



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community & Regional Affairs

Sean Parnell, Governor
Emil Notti, Commissioner
Tara Jollie, Director

Final Report

to the

Local Boundary Commission

Regarding the Proposal
to Annex Approximately
.05 Square Miles of
Territory to the
City of Fairbanks
by Legislative Review

October 2009



This is the Final Report to the Local Boundary Commission Regarding the Proposal to Annex Approximately .05 Square Miles of Territory to the City of Fairbanks by Legislative Review. The report was prepared by the Alaska Department of Commerce, Community, and Economic Development (Commerce), which serves as staff to the Local Boundary Commission. The report can also be found at the following address:

http://www.commerce.state.ak.us/dca/lbc/fairbanks_2.htm

This report is issued in accordance with 3 AAC 110.530(b) which requires Commerce to issue a final report after considering written comments regarding the preliminary report.

Commerce complies with the 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. Such requests should be directed to the Local Boundary Commission staff at 907-269-4560 or LBC@alaska.gov.

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine accuracy of the illustrations.

This final report was written by Brent Williams and Brian Bitzer, Commerce Local Government Specialists.

Special thanks to others who provided information or assistance in developing the reports:

Steve Van Sant, Ron Brown, Drew Nerland, Cheryl Biesemeier, Ruth St. Amour, Margie Vandor, Scott Ruby, Jennie Starkey, and Brigitta Windisch-Cole.

Contents Table

Chapter 1 – Introduction	1
LBC Membership	2
Chapter 2 – Relevant Developments Since Preliminary Report.....	4
Chapter 3 – Commerce Informational Meeting Summary	5
Chapter 4 – Comments and Commerce’s Response.....	6
The City’s 9-16-2009 Letter and Commerce’s Response.....	6
The Borough’s 9-16-2009 Letter and Commerce’s Response	15
Public Comments and Commerce’s Response.....	28
Chapter 5 – General Conclusion and Recommendation.....	32
Appendix A – Comments	A-1
City Comments	A-1
Borough Comments.....	A-25
Public Comments.....	A-29
Appendix B – Local Boundary Commission Regulations	B-1
Hearing Procedures (3 AAC 110.560)	B-1
Decisional Meeting (3 AAC 110.570)	B-2
Tips for Effective Public Comment.....	B-4
Notice of Public Hearing and Decisional Meeting	B-6
Appendix C –Materials Distributed at Informational Meeting	C-1
Public Notice for Informational Meeting.....	C-1
Revised Fairbanks Petition Schedule	C-2
Procedures for City Annexation Flow Chart.....	C-3
Maps of Annexation Area from Preliminary Report	I

Chapter 1 – Introduction

On December 8, 2008, the City of Fairbanks petitioned the Local Boundary Commission to annex approximately 0.05 square miles of land comprising two distinct territories (Fred Meyer subdivision and the enclave lots). The Alaska Department of Commerce, Community, and Economic Development (Commerce) accepted the Petition for filing on January 26, 2009.

On August 17, 2009, Commerce issued its preliminary report on Fairbanks' annexation petition. It consisted of 204 pages of background and analysis. It contained Commerce's findings and recommendations. The preliminary report concluded that the petition met the standards for city annexation for both territories. It recommended that the Local Boundary Commission approve the petition for both territories.

This final report reflects due consideration of the written comments on Commerce's preliminary report. The comments came from the city, the borough, and several public members. It also reports on relevant developments that have occurred since the preliminary report was issued. Those developments are addressed in chapter 2 of this final report. This final report reaffirms our earlier recommendation to the local boundary commission that it approve the petition to annex both territories.

Copies of this Final Report will be mailed to petitioner City of Fairbanks, respondent Fairbanks North Star Borough, Local Boundary Commission members, and others. Copies will be sent to be displayed at Fairbanks City Hall, Fairbanks North Star Borough Hall, and the Noel Wien Public Library.

The Local Boundary Commission has scheduled a public hearing on the proposal to begin November 9, 2009 at 12:00 p.m., at the Fairbanks North Star Borough School District board room. A copy of the hearing notice is included as Appendix B.

Further information regarding this matter is available from:

LBC Staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
Brent Williams: Telephone: (907) 269-4559
Brian Bitzer: Telephone: (907) 269-4587
Fax: (907) 269-4539
Email: LBC@alaska.gov

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding the prescribed length of their terms, however, LBC members serve at the governor's pleasure (AS 39.05.060(d)).

The LBC comprises five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at large and serves as the LBC's chair.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060(b)).

LBC members receive no pay for their service. They are entitled, however, to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current LBC members.



Lynn Chrystal, Chair, Valdez. Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. Commissioner Chrystal is retired but teaches on a substitute basis at Valdez schools. His current term on the LBC ends January 31, 2013.



John Harrington, First Judicial District, Ketchikan. Governor Parnell appointed John Harrington of Ketchikan to represent the First Judicial District on the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97, and as a special education teacher and administrator in Washington from 1972-84. He has served on the Ketchikan Gateway Borough Assembly since 2005 and currently chairs the borough's Planning Liaison and Economic Development Advisory Committee. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission

from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2011.



Robert “Bob” Harcharek, Vice-Chair, Second Judicial District, Barrow. Commissioner Harcharek was appointed to the LBC on July 18, 2002 by Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him vice chair of the commission. On March 9, 2009, Governor Palin reappointed him to the commission. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He served as a member of the Barrow City Council for fifteen years since 1993 and is currently Mayor and Chief Administrative Officer for the City of Barrow. Dr. Harcharek recently

retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. In his twenty-four years of employment with the North Slope Borough, Dr. Harcharek has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center (now known as Ilisagvik College), and Sociocultural Scientist for the North Slope Borough Department of Wildlife Management. Prior to that, he served as Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He has served as a member of numerous boards of directors, including the North Slope Borough Board of Education, the Alaska Association of School Boards, the Alaska School Activities Association and the Northern Justice Society. His current term on the LBC ends January 31, 2014.



Larry Semmens, Third Judicial District, Soldotna. Governor Parnell appointed Larry Semmens of Soldotna to represent the Third Judicial District on the Local Boundary Commission on September 10, 2009. Mr. Semmens is a certified public accountant and the manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He also served the Kenai Peninsula Borough as finance director from 1995-96, controller from 1988-95, and treasury manager from 1981-88. Semmens is the current chair of the Alaska Public Entities Insurance Pool, and a member of the Alaska Government Finance Officers Association, the American Institute of Certified Public Accountants, and the International City Managers

Association. He was recently reappointed to the Alaska Municipal League Investment Pool Board. Semmens served in the U.S. Air Force from 1973-76 and earned a bachelor's degree in business administration from Boise State University. His current term on the LBC ends January 31, 2012.



Lavell Wilson, Fourth Judicial District, Tok. Lavell Wilson, a Tok resident, represents the Fourth Judicial District. Governor Palin appointed him to the commission on June 4, 2007. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big

game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. He has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2010.

Commissioner Wilson is recused from this proceeding.

Chapter 2 – Relevant Developments Since Publishing Commerce’s Preliminary Report

1. Preliminary Report Distribution. On August 17, 2009, Commerce distributed copies of its 204 page *Preliminary Report Regarding the Proposal to Annex Approximately 0.05 Square Miles of Territory to the City of Fairbanks by Legislative Review* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

2. Appointment of Two New Members to the Local Boundary Commission. On September 10, 2009, Governor Sean Parnell appointed two individuals to fill vacancies on the Local Boundary Commission. John Harrington of Ketchikan and Larry Semmens of Soldotna join previously appointed commission members Robert “Bob” Harcharek of Barrow, Lynn Chrystal of Valdez, and Lavell Wilson of Tok. That same day Governor Parnell appointed Lynn Chrystal as the LBC’s chair. Biographies of all five commission members are provided in Chapter 1 of this report following the introduction.

3. Commerce Informational Meeting. On September 11, 2009, Commerce conducted a duly noticed public informational meeting concerning the city of Fairbanks’ annexation proposal and future petition proceedings. Full details of the informational meeting are provided in Chapter 3 of this final report.

4. Receiving Timely Comments on Preliminary Report. The public comment period for the preliminary report was from August 17, 2009 until September 16, 2009. Commerce received six timely submitted comments, including comments from the City of Fairbanks and the Fairbanks North Star Borough. All timely submitted comments are produced in full as Appendix A of this report.

5. Notice of Local Boundary Commission Public Hearing and Decisional Meeting. After Commerce conferred with the City of Fairbanks and the Fairbanks North Star Borough, the Local Boundary Commission chair scheduled a public hearing regarding the City of Fairbanks’ annexation petition. The hearing will be held on Monday, November 9, 2009, beginning at 12:00 p.m. in the Fairbanks North Star Borough School District’s board room. The decisional meeting will occur at the same place on Tuesday, November 10, 2009, at 3:00 p.m.

Formal notice of the hearing has been given by Commerce under 3 AAC 110.550. Commerce published the full notice in a display ad in the *Fairbanks Daily News-Miner* on October 5, 2009. It will also be published on October 19, 2009, and November 2, 2009. The notice was also posted on the internet through the state’s *Online Public Notice System* and on the LBC website¹.

Additionally, notice of the hearing was provided to the Petitioner’s representative (Mayor Terry Strle). The city must post the notice where the petition documents available for public review are (Fairbanks City Hall, Fairbanks North Star Borough Hall, and the Noel Wien Public Library). A copy of the public notice is included in Appendix B.

1 <http://notes5.state.ak.us/pn>
<http://www.commerce.state.ak.us/dca/lbc/lbcnotices.htm>

Chapter 3 – Commerce Informational Meeting Summary

On September 11, 2009, Commerce conducted a duly noticed public informational meeting concerning the city of Fairbanks' annexation proposal as allowed under 3 AAC 110.520. While this meeting was not mandatory, Commerce felt that it was in the public's best interest to hear about the petition procedures.

The meeting began at approximately 5:30 p.m. in the Fairbanks North Star Borough School District's board room. This venue was considered acceptable by both the Fairbanks North Star Borough and the City of Fairbanks. Approximately 10 - 12 persons attended the meeting, including representatives of both parties.

Commerce updated the public on the proceedings to date, including the completion and mailing of Commerce's preliminary report on August 17, 2009. Commerce informed everyone attending that written comments to the preliminary report must be received by Commerce by 4:30 p.m., September 16, 2009. Commerce did properly receive one written comment at the informational meeting from Ms. Carter Crawford. Her comments are addressed later in this report, and are included in full in Appendix A (as are all timely received comments).

Commerce also informed public members present about the future proceedings schedule. This includes a public hearing regarding the city's petition on November 9, 2009, and a decisional meeting to be held on November 10, 2009. The exact time and venue of these meetings had not been settled at the time of the September 11 informational meeting. Commerce informed those attending that full notice of the November hearing and decisional meeting is scheduled to be placed in the Fairbanks Daily News-Miner, as well as online on October 5, 2009 [although not mentioned at the meeting, it will also be published at least twice more].

Commerce was asked about when the two commission vacancies would be filled. Commerce informed those attending that on September 10, 2009, Governor Parnell appointed John Harrington of Ketchikan to the First Judicial District seat and Larry Semmens of Kenai to the Third Judicial District seat. We would like to correct a statement made at the meeting: Larry Semmens is from Soldotna, not Kenai.

Commerce took some questions from the public regarding the process to submit written comments to the preliminary report. Commerce stressed to those attending that any timely comments received by e-mail or fax **must** be followed up by the original hard copy within 10 days of the electronic filing. Staff also received a number of questions from the borough regarding procedures at the November 9th public hearing. These questions are included in its written comments to the preliminary report which can be found in full in Appendix A.

Commerce informed those attending that it would need to research some of the borough's questions. [Commerce is in the process of consulting with the chair and the Department of Law to respond to the borough's questions].

Commerce distributed preliminary report copies to attendees. Other materials that were available at the meeting include an updated proceedings schedule, and information regarding the petition process. Both of these documents are included in this report's Appendix C.

Chapter 4 – Comments and Commerce’s Response

The Department of Commerce, Community and Economic Development (“Commerce”) received several public comments on its preliminary report, including from the City of Fairbanks and the Fairbanks North Star Borough. Commerce staff reviewed the comments. Commerce realizes that the issues are important to the people, businesses, and governments involved.

The Borough’s letter was arranged by numbered points. We are responding in the same order, for clarity’s sake. The City’s comments are also addressed in the manner in which they were presented. All of the comments were read and seriously considered. They were read with an open mind because they could lead Commerce to revise its positions. While our overall conclusions did not change, in light of the comments received, we have clarified or revised how we reached some of our conclusions.

Commerce uses the same shorter terms that it did in the preliminary report: The Fred Meyer subdivision is “Fred Meyer” (Commerce will use the term “Fred Meyer” to apply for all businesses and property in the Fred Meyer subdivision, not just the Fred Meyer store itself); Alaska State Troopers are “the AST”; the Fairbanks North Star Borough is “the Borough”; the City of Fairbanks is “the City”; the Fairbanks Police Department is “the FPD”; the Fairbanks Fire Department is “the FFD”; the University Fire Service Area is “the UFSA.”

The City’s 9-16-2009 Letter and Commerce’s Response

City:

PR, page 34, discussion of 3 AAC 110.090(a)(4), “adequacy of existing services”

Police Service.

The Preliminary Report quotes two excerpts of a March 9, 2009 letter from former Police Chief Dan Hoffman. This letter, addressed to the Mayor and City Council on Chief Hoffman’s retirement, addressed a number of issues, one of which was the ratio of City Police Officers to residents:

“ . . . the City of Fairbanks continues to staff its police department at inadequate levels.”

“ . . . it is a simple fact that our City Police Department is staffed at an officer-to citizen ratio that is significantly less than comparable communities of our size throughout the nation.”

(emphasis in original)

City Comment:

While the City's Police Officer to citizen staffing ratio may be less than that enjoyed by comparable cities, it is undisputed that the City's ratio is far higher than that currently enjoyed by either the enclave lots or the Fred Meyer Subdivision.

In addition, former Chief Hoffman went on to note that he endorsed,

"the current annexation proposal, as the incremental benefit provided to City residents through reasonable taxation **far outweighs** the proportional increase in service outlay." (emphasis added).

Commerce Findings:

Commerce recognized the City's higher officer to population ratio on the preliminary report, page 34. The factor on page 34 regards the adequacy of services currently provided to the territories. While the City has presented evidence that it can presumably provide a higher level of service, through more officers to population, it has not shown that the AST's level of service to the territories is inadequate. "The standard is whether the existing services are adequate." (*Preliminary Report* p. 42). Commerce reaffirms its finding that there has been no evidence presented that the AST provides inadequate service.

City:

PR, page 42, discussion of 3 AAC 110.090(a) (4), "adequacy of existing services"

Adequacy of Alaska State Troopers

The Preliminary Report states that, "There has been no evidence introduced that the AST is not providing adequate services."

City Comment:

The City has high regard for the quality of the Alaska State Troopers; yet the City can offer a higher quantity of police officer response to the two territories to be annexed because of the huge area that the Interior Alaska State Troopers Detachment must serve. Thus, the City can offer an adequate level of service not currently provided. We appreciate that the Alaska State Troopers are grossly underfunded and the city will continue to advocate for increased law enforcement presence in the entire Fairbanks North Star Borough.

Commerce Findings:

The City contends that it can provide a higher police service level. But, providing a higher police service level is not necessarily the same as whether the territories have adequate police protection. Commerce reaffirms its finding that there has been no evidence presented that the AST provides inadequate service.

City:***PR, page 45, discussion of 3 AAC 110.090(a)(6), “. . .property owners . . . receive . . . the benefit of services . . . provided by the annexing city.”***

Commerce did not find that the Fred Meyer Subdivision “receive[d] the benefit of bank robbery protection by the city.”

City Comment:

It is undisputed that an advanced bank robbery apprehension system is being provided by the City alone at this time. The precise details of this system must remain confidential. The city has gone to great lengths to assure that the criminal element is not aware of the technology in place. Therefore, specific details of the advanced apprehension system are not disclosed in order to protect the public.

Commerce Findings:

The City asserts that it solely provides Fred Meyer advanced bank robbery apprehension system. Commerce understands the public safety concerns about disclosing specific details of the system. But, Commerce feels that the City could have provided a memorandum of understanding that it has contracted to provide this service, or some other proof that it is the sole provider of such a system. Commerce finds that doing so would not compromise public safety concerns. It would be helpful if the City detailed the number of responses by the FPD to the banks located in the Fred Meyer territory. Commerce saw no such information in the Attachment 2 to the City’s comments, which detailed emergency responses to that territory.

City:***PR, page 58, discussion of 3 AAC 110.100(a)(3), “Character; Population Density”***

Commerce stated that, “the city overstated in its petition . . . that the population density of the territory to be annexed is the same as much of the City.” Commerce went on to note that the population density of the enclave lots is about 1,750/sq. mi. compared to 967.21sq. mi. for the existing City.

City Comment:

Commerce’s point is well taken. The City should have stated that the population density in the enclave lots was similar to that of the *immediate* neighborhood and that the lack of population in the Fred Meyer Subdivision was similar to that of the *immediate* territory to the east, the Safeway shopping center.

Commerce Findings:

Commerce reaffirms its page 58 findings that the post-annexation population density would be compatible to the existing city because it does not systematically change any population dynamics of the city.

City:***PR, page 68, discussion of 3 AAC 110.110(a)(2), “Anticipated new expenses”***

Commerce stated that Table 3-2 (Petition Table 1 -A) contained an error.

City Comment:

Commerce is correct: The row titled, “Total Expenses” in Table 3-1 was printed incorrectly.

However, the bottom line, “Revenue Minus Expenses” is correct.

Commerce Findings:

Commerce does not find it necessary to respond to this comment. Table 3-1 can be found on page 66 of the preliminary report.

City:***PR, pages 70 - 72, discussion of 3 AAC 110.110(a)(4), “anticipated. . . budgets”***

Commerce suggested the City could have provided “reasonable estimates to the trend in property value and retail sales of taxable sales rather than providing constant figures . . .”

City Comment:

While the adopted 2009 City budget anticipates revenues and expenditures that are not appreciably changed from 2008, since the date of filing the Petition local residents have used the Initiative process to put two measures on the October 2009 ballot that would change the composition of City revenues.

The two measures would enact a 3% sales tax with the proceeds used first to reduce the City’s base mill levy from the current maximum 4.9 mills set by Charter to zero mills. After reducing the mill rate, the sales tax would provide \$8 million dollars annually, inflation adjusted, for additional public safety and public works services.

There is no way to predict if these ballot measures will be adopted. If they were adopted, it would reduce the property tax citywide and increase overall City revenues to provide essential municipal services.

As Commerce notes, in light of the relatively small size of the proposed annexation, it was felt that a “flat” three-year budget was most prudent.

Commerce Findings:

The two measures noted above would change the financial impact on the territories proposed for annexation. The financial impact on the Borough and the UFSA would presumably not change from the analysis found on pages 102-108 of the preliminary report. If the City's mill rate were reduced from the current maximum of 4.9 mills to zero mills, the property tax burden for Fred Meyer would be reduced by the 2.138 mills that are currently paid to the UFSA and the 1.503 mills that are currently paid to the Borough for emergency medical services, economic development, and solid waste. Fred Meyer would still be subject to a duplicate eight percent tax on tobacco.

If the City's mill rate were reduced from the current maximum of 4.9 mills to zero mills, the property tax burden for the enclave lots would be reduced by 1.503 mills that are currently paid to the Borough for emergency medical services, economic development, and solid waste. Businesses in the enclave lots would be subject to a city-wide three percent sales tax. While the City contends that the sales tax would provide \$8 million annually for additional public safety and public works services, Commerce finds that these two measures are too speculative to be given much weight in the proceedings because the measures have not yet passed.

The City's commented that "Commerce notes, in light of the relatively small size of the proposed annexation, it was felt that a "flat" three-year budget was most prudent." Commerce finds that the financial impact of the proposed annexation is relatively small in comparison to the City's overall budget. Commerce still feels that the City could have provided recent trends in the territories' appraised property values to give the commission a better sense of the expected revenues' direction over the next few years.

City:

PR, page 81, discussion of 3 AAC 110.120(a)(1), population

Commerce found a City population estimate of 31,627 to be reasonable.

