

**SENATE AND HOUSE
JOINT JOURNAL SUPPLEMENT**

January 25, 2002

Friday

No. 10

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Statement of Decision

Alaska Local Boundary Commission

in accordance with AS 44.33.812

and

Article X, Section 12

Constitution of the State of Alaska

* * * * *

January 25, 2002

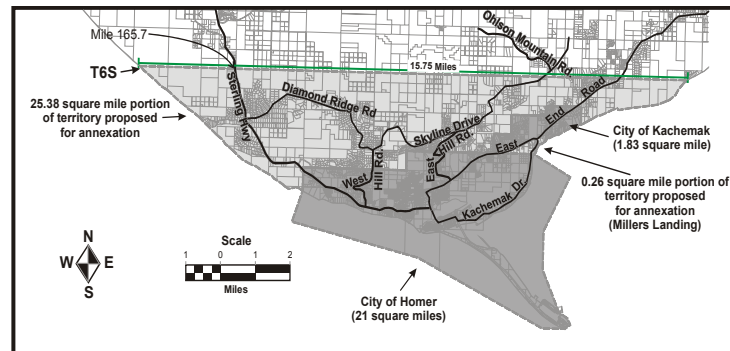
Juneau, Alaska

State of Alaska
Local Boundary Commission
Statement of Decision

**IN THE MATTER OF THE MARCH 20, 2000
PETITION BY THE CITY OF HOMER FOR
ANNEXATION OF APPROXIMATELY 25.64
SQUARE MILES**

**Section I
Summary of Proceedings**

As allowed by Article X, § 12 of the Constitution of the State of Alaska, AS 44.33.812(a)(3), and 3 AAC 110.410, the City of Homer (hereinafter "City"¹ or "Petitioner") formally initiated efforts on March 20, 2000 to expand its boundaries to encompass an additional estimated 25.64 square miles. The City did so by submitting a petition (hereinafter "Petition") to the Local Boundary Commission for "legislative review annexation" under Article X, §12 of the Constitution of the State of Alaska, AS 29.06.040(b), and AS 44.33.812(b)(2).



The Petition was accepted for filing by the Alaska Department of

¹ In its lower case form, the word "city" refers to city governments in general.

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Community and Economic Development (hereinafter "DCED") on March 29, 2000. DCED serves as staff to the Commission under AS 44.33.020(4).

Public notice of the filing of the Petition was given under 3 AAC 110.450. Notice of filing of the Petition was published by the Petitioner in the *Homer News*, a newspaper of general circulation in the territory, on April 3, April 10, and April 17, 2000.

DCED arranged for publication of the notice of filing of the Petition on the State of Alaska's Internet Website, *Online Public Notices*.² The notice was also published on the LBC Internet Website maintained by DCED.

As required by 3 AAC 110.450(a)(2), on April 3, 2000, notice of the filing of the Petition was posted at prominent locations readily accessible to the public within the area proposed for annexation. Posting occurred at the following three locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Groceries, Mile 2.4 East End Road; and
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive.

Notice of the filing of the Petition was also posted by the Petitioner at the following five locations within the existing boundaries of the City of Homer on April 3, 2000:

1. Homer City Hall, 491 East Pioneer Avenue;
2. State Courthouse, 3670 Lake Street;
3. United States Post Office, Sterling Highway;
4. Eagle Quality Center, Sterling Highway; and
5. Lakeside Center Shopping Mall, 3858 Lake Street.

On April 3, 2000, notice of the filing was also posted at the Kachemak City Hall. Although the City of Kachemak is outside the proposed boundaries of the City of Homer, the territory petitioned for

² <http://notes.state.ak.us/pn/pubnotic.nsf>

annexation virtually surrounds the corporate boundaries of the City of Kachemak.

