

RESPONSE AND REQUEST FOR RECONSIDERATION OF JUNE 25, 2026 ADVISORY OPINION

*Concerning Participation in Repeal of 3 AAC 110.270(e)
and an Anticipated Eagle River Detachment Petition*

Submitted by Richard Clayton Trotter
Commissioner, Alaska Local Boundary Commission

To: Acting Attorney General Cori Mills; Members of the Alaska Local Boundary Commission

From: Richard Clayton Trotter, Commissioner

Re: Request for reconsideration under AS 39.52.240(e)

Date: July 29, 2026

I. INTRODUCTION AND RELIEF REQUESTED

I respectfully request reconsideration, revocation, or modification of the Department of Law's June 25, 2026 advisory opinion concluding that I must be recused from both (1) consideration of the proposed repeal of 3 AAC 110.270(e), and (2) any future Eagle River detachment-and-incorporation petition. I fully accept my obligation to disclose genuine conflicts and to protect public confidence in the Local Boundary Commission. My objection is not to careful ethics review. My objection is that the opinion was produced through an incomplete process, rests on material factual assumptions that were never tested with me, and extends the governing statutes and bylaws beyond their text and purpose.

Before I wrote this response, I asked Jedediah R. Smith for legal representation concerning the threatened loss of my ability to perform the duties of my gubernatorial appointment. That request was denied. I was therefore required to respond without counsel while the Chair, the Commission, and the Department of Law developed and considered a record concerning my conduct and interests. Neither Chair Wood nor anyone from the Department of Law interviewed me to obtain or clarify the relevant facts before the June 25 opinion was issued. The result is an opinion that repeatedly treats disputed or incomplete characterizations as established facts.

I ask that the Department and the Commission proceed in a measured manner. I do not seek special treatment, nor do I question the good faith of those involved. I request only the protections built into Alaska law: a complete factual record, individualized application of the Ethics Act, adherence to the statutory process, and separate analysis of a statewide rulemaking question and a future adjudicatory petition.

Specifically, I request that the Department of Law and the Commission:

- withdraw or modify the conclusion that I am barred from participating in the proposed repeal of 3 AAC 110.270(e);
- defer any final determination concerning a future detachment petition until an actual petition is filed and its parties, territory, claims, and evidentiary record are known;
- disclose the chronology showing when the request for advice became complete and how the sixty-day requirement in AS 39.52.240(a) was calculated;
- provide, with appropriate authorization and redaction, the May 1, 2026 advice that the June 25 opinion “revises and replaces,” the original request, and any supplemental factual submissions;
- permit me to submit a complete factual statement and make the written determination required by AS 39.52.220 and AS 39.52.240(c) through a decisionmaker who is not personally involved in the same conflict inquiry; and
- consider whether any arguable bylaw conflict is minor and inconsequential and therefore waivable under Article X, Section 2(b).

II. THE PROCEDURE DID NOT PRODUCE THE COMPLETE, NEUTRAL RECORD REQUIRED FOR RELIABLE ADVICE

A. I was denied representation and was never interviewed

The advisory opinion affects whether I may deliberate, recommend, participate procedurally, or vote on matters central to the work for which the Governor appointed me. Yet no one from the Department of Law interviewed me before reaching its conclusions. Chair Wood likewise did not interview me to verify the nature, timing, or termination of the historical activities on which the opinion relies. I was not asked to explain the separate identities of Eaglexit and the Justice Foundation, the temporary nature of the assistance provided, the absence of compensation, the lack of an attorney-

client relationship with Eaglexit, or the absence of any present organizational role in Eaglexit.

AS 39.52.240 makes the reliability of the factual record central to advisory advice. The requester must provide additional information requested by the Attorney General, and protection for reliance on an ethics determination depends on full disclosure of all relevant facts reasonably necessary to the determination. AS 39.52.240(a), (d); AS 39.52.420(d). The June 25 opinion itself acknowledges that it may be reconsidered when material facts were omitted or misstated. That is precisely the circumstance presented here.

B. The statutory sixty-day period requires explanation

AS 39.52.240(a) provides that, within sixty days after receiving a complete request, the Attorney General “shall” issue an advisory opinion. I understand that Chair Wood first requested advice in January 2026. The final opinion was not issued until June 25, approximately five months later. The opinion does not identify when the Department considered the request complete, what additional information was requested, when any supplementation was received, or why the statutory period did not expire earlier.