City Comment:

On August 14, 2009, we received a new 2008 US Census population estimate of 35,132.

Commerce Findings:

Commerce has verified that the Census website lists a 2008 US Census population estimate of 35,132. Commerce finds that the figure is an estimate, and puts greater weight in the 2008 Commerce figure of 30,367 because it is certified. In the preliminary report we found the City's estimate of a 2007 population of 31,627 to be reasonable because it was derived from the Borough, and because it was consistent with 1990 and 2000 census data. While this Census population estimate, if valid, would change figures like the population density and the officer to population ratio, Commerce reaffirms its preliminary report finding that the population within the City's proposed expanded boundaries would be sufficiently large and stable to support extending city government.

City:***PR, pages 101 - 103, discussion of 3 AAC 110.135(3), relieving the state government of the responsibility of providing local services.***

Commerce viewed AST Colonel Audie Holloway's letter as, "a measured factual statement, and not necessarily a statement of support for annexation . . .

City Comment:

The City Police Department has an excellent working relationship with the Alaska State Troopers and I, as Mayor, would not have supported filing the Petition for Annexation if the Troopers had objected. City Police employees asked AST Director Holloway for his agency's position and I view the letter as completely supportive:

1. The letter states the City is "certainly capable" of providing police protection to the two territories.
2. The letter directly states that the annexation would "relieve" the state from the providing local police service to the territories.
3. The letter states the annexation would "enable the Troopers to focus more efforts on the needs outside the city ..."
4. The letter states no reservations, concerns or objections.

Commerce Findings:

Commerce evaluated and considered AST Director Holloway's comments when writing the preliminary report. On preliminary report page 102 Commerce noted that AST Director Holloway wrote "the annexation by the City would relieve the state government of the responsibility of providing local police services. Annexation would enable the Troopers to focus more efforts on the needs outside the city service areas." Commerce found that the proposed annexation would relieve the state of the responsibility for providing police services to the territories.

Commerce still draws a distinction between a letter containing facts that support annexation from an actual endorsement of the annexation. Commerce finds that Director Holloway's statement differs from the unambiguous statement of then FPD Chief Hoffman when he wrote that "I fully support the current annexation proposal under consideration." (*Reply Brief* p. 8).

City:***PR, pages 106 - 107, discussion of impact on University Fire Service Area (no applicable regulatory standard)***

Commerce found that the City overstated the total financial impact to the Borough and that the City's estimated fiscal impact to the UFSA was \$53,406.46.

City Comment:

The City agrees that the City's Reply Brief overstated the fiscal impact to the overall Borough. Regarding the impact to the UFSA, on September 10, 2009, the Borough, as authorized by AS 39.35.450(c), increased the size of the UFSA by ordinance No. 2009-35 which annexed 37 parcels (stated taxable value of \$4,092,434) without an election. This is just one available option for the Borough to adjust to the *de minimis* effect of the City's annexation of the Fred Meyer Subdivision. (Borough Ordinance 2009-35 with information is Attachment No.1).

Commerce Findings:

Regarding the impact on the UFSA, Commerce wants to clarify its preliminary report page 107 statement that "presumably, there are numerous methods the UFSA can use to recover the loss of 2.7 percent of revenue (e.g. raising taxes, reducing staff)." This statement is not meant to imply that the Borough has to or ought to do any of the cited examples. The City brings up another way (increasing the UFSA's coverage area and presumably the tax base) in which any financial loss to the UFSA might be recovered. Commerce's finding that the financial impact on the UFSA was *de minimis* was not based on the fact that the methods we mentioned might be available to recoup any loss, but instead because the financial impact on the UFSA compared to the UFSA's overall budget is considered small.

City:***PR, page 109 - 122, discussion of 3 AAC 140, Legislative Review Annexation Process***

Commerce noted that at least one of the eight circumstances set forth in Section 140 must be met for a legislative review annexation. We have prepared a table to depict Commerce's findings and the City's prior position, found on the next page.

(The above mentioned table can be found with the city's full comments in Appendix A)

City Comment:

Once again, Commerce must be praised for the exhaustive analysis and review. The City is persuaded by Commerce's analysis with two exceptions: 3 AAC 110.140(4) and (9).

§140(4) -- current benefits received by property owners at the Fred Meyer Subdivision

In addition to the evidence presented in the Petition and Reply Brief as the services provided without compensation to the Fred Meyer Subdivision, attached is detailed recent data. I was not previously aware of our capability to provide such reports. The attachment only includes 2006 - present response to Fred Meyer Subdivision; not the response to streets that border the subdivision, which was summarized in the Reply Brief. (Information provided as Attachment No.2)

Commerce Findings:

In its comments the City submitted attachment 2 showing that the FPD responds to Fred Meyer. In determining whether circumstance (4) exists for 3 AAC 110.140 the Commission must find that

residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government with commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits.

On page 6 of its petition the City states that the FPD has a “working mutual aid relationship with the Alaska State Troopers, at times respond to calls for mutual assistance for incidents that arise in the territory to be annexed.” The AST presumably responds to calls for mutual assistance to the City. If that is the case, then Commerce finds that a mutual aid relationship is an “equitable alternative method to offset the cost of providing those benefits.” Commerce reaffirms its determination that 3 AAC 110.140(4) does not exist for Fred Meyer.

City:

City Comment:

§140(9) Policies set by Constitution and Statute.

Commerce states,

“Article 10, section 12, details the legislative review procedure, but does not explicitly favor legislative review.”

I respectfully suggest there is ample evidence that the policies set by the Constitution and statutes favor the legislative review method over local option annexation.

1. As Commerce staff noted at page 1 of the Preliminary Report, the Alaska Supreme Court has recognized that boundary changes should be considered in light of the statewide standards rather than by “local political decisions.” Article 10, Section 12 sets forth the power of the

Local Boundary Commission to proposed boundary changes by the legislative review route, setting forth a precise timetable for consideration by the elected legislature. Local action boundary changes, stated in the last sentence of Section 12, are optional.

2. Alaska Statute 29.06.040(d) provides that a legislative review annexation “prevails” over a boundary change initiated by local action, “without regard to priority in time.”

3. In the recent City of Homer annexation, the Local Boundary Commission re-affirmed that there is no “constitutionally or statutorily recognized right to vote on [legislative review] annexation which would effectively grant voters the right to veto [a] pending annexation proposal.” The LBC approvingly quoted Constitutional Convention delegate Victor Fischer that, “city government over an urban area is preferred” by the Constitution.

See page 4 of the Reply Brief for further discussion, which noted that the framers of the Alaska

Constitution deliberately repudiated the pre-statehood, “system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.”

Commerce Findings:

Commerce concurs with the City that the process of petitioning the Local Boundary Commission by the legislative review method is well founded in the constitution, statute, and regulation. But, 3 AAC 110.140 circumstance (9) only applies if “the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are **best served** through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.” (*Emphasis added.*)

Article X, section 12 states that “[the commission or board] **may** present proposed changes to the legislature during the first ten days of any regular session.” It further states that “the commission or board, subject to law, may establish procedures whereby boundaries **may** be adjusted by local action.” (*Emphasis added.*)

Commerce does not find that the legislative review process constitutes a specific constitutional policy; rather it is a method a petitioner may choose in petitioning the LBC. On the other hand, maximum local self-government and minimum number of local government units are specific policies set out in Alaska law. Other specific policies set out in the constitution, case law, and statutes hold that local boundary issues are best decided on a state level by a state commission.

3 AAC 110.140(9) requires the petitioner to show that these policies are **best served** by using the legislative review process. Commerce finds that simply having a petition under the legislative review method does not satisfy circumstance (9)’s requirements. Commerce finds further that the City has not shown any specific policies that are **best served** by using the legislative review process.

Commerce reaffirms its finding that 3 AAC 110.140(9) does not exist for either Fred Meyer or the enclave lots.

The Borough's 9-16-2009 Letter and Commerce's Response

Borough:

1. On page 21 of your report, it indicates that no other written materials may be filed at the hearing. Does that include photos and other demonstrative evidence?

Commerce's Response:

Under 3 AAC 110.530(d) Commerce "shall consider timely submitted written comments addressing the preliminary report." Commerce finds that Borough comments 5 through 13 address the preliminary report. Commerce has considered them and addressed them below. Commerce has considered comments 1 – 4 but finds, although comments 1 and 4 refer to the preliminary report, that they concern hearing procedures instead of comments on the preliminary report. The Borough has indicated this as well. These are questions to be answered by the commission chair and not by staff, although Commerce will be the conduit to provide the answers to the parties. Commerce is in the process of consulting the chair and will inform both parties of his decision. Comments 1 - 4 are not addressed in the report.

Borough:

2. Does the exception for good cause apply to allow the Borough to respond to new issues or evidence presented for the first time in the reply brief filed by the City of Fairbanks (City)?

Commerce's Response:

Please see # 1 above.

Borough:

3. Can the petitioner and respondent use power point presentations during opening and closing statements? The Borough realizes this may depend on the venue which has not been selected; however, we believe that all three tentative sites allow for power point presentations.

Commerce's Response:

Please see # 1 above.

Borough:

4. Your preliminary report indicates that the law makes no provision for cross-examination but cross-examination is essential to a due process hearing under Alaska law. The Borough has an interest in this property that the annexation to the City deprives it of (i.e. lost revenues); therefore, due process should attach. The Borough objects to the determination that the petitioner and the respondent do not get an opportunity to cross-examine witnesses.

Commerce's Response:

Please see #1 above.

Borough:

The remaining comments and objections relate to some of the findings presented in the report.

5. On page 31, relating to reasonable need for city government, the report states that “the borough and the [University Fire Service Area] UFSA cannot provide emergency services on a more efficient or more effective level” and concludes, therefore, that “Fred Meyer exhibits a reasonable need for city government.” The Borough objects to this finding. Why must the status quo be at a more efficient or more effective level? The factor specifically states that the territory must exhibit a need. Just because Commerce finds that the current services are not MORE efficient, that does not show a need. The burden is on the City to show that Fred Meyer exhibits a reasonable need for city government. The requirement is not that the Borough must show it can provide a more efficient and more effective level of services than the City.

Commerce's Response:

The Borough correctly states that factor 3 AAC 110.090(a)(2) addresses need. Most of the subchapters (e.g. 3 AAC 110.090, 3 AAC 110.100, 3 AAC 110.110, etc.) mention factors which the Local Boundary Commission (“LBC”) may (emphasis added) consider. These factors are not mandatory checklists unto themselves. They are guidelines to help the LBC determine if the petition satisfies that subchapter’s requirements.

110.090(a)’s factors are factors which the commission may consider. These factors are not exhaustive or mandatory. It is not necessary that every factor be met. Commerce finds that the weight of the evidence is that both territories exhibit a reasonable need for city government based on the analysis of 110.090(a)’s enumerated factors.

Here, the factor is the “existing or reasonably anticipated health, safety, and general welfare conditions.” Commerce feels that the Borough has raised a legitimate point when it stated that “because Commerce finds that the current services are not MORE efficient, that does not show a need.” For that reason, Commerce retracts the following statement: “Commerce finds that annexing Fred Meyer would improve the existing or reasonably anticipated health, safety, and general welfare conditions for the reasons articulated below

– namely that the borough and the UFSA cannot provide emergency services on a more efficient or more effective level. For that reason, Commerce finds that Fred Meyer exhibits a reasonable need for city government.”

Commerce instead finds that Fred Meyer exhibits a reasonable need for city government because Commerce has found that not all of the existing or reasonably anticipated health, safety, and general welfare conditions are adequate. Commerce found that the building code inspection and fire code inspection services currently at Fred Meyer were inadequate.

We also base that finding on the conclusion that although a majority of essential services are adequate, that Fred Meyer needs better services to improve the conditions. Adequacy by itself does not necessarily mean that there is no need. Nor is it a matter of whether the Borough and/or UFSA can do a more effective or efficient job of providing services than the City can. Instead it is a matter of analyzing the conditions, as a factor which the commission may consider, in determining whether Fred Meyer exhibits a reasonable need for city government.

Commerce has found that the City would be more effective than the Borough and/or UFSA in providing essential municipal services such as police, dispatch, and fire code – even though Commerce found that the current police coverage wasn’t inadequate, and that the current dispatch was adequate. Commerce had even found that the current UFSA fire and rescue squad service was more efficient than what the City would provide. But, this is a holistic analysis – overall, are conditions such that Fred Meyer exhibits a reasonable need for city government? Note that the standard does not specify an absolute need for city government – just a reasonable one.

Commerce has found that the existing or reasonably anticipated health, safety, and general welfare conditions, while often adequate, can be improved upon. It is a matter of whether these conditions, and the services which affect them, are at the level which they should be - not a matter of which jurisdiction can better provide them.

The City had averred that it would provide more police per capita than the AST could. Commerce found that the figure was uncontested by the Borough. Commerce finds that, even with a higher city population of 35,627 (see the City’s September 16, 2009 letter, p 4.), that the City can provide more officers per capita than can the AST. Commerce is not necessarily finding that the City police force is per se of higher quality than the AST, but it is saying that having more officers per capita reasonably translates to higher coverage for Fred Meyer. Additionally, the FPD serves a 32.7 square mile area, whereas the AST is spread out over a larger area (the City avers that Detachment D consists of 205,000 square miles and over 100,000 people). (Reply Brief p. 24). Commerce finds that Fred Meyer exhibits a reasonable need for increased police coverage.

In our preliminary report we stated that

[t]he city contends that it has a better dispatch system because all 911 cell calls are answered by the city dispatch. It says that the land based calls for the UFSA are not answered by the city. The Borough states that the land based calls from the UFSA are routed to the AST and then transferred to the UFSA.

That is the point – that calls are being transferred rather than being handed [handled] centrally. Commerce find[s] that it is more effective to have a centralized dispatch, particularly one trained in emergency medical dispatch. Transferring calls, no matter how quickly, is not as efficient as a centralized dispatch. (*Preliminary Report* p. 53).

For those reasons Commerce finds that Fred Meyer reasonably needs the centralized dispatch offered by the City.

Commerce refers to the September 16, 2009 comment by Dominic Lozano, who stated that the City hired an additional fire inspector. He also stated that in the latest contract, firefighters “agreed to a provision that would allow line firefighters the ability to perform fire inspections to help with the work load in the Fire Marshals office.” It is not clear to Commerce, however, whether this contract has been implemented or is still being negotiated. If that contract provision is not implemented, it is of little worth.

In our preliminary report, Commerce wrote that “[t]here is no borough fire code inspection, and no borough function to compare the city fire code and enforcement to.” (*Preliminary Report* p. 53). While there is a state fire code, state fire official Kelly Nicoletto had stated that there had been no construction inspection done at Fred Meyer. (*Reply Brief* p. 7 and Ex. E). For that reason, Commerce found the existing building code inspection and fire code inspection services inadequate. Further, Commerce finds that it is reasonable that a local code and inspection service would be more responsive to residents’ and property owners’ service requests than a state agency would be. Commerce finds that Fred Meyer reasonably needs the City government to perform the building code inspection and fire code inspection services.

Commerce finds that Fred Meyer exhibits a reasonable need for city government because of the existing or reasonably anticipated health, safety, and general welfare conditions. The conditions reflect the level of services. Improving the services would improve the conditions. Commerce finds that annexing Fred Meyer would improve the existing or reasonably anticipated health, safety, and general welfare conditions. Again, it is a holistic analysis – overall, conditions are such that Fred Meyer exhibits a reasonable need for city government. The standard does not specify an absolute need for city government – just a reasonable one.

Commerce finds that Fred Meyer exhibits a reasonable need for increased police coverage.

Commerce finds that Fred Meyer reasonably needs the centralized dispatch offered by the City.

Commerce finds that Fred Meyer reasonably needs the building code inspection and fire code inspection services to be performed by a local government.

For those reasons, Commerce finds that Fred Meyer exhibits a reasonable need for city government to improve those conditions by providing better services.

Borough:

6. On page 44, the report states that “Commerce finds that the majority of conditions in Fred Meyer are adequate.” The report downplays this factor. Furthermore, does Commerce realize that the City did not mention in its briefing that when the City responds to any location, either within the City or in the Borough through its mutual aid agreements, it charges non-City residents significantly more than it charges City residents. While the Borough ambulance services also differentiate between City and Borough residents, the difference is much less. The people who currently use Fred Meyer and the other businesses in the subdivision are not only City residents but also Borough residents and residents outside the Borough (e.g. Nenana, Healy and other towns and villages in Alaska.) Commerce did not address the fact that those people will be adversely affected by the annexation to their detriment if they are in need of ambulance services at the Fred Meyer Subdivision. The staff report does not address the impact on Borough residents who utilize the Fred Meyer Subdivision businesses.

Commerce’s Response:

The Borough is correct when it contends that “[o]n page 44, the report states that Commerce finds that the majority of conditions in Fred Meyer are adequate.” Commerce disagrees with the Borough’s assertion that “[t]he report downplays this factor.” Commerce devoted nearly 13 pages to 3 AAC 110.090 [Need] (a)(4) Adequacy of Existing Services. This is hardly downplaying. A great deal of “ink” was devoted to the City’s position, the Borough’s position, and many comments. All but two of those pages concerned Fred Meyer. Several services (police; fire/rescue squad; code enforcement and construction inspection; dispatch; and roads) were addressed and thoroughly analyzed. Commerce refuted many of the City’s positions, particularly the assertion that the FFD could provide better fire and rescue squad service than could the UFSA. As stated above, (a)(4) “Adequacy of Existing Services” is a factor which the LBC **may** (emphasis added) consider. These factors are not mandatory checklists unto themselves. They are guidelines to help the LBC determine if the petition satisfies that subchapter’s (3 AAC 110.090) requirements.

Commerce exhaustively analyzed factor (a)(4) “Adequacy of Existing Services.” Regarding the police, we said that “Commerce finds that while the city might be able to provide more officers, that the existing police service does not appear to be inadequate.”

Regarding the fire/rescue squad service, Commerce stated “[b]ased on the parties’ evidence, Commerce finds that UFSA’s service is at a minimum, adequate.” In particular, we noted that the UFSA had a lower (meaning better) Insurance Services Office [ISO] rating than did the FFD. We also cited that the UFSA’s University Avenue station was closer than either of the City’s.

As to the existing code and enforcement or construction inspection services, Commerce stated that the existing code and enforcement or construction inspection services were inadequate because there had been no construction inspection done at Fred Meyer.

Regarding dispatch, Commerce had found elsewhere (in its 3 AAC 110.090(b) analysis) that the centralized dispatch (which the City has) was more effective than the system presently serving Fred Meyer. Notwithstanding, we found that the present UFSA and AST dispatch systems were adequate because calls are answered and dispatched.

As to roads, Commerce found that there was no indication that the Fred Meyer roads were inadequate.

We did not merely state the adequacy of Fred Meyer's conditions. In full, we stated on page 44 that

Commerce finds that the majority of conditions in Fred Meyer are adequate. This does not mean that the conditions cannot be improved upon. There are many factors which the LBC may consider in approving or disapproving an annexation petition, and this factor is merely one of many to consider.

After carefully considering the Borough's points, we stand by that analysis.

Regarding the Borough's contention that the City charges non-city residents needing rescue squad services proportionally more than the Borough's differential between City and Borough residents, Commerce, after careful consideration, finds the point moot. We find it moot because we had found the Borough's (UFSA) rescue squad services to be adequate. In other words, regardless of any possible fee difference, Commerce had already found the UFSA to be adequate; this is what the factor concerns. Second, the rescue squad cost does not equate to adequacy. How much a person will have to pay does not influence the adequacy and quality of medical attention and service that she will receive.

Lastly, Commerce did not address in the preliminary report the contention of a fee difference on Borough residents because neither party, nor the commenters had addressed it. The report in general addresses the impact on borough residents (or any other persons) who use the Fred Meyer businesses. As there are no Fred Meyer residents, the people who work in Fred Meyer, patronize its businesses, or deliver goods to Fred Meyer, are the ones affected by the proposed annexation. This includes borough residents.

Borough:

7. On page 47, the report states that the City asserted that the Fairbanks Police Department is the primary responder for any bank robberies at the Fred Meyer Subdivision. The report goes on to state that the assertion was "uncontested by the Borough." The Borough objects to both of those statements. First, the reason that the assertion was uncontested by the Borough was because it was first brought forth by the City in its reply brief. A search of the opening brief shows that bank robberies were not mentioned in the City's opening brief but rather first mentioned in the reply brief. Therefore, because the Borough had no opportunity to respond to the reply brief, it should not be held against the Borough. For the same reasons, the Borough objects to the staff using information to support the annexation which was only addressed in the City's reply brief.