On April 5, 2000, the Petitioner sent a copy of the notice of filing of the Petition to the following nine individuals and organizations:

1. State Representative Gail Phillips;
2. State Senator John Torgerson;
3. South Peninsula Hospital Service Area Board;
4. City of Kachemak;
5. Kenai Peninsula borough, Mayor's Office;
6. Kenai Peninsula Borough Road Service Area;
7. Citizens Concerned About Annexation;
8. City Residents Annexation Process Study Group; and
9. City of Seldovia.

DCED staff sent notice of the filing of the Petition to thirty-nine State officials, including members of the Local Boundary Commission, the heads of principal agencies, and others.

Under 3 AAC 110.460(b), the Petition, including all exhibits, was made available for public review. The City designated the Homer City Hall and Homer Public Library as locations where Petition materials were to be made available to the public.

June 5, 2000 was set by the Commission Chairman as the deadline for filing responsive briefs and written comments in support of or in opposition to the annexation proposal.

On April 17, April 18, and May 2, 2000, DCED staff attended meetings regarding annexation with various groups in Homer.

Fourteen responsive briefs collectively comprising 147 pages along with 604 pages of exhibits were filed with DCED by the June 5, 2000 deadline.³ The fourteen individuals and organizations that filed

³ 3 AAC 110.480(a) provides that "Any interested person or entity may file with the department a responsive brief."

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responsive briefs are:

Respondent	Representative	Brief	Exhibits
1. Alaskans Opposed to Annexation	Erwin and Erwin, LLC	24 pages	33 pages
2. Cabana, Doris	Same	8 pages	8 pages
3. Dodd-Butters, Sallie	Same	6 pages	0 pages
4. Fuller, Abigail	Same	11 pages	21 pages
5. Griswold, Mary	Same	17 pages	0 pages
6. Jerrel, Vi, Ph.D.	Same	5 pages	23 pages
7. Kachemak Area Coalition, Inc.,d.b.a. Citizens Concerned About Annexation	Hicks Boyd Chandler & Falconer	30 pages	511 pages
8. Kenai Peninsula Borough	Same	2 pages	0 pages
9. Objective Annexation Review	Larry Smith	11 pages	0 pages
10. Roberts, Peter	Same	8 pages	0 pages
11. Seelye, Steve and Margret	Same	3 pages	0 pages
12. Smith, Bill	Same	4 pages	0 pages
13. The Crossman Ridge Neighborhood	Cris Rideout	12 pages	8 pages
14. The Raven Ridge Homeowners Association	Wayne Clark	6 pages	0 pages

In addition to the fourteen responsive briefs, a total of 168 timely letters concerning the proposed annexation were received by DCED. The vast majority of the letters expressed opposition to the proposed annexation, three letters expressed support for the proposed change, and others raised issues but did not support or oppose the entire annexation proposal per se.

On June 14 and August 24, 2000, DCED staff attended additional meetings in Homer regarding annexation.

On September 11, 2000, the City of Homer filed its *Reply Brief of the City of Homer Supporting Its Petition for Annexation to the City of Territory West, North, & East of the Current City Limits* (hereinafter "Reply Brief") in response to the fourteen Responsive Briefs and the 168 written comments.

On July 31, 2001, DCED staff conducted two public informational meetings under 3 AAC 110.520 in Homer. Additionally, on July 31, DCED staff was available to the public to address questions from noon to 10:00 p.m.

Forty-seven people attended the first public informational meeting on July 31, which began at 2:00 p.m. Nineteen people attended the second meeting, which began at 7:00 p.m. During both meetings, an opportunity was provided for the public to comment or ask questions about developments relating to the Petition that had occurred since the filing of the City's Reply Brief in September 2000. Most of those offering comments expressed opposition to all, or specific elements of the proposed annexation.

In early October 2001, DCED completed its 412-page *Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Preliminary Report"). The Preliminary Report recommended amendment of the Petition to limit annexation to approximately 3.3 square miles.

On October 5, 2001, DCED distributed copies of its four-page *Executive Summary of the Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Executive Summary") to thirty-one interested individuals and individuals and organizations including the Petitioner, respondents, Local Boundary Commission members, State Representative Drew Scalzi, State Senator John Torgerson, City of Kachemak, and Homer-area media.