The June 25 opinion also states that it “revises and replaces” advice given on May 1, 2026. The record presently available to me does not reveal whether the May 1 advice was written or oral, whether it was issued under AS 39.52.240(a) or the expedited procedure in subsection (b), what facts it assumed, what changed afterward, or who sought revision. Because the later opinion disables two of five commissioners from an anticipated matter of public importance, the chronology and basis for the change should be disclosed and explained before the opinion is treated as dispositive.

C. Chair Wood’s own potential conflict required procedural separation

The chair of a board or commission is ordinarily the designated supervisor for its members. AS 39.52.960(8). But Chair Wood was simultaneously the requester, the person transmitting or framing facts concerning me, and a commissioner whose own residence and property ownership were under review. The June 25 opinion ultimately concluded that he must be recused from a future petition. Once his own potential conflict became part of the inquiry, he could not fairly serve as the sole institutional gatekeeper for the investigation of mine.

AS 39.52.220 contemplates that an involved chair does not determine his own participation; the uninvolved members decide. At a minimum, the vice chair should have assumed the practical leadership of the inquiry, ensured that I received notice and an opportunity to provide facts or clarifications, and transmitted a neutral record to the Department. This concern is heightened because Chair Wood previously worked in the Department of Law and, as I understand it, currently represents clients with property interests in both Anchorage and Eagle River. I do not assert that those circumstances disqualify him. I raise them to demonstrate why the inquiry should have been led by an uninvolved commissioner and why the same individualized scrutiny applied to me should have been applied to the process itself.

III. THE STATEWIDE REGULATION-REPEAL PROCEEDING MUST BE ANALYZED SEPARATELY FROM A FUTURE DETACHMENT PETITION

A. Article X, Section 2(a)(2) does not reach general rulemaking

Article X, Section 2(a)(2) of the LBC bylaws bars participation when a proposal affects territory in which a commissioner resides or owns property. The bylaw then expressly limits that subsection to action on territory proposed for “annexation, consolidation, detachment, dissolution, incorporation, merger, or reclassification.” It does not list the adoption, amendment, or repeal of a regulation. The textual distinction is decisive. A vote on whether a statewide legal standard should remain in the Alaska Administrative Code is not itself a vote to detach Eagle River, create a borough, alter a boundary, or change any person’s taxes or services.

The June 25 opinion correctly recognizes this distinction for Chair Wood. It concludes that he may participate in the regulation-repeal matter because the rule is statewide and no territory is then being detached. The same distinction applies to me unless I presently possess a personal or financial interest in Eagle River within Article X, Section 2(a)(3). As shown below, I do not.

B. Repeal would not itself produce a personal benefit

Repeal of 3 AAC 110.270(e) would not detach Eagle River, incorporate a new borough, alter my property title, change a tax rate, or guarantee approval of any future petition. Any possible effect on my household would depend on multiple future contingencies: preparation and filing of a legally sufficient petition; notice and investigation; development of an evidentiary record; application of numerous constitutional, statutory,

and regulatory standards; action by the Commission; and any electoral, legislative, or judicial steps that may follow. Under AS 39.52.110(b), an interest shared by a large class, or an effect that is insignificant or conjectural, is not a substantial impropriety.

The opinion treats Eaglexit's sponsorship of the repeal petition as converting general rulemaking into an organizational conflict unique to me. That reasoning effectively allows the identity of a rulemaking petitioner to determine which commissioners may vote on statewide law. The better inquiry is whether I have a present, substantial personal or financial interest in that organization or whether I have committed myself to a predetermined result. I have neither.

IV. MY HISTORICAL COMMUNITY AND ACADEMIC ACTIVITY DOES NOT CREATE A PRESENT PERSONAL INTEREST IN EAGLEXIT

A. The Justice Foundation and Eaglexit are separate organizations

I serve as an unpaid, volunteer director and general counsel of the Justice Foundation. That affiliation has been disclosed. But the opinion repeatedly moves from my present affiliation with the Justice Foundation to a finding that I have a present personal interest in Eaglexit. The two organizations are legally and operationally distinct.

During Eaglexit's formative period approximately five to seven years ago, personnel of the Justice Foundation in San Antonio provided limited organizational assistance. I did not personally supervise that work. Before Eaglexit obtained its own federal tax-exempt status, I suggested that the Foundation could temporarily provide a nonprofit structure for certain early civic activity. Eaglexit later obtained its own exemption, effective in 2021, and the temporary relationship ended. The Justice Foundation does not now serve as Eaglexit's fiscal sponsor, control its operations, manage its petition, or appear before the LBC as petitioner or counsel.