Commerce's Response:

Commerce finds that the Borough raises a legitimate point regarding when Commerce stated that the Borough did not contest the City's assertion that the City is the primary responder to any Fred Meyer bank robbery. We understand that the Borough is concerned that it did not previously have an opportunity to respond to the bank robbery issue raised by the city in the reply brief. Commerce therefore retracts the following phrase found on preliminary report page 47: "an assertion uncontested by the borough." Commerce does not replace that language with other language.

The Borough contends that it didn't have a chance to respond to the bank robbery issue because the City raised it for the first time in the reply brief. Staff reviewed the petition and didn't see the bank robbery issue raised there. The City states in its September 16, 2009 letter that it discussed the bank robbery on reply brief pages 6, 17, 24, 28, and 35.

Commerce verified that the City referenced the bank robbery issue on reply brief pages 6, 17, 24, 28, and 35. On pages 24, 28, and 35, the City responds to Borough arguments regarding the adequacy of existing government (*Responsive Brief* p. 9), benefits to territory (*Responsive Brief* p. 14), and benefits of some City services without payment (*Responsive Brief* p. 25). 3 AAC 110.490 allows the petitioner to file a reply brief "in response to all responsive briefs and written comments filed timely under 3 AAC 110.480." Commerce finds that the City is replying to Borough arguments that, although not concerning bank robbery per se, pertain to the City's points concerning bank robbery.

Again, 3 AAC 110.490 allows the petitioner to file a reply brief "in response to all responsive briefs and written comments filed timely under 3 AAC 110.480." We note that Harry Davis' comment partly concerned the bank robbery issue. His comment was posted on the LBC website on March 18, 2009. This precedes the May 11, 2009 due date for the City reply brief. The petitioner, without citing Harry Davis, addressed the bank robbery issues which he raised.

Commerce finds that at this point the Borough has responded to the bank robbery issue raised in the reply brief in its comments to the preliminary report. "The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report." 3 AAC 110.530(c). Even greater detail concerning the merits of the bank robbery issue could have been raised by either party in its comments on the preliminary report.

Further, Commerce has a duty to address the material which it receives, not to ignore it. Commerce feels that far greater danger to the petition process could result if staff surgically examined material and judged whether to exclude it or not, or whether to address or not. The public is, in our view, far better served if Commerce analyzes all timely submitted material, rather than act as an evidentiary gatekeeper.

Both parties may address the bank robbery issue at the November 9, 2009 hearing.

As indicated below, Commerce in any event did not accept the City's contention that the City is the primary responder to any bank robberies at Fred Meyer.

Regarding the assertion that the FPD is the primary responder for any bank robberies at Fred Meyer (an assertion uncontested by the borough), if that is so, that would be a benefit received by Fred Meyer. Receiving a benefit from the city would satisfy this factor's requirement. It is not clear if the FPD is the primary responder in such an incident, if there is any formal arrangement for the FPD to be the primary responder, or how often the need for FPD has previously arisen. For these reasons Commerce finds that the city has not shown [emphasis added] that property owners within Fred Meyer receive or may be reasonably expected to receive the benefit of bank robbery protection by the city. Commerce finds that the argument that Fred Meyer shows a reasonable need for city government based on this factor is speculative. Commerce finds that the city's argument does not meet the factor's requirements, and that Fred Meyer does not exhibit a reasonable need for city government based on this factor alone. (*Preliminary Report* p. 47).

As we did not accept the City's argument, Commerce does not see how we used that "information to support the annexation."

Borough:

8. On page 53, the report states that the regulations state that a territory may not be annexed to a City if essential municipal services can be provided more efficiently and more effectively by . . . an organized borough." The regulation means that if the Borough is more efficient and effective then the annexation MAY NOT happen. However, the regulation does not mean that if the Borough is not more efficient and effective then the annexation must occur. The report concludes that the Borough provides a more effective and efficient fire and EMS service but that it does not provide a more effective or efficient police, dispatch, building code inspection and fire code enforcement. If Commerce's finding is that neither the Borough nor the UFSA can provide essential municipal services more effectively or efficiently then doesn't that only mean that there is not an absolute ban on the annexation? It should be noted in the report that the regulation does not require that the Borough be more efficient or more effective in order to defeat the annexation.

Commerce's Response:

The Borough correctly interprets 3 AAC 110.090(b). That part of the regulation states that

[t]erritory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an area wide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec 5, Constitution of the State of Alaska.

Commerce finds that the Borough established the UFSA in accordance with art. X, sec 5, Constitution of the State of Alaska.

Commerce clarifies that it finds that neither the Borough nor the UFSA can provide essential municipal services more efficiently and effectively [note that the proper connector is an "and," not an "or" as Commerce indicated on page 53] than the City because neither the Borough nor the UFSA can provide more efficient and effective police, dispatch, building code inspection and fire code enforcement.

Commerce found that the standard concerned essential municipal services_s (in the plural), and that neither the Borough nor the UFSA could provide these services more efficiently or effectively than the City. The Borough is correct that this means merely that the proposed annexation is not absolutely banned. Commerce notes that 3 AAC 110.090(b) states that if the borough or borough service area can provide the essential municipal services more effectively and efficiently, then the territory may not be annexed. But, just because a petition satisfies 3 AAC 110.090(b) does not necessarily mean that the petition meets all city annexation standards.

Borough:

9. On page 53, the report concludes that fire code inspections are not currently provided more effectively; however, currently those services are provided by the State. The Borough questions whether or not staff spoke to Dave Tyler, State Fire Marshall, regarding the current State ability and intent to provide fire code inspections outside the City as opposed to the past performance. What is represented in the report has more to do with past State staffing and budget issues as opposed to what would be done under the current inspection program.

Commerce's Response:

On page 53 Commerce found that

[t]he borough or UFSA cannot provide more effective and efficient building code inspections or fire code enforcement than can the city because neither the borough nor the UFSA provides such functions. The borough writes that these services are provided by the state. That is our point – that the services are provided not by the borough or by the UFSA, but by the state.

3 AAC 110.090(b), however, addresses whether essential municipal services can be better provided by another existing city, organized borough, or borough service area, not by the state. As 3 AAC 110.090(b) is concerned with the quality of local government provided services, the quality of any state services, including the fire marshal's office, is irrelevant to 3 AAC 110.090(b).

Either party may address the quality and ability of the state fire marshal's office at the hearing, and has had the opportunity to have addressed it in its comments. Commerce did not specifically speak with Mr. Tyler, nor did either party cite him in its materials (although Mr. Tyler received an e-mail from FFD Fire Chief Cummings requesting fire inspection information. Mr. Tyler forwarded it to others in his office). (*Reply Brief* Ex. 3).

Borough:

10. The Borough objects to the fact that Commerce did not address the fact that Fred Meyer Subdivision owners will be paying \$150,000 more in property taxes yet will not be receiving \$150,000 more in services.

Commerce's Response:

Commerce is not clear as to how the Borough calculated the property tax increase to be \$150,000. Commerce's calculation is based on the data the City provided on page 14 of its petition in the table titled "Existing 2008 Mill Rates Prior to Annexation." In 2008, Fred Meyer's property tax burden (Borough and the UFSA combined) was 14.928 mills. The table also shows that Fred Meyer's total property taxes amounted to \$372,896. Page 14 of the petition states that "[t]he total levy for all property in the City (combination of taxes levied by City plus areawide Borough taxes) is 17.278 mills (1.7% of net taxable assessed value)." If annexation is approved Fred Meyer will have to pay an additional 2.35 mills in property taxes ($17.278 - 14.928 = 2.35$). Based on the 2008 tax of \$372,896 from the 14.928 mill levy, Commerce calculates the property tax increase of 2.35 mills to be approximately \$58,702.14. This figure is calculated by this equation: $[(2.35 \times \$372,896) / 14.928 = \$58,702.14]$. This is far less than the Borough's estimate of \$150,000.

Regardless of the amount, Fred Meyer currently pays for UFSA services. If annexation is approved, it would no longer have to pay for that. Second, Fred Meyer receives AST police service. Its property taxes are not spent on AST service. If annexation is approved, Fred Meyer would be both receiving and paying for police service. Third, Fred Meyer would pay for and receive what Commerce has found to be a more effective dispatch service (although the Borough noted in page 26 of its responsive brief that the system was paid for with a Department of Justice grant and with funds that the Borough collected indirectly from phone owners). Fourth, Fred Meyer would also pay for and receive what Commerce has found to be a more effective City building code inspection and City fire code inspection service. Its current property taxes do not pay for the state building and fire code inspection. Further, a taxpayer is not guaranteed a *quid quo pro* return on one's taxes. For example, a borough taxpayer who pays a great deal in property taxes might not have any children in the borough school system. She would not receive a direct benefit from the proportion of her tax dollars spent on education. Likewise, currently some of Fred Meyer's property taxes go to support the borough school system. Yet there are no school children living at Fred Meyer.

Borough:

11. The Borough objects to the finding that the effect on the Borough and the University Fire Service area is *de minimis* which can be made up easily by raising taxes. Why should the Borough residents' taxes increase just so the City residents' taxes can be decreased? Merely shifting a tax burden is not in the best interest of the State.

Commerce's Response:

On preliminary report page 107 we stated that

Commerce finds that the UFSA has the largest budget of the five fire service areas. Total projected revenue from property tax for 2008 is \$1,988,115. This is the same figure that the city states in its petition. Commerce calculates that the revenue loss of approximately \$53,406.46 (Commerce figure) is about 2.7 percent of the total revenue that the UFSA is expected to raise through property taxes. Commerce also notes Table 3-9 shows that revenues exceed operating expenditures by roughly \$379,000. This could represent a current revenue surplus that far exceeds the roughly \$53,406.46 in revenue loss from annexation. Presumably, there are numerous methods the UFSA can use to recover the loss of 2.7 percent of revenue (e.g. raising taxes, reducing staff). Commerce finds the financial impact to the UFSA in consideration of its entire budget to be *de minimis*. This is considerably less than the 25 percent revenue loss for a service area that the LBC found to be *de minimis* in the Homer annexation.

Commerce respectfully disagrees with the Borough's above statements. Commerce did not state that the UFSA's revenue loss could be made up "easily." What we said was that there were presumably many methods that the UFSA could use to make up the revenue loss. Commerce mentioned two specific examples of raising taxes or reducing staff to make up that revenue. We do not suggest or advocate either of those methods; we merely say that they are possibilities. Other possible methods could include annexing area to the UFSA, cutting expenses, or seeking grants. Similarly, in analyzing the effect on the Borough on page 108, we stated that "it is a lesser loss of only 0.149 percent of total projected net revenues. There are numerous methods the borough can use [emphasis added] to recover the loss of at most 0.298 percent [using Borough figures] of total projected net revenue. Commerce finds the financial impact to the borough to be *de minimis*."

Commerce found the effect on the UFSA to be *de minimis* because we found the revenue loss to be about 2.7% of the UFSA's total revenue. Specifically, "Commerce finds the financial impact to the UFSA in consideration of its entire budget to be *de minimis*." It is *de minimis* because of its proportion of the total budget, not because there might be other methods to recover the revenue loss.

Borough taxes do not necessarily need to increase. If they do, it is not in order to decrease city residents' taxes. Commerce made no finding that city resident taxes would decrease as a result of the annexation. Commerce made no finding that shifting a tax burden is in the best interests of the state.

Borough:

The last comments and objections relate to the Legislative Review standards. Pursuant to the statutes and regulations, at least one of the nine circumstances must exist. The report clearly states that seven of the circumstances do not exist. The Borough objects to the two findings that circumstance 7 and 8 exist within the Fred Meyer Subdivision. Specifically:

12. On page 117, Commerce found that annexation of the Fred Meyer Subdivision would promote a maximum local self-government and minimum local government units because the Subdivision would belong to both the City and the Borough. If just belonging to both a city and a borough means that there is maximum self-government and minimum local government, the necessity to meet one of the circumstances would always be met when a city annexes property within an existing borough. There must be something more required otherwise the regulation would be pointless. The Borough objects that circumstance 7 exists in the Fred Meyer Subdivision.

Commerce's Response:

On page 117, Commerce found that annexing Fred Meyer would promote maximum local self-government and a minimum number of local government units. Commerce respectfully disagrees with the Borough's contention that "[i]f just belonging to both a city and a borough means that there is maximum self-government and minimum local government, the necessity to meet one of the circumstances would always be met when a city annexes property within an existing borough."

Regarding maximum local self-government, Commerce applied 3 AAC 110.981 and determined that annexing Fred Meyer would promote the maximum local self-government principle. Commerce found that annexing Fred Meyer would promote the principle of local self-government "because Fred Meyer would receive the benefits of belonging to both the city and the borough. If annexation is approved then Fred Meyer would receive both the benefits only the borough can offer (e.g. assessing, tax collection, education, planning and zoning, and others) and also those benefits which only the city can offer (e.g. police, dispatch, building and building and fire code)."

That might not be the case in every proposed annexation. There might be circumstances where local government needs can be met by local government units other than the annexing city.

Some boroughs, for example, provide more services than do other boroughs. Whether local government needs can be met by local government units other than the annexing city would be determined on a case by case basis by the LBC.

Regarding the minimum number of local governments principle, Commerce found that the proposed annexation would not increase the number of local government units. Commerce found that maintaining the number of local governments satisfied that standard.

It is not a given that a city attempting to annex within an organized borough would always be found to have met both the maximum self-government and minimum local government standards. It is determined on case by case basis. For that reason the regulation is not pointless.

Borough:

13. On page 120, Commerce declares that annexation of Fred Meyer would enhance the existing City to meet incorporation standards and be in the best interest of the state merely because the City has averred that Fred Meyer has an advantage over other businesses in the City limits. The Borough is unaware of any businesses that have stepped forward to make that argument. Furthermore, how can Commerce find that the annexation meets this circumstance merely because annexation would bring in additional area and revenue to the City? Again, wouldn't the necessity to meet one of the circumstances always be met by this criteria because EVERY proposed annexation would bring in additional area and revenue (property taxes)? Finally, the City is already incorporated. It would seem that this circumstance is aimed at cities that are in the process of incorporation. The annexation would not help the City meet the standards for incorporation because it is already incorporated. The Borough objects that circumstance 8 exists in the Fred Meyer Subdivision.

Commerce's Response:

Commerce had found that annexing Fred Meyer meets 3 AAC 110.140(8)'s requirement that: "Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042, and is in the best interests of the state." Commerce found that annexing Fred Meyer would enhance the existing city's ability to meet incorporation standards. But, Commerce found that annexing Fred Meyer would enhance the existing city's ability to meet incorporation standards for reasons different than those the Borough gave.

Commerce did not state "that annexation of Fred Meyer would enhance the existing City to meet incorporation standards and be in the best interest of the state merely because the City has averred that Fred Meyer has an advantage over other businesses in the City limits." What we said on preliminary report page 119 was that

[t]he city has averred that its is economically inequitable to have a large retail store 'perched' on city boundaries that is subject to less taxes than competing retail stores inside the city and even just across the street.

Commerce does not make a finding as to the equity of this circumstance, but simply finds that there is an economic advantage for commercial properties selling the same goods outside of city limits compared to those inside of city limits. The fact that economic inequality exists, however, does not alone show how annexing Fred Meyer would enhance the extent to which the existing city meets the incorporation standards.

In other words, Commerce found that while different economic circumstances existed between stores inside and outside of the city, we made no finding as to the situation's fairness or equity. Instead, we said that such inequity alone did not show how annexing Fred Meyer would enhance the existing city's extent to meet the incorporation standards. The best interests of the state did not enter into that analysis.

What we did find on page 120 was that "annexing Fred Meyer would enhance the extent to which the existing city meets the incorporation standards because annexing Fred Meyer would bring additional area and revenue to the city. Due to Fred Meyers's small size and no population, Commerce finds that annexing Fred Meyer would only marginally enhance that extent." Nonetheless, however, it does enhance it.

Commerce respectfully disagrees with the Borough's contention that this criterion would always be met because every proposed annexation would bring in additional area and revenue (property taxes). We do not find that to be the case. An annexation could bring in areas that are tax exempt because, for example, they are not privately owned; that they are Native allotments and hence tax exempt; or that they are governmentally owned and are tax exempt. Further, the Borough's contention does not consider the additional expenses required in providing services to the annexed territory. Every proposed legislative review annexation would be decided on case by case basis, including determining if it met 3 AAC 110.140(8).

The Borough argues that "[f]inally, the City is already incorporated. It would seem that this circumstance is aimed at cities that are in the process of incorporation. The annexation would not help the City meet the standards for incorporation because it is already incorporated. The Borough objects that circumstance 8 exists in the Fred Meyer Subdivision."

Commerce responds that the regulation exists. We must address it because it pertains to city annexation by legislative review, which this petition is. We mentioned earlier that most of the subchapters (e.g. 3 AAC 110.090, 3 AAC 110.100, 3 AAC 110.110, etc.) mention factors which the Local Boundary Commission ("LBC") **may** (emphasis added) consider. These factors are not mandatory checklists unto themselves. They are guidelines to help the LBC determine if the petition satisfies that subchapter's requirements. That is not the case, however, for 3 AAC 110.140. The LBC must examine 3 AAC 110.140 's eight circumstances.

Under 3 AAC 110.530, Commerce must write reports investigating and analyzing the petition. To do so, we need to examine the standards. 3 AAC 110.140 is a legislative review annexation petition standard. 3 AAC 110.140 lists eight criteria under which territory may be annexed to a city by legislative review. These are criteria which the LBC must consider. The petition must meet at least one of the eight circumstances. 3 AAC 110.140(8) is one of those circumstances, and so must be addressed. We cannot ignore it.

3 AAC 110.140(8) cannot be intended, as the Borough contends, only for cities in the process of incorporating because unincorporated cities cannot annex. It is meant for existing cities, as the regulation states.

Regarding best interests of the state, on page 120 we found that

Commerce found in analyzing 3 AAC 110.135 that annexing Fred Meyer is in the best interests of the state. Commerce found that annexing Fred Meyer promoted the principles of maximum local self government and minimum of local government units, would relieve the state of the responsibility of providing some services to the territories, and would not cause a detrimental financial impact to either the borough or the UFSA. For a more in depth analysis on best interests of the state please see Commerce's discussion of 3 AAC 110.135 beginning on [preliminary report] page 96.

Commerce would like to clarify a page 120 statement. Commerce finds that the City meets this standard for Fred Meyer because it has been found that annexing Fred Meyer [not the enclave lots] will enhance the extent to which the existing city will meet incorporation standards, and because it is in the best interests of the state.

Public Comments and Commerce's Response

Annie Neubauer:

Several years ago the people gave the City of Fairbanks a "no" vote and they had to sell, for better or worse, all the utilities, except garbage. I am presently hooked up to GVEA, and Golden Heart Utilities and I pay to have my garbage hauled. I live in the city and I pay for them to pick up my garbage whether or not I have any so that will be another bill each month for those people who own property next to the Boatel.

The city wishes to give me "protection", when they really mean they want to provide me with more regulations. I'm at a loss as to how I have survived 38 years without a fire inspection of my cement block building. However, just so you know...two years ago I spent quite a bit of money to have all the electrical updated. As a private business person, I try to keep the building and property in order so my customers will keep coming back and my employees will keep getting paid.

Ms. Neubauer strongly objects to the City annexing the enclave lots. She owns the Boatel Bar. She states that the City does not provide utilities except for garbage. Ms. Neubauer she says that she has been proactive in keeping her property safe.

Commerce Findings:

Ms. Neubauer raises interesting issues regarding the enclave lots. Commerce finds that annexation would increase the enclave lots' property taxes. After considering Ms. Neubauer's comments, Commerce reaffirms its preliminary report finding that the enclave lots exhibit a reasonable need for city government due to need for improved police services, need for fire and building code inspection services, and lack of fire service.

Ms. Neubauer's full written comments have been included in Appendix A for the commission's review.

Carter Crawford:

I have written in the past to oppose the annexation of the property west of University that includes the Fred Meyer store complex. Annexing the enclave lots surrounded by city property makes sense.

