and-area barrier, rather than applying it as part of the broader constitutional balance.

This creates internal tension. If the ordinary standards are sufficient to evaluate whether a proposed borough is viable and whether the remnant municipality remains viable, subsection (e) is duplicative and unnecessary. If subsection (e) overrides those ordinary standards, it conflicts with the more flexible constitutional and regulatory framework.

F. The available public record does not show continuing practical utility.

The October 27 repeal argument states that the "substantially larger" language was inserted in Register 185 and asserts that no recorded LBC decision has applied or relied on the subsection since its adoption. If accurate, that history supports repeal because the rule has not demonstrated continuing practical utility. If the Department or Commission believes the rule remains justified, the burden of explanation should be placed on the public record, including any Register 185 rulemaking materials and findings relied upon.

G. The subsection chills citizen self-government and undermines reliance.

Boundary-change petitions require extraordinary citizen work: boundaries, maps, budgets, transition plans, school issues, service delivery, powers and functions, assets and liabilities, public outreach, and signatures. A threshold regulation that can defeat the petition after years of work must be clear, necessary, and surfaced early. Subsection (e) does not meet that standard.

The practical harm is not merely that Eaglexit may disagree with the rule. The harm is that a conclusive threshold rule was not identified as a failing standard in the written informal technical reviews yet was later publicly described as a rule the last draft would have failed. That sequence creates avoidable reliance costs and weakens public confidence in the petition process.

6. Chronology of Engagement and Record Development

A. October 6, 2023 informal technical review.

LBC staff issued an informal technical review of Eaglexit's draft petition. The review emphasized missing details, transition planning, assets and liabilities, consultation, boundary clarity, and the need to address applicable standards. The review did not identify 3 AAC 110.270(e) as a failing or unmet standard.

B. February 7 and February 15, 2024 engagement.

Eaglexit submitted follow-up questions and issue papers to LBC staff and then met with LBC staff and Department of Law counsel. The issues included 3 AAC 110.270(e), the comprehensive approach, recusal and conflict questions, hearing protocols, signature requirements, and assets and liabilities. The chronology reflects repeated attempts to obtain early clarity on subsection (e).

C. January 15, 2026 informal technical review.

LBC staff issued a second informal technical review. It again focused on evidentiary support, feasibility assumptions, stakeholder consultation, organization, and the complexity of the proposed boundary change. As reflected in the prior white paper, the written review did not identify 3 AAC 110.270(e) as a failing or unmet standard.

D. January 26, 2026 LBC meeting.

At the January 26 meeting, staff summarized the requested repeal of 3 AAC 110.270(e) and stated that the last draft reviewed would have failed the standard because it did not incorporate a substantially larger population. The Chair then indicated that the Commission should not delve into the merits until it received guidance on potential conflicts involving commissioners from the Eagle River area. The Commission tabled the merits discussion and sought ethics guidance.

E. March 16, 2026 AS 44.62.220 petition.

The March 16 submission formally petitioned for repeal under AS 44.62.220. It identified the regulation, requested full repeal, explained the LBC's authority to act, and requested that the Department proceed under AS 44.62.230 by scheduling public hearing and rulemaking unless the petition was denied in writing.

F. July 14, 2026 noticed meeting.

The July 14 meeting places the Department of Law ethics determination and the AO 360 request to repeal 3 AAC 110.270(e) on the agenda. That agenda confirms that the matter remains before the Commission for discussion. The ethics item should resolve participation. The AO 360 item should address the repeal request.

7. Why 3 AAC 110.270(e) Belongs on the AO 360 Agenda

Subsection (e) belongs on the AO 360 agenda because it is exactly the kind of regulation AO 360 was designed to surface: a high-impact rule that is unclear, burdensome, arguably unnecessary, and potentially inconsistent with statutory and constitutional purpose.

- It can be outcome-determinative before substantive merits review.
- It uses the undefined phrase "substantially larger" without a clear measure.
- It adds a relative-size prerequisite not found in the governing statutes.
- It elevates one Article X principle above the balancing required by Article X as a whole.
- It duplicates or overrides narrower safeguards already present in LBC regulations.
- It imposes particular hardship on geographically constrained communities that may otherwise be viable.
- It was not identified as a failing standard in written informal technical reviews, but was later described as a standard Eaglexit's draft would have failed.

For these reasons, the AO 360 record should not close without Commission action on whether 3 AAC 110.270(e) should be moved into formal repeal proceedings.

8. July 14 Agenda and Ethics Determination: Keep the Matters Separate

The Department of Law ethics determination and the AO 360 repeal discussion are related by the January 26 meeting history, but they are not the same matter. The ethics determination should answer who may participate and on what terms. It should not convert a general regulatory-review item into an adjudication of a future or hypothetical petition.

The Commission should state on the record whether each commissioner may participate in the AO 360 regulatory-review item. If any commissioner is recused, the record should identify the specific legal basis for recusal and whether that recusal applies to general regulatory review, a future Eaglexit petition adjudication, or both.

Once that participation question is resolved, the Commission should proceed to the separate AO 360 item and address the repeal request on its own terms. No Eaglexit petition is before the Commission for approval, denial, amendment, or conditioning in this item. The matter before the Commission is whether 3 AAC 110.270(e) should be repealed in full.

9. Requested Findings and Requested Action

Eaglexit respectfully requests the following findings and actions:

1. Find that 3 AAC 110.270(e) is properly before the Commission and Department as an AO 360 regulatory-review item and as a petition for repeal under AS 44.62.220.
2. Find that the request concerns repeal of a generally applicable regulation and is not an adjudication of any Eaglexit boundary-change petition.
3. Find that subsection (e) creates a categorical relative-size prerequisite not found in the governing statutes.
4. Find that subsection (e) is not reasonably necessary because existing LBC standards already provide record-based safeguards against fragmentation, service failure, fiscal weakness, enclaves, and noncontiguous remnants.
5. Find that the phrase "substantially larger population and area" is unclear, vague and overbroad and can operate arbitrarily against geographically constrained but otherwise viable communities.
6. Find that subsection (e) should be repealed in full.

7. Direct staff to proceed under the Administrative Procedure Act with formal repeal processing unless the petition is denied in writing with the historical, statutory, and legal basis for denial identified on the record.
8. If the Department or Commission concludes that subsection (e) remains justified, identify the Register 185 rulemaking materials, findings, decisional memoranda, public notices, hearing materials, and staff recommendations relied upon for that conclusion.

10. Conclusion

3 AAC 110.270(e) must be repealed in full. It is not required by statute, distorts Article X's balance, duplicates existing safeguards, creates an unclear and arbitrary threshold, and can defeat citizen-initiated comprehensive petitions before ordinary merits review occurs. The public record also shows a procedural fairness problem: a rule with conclusive effect was not identified as a failing standard in written informal technical reviews but was later described publicly as a standard Eaglexit's last draft would have failed.

AO 360 and AS 44.62.220 provide the proper path forward. The Commission should keep the ethics determination separate from regulatory review, resolve participation issues narrowly, and then act on the repeal request. The appropriate action is not to delay, narrow, or recast the request. The appropriate action is to begin formal repeal proceedings for 3 AAC 110.270(e) or provide a written denial that identifies the legal and historical basis for retaining it.