B. I did not represent Eaglexit and received no compensation

I have never served as Eaglexit's attorney, employee, or paid consultant. I have not represented Eaglexit before the LBC. I received no compensation from Eaglexit, and I received no Justice Foundation compensation for the activities at issue. There was no ongoing attorney-client relationship, contractual duty, financial arrangement, or organizational authority that could give me a present stake in Eaglexit's success.

The absence of compensation is not by itself conclusive, because a personal interest can sometimes arise from uncompensated organizational involvement. But timing, duration, termination, control, and present benefit are indispensable to an individualized analysis. A completed, temporary relationship between two nonprofit entities does not permanently impute the interests of one entity to every person who remains associated with the other.

C. My 2019 remarks were pre-appointment civic and academic activity

My four and a half minutes of public remarks occurred in 2019, before my appointment to the Commission on January 30, 2020. I participated as a University of Alaska Anchorage faculty member engaged in community service and public discussion of legal concepts, organizational structure, and local government. Faculty members are expected to contribute professional knowledge to public affairs. I was not speaking for UAA, but neither was I acting as counsel for Eaglexit.

The advisory opinion relies in part on this publicly available video from 2019—approximately seven years before this opinion. That reliance is difficult to reconcile with the Legislature’s general approach to ethics laws. Where the Legislature has determined that prior conduct should restrict future governmental service, it has ordinarily imposed defined and limited time periods. See, e.g., AS 39.52.180(a) (generally establishing a two-year limitation in its applicable context). While that statute addresses a different ethics provision, it illustrates that Alaska’s ethics laws are intended to be applied narrowly, not to transform long-concluded civic or academic activities into indefinite grounds for disqualification. The opinion identifies no authority supporting such an expansive temporal reach.

The opinion relies on this 2019 video to characterize my conduct, but neither Chair Wood nor the Department asked me about the context, scope, or meaning of those remarks. Support for public examination of separate local government or assistance with lawful organizational formation, especially in my field of expertise of business and property law, is not equivalent to prejudgment of a petition not yet filed. A future petition must be decided on the record then presented and under the legal standards then applicable. I remain able and obligated to do so.

D. The asserted family facts are outdated

The opinion states that I “may have immediate family members” living in Eagle River, citing the same four-minute video in which I talked about my four teen children. That information is outdated. My children are graduated and live or go to school elsewhere. They do not own property in Eagle River. My household consists of my wife and me (with two dependent college students). An advisory opinion should not treat a seven-year-old description of family residence as a present financial interest without verification.

V. THE ETHICS ACT REQUIRES A SUBSTANTIAL, MATERIAL, AND PRESENT INTEREST—not AN ATTENUATED ASSOCIATION

The Ethics Act begins from the Legislature’s recognition that public officials are drawn from society and cannot and should not be without personal and financial interests in governmental policy. AS 39.52.110(a). The Act therefore distinguishes unavoidable, minor, and inconsequential interests from substantial and material conflicts. Under AS 39.52.110(b), there is no substantial impropriety when an interest is insignificant, is possessed generally by the public or a large class, or would be affected only insignificantly or conjecturally. The Attorney General must be guided by those limitations when issuing advisory opinions. AS 39.52.110(c).

Article X, Section 2(a)(3) likewise uses the present tense: a commissioner may not participate when the commissioner “has” a personal or financial interest in a party or advocacy organization. The opinion identifies no current membership in Eaglexit, no current office, no contractual relationship, no financial arrangement, no continuing duty, and no benefit I receive from Eaglexit. It instead combines a 2019 speech, my continuing service to a different nonprofit, and that nonprofit’s former limited assistance to Eaglexit several years ago. That combination does not establish the statutory elements of a present, substantial interest.

Even if these facts were sufficient to trigger initial concern under Article X, Section 2(b) expressly permits waiver when the conflict is minor and inconsequential and participation will not interfere with faithful discharge of duty. The bylaw specifically identifies an insignificant interest in an advocacy organization as potentially waivable. The opinion’s conclusion that no waiver is available is largely categorical; it does not explain why a remote, uncompensated, terminated, pre-appointment connection cannot qualify under the waiver provision.

VI. RESIDENCE AND HOMEOWNERSHIP DO NOT SUPPORT A CATEGORICAL ETHICS-ACT DISQUALIFICATION

A. My interest is shared with a large class and any financial effect is speculative

I own and reside in a home in Eagle River. That is an ordinary interest shared by thousands of residents. The possible effects listed in the opinion—future taxation, services, governance, household costs, and property values—are not present benefits and cannot be predicted in one direction but are speculative. Detachment could increase or decrease costs or values, or have no material effect, depending on future governmental decisions and economic conditions. The Ethics Act specifically directs that interests shared by a large class and conjectural effects not be treated as substantial improprieties.