Despite some articles favoring annexation of Fred Meyer I see nothing that meets the legal standards for annexation.

First there is no unmet need or unqualified public safety service. The area is currently well served by both University and Chena Ridge Fire Depts. and Ak State Troopers. And the University Fire Dept has a higher rating than the City Fire Dept!

In fact both Fire Departments are closer than the City Fire Station for response time. And I read repeatedly that the City believes its Police Department is under staffed and response time currently to lesser crimes is delayed.

Second, many of all the officials consulted oppose the city plan

Third, this area is not a community but rather a fully developed retail sector with very limited potential for growth.

Fourth, nothing submitted indicates this is in the best interest of the state, particularly when the larger geographic area of Fairbanks, the surrounding Borough has voted unanimously (Assembly) to oppose this annexation.

Commerce Findings:

Ms. Crawford opposes annexing Fred Meyer, but does agree that the enclave lots should be annexed. First, Ms. Crawford contends that “there is no unmet need or unqualified public safety service.” Commerce in its preliminary report found that a majority of services were adequate for Fred Meyer. This included police service provided by AST and fire and rescue squad services provided by the UFSA. Commerce also recognized that both the UFSA’s fire stations were closer than either of the FFD’s, and that the UFSA has a better ISO rating than the FFD. Commerce also found that the UFSA could provide better overall rescue squad services to Fred Meyer.

3 AAC 110.090(a) requires that the “territory must exhibit a reasonable need for city government.” While Commerce found that a majority of services were adequate, Commerce still found that Fred Meyer exhibited a reasonable need for city government. For example, Commerce found that the FPD could offer Fred Meyer more officers per capita than AST. Commerce found and continues to find that a reasonable need exists for increased police coverage, a centralized dispatch offered by the City, and building code inspection and fire code inspection services to be performed by a local government.

Second, while many of the consulted officials might oppose the City’s plan, their consent is not required of any standard for city annexation. Commerce carefully considered all material received and found that the petition satisfied all pertinent standards.

Third, there is no direct standard that requires Fred Meyer to be a community in and of itself in order to be annexed. Regarding future growth in the territory, Commerce stated on preliminary report page 27 regarding 3 AAC 110.090(a)(1), “the factor’s language clearly states that there may be either “existing or reasonably anticipated social **or** economic conditions” including growth that has occurred **or** is reasonably expected to occur” [emphasis added]. The language is clear that by using the word “or,” conditions, including growth, may either be present or in the future.”

Fourth, regarding best interests of the state, Commerce carefully considered and analyzed each standard. 3 AAC 110.135 addresses best interests of the state which includes relevant factors which the commission may consider including whether annexation: promotes maximum local self-government, promotes a minimum number of local government units, and will relieve the state government of the responsibility of providing local services.

Commerce found on preliminary report page 108 that annexing Fred Meyer and the enclave lots to the city would promote maximum local self-government and minimum number of local government units. Commerce found that the proposed annexation would relieve the state government of the responsibility of providing police services and fire and building code inspections. Commerce found “that annexing either the enclave lots or Fred Meyer does not cause a detrimental financial impact to either the borough or the UFSA that would cause the city’s petition for annexation to be against the best interests of the state.” Commerce found and continues to find that based on the submitted material and application of the factors which the commission may consider under 3 AAC 110.135, that annexing Fred Meyer and the enclave lots is in the best interests of the state.

Ms. Crawford’s full written comments have been included in Appendix A for the commission’s review.

David van den Berg:

It does not surprise me that the LBC staff found that the proposal meets the statutory and regulatory standards and is in the best interest of the state, for it is true that both areas possess characteristics of the City and can be made part of and served by that political subdivision, in accordance with the state’s best interests.

Commerce Findings:

Mr. van den Berg supports annexing both Fred Meyer and the enclave lots. In particular Mr. van den Berg states that “both areas possess characteristics of the City.” Commerce reaffirms its findings that both territories are compatible in character to the existing city because of their similar land use, subdivision platting, and ownership patterns; comparable salability to similar properties within the existing city; that annexation would not significantly change the population density of the existing city; that there are no current or expected population changes that would render the territories incompatible with the existing city; that there are existing transportation patterns and facilities in place to extend municipal services to the territories; and that the geographical features and environmental factors in the territories are compatible with the existing city and do not prevent the City from providing municipal services.

Mr. van den Berg’s full written comments have been included in Appendix A for the commission’s review.

Dominic Lozano:

We wanted to assure the commission that the City of Fairbanks and the Fairbanks Fire Fighters Association have been working together to ensure that City residents are receiving the best possible service. In our latest contract the Fairbanks Fire Fighters Association agreed to a provision that would allow line firefighters the ability to perform fire inspections to help with the work load in the Fire Marshals office. The City also noted a deficiency in the office and hired an additional Fire Inspector.

We also hired two additional Fire Fighters thru a federal SAFER grant that brings shift manning up to thirteen firefighters per shift. This will assist in our manning difficulties. We hope to be able to hire more firefighters in the near future to increase those numbers.

Commerce Findings:

Mr. Lozano is the President of the Fairbanks Fire Fighters Association. Mr. Lozano's organization supports Commerce's recommendation to the commission to approve the petition.

Mr. Lozano presents interesting comments that pertain to the City's ability to assume building and fire inspection from the state of Alaska. If it is true that fire fighters are now able to perform fire inspections and that the City has hired an additional fire inspector it would strengthen the City's claim that it would provide more effective and efficient fire code and inspection services than the state's fire marshal office. Commerce reaffirms its findings that the "existing code enforcement or construction inspection services are inadequate."

Mr. Lozano brings up the point that two new fire fighters have been hired through a federal SAFER grant. While this strengthens the City's position on its fire service, Commerce reaffirms its finding that the UFSA can provide more effective and efficient fire and rescue squad service to Fred Meyer than the FFD can. As the UFSA does not provide fire service to the enclave lots, Commerce reaffirms that the City can provide better service to that territory than the Borough.

Mr. Lozano's full written comments have been included in Appendix A for the commission's review.

Note to the Commission:

LBC staff also received a faxed comment from Mr. Ron Huffman on September 4, 2009. Mr. Huffman did not follow up with a hard copy of his written comments within 10 days as 3 AAC 110.700(d) requires. For this reason his comments cannot be included in this final report. Commerce called and informed Mr. Huffman that he can provide public comment to the commission at the November 9, 2009 public hearing.

Chapter 5 – General Conclusion and Recommendation

All timely submitted comments to the preliminary report have been read, considered, and responded to in this final report. After careful consideration and analysis, Commerce reaffirms its recommendation to the Local Boundary Commission to approve the annexation of both the enclave lots and Fred Meyer. Commerce reaffirms that the City of Fairbanks' annexation petition satisfies all of the relevant standards and requirements for annexing both the enclave lots and Fred Meyer.

Commerce's reaffirmed preliminary report conclusions are as follows:

Commerce finds that Fred Meyer and the enclave lots exhibit a reasonable need for city government because *inter alia*, it has found under 3 AAC 110.090(a) that not all of the existing or reasonably anticipated health, safety, and general welfare conditions are adequate. Commerce found that the building code inspection and fire code inspection services currently at Fred Meyer and the enclave lots were inadequate. We also base that finding on the conclusion that although a majority of essential services are adequate, that Fred Meyer needs better services. Adequacy by itself does not necessarily mean that there is no need. The standard does not specify an absolute need for city government – just a reasonable one. Commerce found that Fred Meyer exhibits a reasonable need for city government because it has a reasonable need for increased police coverage, the centralized dispatch offered by the City, and the building code inspection and fire code inspection services. Commerce found that the enclave lots exhibit a reasonable need for city government based on, *inter alia*, inadequate existing services and inadequate health, safety, and general welfare conditions.

Regarding 3 AAC 110.090(b), Commerce found that the standard concerned essential municipal services (in the plural). While Commerce found that the UFSA could provide Fred Meyer a more effective and efficient fire and rescue squad service than the FFD (UFSA does not provide these services to the enclave lots) that is not the only essential municipal service to consider. Commerce found that neither the Borough nor the UFSA can provide essential municipal services more effectively and more efficiently than the City because they do not provide some of the services such as police, centralized dispatch, and building code inspection and fire code enforcement. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.090 for both the enclave lots and Fred Meyer.

Commerce has found that both the enclave lots and Fred Meyer are compatible in character to the existing city. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.100 for both the enclave lots and Fred Meyer.

3 AAC 110.110 addresses whether the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential city services on an efficient, cost effective level. Many of the relevant factors that the commission may consider deal with revenue and expense projections and whether there are sufficient resources that can generate the revenues necessary to cover the expenses of extending city services. The budget information provided by the City was carefully considered by Commerce. Commerce found that the City's budget projections demonstrate that the City has the ability to extend services into the proposed areas. Commerce found that there is sufficient development and property value in these areas to generate adequate tax revenues to support providing and extending municipal services. Commerce found that the aforementioned relevant

factors of this standard demonstrate that the expanded boundaries of the City (including both the enclave lots and Fred Meyer) includes the human and financial resources necessary to provide essential municipal services on an efficient, cost effective level. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.110 for both the enclave lots and Fred Meyer.

Commerce has found the population within the proposed expanded city to be sufficiently large and stable to support the extension of city government based on the City's economic base and population and does not foresee any factors that could cause destabilization. The City of Fairbanks is Alaska's second most populous city. The territories proposed for annexing are highly developed, contiguous to the existing city, and the City already provides city services up to the boundaries of the territories. The City provides some services to the enclave lots. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.120 for both the enclave lots and Fred Meyer.

Commerce found that the proposed expanded boundaries of the City includes all land and water necessary to provide the development of essential municipal services on an efficient, cost effective level. Commerce found the enclave lots to be contiguous to the annexing city and that annexation would not create an enclave in the annexing city. Commerce also found that although annexing Fred Meyer could arguably create an enclave, the expanded city would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. Both the enclave lots and Fred Meyer promote the limitation of community by being on a scale suitable for city government, and because neither contains entire geographical regions or large unpopulated areas. Commerce found that the overlapping boundary standards in 3 AAC 110.130(d) are not an issue and so this petition is not required to address detachment standards. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.130 for both the enclave lots and Fred Meyer.

Commerce found that annexing both the enclave lots and Fred Meyer is in the best interests of the state. Commerce found that annexing both the enclave lots and Fred Meyer would promote the constitutional principles of maximum local self-government and minimum local government units. Commerce found that annexation would relieve the state of the responsibility of providing local services to the territories such as police, building code, and fire code enforcement. Commerce also found that this annexation proposal would not cause a detrimental financial impact to either the Borough or the UFSA. Commerce found and reaffirms that the petition satisfies the best interests of the state requirements of 3 AAC 110.135 for both the enclave lots and Fred Meyer.

Commerce has found that the enclave lots and Fred Meyer proposed for annexation meet the standards specified in 3 AAC 110.090 – 3 AAC 110.135, fulfilling part of 3 AAC 110.140's requirements. Commerce found that five of the nine circumstances enumerated in 3 AAC 110.140 exist for the enclave lots. Commerce found that two of the nine circumstances exist for Fred Meyer. The requirement is that one of the nine circumstances exist for territory to be annexed by legislative review. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.140 for both the enclave lots and Fred Meyer.

Commerce found that the transition plan is adequate based on the requirements of 3 AAC 110.900. This annexation proposal includes territories that are developed, accessible, and contiguous to the existing city. Commerce finds the prospective transition of extending essential city services into the territories proposed for annexation to be elementary and uncomplicated. The petition states that the City is willing to extend essential city services to the territories proposed for annexing immediately upon the effective date of an approved annexation petition. This proposal does not involve the transfer of assets or liabilities from one local government to another. Commerce found that the City has included in its plan all relevant powers, duties, rights, and functions to be assumed upon the effective date of an approved annexation petition. Commerce found that consultation had occurred before the filing of this petition with officials of the Borough, and the UFSA. While the transition plan

does not include all the dates and subjects of consultations, Commerce found that the spirit of the regulation had been met, and no irrevocable harm had been caused by its omission. Commerce found and reaffirms that the transition plan provided in the City's petition meets all requirements set out in 3 AAC 110.900.

Commerce has found no evidence that any effects on the political rights of citizens of the territories proposed for annexation are denied because of race, color, creed, sex, or national origin. Commerce found and reaffirms that the petition satisfies the requirements of 3 AAC 110.910 for both the enclave lots and Fred Meyer.

Commerce found that the proposed annexation of the enclave lots and Fred Meyer will greatly enhance municipal services provided to the territories, and that doing so promotes maximum local self-government. The territories will still receive services which by law only the borough may provide (e.g. assessing, planning, and land use regulation), and will enjoy the integrated emergency services provided by the City (e.g. local police force, centralized dispatch, building code and fire code enforcement). Citizens of the enclave lots will receive more political rights, gaining a more local level of representation and having the opportunity to run and hold elected office for the City of Fairbanks, while retaining their rights as borough citizens.

Commerce reaffirms its recommendation that the Local Boundary Commission approve the December 8, 2008, petition of the City of Fairbanks to annex approximately 0.05 square miles (described as the enclave lots and Fred Meyer). Commerce reaffirms its recommendation to the Commission that it approve the City's proposal to annex both the enclave lots and Fred Meyer.

Appendix A – Comments

City Comments

RECEIVED
SEP 18 2009



CITY OF FAIRBANKS
Terry Strle, City Mayor
800 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4615
907- 459-6793
tmstrle@ci.fairbanks.ak.us

September 16, 2009

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501 – 3510

Re: Comments on the Preliminary Report to the Local Boundary Commission on Proposal to Annex Approximately .05 Square Miles of Territory to the City of Fairbanks by Legislative Review

Greetings:

The City takes this opportunity, pursuant to 3 AAC 110.530(c) to comment on the August 17, 2009 *Preliminary Report*.

General Comment

The public has been extremely well served by the intensive scrutiny that went into the writing of the *Preliminary Report*. It is obvious that staff carefully studied the issues independently in light of the standards established by the Alaska Constitution, statutes and regulations.

The *Preliminary Report* recommends approval of the City's Petition for annexation of both the enclave lots and Fred Meyer Subdivision. The City has minor comments that are intended to assist the staff in completing the Final Report.

Particular Comments

The City's comments will reference the page of the *Preliminary Report* (hereafter, "PR") and will use the term "Commerce" to describe the LBC staff.

PR, page 34, discussion of 3 AAC 110.090(a)(4), "adequacy of existing services"

Police Service.

The *Preliminary Report* quotes two excerpts of a March 9, 2009 letter from former Police Chief Dan Hoffman. This letter, addressed to the Mayor and City Council on Chief Hoffman's retirement, addressed a number of issues, one of which was the ratio of City Police Officers to residents:

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 2**

“ . . . the City of Fairbanks continues to staff its police department at inadequate levels.”

“ . . . it is a simple fact that our City Police Department is staffed at an officer-to-citizen ratio that is significantly less than comparable communities of our size throughout the nation.”¹

(emphasis in original)

City Comment:

While the City’s Police Officer to citizen staffing ratio may be less than that enjoyed by comparable cities, it is undisputed that the City’s ratio is **far higher** than that currently enjoyed by either the enclave lots or the Fred Meyer Subdivision.²

In addition, former Chief Hoffman went on to note that he endorsed,

“the current annexation proposal, as the incremental benefit provided to City residents through reasonable taxation **far outweighs** the proportional increase in service outlay.” (emphasis added).³

PR, page 42, discussion of 3 AAC 110.090(a)(4), “adequacy of existing services”***Adequacy of Alaska State Troopers.***

The *Preliminary Report* states that, “There has been no evidence introduced that the AST is not providing adequate services.”

City Comment:

The City has high regard for the quality of the Alaska State Troopers; yet the City can offer a higher quantity of police officer response to the two territories to be annexed because of the huge area that the Interior Alaska State Troopers Detachment must serve.⁴ Thus, the City can offer an adequate level of service not currently provided. We appreciate that the Alaska State Troopers are grossly underfunded and the city will continue to advocate for increased law enforcement presence in the entire Fairbanks North Star Borough.

¹ From City’s Reply Brief, exhibit 8, from page 1.

² City Reply Brief, page 24.

³ Quoted also at page 16 of the City’s Reply Brief.

⁴ At Reply Brief page 24, the City noted, “Over the past 14 years, the City has continued to add new police officers; our current staff of 45 officers is over a 50% increase in officers per 1,000 people from 1.02 in 1995 up to 1.55. The Alaska State Troopers has approximately 52 budgeted Trooper positions for the entire “D Detachment” which includes over 100,000 people in 205,000 square miles with 30 Alaska Native villages and 20 highway communities.

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 3*****PR*, page 45, discussion of 3 AAC 110.090(a)(6), “. . .property owners . . . receive . . . the benefit of services . . . provided by the annexing city.”**

Commerce did not find that the Fred Meyer Subdivision “receive[d] the benefit of bank robbery protection by the city.”

City Comment:

It is undisputed that an advanced bank robbery apprehension system is being provided by the City alone at this time.⁵ The precise details of this system must remain confidential. The city has gone to great lengths to assure that the criminal element is not aware of the technology in place. Therefore, specific details of the advanced apprehension system are not disclosed in order to protect the public.

***PR*, page 58, discussion of 3 AAC 110.100(a)(3), “Character; Population Density”**

Commerce stated that, “the city overstated in its petition . . . that the population density of the territory to be annexed is the same as much of the City.” Commerce went on to note that the population density of the enclave lots is about 1,750/sq. mi. compared to 967.2/sq. mi. for the existing City.

City Comment:

Commerce’s point is well taken. The City should have stated that the population density in the enclave lots was similar to that of the *immediate* neighborhood and that the lack of population in the Fred Meyer Subdivision was similar to that of the *immediate* territory to the east, the Safeway shopping center.

***PR*, page 68, discussion of 3 AAC 110.110(a)(2), “Anticipated new expenses”**

Commerce stated that Table 3-2 (Petition Table 1-A) contained an error.

City Comment:

Commerce is correct: The row titled, “Total Expenses” in Table 3-1 was printed incorrectly. However, the bottom line, “Revenue Minus Expenses” is correct.

⁵ Stated at pages 6, 17, 24, 28 and 35 in the City’s Reply Brief.

Local Boundary Commission Staff

RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*

September 16, 2009

Page 4

PR, pages 70 - 72, discussion of 3 AAC 110.110(a)(4), “anticipated . . . budgets”

Commerce suggested the City could have provided “reasonable estimates to the trend in property value and retail sales of taxable sales rather than providing constant figures . . .”

City Comment:

While the adopted 2009 City budget anticipates revenues and expenditures that are not appreciably changed from 2008, since the date of filing the Petition local residents have used the Initiative process to put two measures on the October 2009 ballot that would change the composition of City revenues.

The two measures would enact a 3% sales tax with the proceeds used first to reduce the City’s base mill levy from the current maximum 4.9 mills set by Charter to zero mills. After reducing the mill rate, the sales tax would provide \$8 million dollars annually, inflation adjusted, for additional public safety and public works services.

There is no way to predict if these ballot measures will be adopted. If they were adopted, it would reduce the property tax citywide and increase overall City revenues to provide essential municipal services.

As Commerce notes, in light of the relatively small size of the proposed annexation, it was felt that a “flat” three-year budget was most prudent.

PR, page 81, discussion of 3 AAC 110.120(a)(1), population

Commerce found a City population estimate of 31,627 to be reasonable.

City Comment:

On August 14, 2009, we received a new 2008 US Census population estimate of 35,132.⁶

PR, pages 101 - 103, discussion of 3 AAC 110.135(3), relieving the state government of the responsibility of providing local services.

Commerce viewed AST Colonel Audie Holloway’s letter as, “a measured factual statement, and not necessarily a statement of support for annexation . . .”

⁶ <http://www.census.gov/popest/cities/tables/SUB-EST2008-04-02.xls>

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 5****City Comment:**

The City Police Department has an excellent working relationship with the Alaska State Troopers and I, as Mayor, would not have supported filing the Petition for Annexation if the Troopers had objected. City Police employees asked AST Director Holloway for his agency's position and I view the letter as completely supportive:

1. The letter states the City is "certainly capable" of providing police protection to the two territories.
2. The letter directly states that the annexation would "relieve" the state from the providing local police service to the territories.
3. The letter states the annexation would "enable the Troopers to focus more efforts on the needs outside the city . . ."
4. The letter states no reservations, concerns or objections.