In addition, those same individuals and organizations were provided a compact disc containing the Executive Summary and DCED's complete Preliminary Report. The Homer City Clerk and the Director of the Homer Public Library were each provided ten copies of the disc for use by the public. DCED also posted a copy of the Executive Summary on the Internet on October 5, 2001.

On October 6, 2001, a printed copy of the 412-page Preliminary Report was mailed to the same individuals and organizations to whom the Executive Summary had been mailed the previous day.

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On October 8, 2001, DCED mailed an additional 138 copies of the Executive Summary to interested individuals and organizations. On October 9, 2001, DCED distributed seventy-six printed copies of the Preliminary Report to twelve individuals and organizations. The October 9, 2001 mailing included sixty copies of the Preliminary Report and six additional copies of the CD-ROM sent to the Homer City Clerk for distribution to the Library and City officials.

On October 9, 2001, the Director of the Homer Public Library made available to the public the printed copy of the Preliminary Report mailed by DCED on October 6. Also on October 9, the Library Director made available to the public ten CD-ROM copies of the Preliminary Report, and fifteen copies of the Executive Summary. On October 22, 2001, the Homer Library made twenty-five additional copies of the printed Preliminary Report available to the public.

Between October 5 through October 26, 2001, DCED received requests from the public for five additional copies of the Preliminary Report. DCED promptly fulfilled each request.

Because of the extensive size of the Preliminary Report, it was necessary to post the DCED Preliminary Report on the Internet in increments. DCED staff posted segments of the DCED Preliminary Report, beginning with Chapters 4 and 5, on October 10, October 19, and October 25, 2001.

In total, DCED distributed 268 printed Executive Summaries, 56 CDs containing the Preliminary Report, and 126 printed copies of the Preliminary Report.

The Chairman of the Local Boundary Commission set November 6, 2001 as the deadline for comment on the Preliminary Report. Comments expressing a wide range of views were received from thirty-two individuals and organizations.⁴ A copy of the comments

⁴ Some of the thirty-two individuals and organizations submitted multiple sets of comments. Each individual or organization that submitted comments is included only once in the tally of the number (32) who commented on the Preliminary Report. However, (Continued on next page)

was made available for public review at the Homer City Clerk's office and the Homer City Library on November 8, 2001.

The Commission scheduled a public hearing on the Homer annexation proposal to begin December 14, 2001. DCED arranged for notice of the hearing to be published in the *Homer News* on November 8, November 22, and December 6, 2001 and in the *Homer Tribune* on November 14, November 28, and December 12, 2001. In addition, DCED arranged for public notice of the hearing to be provided on the State of Alaska *Online Public Notice* system beginning November 5, 2001 and continuing through the date of the hearing.

The notice, draft agenda, statutes and regulations governing hearing and decisional procedures, and guidelines for comments at the hearing were mailed to the Petitioner, respondents, Local Boundary Commission members, Representative Drew Scalzi, Senator John Torgerson, City of Kachemak, and Homer-area media on November 5, 2001.

On November 5, a request for public service broadcast announcements of the hearing was sent to KBBI-AM, the Homer affiliate of the Alaska Public Radio Network. On November 5, 2001, the City of Homer posted the notice of the hearing at the following nine locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Grocers, Mile 2.4 East End Road;
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive;
4. Homer City Hall, 491 East Pioneer Avenue;
5. State Courthouse, 3670 Lake Street;
6. United States Post Office, Sterling Highway;
7. Eagle Quality Center, Sterling Highway;
8. Lakeside Center Shopping Mall, 3858 Lake Street; and
9. Kachemak City Hall.

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if multiple individuals submitted joint comments, for example, married couples submitting a single letter, they were counted separately in the tally.

The City of Homer also made available for public review at the office of the Homer City Clerk and the Homer Public Library the Notice, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments.

Notice of the Commission's December hearing in Homer, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments at the hearing were posted to the LBC Website⁵ on November 6, 2001.