The opinion attempts to distinguish an earlier confidential memorandum that found a \$138,000 residence insignificant in relation to approximately \$1.09 billion in affected assessed value. But the proportional relationship identified in the June 25 opinion is essentially the same: Chair Wood’s approximately \$545,300 residence compared with approximately \$4.27 billion in Eagle River property. The older ratio was approximately 1 to 7,899; the present ratio is approximately 1 to 7,831. Geography may be relevant under the bylaws, but the comparable proportional dilution should not be dismissed without a principled explanation.

B. The property rule is a Commission bylaw, not an immutable constitutional command

The residence-and-property prohibition is contained in the LBC’s bylaws. It is a Commission-adopted supplemental rule, not a constitutional definition of bias and not a legislative declaration that every homeowner has a substantial ethics conflict. The Commission retains authority, through lawful public procedures, to amend its bylaws if experience shows that a categorical rule is overinclusive or frustrates the Commission’s constitutional function. Until amended, the bylaw must of course be applied according to its text, including its express limits and waiver provision.

A categorical interpretation has serious institutional consequences. Commissioners are appointed from regions of Alaska precisely because they bring knowledge of local conditions. Boundary proposals often encompass large areas and affect most residents and property owners within them. If residence or homeownership automatically excludes knowledgeable regional commissioners from all related policy and adjudicatory work, a

substantial share of Alaskans—and in some matters nearly everyone with a settled connection to the affected region—could be effectively excluded from meaningful representation on the Commission. That cannot be presumed to be the intended result where the bylaws themselves allow waiver for minor and inconsequential interests.

I do not contend that the Commission may ignore its current bylaws or simply vote to excuse a genuine nonwaivable conflict. I contend that the bylaws must be read narrowly, consistently, and with their waiver provision intact; and that the Commission may prospectively reconsider an overbroad rule through proper rulemaking or bylaw amendment. For the present matter, the regulation-repeal proceeding is outside Section 2(a)(2) by its own terms. Any future petition should be assessed when filed, with a complete record and a specific waiver analysis.

VII. ALASKA AND FEDERAL RECUSAL PRINCIPLES CAUTION AGAINST EXPANDING DISQUALIFICATION BEYOND IDENTIFIED CONFLICTS

A. Administrative decisionmakers are presumed capable of deciding fairly

Alaska administrative law recognizes that agency personnel are presumed honest and impartial until a challenger demonstrates actual bias or prejudgment. See *Griswold v. City of Homer*, Alaska Supreme Court No. S-18608 (Sept. 20, 2024) (quoting the presumption and requiring a showing of predisposition or prejudgment); *AT&T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007). Familiarity with a public issue, prior professional activity, or a previously expressed policy view is not ordinarily enough by itself.

The United States Supreme Court follows the same basic approach for administrative bodies. *Withrow v. Larkin*, 421 U.S. 35, 47, 55 (1975), presumes honesty and integrity in adjudicators and rejects automatic disqualification based on prior exposure to facts or participation in related institutional functions. *Hortonville Joint School District v. Hortonville Education Ass’n*, 426 U.S. 482, 493-97 (1976), likewise refused to disqualify public decisionmakers merely because they had prior involvement and policy views concerning the controversy. Those principles are especially relevant to rulemaking, where officials are selected to exercise informed policy judgment rather than arrive without knowledge or opinions.

B. *Caperton* confirms that constitutional recusal is exceptional

Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), involved an extraordinary circumstance: while a \$50 million judgment against a chief executive’s company was approaching appellate review, that chief executive spent approximately \$3 million supporting the election of a state supreme court justice—more than the total spent by all other supporters and about three times the candidate committee’s own spending. The elected justice then declined to recuse and cast the decisive vote overturning the judgment. The Supreme Court held that this extreme, disproportionate, case-linked financial support created an unconstitutional probability of bias.

Caperton does not support broad recusal based on ordinary civic participation. It emphasizes that most recusal questions do not rise to constitutional dimension and that due process intervenes only where the probability of actual bias is too high to be constitutionally tolerable. *Id.* at 876-87. The traditional constitutional core is a direct, personal, substantial pecuniary interest. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). My situation bears no resemblance to *Caperton*: I received no contribution, compensation, benefit, or promise from Eaglexit; I hold no office in it; and I have no direct financial stake in its success.

C. Recent Alaska judicial authority is consistent, though not controlling

In *Cline v. Duckett*, Alaska Supreme Court No. S-19197 (July 17, 2026), the court rejected a judicial-recusal claim based on prior professional overlap that did not establish an identified conflict or reasonable basis to question impartiality. Judicial ethics rules are not identical to the Ethics Act or LBC bylaws, so *Cline* is not controlling here. It nevertheless illustrates the same caution against converting a prior professional connection, standing alone, into permanent disqualification.