***PR*, pages 106 - 107, discussion of impact on University Fire Service Area (no applicable regulatory standard)**

Commerce found that the City overstated the total financial impact to the Borough and that the City's estimated fiscal impact to the UFSA was \$53,406.46.

City Comment:

The City agrees that the City's Reply Brief overstated the fiscal impact to the overall Borough.

Regarding the impact to the UFSA, on September 10, 2009, the Borough, as authorized by AS 39.35.450(c), increased the size of the UFSA by ordinance No. 2009-35 which annexed 37 parcels (stated taxable value of \$4,092,434) without an election. This is just one available option for the Borough to adjust to the *de minimis* effect of the City's annexation of the Fred Meyer Subdivision. (Borough Ordinance 2009-35 with information is Attachment No. 1).

***PR*, page 109 - 122, discussion of 3 AAC 140, Legislative Review Annexation Process**

Commerce noted that at least one of the eight circumstances set forth in Section 140 must be met for a legislative review annexation. We have prepared a table to depict Commerce's findings and the City's prior position, found on the next page.

Note: on the table, "yes" indicates Commerce found the circumstance to exist, "no" indicates Commerce did not; shaded cells indicate the circumstances that the City advanced should apply.

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 6**

Circumstance	Commerce Findings regarding meeting standard:	
	Enclave Lots	Fred Meyer Subdivision
3 AAC 110.140 Subsection:		
(1). <i>The territory is wholly or substantially surrounded by the annexing city;</i>		No.
(2). <i>The health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;</i>	Yes	No.
(3). <i>The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city</i>		No
(4). <i>Residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government with commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits</i>	Yes	No
(5). <i>Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city</i>	No	No
(6). <i>Repealed 5/19/02</i>		
(7). <i>Annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981 AND a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with Art. X, sec. 1, Constitution of the State of Alaska</i>		Y
(8). <i>Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042, and is in the best interests of the state</i>		Y
(9). <i>The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.</i>	No	No

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 7****City Comment:**

Once again, Commerce must be praised for the exhaustive analysis and review. The City is persuaded by Commerce's analysis with two exceptions: 3 AAC 110.140(4) and (9).

§140(4) -- current benefits received by property owners at the Fred Meyer Subdivision

In addition to the evidence presented in the Petition and Reply Brief as the services provided without compensation to the Fred Meyer Subdivision, attached is detailed recent data. I was not previously aware of our capability to provide such reports. The attachment only includes 2006 – present response to Fred Meyer Subdivision; not the response to streets that border the subdivision, which was summarized in the Reply Brief. (Information provided as Attachment No. 2)

§140(9) – Policies set by Constitution and Statute.

Commerce states,

“Article 10, section 12, details the legislative review procedure, but does not explicitly favor legislative review.”

I respectfully suggest there is ample evidence that the policies set by the Constitution and statutes favor the legislative review method over local option annexation.⁷

1. As Commerce staff noted at page 1 of the Preliminary Report, the Alaska Supreme Court has recognized that boundary changes should be considered in light of the statewide standards rather than by “local political decisions.”⁸ Article 10, Section 12 sets forth the power of the Local Boundary Commission to proposed boundary changes by the legislative review route, setting forth a precise timetable for consideration by the elected legislature. Local action boundary changes, stated in the last sentence of Section 12, are optional.⁹

2. Alaska Statute 29.06.040(d) provides that a legislative review annexation “prevails” over a boundary change initiated by local action, “without regard to priority in time.”

⁷ While I regret that the City did not specifically address subsection §140(9) in the Reply Brief, throughout the City's materials we have referred to it and provided information about the legal preference for the legislative review annexation. See, Petition page 1, at page 7 and Petition Exhibit H. We addressed the constitution's adoption of legislative review annexation at Responsive Brief page 4. The City has made it clear that the issues presented to the Local Boundary Commission in the City of Homer legislative review annexation apply to this Petition

⁸ Quoting, *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P2d 540, 543 (Alaska 1962).

⁹ See, *Oesau v. City of Dillingham*, 439 P. 2d 180 (Alaska 1968), which recognized that boundaries are best set using statewide standards and not the desire of those who are geographically close to the proposed change.

Local Boundary Commission Staff**RE: Fairbanks 2009 Petition for Annexation; Comments on *Preliminary Report*****September 16, 2009****Page 8**

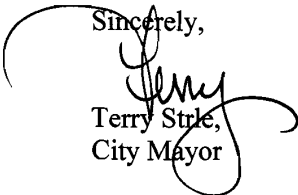
3. In the recent City of Homer annexation, the Local Boundary Commission re-affirmed that there is no, “constitutionally or statutorily recognized right to vote on [legislative review] annexation which would effectively grant voters the right to veto [a] pending annexation proposal.” The LBC approvingly quoted Constitutional Convention delegate Victor Fischer that, “city government over an urban area is preferred” by the Constitution.¹⁰

See page 4 of the Reply Brief for further discussion, which noted that the framers of the Alaska Constitution deliberately repudiated the pre-statehood, “system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.”¹¹

Conclusion

I fully agree with the conclusions of the *Preliminary Report*; there certainly is a reasonable basis for annexation of the two territories in light of applicable standards. Annexation has been a learning process for City staff and me. We have a much greater appreciation for the thought that went into the writing of our state Constitution and the application of the regulations regarding annexation. Thank you for your commitment to the process. We look forward to meeting with the Commission in November.

Sincerely,



Terry Strle,
City Mayor

Cc: Mayor Jim Whitaker, Fairbanks North Star Borough

¹⁰ LBC, *Statement of Decision In the matter of the March 20, 2000 Petition of the City of Homer for Annexation of approximately 25.64 Square Miles* (p. 14 - 22).

¹¹ Alaska Const. art X, §12; *Fairview Public Utility Dist. No. 1. v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

Attachment No. 1

Borough Ordinance 2009-35 with supporting information



Fairbanks North Star Borough

Emergency Operations Department

3175 Peger Road • PO Box 71267 • Fairbanks, AK 99707 • (907) 459-1481 • FAX 459-1119

TO: Fairbanks North Star Borough Assembly

THRU: Jim Whitaker, Borough Mayor *[Signature]*

FROM: David Gibbs, Director, Emergency Operations *[Signature]*

DATE: July 30, 2009

SUBJECT: Ordinance No. 2009 – 35
Altering the Boundary of the University Fire Service Area

Ordinance 2009- alters the boundaries of the University Fire Service Area by annexing 37 parcels into the existing service area.

The parcels to be annexed are generally located near Farmers Loop Road, Wessel Acres Subdivision, and near the Fairbanks Golf Course.

As per AS 29.35.450, no election is required for this annexation, as the increase of the number of parcels in the service area is not greater than 6% and will not add more than 1,000 residents.

A meeting will be held on August 3rd, 2009 to provide information about this annexation to the public.

The University Fire Service Area Commission supports this annexation.

I urge your approval of this ordinance.

Attachments: Ordinance
Map
Table
Staff Report

By: Jim Whitaker, Mayor
Introduced: 07/30/09
Advanced: 07/30/09
Adopted: 09/11/09

FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2009 - 35

AN ORDINANCE ALTERING THE BOUNDARIES OF THE UNIVERSITY FIRE SERVICE AREA TO INCLUDE: 1. WESSEL ACRES SUBDIVISION OFF INIAKUK AVENUE; 2. THREE TRACTS SOUTH AND EAST OF THE FAIRBANKS GOLF COURSE AND A FORTY ACRE TRACT NORTH OF COLLEGE ESTATES SUBDIVISION OFF COLLEGE ROAD; AND 3. A LARGE PUBLICLY OWNED TRACT SOUTH OF FARMERS LOOP ROAD AND TO THE EAST OF NARWHALE TRAIL.

WHEREAS, fire service areas improve the quality of life for residents and visitors by providing a broad range of services designed to save lives and property; and

WHEREAS, it is the policy of the Fairbanks North Star Borough to encourage fire protection for all residents; and

WHEREAS, annexation helps avoid a patchwork of fire protection which can lead to delays in responding to fire emergencies; and

WHEREAS, responses to fire emergencies occurring in areas outside the fire service area where the points of demarcation for fire protection were unclear led to bad publicity for area fire departments and the Borough; and

WHEREAS, University Fire Service area commissioners and the fire chief have identified areas within the service area where gaps in fire protection exist, as well as obvious points of demarcation for fire protection services boundaries; and

WHEREAS, insurance companies are indicating they may no longer write new policies for homeowners residing in areas without fire protection; and

WHEREAS, the University Fire Service Area Commission supports this request for fire protection.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. Classification. This ordinance is not of a general and permanent nature and shall not be codified.

Section 2. Actions Upon Annexation. The boundaries of the University Fire Service Area shall be altered to add an additional thirty-seven parcels generally described as:

1. Wessel Acres Subdivision off Iniakuk Avenue;
2. Three tracts south and east of the Fairbanks Golf Course and a forty acre tract north of College Estates Subdivision off College Road;
3. A large publicly owned tract south of Farmers Loop Road and to the east of Narwhale Trail.

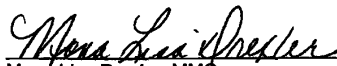
Specific parcels to be included in the University Fire Service Area are listed in Exhibit A and shown in Exhibit B attached hereto. The Clerk of the Assembly shall adjust the official map to reflect this alteration.

Section 3. Effective date. This ordinance shall be effective at 5:00 p.m. on the first borough business day following its adoption.

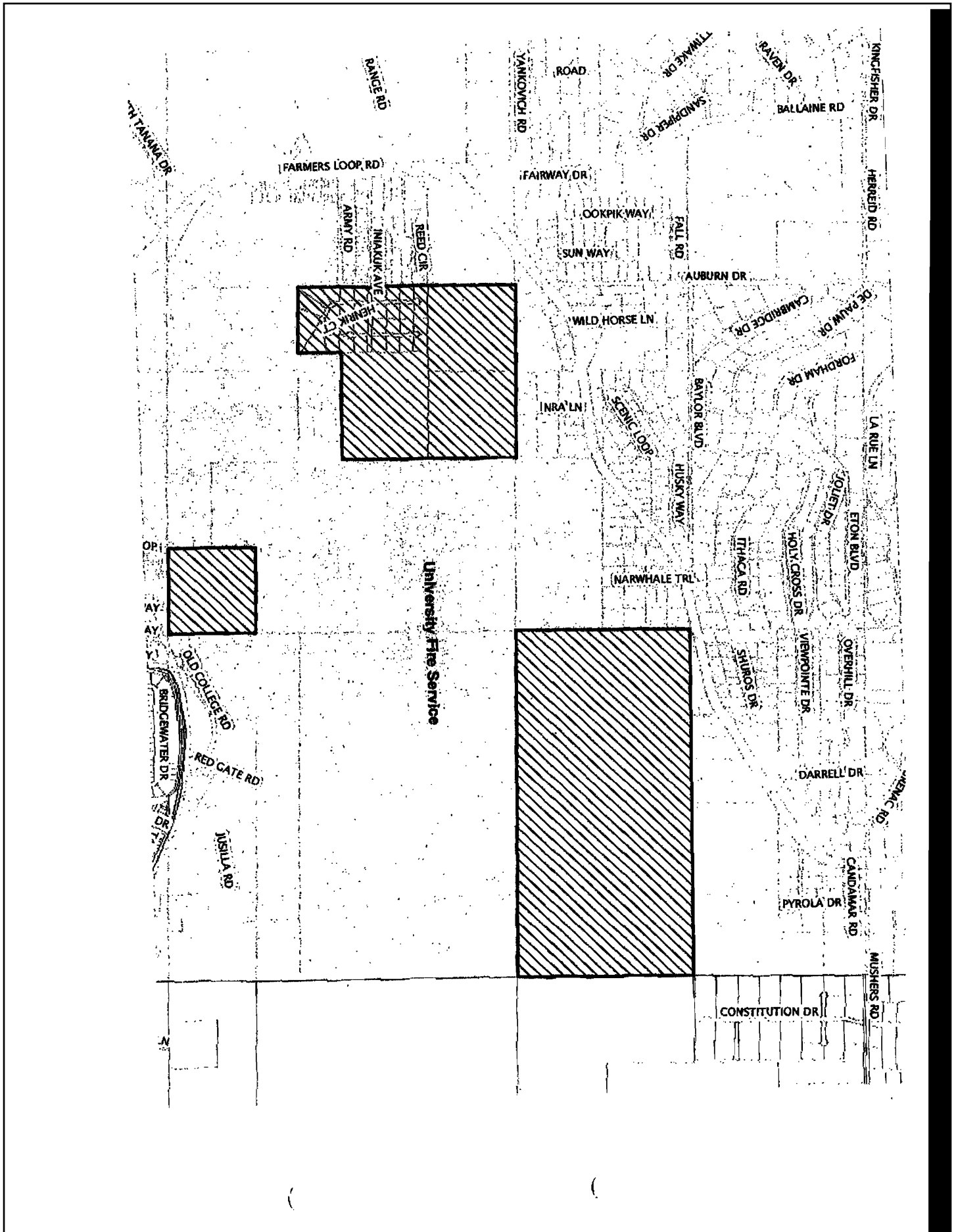
PASSED AND APPROVED THIS 11th DAY OF SEPTEMBER 2009.


Nadine Winters
Presiding Officer

ATTEST:


Mona Lisa Drexler, MMC
Municipal Borough Clerk

Ayes: Brown, Beck, Musick, Stringer, Hopkins, Winters
Noes: Wilson, Sattley
Excused: Blanchard II



) University Fire Service Annexation)

Total Parcels: 5340 (6% ~ 320) Population Estimate for Proposed Parcels: 110
 Proposed Parcels: 37 (0.69%) Taxable Value for Proposed Parcels: \$4,092,434

1 of 1

PAN	Description
0199869	1N 1W 28 2805
0199877	1N 1W 32 3200
0471712	FAIRBANKS GOLF & A
0471704	FAIRBANKS GOLF & NENW
0466620	FAIRBANKS GOLF & NWNW
0538329	WESSEL ACRES 01 01A
0538337	WESSEL ACRES 01 02A
0519855	WESSEL ACRES 01 03
0519863	WESSEL ACRES 01 04
0519871	WESSEL ACRES 01 05
0519880	WESSEL ACRES 01 06
0519898	WESSEL ACRES 01 07
0519901	WESSEL ACRES 01 08
0519910	WESSEL ACRES 01 09
0519928	WESSEL ACRES 01 10
0519936	WESSEL ACRES 01 11
0519944	WESSEL ACRES 01 12
0519952	WESSEL ACRES 01 13
0519961	WESSEL ACRES 01 14
0519979	WESSEL ACRES 01 15
0519987	WESSEL ACRES 01 16
0519995	WESSEL ACRES 02 01
0520004	WESSEL ACRES 02 02
0520012	WESSEL ACRES 02 03
0520021	WESSEL ACRES 02 04
0520039	WESSEL ACRES 02 05
0520047	WESSEL ACRES 02 06
0520055	WESSEL ACRES 02 07
0520063	WESSEL ACRES 02 08
0520071	WESSEL ACRES 02 09
0520080	WESSEL ACRES 02 10
0520098	WESSEL ACRES 02 11
0520101	WESSEL ACRES 02 12
0520110	WESSEL ACRES 02 13
0520128	WESSEL ACRES 02 14
0520136	WESSEL ACRES 02 15
0520144	WESSEL ACRES 02 16

Exhibit A

**STAFF REPORT
PROPOSED ANNEXATION TO A FIRE SERVICE AREA**

RECOMMENDATION:

Approval of Ordinance 2009- altering the boundaries of the University Fire Service Area to include the thirty-seven parcels listed in Exhibit A.

LOCATIONS PROPOSED FOR ANNEXATION:

The areas to be included in this annexation are generally described as follows:

1. WESSEL ACRES SUBDIVISION OFF INIAKUK AVENUE;
2. THREE TRACTS SOUTH AND EAST OF THE FAIRBANKS GOLF COURSE AND A FORTY ACRE TRACT NORTH OF COLLEGE ESTATES SUBDIVISION OFF COLLEGE ROAD;
3. A LARGE PUBLICLY OWNED TRACT SOUTH OF FARMERS LOOP ROAD AND TO THE EAST OF NARWHALE TRAIL.

PROPOSED BOUNDARIES: See attached map.

NUMBER OF PARCELS IN THE UNIVERSITY FSA: 5,340

NUMBER OF PARCELS IN PROPOSED ANNEXATION AREA: 37 (0.69% increase)

EST. POPULATION WITHIN AREA PROPOSED FOR ANNEXATION 110

2008 TAXABLE ASSESSED VALUE OF PROPOSED ANNEXATION: \$4,092,434

COMMENTS:

The impact on existing fire service area resources is expected to be minimal. The University Fire Service Area Commission supports this annexation.

Attachment No. 2

Details of Emergency Response to Fred Meyer Subdivision

(names of suspects, victims & complainants redacted)

SUNGARD*

HTE INC.

Fairbanks Police**Incident List Report (Combined Prompts)**Date Run: 9/15/2009
Time Run: 15:09:39
Page 1 of 1

Date Range: 1/1/2006 To 12/31/2006			Nature Code:		Service Code:		Beat:	
Hours: 0000 - 2400			Dispo UCR Code:		Dispo Star #:		SubBeat:	
Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star	
06-001604	1/27/2006 05:54	VEHICLE IN DISTRESS 6418CU	3755 AIRPORT WY	/	9576	NRP	1110	
06-005875	3/30/2006 10:10	ASSIST OTHER AGENCY CHECK FORGERY SUSPECT ANDRE TANNER	3755 AIRPORT WY	/	9605	RPT	1046	
06-005902	3/30/2006 21:31	DUI LOCATE APROX 2HRS AGO //SUSPECT LIVES ON BASE // XXXXXXXXXX ON NUMEROUS SLEEP MEDS //WV PLATE 3DD640 //2000 FORD EXPLORER WHITE // LOCATE GIVEN TO MPS	3755 AIRPORT WY	/	5404	NRP	1008	
06-007663	4/24/2006 22:12	FIELD INTERVIEW OUT WITH XXXXXXXXXX IN PARKING LOT//GREEN SUV WITH MAROON HOOD, ABC CAB CO	3755 AIRPORT WY	/	9640	nrp	1020	
06-011467	6/12/2006 19:05	CRIMINAL TRESPASS male wearing blue jeans, white shirt, blk hair, gray striped shirt over white shirt will not leave building. subject is on the sw corner in front of building with security officer. weapons unknown. refusing to give id. not being aggressive, no alcohol involved	3755 AIRPORT WY	/	5707	TOT	1125	
06-012670	6/28/2006 13:57	TRAFFIC OFFENSES // ERW558 // XXXXXXXXXX 02-04-80 TOT FCC DWSOL // 10-80 AT 1358	3755 AIRPORT WY	/	5499	ARR	1115	
06-013910	7/13/2006 23:05	SECURITY CHECK	3755 AIRPORT WY	/	9550	NRP	1074	
06-014006	7/15/2006 04:54	VEHICLE IN DISTRESS EXF419 HAS FLASHERS ON, NO OCCUPANTS	3755 AIRPORT WY	/	9576	NRP	1126	
06-014356	7/19/2006 21:12	SECURITY CHECK	3755 AIRPORT WY	/	9550	nrp	1055	
06-016585	8/16/2006 18:13	ASSIST OTHER AGENCY 68 TROOPERS WITH A 10-15 MALE WHO STATED THAT HE HAS A GUN IS GOING TO SHOOT// THEY SHOULD B ENTRANCE	3755 AIRPORT WY	/	9605	NRP	1056	

SUNGARD®

HTE INC.

Fairbanks Police

Incident List Report (Combined Prompts)

Date Run: 9/15/2009

Time Run: 16:00:27

Page 1 of 1

Date Range: 1/1/2007 To 12/31/2007

Hours: 0000 - 2400

Nature Code:

Dispo UCR Code:

Service Code:

Dispo Star #:

Beat:

SubBeat:

<i>Incident RD Number</i>	<i>Incident Date-time</i>	<i>Narrative</i>	<i>Incident Location</i>	<i>Beat/ MRA</i>	<i>UCR code</i>	<i>Serv Code</i>	<i>Dispo Star</i>
07-003658	2/24/2007 03:46	FIELD INTERVIEW//EJUU988	1450 UNIVERSITY AV	/AK6	9640	COM	1115

SUNGARD®

HTE INC.