On November 21, 2001, DCED released its *Final Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Final Report"). The timely comments regarding DCED's Preliminary Report were synopsisized in DCED's Final Report. The Final Report recommended annexation of approximately 3.9 square miles.

119 copies of DCED's Final Report were distributed on November 21, 2001, including sixty copies to the City of Homer for distribution to staff, office of the Homer City Clerk, and Homer Public Library. On that same date, DCED distributed an executive summary of the Final Report to 125 individuals and organizations.

On December 13, 2001, before the hearing, four currently appointed members of the Commission inspected the 25.64 square miles proposed for annexation by helicopter and automobile.

The Commission convened its public meeting on the City's annexation proposal on December 14, 2001 at the Mariner Theater in the Homer High School at approximately 9:00 a.m. The entire hearing was broadcast live on local radio station KBBI.

After introductory remarks by the Commission Chairman, DCED summarized its reports and recommendations concerning the Homer annexation proposal to the Commission.

⁵ <http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>

The opening statement of the Petitioner followed DCED's summary. Gordon Tans, Attorney for the City of Homer, made the opening statement on behalf of the Petitioner. The City of Homer did not follow its opening statement with sworn testimony by witnesses.

After the Petitioner's opening statement, opening statements were made by the following respondents:⁶

1. Peter Roberts;
2. Alaskans Opposed to Annexation (Vi Jerrel);
3. Kenai Peninsula Borough (Colette Thompson, Borough Attorney);
4. Objective Annexation Review (Michael Kennedy);
5. The Crossman Ridge Neighborhood (Cris Rideout);
6. Abigail Fuller;
7. Steve and Margaret Seelye (Margaret Seelye);
8. Sallie Dodd Butters;
9. Raven Ridge Homeowners Association (Billy Pepper);
10. Mary Griswold; and
11. Citizens Concerned About Annexation (Peter Roberts).

The opening statements by respondents were followed by sworn testimony provided by five witnesses called by two respondents. Sallie Dodd Butters called Charles Davis as a sworn witness, while Citizens Concerned About Annexation called Abigail Fuller, Dennis Oakland, Milli Martin, and Lee Krumm as sworn witnesses.

The City of Homer did not call witnesses to provide sworn responsive testimony.

Following the sworn testimony of witnesses called by the respondents, the hearing was opened for a period of comment by the general public. Public comment was received during that segment from the following individuals:

⁶ There are fourteen respondents; eleven of whom made opening statements. Vi Jerrel made an opening statement on behalf of Alaskans Opposed to Annexation but did not make an opening statement as a respondent in her own right. Respondents Bill Smith and Doris Cabana were not present.

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1. Laura Barton
2. Ed Cooley
3. Eileen Becker
4. Jim Reinhart
5. Lois H. Field
6. Mike Ryan
7. Paul Field
8. Terry Jones
9. Randel Jones
10. Linda Reinhart
11. Timothy Fuller
12. Patricia Brennan
13. Rick Harness
14. Charles Davis
15. Milli Martin
16. Mike Arno
17. Kari Arno
18. Roberta Harris
19. Roberta Highland
20. Patti Krumm
21. Diana Walrath
22. Billy Pepper
23. Rich Corazza
24. Sonja Corazza
25. Roy E. Hoyt, Jr.
26. Nancy Hillstrand
27. Daniel Boone
28. Rick Ladd
29. Joanne Gregory
30. Mary Deihl
31. Geo Beach
32. Carey Meyer
33. Poppy Benson
34. Daisy Lee Bitter
35. John Fowler
36. Douglas Frainan
37. Gary Lyon
38. Kurt Weichhan
39. Scott Adams
40. Diane Sedor

41. Leah Handley
42. Al Wadell
43. Ed Todd
44. Marilyn Hendren
45. Michael A. Lemay
46. Madrene Hoyt
47. Rieta Walker
48. David Rowe
49. Anita Critchett
50. Gail Ammerman
51. Paul Seaton
52. Hellen Buckwalter
53. Hardin Terrell
54. Findlay Abbott

At the conclusion of the comments by Findlay Abbott, no one else came forward to speak under the comments from the general public segment of the hearing. Respondent Sallie Dodd Butters requested and was granted permission to give her closing statement at that time.