VIII. HISTORICAL CONSISTENCY WARRANTS REVIEW

The official record of the 1975 Eagle River–Chugiak proceeding reflects that Commissioner Sheila G. Jones disclosed prior service as Borough Attorney for Anchorage and the Anchorage School District and continuing limited contractual representation of those entities. She reported that Attorney General Av Gross determined she could participate, and she voted on the detachment petition. I recognize that the present Ethics Act and current LBC bylaws differ from the legal framework in 1975, and I do not contend that the earlier decision controls.

The comparison is nonetheless relevant. Commissioner Jones’s connection was direct and professional: she had represented governmental entities whose territory, authority, finances, schools, and services were at issue. My connection is more attenuated: pre-appointment public discussion and a separate nonprofit’s completed, uncompensated assistance years ago. If current law requires a different outcome, the Department should explain the legal change and factual distinction rather than assume that the remote connection is categorically more serious.

IX. THE COMMISSION RETAINS A STATUTORY DECISION-MAKING ROLE

The June 25 opinion is advisory. AS 39.52.240(c) provides that the designated supervisor or board or commission “shall make a written determination based on the advice of the attorney general.” AS 39.52.220 further provides the process for a board member’s disclosure and, when the member objects, decision by the uninvolved members. The LBC bylaws incorporate those procedures. The Department’s advice is entitled to respect, but it does not eliminate the Commission’s statutory duty to make the operative determination on a complete record.

That distinction matters here because the opinion itself recognizes that the Chair and Commission must formally address the conflicts after disclosure. I understand that a majority of the uninvolved commissioners may conclude that the alleged conflict is not established or is minor and inconsequential under Article X, Section 2(b). I ask that they be permitted to perform that statutory function without treating the advisory opinion as a self-executing removal from deliberation.

I also ask that any determination be separated by matter. The Commission may decide now whether I may participate in a general statewide rulemaking. It need not—and should not—issue a final prospective disqualification from a petition that has not been filed.

X. CONCLUSION

I have served the State of Alaska as a university professor and as a member of the Local Boundary Commission. My earlier civic participation was transparent, uncompensated, and undertaken before my appointment. I have never represented Eaglexit nor received compensation from it. My affiliation with the Justice Foundation does not create a perpetual personal interest in every organization the Foundation may once have assisted.

The June 25 opinion was issued without an interview of me, relies on outdated family information, does not explain the statutory timing, and arose from a process led by a chair whose own participation was under review. It also treats a statewide regulation-repeal proceeding as disqualifying for me based on an attenuated historical association while correctly recognizing that the same proceeding does not trigger the property-based bylaw for Chair Wood.

Alaska law requires individualized analysis of present, substantial, and material interests. It protects against genuine conflicts while recognizing that public officers necessarily come to service with community ties, property, experience, and opinions. Federal and Alaska recusal principles likewise presume honesty and reserve disqualification for identified conflicts, actual prejudgment, or circumstances creating an intolerable probability of bias. Those standards are not met by the facts accurately stated here.

I therefore respectfully request that the Department reconsider and modify its opinion, that the Commission permit my participation in the repeal of 3 AAC 110.270(e), and that any issue concerning a future Eagle River petition be deferred until a petition is filed and evaluated through the statutory process on a complete and neutral factual record. In the alternative, I request an express determination whether any arguable conflict is minor and inconsequential and may be waived under Article X, Section 2(b).

Respectfully submitted,

Richard Clayton Trotter

Commissioner

Alaska Local Boundary Commission

AUTHORITIES CITED

- Alaska Constitution art. X, § 12.
- AS 39.52.010; AS 39.52.110; AS 39.52.120; AS 39.52.220; AS 39.52.240; AS 39.52.420; AS 39.52.430; AS 39.52.960.
- LBC Bylaws art. X, § 2.
- 9 AAC 52.010; 9 AAC 52.120.
- AT&T Alascom v. Orchitt, 161 P.3d 1232 (Alaska 2007).

- Griswold v. City of Homer, Alaska Supreme Court No. S-18608 (Sept. 20, 2024).
- Cline v. Duckett, Alaska Supreme Court No. S-19197 (July 17, 2026).
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009).
- Hortonville Joint School District v. Hortonville Education Ass’n, 426 U.S. 482 (1976).
- Withrow v. Larkin, 421 U.S. 35 (1975).
- Tumey v. Ohio, 273 U.S. 510 (1927).