Fairbanks Police**Incident List Report (Combined Prompts)**

Date Run: 9/15/2009
Time Run: 16:01:58
Page 1 of 1

Date Range: 1/1/2008 To 12/31/2008
Hours: 0000 - 2400

Nature Code:
Dispo UCR Code:

Service Code:
Dispo Star #:

Beat:
SubBeat:

Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star
08-000669	1/11/2008 22:11	ASSIST OTHER AGENCY // ast requesting K9 for poss drug deals going on out of gm kia DZT413 // just want k9 in the area for now	1450 UNIVERSITY AV	/9999	9605	UTL	1014
08-012077	6/20/2008 02:44	DUI // CURRENTLY IN PLOT // WHI GMC SUV TYPE VEH, WISCONSIN PLATES // DRIVER WAS BANGING ON THE WINDOW, THEN DROVE OVER THE CURB, TRIED TO ENTER THE DRIVE THRU GOING THE WRONG WAY // WHI MALE DRIVER, POSS MILITARY	1450 UNIVERSITY AV	/9999	5404	UNF	1039
08-020279	10/11/2008 00:27	DUI - MOVING ***IN TACO BELL DRIVETHRU*** FEH786 2008 NISSAN VERSA HB (LIKE STATION WAGON) OCC BY SUBJ WHO APPEAR "VERY UNDERAGE BUT ARE DRINKING" AND PASSENGER GOT OUT OF VEH & URINATED // CALL WAS SENT TO AST; FPD DISPATCH STACKING CALL AS WELL	1450 UNIVERSITY AV	/9999	15D1	CIT	1039

Date Run: 9/15/2009
Time Run: 16:03:54
Page 1 of 1

SUNGARD®
HTE INC.

Fairbanks Police
Incident List Report (Combined Prompts)

Date Range: 1/1/2008 To 12/31/2008		Nature Code:		Service Code:		Beat:	
Hours: 0000 - 2400		Dispo UCR Code:		Dispo Star #:		SubBeat:	
Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star
08-018630	9/16/2008 17:31	FIELD INTERVIEW	1380 UNIVERSITY AV	/9999	9640	COM	1118

SUNGARD®

HTE INC.

Fairbanks Police**Incident List Report (Combined Prompts)**

Date Run: 9/15/2009
Time Run: 15:36:30
Page 1 of 1

Date Range: 1/1/2008 To 12/31/2008		Nature Code:		Service Code:		Beat:	
Hours: 0000 - 2400		Dispo UCR Code:		Dispo Star #:		SubBeat:	
Incident RD Number	Incident Date-time	Narrative		Incident Location	Beat/ MRA	UCR code	Dispo Star
08-004538	3/13/2008 18:58	ASSIST OTHER AGENCY		3755 AIRPORT WY	/9999	9605	1124
08-008279	5/5/2008 10:18	CRIMINAL MISCHIEF - PRIVATE PROPERTY // window broken out // EDV254 // ref ast case 08-30207 4/22/08 trooper jones		3755 AIRPORT WY	/9999	2902	1112
08-013101	7/3/2008 20:57	RECKLESS DRIVING // 08-17839 A MAROON MERC SABLE SW // SHE WAS STRADDLING THE MIDDLE LINE AND ALMOST HIT A FEW CARS // THE VEHICLE IS CURRENTLY PARKED ON THE W SIDE OF FRED'S IN THE HANDICAPPED SPOT AND LORNA IS 10-12 WITH HER // AST DOESN'T HAVE ANYONE TO SEND		3755 AIRPORT WY	/9999	9890	1116
08-017850	9/5/2008 19:15	Follow-Up 08-17839 "c" is holding a person with the bike he reported stolen this afternoon to ofc wages // ast does not have anyone to send // suspect is a teen they are at the taco bell entrance		3755 AIRPORT WY	/9999	9022	1139
08-020373	10/12/2008 03:01	TRAFFIC OFFENSES 5.AK EMY172..PC		3755 AIRPORT WY	/9999	5499	1115
08-021165	10/25/2008 04:23	TRAFFIC VIOLATION/COMPLAINT// EDX517 // 08-17839 10/08/1973 10-80@ 0438 TOT FCC DUI, NVOL		3755 AIRPORT WY	/9999	32B3	1115
08-024468	12/20/2008 00:24	AOA - NON-URGENT// AIRPORT POLICE		3755 AIRPORT WY	/9999	07B1	1126

SUNGARD*

HTE INC.

Fairbanks Police**Incident List Report (Combined Prompts)**Date Run: 9/15/2009
Time Run: 15:10:42
Page 1 of 1

Date Range: 1/1/2007 To 12/31/2007			Nature Code:		Service Code:		Beat:	
Hours: 0000 - 2400			Dispo UCR Code:		Dispo Star #:		SubBeat:	
Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star	
07-000639	1/11/2007 21:27	Follow-Up ofc wells is in the store with the suspect from the home invasion robbery and wants ofc to come over and id them	3755 AIRPORT WY	/	9022	NRP	1026	
07-002879	2/12/2007 09:59	WARRANT SERVICE WARRANT SERVICE dob: 6-14-81 FBNKs AST/JS 4FA07409	3755 AIRPORT WY	/	9597	COM	1057	
07-005641	3/25/2007 23:04	Warrant Service dob: 06-14-1981 toffcc wmt arrest: 4fa07409 10-80 @ 1030	3755 AIRPORT WY	/	9605	TOT	1090	
07-010432	5/26/2007 04:24	ASSIST OTHER AGENCY	3755 AIRPORT WY	/9999	9605	COM	1090	
07-010602	5/28/2007 18:24	AOA -//attempt to locate a blk pimp'd out monte carlo in the pklot near the gas station end//unknown amount of occupants//occupants pulled gun on other subjects //10-68 AST	3755 AIRPORT WY	/9999	07B1	COM	1056	
07-011427	6/7/2007 19:16	AOA - NON-URGENT AST RPTING 2 M AND 1F LATE TEENS IN OLDER GRAND AM PAN HANDLING AND BOTHERING CUSTOMERS ON THE WEST SIDE OF THE BLDG	3755 AIRPORT WY	/9999	07B1	UTL	1119	
07-011795	6/12/2007 21:42	Follow-Up//C STATES ASSIST OTHER AGENCY IS GETTING GAS IN HER WHITE GRAND AM EDF961, THERE ARE LOCATES STOP & FI IN APSIN SUSPECT IN SEVERAL THEFTS // C STATES SHE IS ALSO WANTED IN A HIT & RUN THAT OCCURRED 2 WEEKS, NO LOCATE IN APSIN	3755 AIRPORT WY	/9999	9022	NRP	1099	
07-012693	6/23/2007 11:40	SPECIAL EVENT - MANNING A BOOTH TIL 4PM	3755 AIRPORT WY	/9999	9010	COM	1119	
07-012791	6/24/2007 11:31	OTHER SERVICE // AT A BOOTH AT FREDS	3755 AIRPORT WY	/9999	03A3	COM	1119	
07-017279	8/19/2007 18:37	DUI - MOVING// EUH270 BLK PK LAST SEEN WB ON AIRPORT FROM FRED MEYER GAS STATION// CLERK STATED THAT MALE SUBJ SMELLED OF ALCOHOL// POSS ASSIST OTHER AGENCY LOL 7083956	3755 AIRPORT WY	/9999	15D1	NRP	1122	
07-021944	10/23/2007 15:28	AOA - NON-URGENT //need dre near the gas station	3755 AIRPORT WY	/9999	07B1	NRP	1035	
07-022580	11/1/2007 02:02	ASSIST OTHER AGENCY // ast got a call of 2 fem screaming // near the gas station area	3755 AIRPORT WY	/9999	9605	PRS	1040	

SUNGARD®

HTE INC.

Date Run: 9/15/2009

Time Run: 15:59:42

Page 1 of 1

Fairbanks Police

Incident List Report (Combined Prompts)

Date Range: 1/1/2006 To 12/31/2006		Nature Code:		Service Code:		Beat:	
Hours: 0000 - 2400		Dispo UCR Code:		Dispo Star #:		SubBeat:	
Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star
06-022026	11/1/2006 03:59	SUSPICIOUS CIRCUMSTANCES 3 males looking in windows of restaurant	1450 UNIVERSITY AV	/AK6	9549	NRP	1006

Chapter A

- A-23 -

SUNGARD®

HTE INC.

Fairbanks Police

Date Run: 9/15/2009
Time Run: 15:37:21
Page 1 of 1

Incident List Report (Combined Prompts)

Date Range: 1/1/2009 To 12/31/2009

Hours: 0000 - 2400

Nature Code:

Dispo UCR Code:

Service Code:

Dispo Star #:

Beat:

SubBeat:

Incident RD Number	Incident Date-time	Narrative	Incident Location	Beat/ MRA	UCR code	Serv Code	Dispo Star
09-000035	1/1/2009 08:05	WELFARE CHECK/EFM159 IN THE BACK CORNER OF THE LOT RUNNING, APPEARS UNOCCUPIED, POSS SLEEPER IN THE VEHICLE	3755 AIRPORT WY	/9999	25B1	com	1098
09-000849	1/14/2009 21:38	AOA - NON-URGENT//traffic control //bomb threat at fred meyer west	3755 AIRPORT WY	/9999	07B1	TOT	1121
09-000850	1/14/2009 21:42	AOA - NON-URGENT//traffic control for bomb threat at fred meyer west	3755 AIRPORT WY	/9999	07B1	NRP	1011
09-002308	2/5/2009 19:06	TRAFFIC VIOLATION/COMPLAINT// TNT87	3755 AIRPORT WY	/9999	32B3	COM	1034
09-002894	2/13/2009 13:21	AOA - NON-URGENT//AST AFTER A JUVE W/WARRANT FEMALE WEARING BLK HOODIW AND BLK PANTS W/LEGS ROLLED UP//AMBER GALLEY 1991	3755 AIRPORT WY	/9999	07B1	NRP	1026
09-005846	3/27/2009 00:44	TRAFFIC OFFENSES AK DMX945 //10-12 TESTS @0044HRS	3755 AIRPORT WY	/9999	5499	NRP	1116
09-009334	5/12/2009 22:06	ASSIST OTHER AGENCY//1d4 attempting to pull over a 10-55 driver and is circling in the parking lot // DNA503 1988 BRO FORD F150	3755 AIRPORT WY	/9999	9605	NRP	1053
09-011320	6/5/2009 23:22	TRAFFIC VIOLATION/COMPLAINT // FMD252 // tests @ 2325 // 10-80 @ 2334 // refused pbt	3755 AIRPORT WY	/9999	32B3	ARR	1110
09-018505	9/2/2009 13:30	AOA - NON-URGENT AST ASKING FOR ASSISTANCE//CHECK ON MALE ON THE GROUND ON THE CASTLE SIDE OF THE FRED MEYER PARKING LOT//WEARING A GRY/BLK JKT//	3755 AIRPORT WY	/9999	07B1	NRP	1105
09-019425	9/14/2009 13:08	GENERAL ADMIN. ASSIGN	3755 AIRPORT WY	/9999	9671	NRP	1002

Borough Comments



Fairbanks North Star Borough

Department of Law

809 Pioneer Road • PO Box 71267 • Fairbanks, AK 99707 • (907) 459-1318 FAX 459-1155

RECEIVED
SEP 17 2009

September 16, 2009

sent via e-mail
LBC@alaska.gov
Original to follow via US mail

Department of Commerce
Community and Economic Development
Division of Community & Regional Affairs
Local Boundary Commission
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501

Dear Commerce Staff:

Pursuant to the Preliminary Report filed August 2009 and the informational meeting held in Fairbanks, Alaska on September 11, 2009, the Fairbanks North Star Borough (Borough) is forwarding the following questions, comments and objections regarding the report.

First are some questions relating to the process. Some of these were asked during the informational meeting:

1. On page 21 of your report, it indicates that no other written materials may be filed at the hearing. Does that include photos and other demonstrative evidence?
2. Does the exception for good cause apply to allow the Borough to respond to new issues or evidence presented for the first time in the reply brief filed by the City of Fairbanks (City)?
3. Can the petitioner and respondent use power point presentations during opening and closing statements? The Borough realizes this may depend on the venue which has not been selected; however, we believe that all three tentative sites allow for power point presentations.
4. Your preliminary report indicates that the law makes no provision for cross-examination but cross-examination is essential to a due process hearing under Alaska law. The Borough has an interest in this property that the annexation to the City deprives it of (i.e. lost revenues); therefore, due process should attach. The Borough objects to the determination that the petitioner and the respondent do not get an opportunity to cross-examine witnesses.

Department of Commerce
September 16, 2009
Page 2

The remaining comments and objections relate to some of the findings presented in the report.

5. On page 31, relating to reasonable need for city government, the report states that “the borough and the [University Fire Service Area] UFSA cannot provide emergency services on a more efficient or more effective level” and concludes, therefore, that “Fred Meyer exhibits a reasonable need for city government.” The Borough objects to this finding. Why must the status quo be at a more efficient or more effective level? The factor specifically states that the territory must exhibit a need. Just because Commerce finds that the current services are not MORE efficient, that does not show a need. The burden is on the City to show that Fred Meyer exhibits a reasonable need for city government. The requirement is not that the Borough must show it can provide a more efficient and more effective level of services than the City.

6. On page 44, the report states that “Commerce finds that the majority of conditions in Fred Meyer are adequate.” The report downplays this factor. Furthermore, does Commerce realize that the City did not mention in its briefing that when the City responds to any location, either within the City or in the Borough through its mutual aid agreements, it charges non-City residents significantly more than it charges City residents. While the Borough ambulance services also differentiate between City and Borough residents, the difference is much less. The people who currently use Fred Meyer and the other businesses in the subdivision are not only City residents but also Borough residents and residents outside the Borough (e.g. Nenana, Healy and other towns and villages in Alaska.) Commerce did not address the fact that those people will be adversely affected by the annexation to their detriment if they are in need of ambulance services at the Fred Meyer Subdivision. The staff report does not address the impact on Borough residents who utilize the Fred Meyer Subdivision businesses.

7. On page 47, the report states that the City asserted that the Fairbanks Police Department is the primary responder for any bank robberies at the Fred Meyer Subdivision. The report goes on to state that the assertion was “uncontested by the Borough.” The Borough objects to both of those statements. First, the reason that the assertion was uncontested by the Borough was because it was first brought forth by the City in its reply brief. A search of the opening brief shows that bank robberies were not mentioned in the City’s opening brief but rather first mentioned in the reply brief. Therefore, because the Borough had no opportunity to respond to the reply brief, it should not be held against the Borough. For the same reasons, the Borough objects to the staff using information to support the annexation which was only addressed in the City’s reply brief.

8. On page 53, the report states that the regulations state that a territory may not be annexed to a City if essential municipal services can be provided more efficiently and more effectively by . . . an organized borough.” The regulation means that if the Borough is more efficient and effective then the annexation MAY NOT happen. However, the regulation does not mean that if the Borough is not more efficient and effective then the annexation must occur. The report

Department of Commerce
September 16, 2009
Page 3

concludes that the Borough provides a more effective and efficient fire and EMS service but that it does not provide a more effective or efficient police, dispatch, building code inspection and fire code enforcement. If Commerce's finding is that neither the Borough nor the UFSA can provide essential municipal services more effectively or efficiently then doesn't that only mean that there is not an absolute ban on the annexation? It should be noted in the report that the regulation does not require that the Borough be more efficient or more effective in order to defeat the annexation.

9. On page 53, the report concludes that fire code inspections are not currently provided more effectively; however, currently those services are provided by the State. The Borough questions whether or not staff spoke to Dave Tyler, State Fire Marshall, regarding the current State ability and intent to provide fire code inspections outside the City as opposed to the past performance. What is represented in the report has more to do with past State staffing and budget issues as opposed to what would be done under the current inspection program.

10. The Borough objects to the fact that Commerce did not address the fact that Fred Meyer Subdivision owners will be paying \$150,000 more in property taxes yet will not be receiving \$150,000 more in services.

11. The Borough objects to the finding that the effect on the Borough and the University Fire Service area is de minimus which can be made up easily by raising taxes. Why should the Borough residents' taxes increase just so the City residents' taxes can be decreased? Merely shifting a tax burden is not in the best interest of the State.

The last comments and objections relate to the Legislative Review standards. Pursuant to the statutes and regulations, at least one of the nine circumstances must exist. The report clearly states that seven of the circumstances do not exist. The Borough objects to the two findings that circumstance 7 and 8 exist within the Fred Meyer Subdivision. Specifically:

12. On page 117, Commerce found that annexation of the Fred Meyer Subdivision would promote a maximum local self-government and minimum local government units because the Subdivision would belong to both the City and the Borough. If just belonging to both a city and a borough means that there is maximum self-government and minimum local government, the necessity to meet one of the circumstances would always be met when a city annexes property within an existing borough. There must be something more required otherwise the regulation would be pointless. The Borough objects that circumstance 7 exists in the Fred Meyer Subdivision.

13. On page 120, Commerce declares that annexation of Fred Meyer would enhance the existing City to meet incorporation standards and be in the best interest of the state merely because the City has averred that Fred Myer has an advantage over other businesses in the City

Department of Commerce
September 16, 2009
Page 4

limits. The Borough is unaware of any businesses that have stepped forward to make that argument. Furthermore, how can Commerce find that the annexation meets this circumstance merely because annexation would bring in additional area and revenue to the City? Again, wouldn't the necessity to meet one of the circumstances always be met by this criteria because EVERY proposed annexation would bring in additional area and revenue (property taxes)? Finally, the City is already incorporated. It would seem that this circumstance is aimed at cities that are in the process of incorporation. The annexation would not help the City meet the standards for incorporation because it is already incorporated. The Borough objects that circumstance 8 exists in the Fred Meyer Subdivision.

The Borough appreciates Commerce staff taking time to review these questions, comments and objections.

Sincerely,



Cynthia M. Klepaski
Assistant Borough Attorney

cc: Mayor Jim Whitaker, Fairbanks North Star Borough
Mayor Terry Strle, City of Fairbanks
University Fire Service Area Commission

Public Comments

September 15, 2009

RECEIVED
SEP 18 2009

State of Alaska
Dept. of Commerce &
Economic Dev.
Div. Community & Regional Aff.
550 W. 7th Ave., Suite 1770
Anchorage, AK 997501

Attn: Brian Bitzer
Local Boundary Commission

RE: Fairbanks Annexation of enclave lots

Dear Mr. Bitzer:

Of all the people in the enclave lots, this proposed annexation probably affects me the most. In 1971 my husband and I acquired the Boatel and he ran it until his death in January 2003. Since that time, I have operated it with the help of my two daughters as ANJO, INC. and ABIE NEUBAUER, INC. Being in the liquor industry has its ups and downs. Many people like us, and many people do not, but that is the nature of the business.

Most of us realize this is just a money thing. The city, and it does not matter which people are in charge, seems to always need more. Property taxes are very important to the city, but who pays property taxes; the private person or the privately owned business. I'm sure they will be losing many tax dollars when the new bridge (better to by pass downtown Fairbanks) is installed. Don't forget all that property by the Big I was privately owned and those people paid property taxes. A new bridge or a road or a government building does not pay property taxes even though they might provide employment during construction.

The other property downtown that the city has not collected taxes on for several years is the Polaris building. It would be nice if the City would not be able to annex my property until they took care of "old business". They need to get efficient and get the Polaris building back paying taxes then come after the rest of us.

As far as the city providing utilities to us, they can't. Several years ago the people gave the City of Fairbanks a "no" vote and they had to sell, for better or worse, all the utilities, except garbage. I am presently hooked up to GVEA, and Golden Heart Utilities and I pay to have my garbage hauled. I live in the city and I pay for them to pick up my garbage whether or not I have any so that will be another bill each month for those people who own property next to the Boatel.

The city wishes to give me "protection", when they really mean they want to provide me with more regulations. I'm at a loss as to how I have survived 38 years without a fire inspection of my cement block building. However, just so you know...two years ago I spent quite a bit of money to have all the electrical updated. As a private business person, I try to keep the building and property in order so my customers will keep coming back and my employees will keep getting paid.