After the closing statement from Sallie Dodd Butters, the Commission Chairman asked if anyone else from the general public wished to offer comment. The following two individuals came forward:⁷

55. Susan Jackson
56. Wendy Lefton

After the comments by Wendy Lefton, the Commission Chairman recessed the hearing at approximately 8:20 p.m. The hearing reconvened at the Mariner Theater on Saturday, December 15 at approximately 9:15 a.m. At the invitation of the Commission Chairman, the following seven individuals came forward to offer comments from the general public.⁸

⁷ Numbering is continued sequentially from Findlay Abbott.

⁸ Numbering is continued sequentially from Wendy Lefton.

57. Bob Barnett
58. Kathy Hill
59. Don Darnell
60. Mike Yourkowski
61. Michael Kennedy
62. Harry Wilson
63. Robert Archibald

Following the comments from Robert Archibald, the Petitioner presented its closing statement. Gordon Tans made the statement on behalf of the City of Homer.

The closing statement by the Petitioner was followed by closing statements from the following ten respondents:⁹

1. Peter Roberts;
2. Alaskans Opposed to Annexation (Vi Jerrel);
3. Vi Jerrel;
4. Objective Annexation Review (Michael Kennedy);
5. The Crossman Ridge Neighborhood (Cris Rideout);
6. Abigail Fuller;
7. Steve and Margaret Seelye (Margaret Seelye);
8. The Raven Ridge Homeowners Association (Billy Pepper);
9. Mary Griswold; and
10. Citizens Concerned About Annexation (Peter Roberts).

The hearing concluded at approximately noon on December 15. Following the hearing the Commission convened a decisional session lasting approximately two hours. Guided by the fourteen city annexation standards set out in State law, the Commission determined during the decisional session that it would be appropriate to limit the size of the annexation at this time to an area estimated to comprise 4.58 square miles. Accordingly, the Commission amended the Petition

⁹ As noted previously, there were fourteen respondents in this proceeding. Respondent Sallie Dodd Butters made her closing statement on December 14. Respondents Kenai Peninsula Borough, Bill Smith, and Doris Cabana were not present at this segment of the hearing.

to reduce the territory proposed for annexation from 25.64 square miles to an estimated 4.58 square miles. Section II of this Statement of Decision sets out the basis for the Commission's action. A legal description and a map of the 4.58 square miles approved for annexation are included in Section III of this Statement of Decision.

Section II
Findings and Conclusions

Based on the voluminous evidence¹⁰ in this proceeding, which the Commission finds to be suitably complete to render a well-informed decision, the Commission reached the following findings and conclusions:

A. Compatibility of the Character of the Territory Proposed for Annexation and the Area within the Existing Boundaries of the City.

The compatible territory standard is in 3 AAC 110.100.¹¹ DCED

¹⁰ The evidence includes the Petition, Responsive Briefs of the fourteen respondents, written comments on the Petition from 168 correspondents, Reply Brief, Preliminary Report, written comments on the Preliminary Report from 32 correspondents, Final Report, observations made by the Commission during its December 13, 2001 helicopter and automobile tours of both the territory petitioned for annexation and the area within the City of Homer, and statements, testimony and comments made at the public hearing concerning this matter conducted by the Commission on December 14 and 15, 2001.

¹¹ 3 AAC 110.100 provides as follows:

The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;

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addressed that standard on pages 161 – 200 of its Preliminary Report.

The 4.58 square miles approved for annexation by the Commission are more similar in character to the area within the existing boundaries of the City of Homer than is the 25.64 square miles petitioned for annexation.

Properties closest to the existing northern boundaries of the City of Homer and along the major roadways are generally divided into smaller parcels and are developed to a greater degree than the remainder of the territory petitioned for annexation. That is not to imply, however, that the entire 25.64 square miles petitioned for annexation is incompatible in character with the area inside the existing boundaries of the City of Homer.

Residential development is the predominant land use within the 25.64 square miles petitioned for annexation. The entire territory petitioned for annexation contains an estimated 870 housing units.

There is significant commercial development in portions of the territory petitioned for annexation, notably Millers Landing and the area along the Sterling Highway within the 4.58 square miles approved for annexation. The City estimated that \$14 million in annual taxable sales occur within the 25.64 square miles petitioned for annexation. However, that estimate reflects only 80% of the taxable sales reported in the territory (excluding Kenai Supply) for 1999 – actual taxable sales were approximately \$17.6 million in 1999.

The area within the existing boundaries of the City of Homer is the regional center for State, federal, and borough offices. However, there are also a number of governmental facilities within the 25.64 square

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- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

miles petitioned for annexation along the Sterling Highway, Diamond Ridge Road, and Skyline Drive. Many of those facilities lie within the 4.58 square miles approved for annexation by the Commission.

The 25.64 square miles petitioned for annexation is generally higher in elevation than the area within the current boundaries of the City of Homer. However, this distinction does not render the two areas incompatible. There is no shortage of property for sale in the 25.64 square miles petitioned for annexation or within the existing boundaries of the City of Homer.

The population density within the City of Homer (including both land and water) is 188 residents per square mile. Excluding water, the City of Homer population density is 359 residents per square mile. In comparison, the population density of the 25.64 square miles petitioned for annexation is eighty-six persons per square mile. The population density of the 4.58 square miles approved for annexation by the Commission is 196. The latter figure is 12.6% greater than the comparable figure for the average of all city governments in Alaska.

There has been significant development in the 25.64 square miles petitioned for annexation; more than \$25 million in taxable property improvements have been undertaken since 1995. Many of those improvements occurred within the 4.58 square miles approved for annexation.

The per capita value of taxable real property within the existing boundaries of the City of Homer is estimated to be \$58,527. In comparison, the per capita taxable value of real property in the 25.64 square miles petitioned for annexation is estimated to be \$60,238. The per capita taxable value of property in the 4.58 square miles approved for annexation by the LBC is estimated to be \$64,994. The per capita value for the 4.58 square miles approved for annexation is 7.9% greater than the comparable figure for the 25.64 square miles as a whole and 11.0% greater than the figure for the area within the City of Homer. These data show that the area approved for annexation encompasses valuable properties and substantial development.

Property taxes in the 25.64 square miles petitioned for annexation, except Millers Landing, are 2.75 mills lower than they are within the

City of Homer. Property taxes in Millers Landing are 4.58 mills lower than they are in the City of Homer. Sales taxes throughout the territory petitioned for annexation are 2%; sales taxes within the City of Homer are 5.5%.

It is likely that residents of the 25.64 square miles petitioned for annexation travel throughout both the areas within the existing boundaries of the City and the territory petitioned for annexation for routine purposes such as those related to employment and to purchase of goods and services.

The record clearly demonstrates that the 25.64 square miles petitioned for annexation and the City of Homer are one organic community separated by the invisible corporate boundaries of the City of Homer.

The Commission concludes that both the 25.64 square mile territory petitioned for annexation by the City of Homer and the 4.58 square mile area approved for annexation by the Commission are compatible in character with the territory within the City's current boundaries. Thus, the standard set out in 3 AAC 110.100 is satisfied for both areas. Again, the 4.58 square mile area approved for annexation is more similar in character with the territory currently within the corporate boundaries of the City of Homer.

B. Proposed New Boundaries of the City of Homer in Relation to Boundaries of other Existing Local Governments.

The standard at issue is in 3 AAC 110.130(e).¹² DCED addressed this

¹² 3 AAC 110.130(e) provides as follows:

If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat the annexation petition to

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standard on pages 201- 202 of its Preliminary Report.