I assume, in the not too distant future, the city will be asking the voters for more money for more fire people, police people, and safety people because of this annexation. Hopefully, they will not be doing this just for the Boatel.

Thanks for your time and consideration.

A handwritten signature in black ink that reads "Annie Neubauer". The script is cursive and fluid, with the first name "Annie" being more prominent than the last name "Neubauer".

Annie Neubauer, Pres.
ANJO, INC. & ABIE NEUBAUER, INC.
P.O. Box 80626
Fairbanks, AK 99708

I have written in the past to oppose the annexation of the property west of University that includes the Fred Meyer store complex. Annexing the enclave lots surrounded by city property makes sense.

Despite some articles favoring annexation of Fred Meyer I see nothing that meets the legal standards for annexation.

First there is no unmet need or unqualified public safety service. The area is currently well served by both University and Chena Ridge Fire Depts. and Ak State Troopers . And the University Fire Dept has a higher rating than the City Fire Dept!

In fact both Fire Departments are closer than the City Fire Station for response time. And I read repeatedly that the City believes its Police Department is under staffed and response time currently to lesser crimes is delayed. How do they propose to add another service area without further problems in addressing crime loads in its current service area.

Second, many of all the officials consulted oppose the city plan

Third, this area is not a community but rather a fully developed retail sector with very limited potential for growth.

Fourth, nothing submitted indicates this is in the best interest of the state, particularly when the larger geographic area of Fairbanks, the surrounding Borough has voted unanimously (Assembly) to oppose this annexation.

Rather than meeting unmet needs this is simply a money grab by the City, robbing the Borough of these same tax dollars in order to grow City Government. City residents have repeatedly said they want smaller government, and have maintained a tax cap in order to protect that demand.

One City Council person even had the audacity to state his reason as "it is not fair" (to have this property outside the City.)

Borough residents have not expressed approval and in fact some have petitioned you against it. Not only do they live in the borough because they want to remain outside the City, but also they also know from both the prior and this City Mayor that this annexation is only step one, and the real goal is to expand the City west to the airport and northwest to include University West and more.

In closing, the City request for annexation of Fred Meyer does not meet any of the basic requirements, and in fact is based simply on the desire to expand their tax base, and should be denied.

RECEIVED
SEP 11 2009

*Carter E. Crawford
107 Maple
Fairbanks 99709
cc Crawford
9/11/09*

RECEIVED
SEP 18 2009

9/16/09

LBC Staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501 – 3501

To whom it may concern:

I write to express my pleasure that the Local Boundary Commission staff recommend approval of the annexation of the Fred Meyer West subdivision and the Park Drive 'enclave lots'. It does not surprise me that the LBC staff found that the proposal meets the statutory and regulatory standards and is in the best interest of the state, for it is true that both areas possess characteristics of the City and can be made part of and served by that political subdivision, in accordance with the state's best interests.

Thank you for the quality of your analysis and the strength of your recommendation to approve the City of Fairbanks' proposed annexation of the Fred Meyer West subdivision and the 'enclave lots' on Park Drive near Riverview.

Sincerely,



David van den Berg
PO Box 80433
Fairbanks, AK 99708
378-1253

**Fairbanks Fire Fighters Association***Local 1324**International Association of Fire Fighters*

POST OFFICE BOX 71739, FAIRBANKS, ALASKA 99707

September 16, 2009

Local Boundary Commission

Department of Community, Commerce, and Economic Development
State of AlaskaIN SEP 22 2009
RECEIVED
SEP 22 2009

RE: City of Fairbanks Annexation

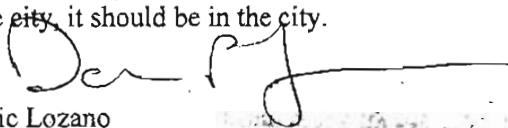
Commissioners,

As President of the Fairbanks Fire Fighters Association I submit this letter, on behalf of our 40 members, in support of the annexation petition by the City of Fairbanks. I applaud the commission and the department's findings in the Preliminary Report. I thought it was well studied and public input was well received.

The Fairbanks Fire Fighters are well aware of the debate on which Fire Department can best handle the annexation of Fred Meyers subdivision. We wanted to assure the commission that the City of Fairbanks and the Fairbanks Fire Fighters Association have been working together to ensure that City residents are receiving the best possible service. In our latest contract the Fairbanks Fire Fighters Association agreed to a provision that would allow line firefighters the ability to perform fire inspections to help with the work load in the Fire Marshals office. The City also noted a deficiency in the office and hired an additional Fire Inspector.

We also hired two additional Fire Fighters thru a federal SAFER grant that brings shift manning up to thirteen firefighters per shift. This will assist in our manning difficulties. We hope to be able to hire more firefighters in the near future to increase those numbers.

The City of Fairbanks and the Fairbanks Fire Fighters Association have not always seen eye to eye. The new administration thru the leadership of Mayor Strle has made the Fairbanks Fire Department once again a top place to work. We look forward to continue to strive to improve the city and hope that the commission will rule in favor of this annexation to help Fairbanks grow into the future. As we have stated before, if it looks like the city, it should be in the city.



Dominic Lozano
President, Fairbanks Fire Fighters Association
IAFF Local 1324

Appendix B – Local Boundary Commission Regulations

Hearing Procedures (3 AAC 110.560)

[3 AAC 110.560. Commission hearing procedures](#)

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

(1) a report with recommendations from the department;

(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

(A) with expertise in matters relevant to the proposed change; and

(B) called by the petitioner;

(5) sworn testimony of witnesses

(A) with expertise in matters relevant to the proposed change; and

(B) called by each respondent;

(6) sworn responsive testimony of witnesses

(A) with expertise in matters relevant to the proposed change; and

(B) 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;

(10) a reply by the petitioner, not to exceed five minutes; and

(11) points of information or clarification by the department.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief, document, or other evidence may not be introduced at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents or for consideration in the reports of the department under 3 AAC [110.530](#).

(f) The commission may amend the order of proceedings and change allotted times for presentations to promote efficiency if the amendment does not detract from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185 | Authority: Art. X, sec. 12, Ak Const.; Art. X, sec. 14, Ak Const.; [AS 29.04.040](#); [AS 29.05.090](#); [AS 29.06.040](#); [AS 29.06.120](#); [AS 29.06.490](#); [AS 44.33.020](#); [AS 44.33.812](#); [AS 44.33.814](#); [AS 44.33.816](#); [AS 44.33.820](#); [AS 44.33.826](#)

Decisional Meeting (3 AAC 110.570)

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony and to reach a decision regarding the proposed change. During the decisional meeting,

(1) the commission will not receive new evidence, testimony, or briefing;

(2) the chair of the commission or a commission member may ask the department or a person for a point of information or clarification; and

(3) the department may raise a point of information or clarification.

(b) Repealed 1/9/2008.

(c) If the commission determines that a proposed change must be altered or a condition must be satisfied to meet the standards contained in the Constitution of the State of Alaska, [AS 29.04](#), [AS 29.05](#), [AS 29.06](#), or this chapter, and be in the best interests of the state, the commission may alter or attach a condition to the proposed change and accept the petition as altered or conditioned. A motion to alter, impose conditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval. If the proposed change is a

(1) municipal annexation, detachment, deunification, dissolution, merger, or consolidation, a city reclassification, or a legislative-review borough incorporation under [AS 29.05.115](#), and if the commission determines that the proposed change must be altered or a condition must be satisfied before the proposed change can take effect, the commission will include that condition or alteration in its decision; or

(2) municipal incorporation subject to [AS 29.05.060](#) - 29.05.110, and if the commission determines that an amendment to the petition or the placement of a condition on incorporation may be warranted, the department shall provide public notice and an opportunity for public comment on the alteration or condition before the commission amends the petition or imposes a condition upon incorporation; if the department recommended the proposed change or condition and the public had an opportunity to comment on the proposed change or condition at a commission hearing, an additional notice or comment period is not required.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, [AS 29.04](#), [AS 29.05](#), [AS 29.06](#), or this chapter, or is not in the best interests of the state, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will issue a written decision 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. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC [110.580](#) or the commission, on its own motion, orders reconsideration under 3 AAC [110.580](#), a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185 | Authority: Art. X, sec. 12, Ak Const.; Art. X, sec. 14, Ak Const.; [AS 29.04.040](#); [AS 29.05.100](#); [AS 29.06.040](#); [AS 29.06.130](#); [AS 29.06.500](#); [AS 44.33.020](#); [AS 44.33.812](#); [AS 44.33.814](#); [AS 44.33.816](#); [AS 44.33.818](#); [AS 44.33.820](#); [AS 44.33.822](#); [AS 44.33.826](#)

Tips for Effective Public Comment



Members

Lynn Chrystal
Chair
At large

John Harrington
Member
First Judicial District

Robert Harcharek
Member
Second Judicial District

Larry Semmens
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District
**Recused from
proceedings**



TIPS FOR EFFECTIVE PUBLIC COMMENT

If you plan to offer comments to the Local Boundary Commission (LBC) at the public hearing on the proposed annexation to the City of Fairbanks, the following tips are offered to make your comments more effective.

1. Come prepared and informed. Plan your comments in advance. Prior to the hearing you may wish to review:

- ◆ the annexation petition, responsive brief, and written comments on the petition,
- ◆ Commerce's preliminary report, public comments on the preliminary report, and Commerce's final report.

The above materials are available at the Fairbanks City Hall, Fairbanks North Star Borough Hall, and the Noel Wien Public Library. The documents are also available on the LBC web site at http://www.commerce.state.ak.us/dca/lbc/fairbanks_2.htm.

2. Provide relevant comments or testimony. The LBC's decision on the annexation proposal will be based on legal standards applied to the proposal's facts. Comments addressing those standards will most help the LBC. A summary of the criteria includes:

- ◆ There must be a reasonable need for city government in the territory proposed for annexation. (3 AAC 110.090(a));
- ◆ The territory may not be annexed if essential city services can be provided more efficiently and more effectively by another existing city, by an organized borough, or through a borough service area. (3 AAC 110.090(b));
- ◆ The territory must be compatible in character with the annexing city. (3 AAC 110.100);
- ◆ There must be sufficient human and financial resources in the proposed city boundaries (area within existing city, plus territory proposed for annexation) to provide essential city services on an efficient, cost effective level. (3 AAC 110.110);
- ◆ The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government. (3 AAC 110.120);
- ◆ The proposed expanded city boundaries must include all land and water necessary to provide the development of essential municipal services on an efficient, cost effective level. (3 AAC 110.130(a));
- ◆ Absent a specific and persuasive showing to the contrary, the Local Boundary Commission will, presume that territory that is not contiguous to the annexing city or would create enclaves in the existing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. (3 AAC 110.130(b));
- ◆ The proposed boundaries of the city must be on a scale suitable for city government and may include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation. (3 AAC 110.130(c)(1));
- ◆ The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards. (3 AAC 110.130(c)(2));
- ◆ Whether the petition for annexation is in the best interests of the state under AS 29.06.040(a). (3 AAC 110.135);



Members

Lynn Chrystal
Chair
At large

John Harrington
Member
First Judicial District

Robert Harcharek
Member
Second Judicial District

Larry Semmens
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District
Recused from proceedings



- ◆ 3 AAC 110.140 requires that the territory to be annexed by legislative review must meet at least one of several specified criteria. (3 AAC 110.140);
- ◆ petition for annexation must include a practical plan:
 - ◆ demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practical time after the effective date of the proposed boundary change;
 - ◆ providing for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, service area or other entity located in the territory proposed for change;
 - ◆ providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change;
 - ◆ must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed. (3 AAC 110.900);
- ◆ The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (3 AAC 110.910);
- ◆ If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services. (3 AAC 110.970(c));
- ◆ In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area. (3 AAC 110.981(8));
- ◆ Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area. (3 AAC 110.982(7)); and
- ◆ The commission is also guided by principles set forth in Article X of the Constitution of the State of Alaska in judging the merits of annexation proposals.
- ◆ All legal standards can be looked up on the legislative website (Title 3, Part 15, Chapter 110): <http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac?>

3. Observe the rules.

- ◆ New written materials may not be filed at the hearing unless good cause for such is shown.
- ◆ Public comment will be limited to a maximum of three minutes per speaker (does not apply to petitioner and respondent) to ensure that the LBC will be able to hear from all persons who wish to speak. Please honor the time limits.

4. Avoid repetition.

- ◆ If an earlier speaker has addressed certain points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and then spend your allotted time on topics that have not yet been addressed.

Notice of Public Hearing and Decisional Meeting



State of Alaska Local Boundary Commission (LBC)

Notice of Public Hearing and Decisional Meeting Regarding the City of Fairbanks' Annexation Proposal

On the below date, time, and place, the LBC will meet to convene a public hearing under 3 AAC 110.560 regarding the proposal to annex an estimated 0.05 square miles to the city of Fairbanks. The proposed area includes two distinct territories referred to as "Fred Meyer subdivision" and the "enclave lots".

Monday, November 9, 2009 – 12:00 p.m.
Fairbanks North Star Borough School District board room
520 Fifth Avenue, Fairbanks, Alaska

The public hearing will be held from **12:00 p.m.** until **4:00 p.m.** and then from **6:00 p.m.** until **8:00 p.m.**, and might be extended to accommodate those present before 8:00 p.m. who did not have an opportunity to comment.

The LBC will convene a decisional meeting under 3 AAC 110.570 to act on the proposal as noted below.

Tuesday, November 10, 2009 – 3:00 p.m.
Fairbanks North Star Borough School District board room
520 Fifth Avenue, Fairbanks, Alaska

The decisional meeting will be held from 3:00 p.m. until 5:00 p.m., and might be extended if the commission decides it needs more time to deliberate.

The hearing agenda and information concerning the hearing, decisional meeting, and other aspects of the annexation proposal may be obtained from:

LBC staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Brent Williams: (907) 269-4559
Brian Bitzer: (907) 269-4587
Fax: (907) 269-4539
Email: LBC@alaska.gov

All petition materials are available for public review in Fairbanks at the Noel Wien Public Library, Fairbanks North Star Borough Hall, and Fairbanks City Hall. The materials are also available on the LBC website: http://www.commerce.state.ak.us/dca/lbc/fairbanks_2.htm.

Persons interested in receiving future LBC notices by email may subscribe to the LBC notice list service by visiting <http://www.commerce.state.ak.us/dca/lbc/lbcnotices.htm>, clicking on the link to the LBC Subscription Service, and following the instructions.

Teleconference sites for the proceedings may be added for the convenience of the public and/or LBC members. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate should contact LBC staff by **October 30, 2009**.

Appendix C – Materials Distributed at Sept. 11, 2009 Informational Meeting

Public Notice for Informational Meeting

Alaska Department of
Commerce, Community, and Economic Development

**PUBLIC NOTICE
INFORMATIONAL MEETING
CITY OF FAIRBANKS ANNEXATION PROPOSAL**

Friday, September 11, 2009 – 5:30 pm – 7:30 pm
Fairbanks North Star Borough School District, Board Room, 520 Fifth Avenue,
Fairbanks, Alaska

The Alaska Department of Commerce, Community, and Economic Development (“Commerce”) will conduct a public informational meeting under 3 AAC 110.520 concerning the City of Fairbanks’ annexation proposal at the date, time, and place noted above. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate should contact Commerce staff by telephone at (907) 269-4580, or at the mailing address, e-mail address, or fax number listed below.

At the informational meeting, Commerce staff will address Commerce’s August 2009 preliminary report on the city of Fairbanks’ annexation proposal and the future schedule of the petition process. Attendees will have the chance to ask questions concerning the pending annexation proposal and Commerce’s preliminary report.

The September 11 informational meeting is not a public hearing. Any verbal public comment to be considered by the Local Boundary Commission (LBC) and become part of the public record should be presented at the November 9th public hearing. The LBC will conduct a public hearing on the proposal in Fairbanks on November 9th, possibly extending to the 10th. Extensive notice of that hearing will be provided.

A public review copy of Commerce’s preliminary report is available in Fairbanks at the Noel Wien Public Library, Fairbanks North Star Borough Hall, and at Fairbanks City Hall. The report is also available on the Internet at

http://dcra.commerce.alaska.gov/DCBD/Fairbanks_Annex_08-01/Preliminary_Report/.

The deadline for receipt by Commerce of comments on its Preliminary Report is September 16, 2009, at 4:30 p.m. Comments may be submitted in writing to:

Local Boundary Commission Staff
Department of Commerce, Community, & Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

Comments may also be submitted by fax at (907) 269-4539 or email at [<LBC@alaska.gov>](mailto:LBC@alaska.gov). Any comments submitted by fax or email must be followed up by a hard copy within ten days of the electronic filing to be considered per 3 AAC 110.700(d).

Revised Fairbanks Petition Schedule

Revised Fairbanks Petition Schedule

Aug 17: Finished and mailed the preliminary report. Start the at least 28 days of public comment on prelim report.

Sept 16: Public comment period for preliminary report ends (lasted **30 days**).

Sept 16: Start writing final report (must be done by at least **21 days** before the hearing). **26 days** to write final report.

Oct 5: Hearing notice (at least **30 days** before hearing) (It is given **35 days** before hearing).

Oct 13: Mail final report (must precede the hearing by at least **21 days**) (It is sent **27 days** before hearing).

Nov M 9 – Tu 10: Hearing **and** decisional meeting in Fbx. Decisional meeting must be within **90 days** of the last hearing, but can immediately follow it. Decision must be issued within **30 days** of decisional meeting.

Nov 12: Start writing final decision. **18 days to write decision.**

Nov 30: Decision written and sent to commissioners.

Dec 7: LBC meeting to approve/disapprove written decision.

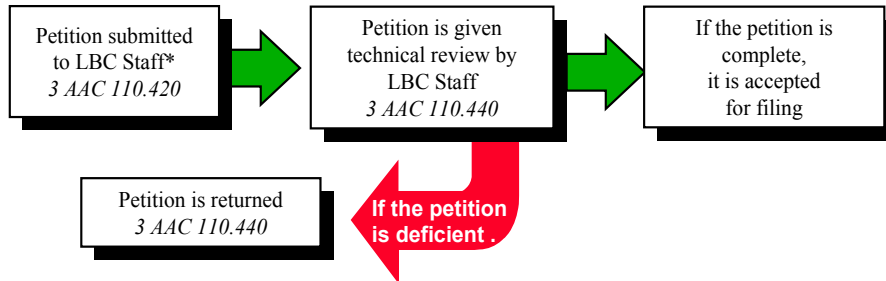
Dec 9. Approved decision mailed (**29 days** after decision). **18 days** of public reconsideration of decision starts. LBC has **30 days**, on its own motion, to reconsider. Petitioner or respondent has **10 days** to file a brief.

Jan 19: If petition is approved, the decision will be submitted to the Legislature (session starts 1-19-10).

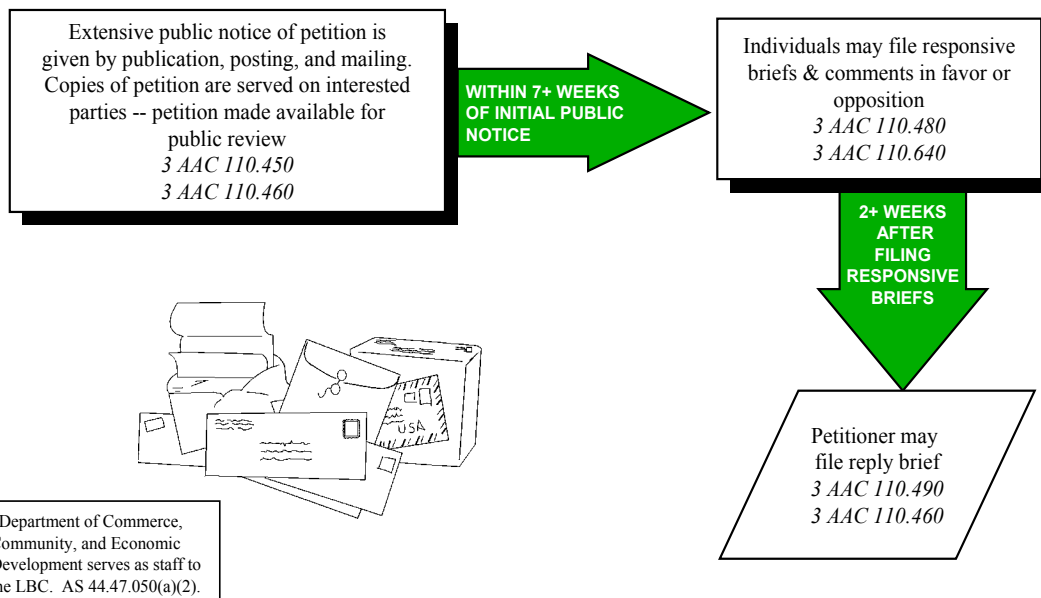
Procedures for City Annexation

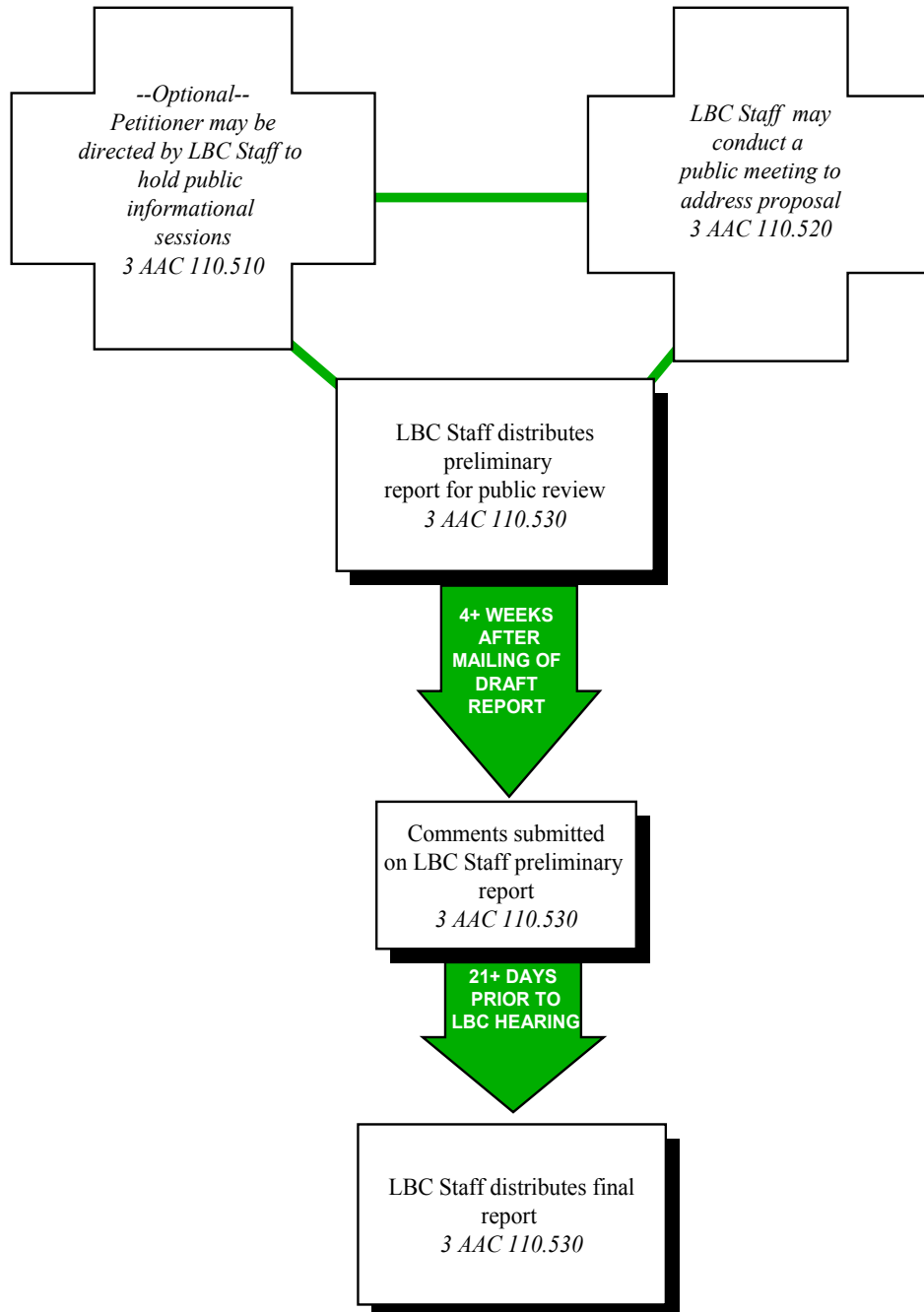
PROCEDURES FOR CITY ANNEXATION

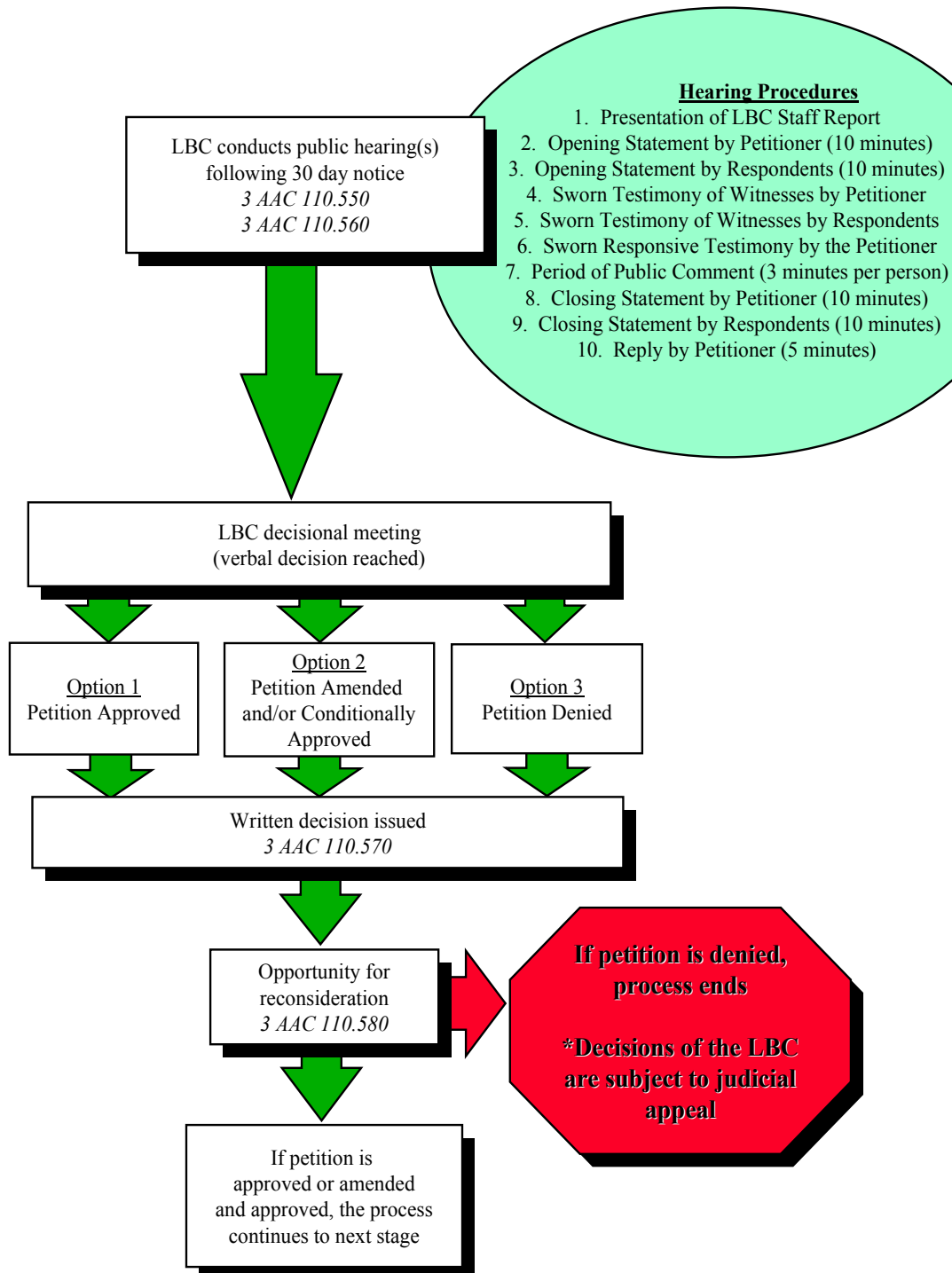
STAGE 1 - FILING THE PETITION

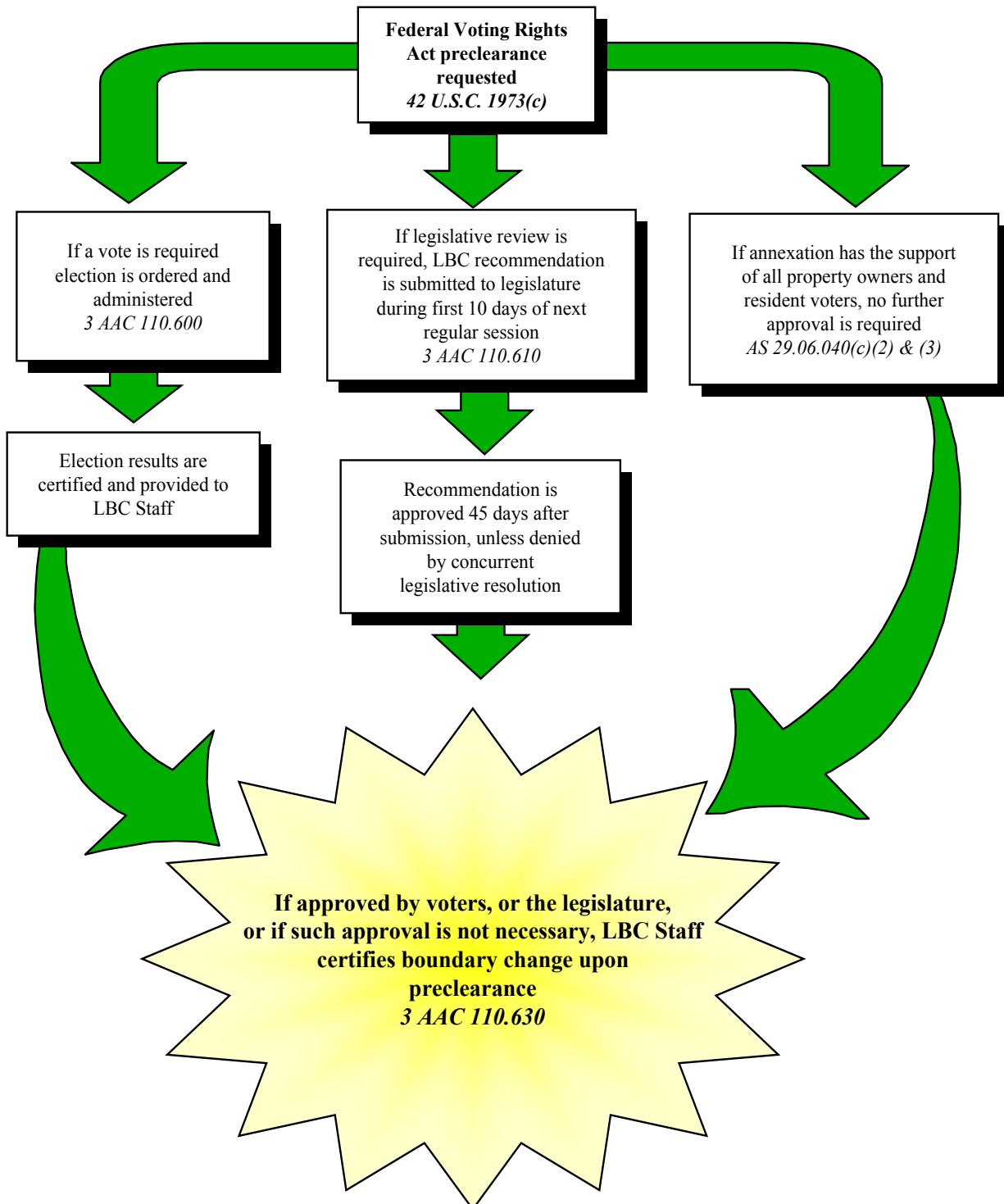


STAGE 2 - PUBLIC REVIEW & COMMENT



STAGE 3 - ANALYSIS

STAGE 4 - HEARING, DECISION & RECONSIDERATION

STAGE 5 - IMPLEMENTATION

Maps of Annexation Area from Preliminary Report

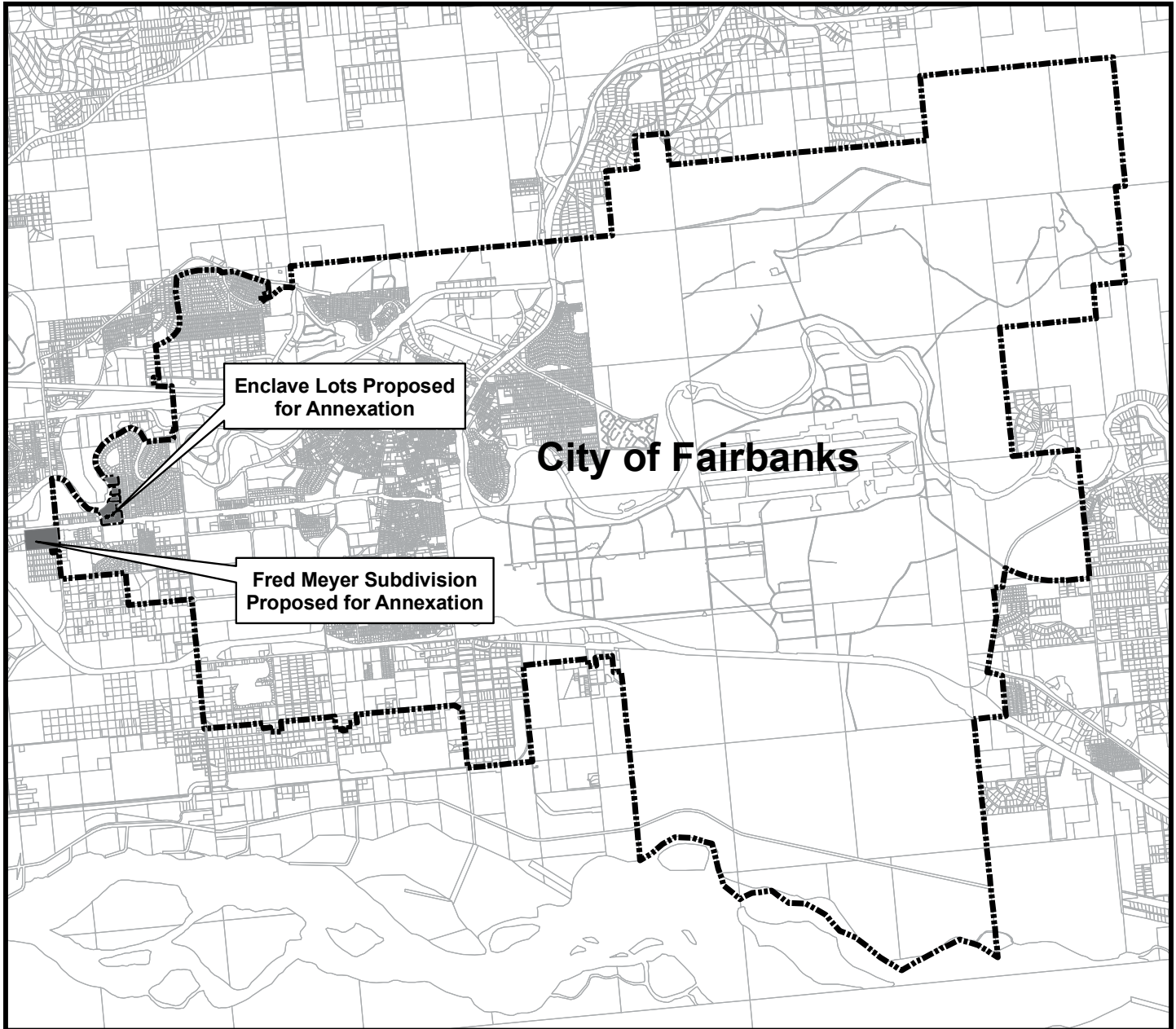


Figure 3-1. Map showing the parcels inside and directly surrounding the City of Fairbanks Municipal Boundary.



Figure 3-2. Character of the lots proposed for annexation and surrounding city lots.

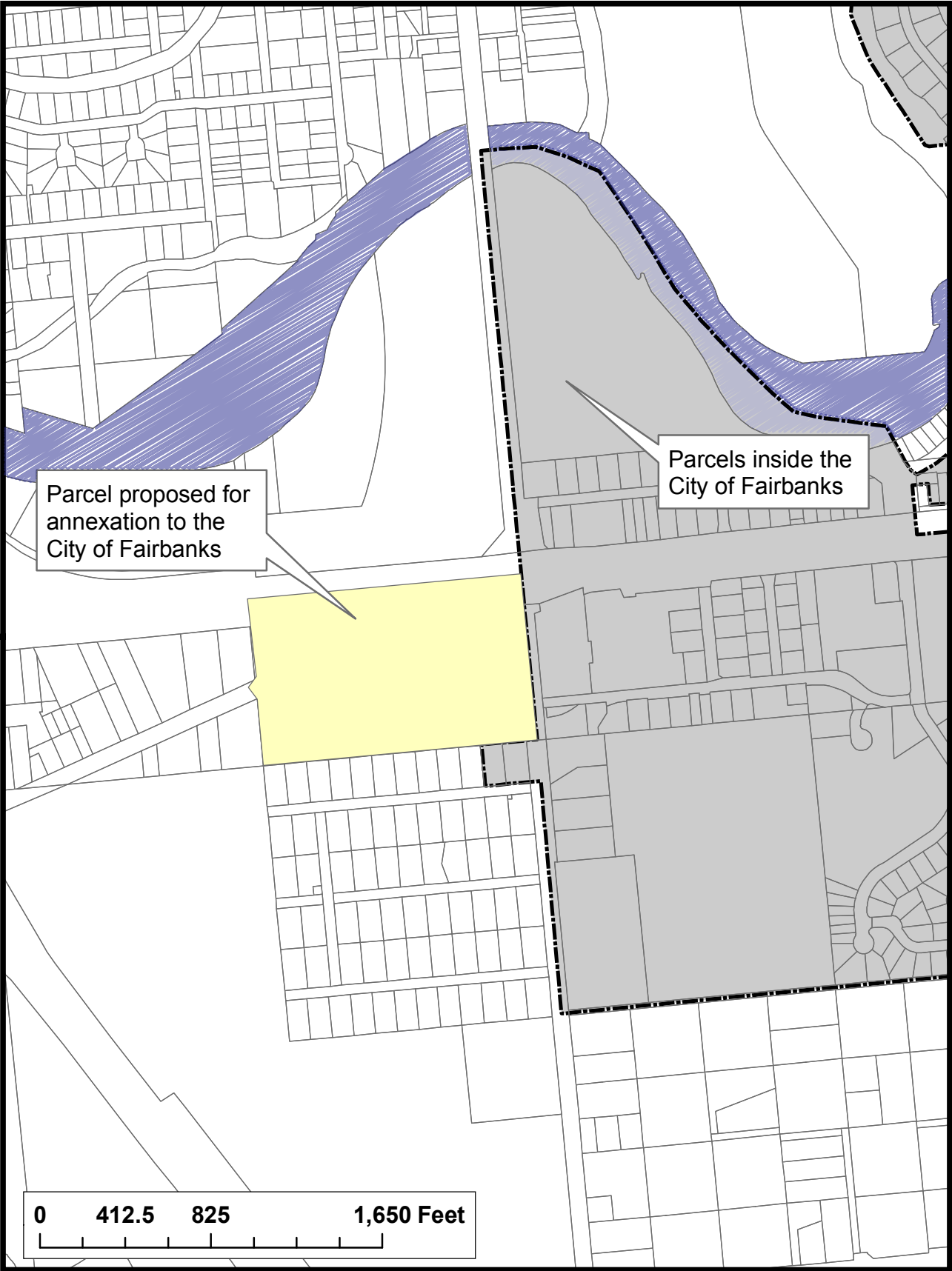


Figure 3-3. Character of the lot proposed for annexation and surrounding city lots.