The proposed expanded boundaries of the City of Homer are entirely within the corporate limits of the Kenai Peninsula Borough. Moreover, although the proposed expanded boundaries of the City of Homer adjoin the corporate limits of the City of Kachemak, they do not overlap the jurisdictional area of any existing city government.

The Commission concludes from the foregoing that the City of Homer annexation proposal (both with and without the boundary amendment by the Commission) clearly satisfies the overlapping boundary standard set out in 3 AAC 110.130(e).

C. Contiguity of the Territory with the City of Homer.

The contiguity standard is in 3 AAC 110.130(b).¹³ DCED addressed this standard on pages 203 – 204 of its Preliminary Report.

The Commission finds that, with respect to this standard, the 25.64 square miles petitioned for annexation to the City of Homer is contiguous to the area within the existing boundaries of the City of Homer. The 4.58 square miles approved for annexation by the Commission are also contiguous to the current corporate boundaries of the City of Homer.

The Commission concludes from the simple facts relating to this standard that the Petition plainly satisfies the requirement of 3 AAC 110.130(b), as does the territory approved for annexation by the Commission.

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the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city.

¹³ 3 AAC 110.130(b) provides as follows:

Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation

D. Effects of Annexation on Civil and Political Rights.

The civil and political rights standards are in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1.¹⁴ DCED addressed this

¹⁴ 3 AAC 110.910 provides that:

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

42 U.S.C., § 1973 provides that:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

28 C.F.R. PART 51.1 provides that:

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction

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standard on pages 204 – 213, 363, and 364 of its Preliminary Report and pages 23 – 26 and 34 of DCED’s Final Report.

The anticipated effects of annexation on civil and political rights include the following:¹⁵

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covered by Section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. Additionally, State law provides with respect to annexation that, “A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.”

¹⁵ Black’s Law Dictionary (Revised Fourth Edition) defines “civil rights” and “political rights” as follows:

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the

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Right	Effect	Area Affected
To hold appointed office as a member of the board of supervisors of the Kenai Peninsula Borough Road Service Area	Loss of right	All annexed areas
To hold elected office as a member of the board of supervisors of the Kenai Peninsula Borough Kachemak Emergency Service Area	Loss of right	All annexed areas excluding Millers Landing
To hold office as a member of the Kachemak Bay Advisory Planning Commission	Loss of right	All annexed areas excluding Millers Landing
To propose and enact laws of the City of Homer through the initiative process	Gain of right	All annexed areas
To approve or reject laws of the City of Homer through the referendum process	Gain of right	All annexed areas
To vote on propositions (e.g., bonds) submitted to the voters of the City of Homer	Gain of right	All annexed areas
To hold any appointed office (e.g., Planning Commission) of the City of Homer*	Gain of right	All annexed areas
To hold any elected office (i.e., mayor or city council) of the City of Homer	Gain of right	All annexed areas

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United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

The most significant effect of annexation in terms of political rights is that resident voters in the annexed area will be granted the right to participate in future elections regarding electing City officials and other City matters. The hundreds of voters in the territory approved for annexation will be a major political force in the expanded City of Homer.

Further, residents of 25.64 square miles petitioned for annexation generally pay sales taxes to the City. In addition, the City of Homer has great influence on the daily lives of many in the territory petitioned for annexation in other matters such as the availability of water, public health and safety, and commerce. Annexation would enfranchise such residents and, therefore, provide them with a direct and tangible voice in determining City policies.

Evidence does not show that annexation will affect any civil or political right of any person within the territory petitioned for annexation "because of race, color, creed, sex, or national origin."¹⁶ Moreover, annexation will not result in the imposition or application of voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

Therefore, the Commission concludes that the requirements of 3 AAC 110.910; 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1 are satisfied by the City of Homer's annexation proposal (both with and without the boundary amendment made by the Commission).

¹⁶ Respondent Sallie Dodd Butters testified during the hearing that, "My spiritual and rural lifestyle is my creed, so I contend I am being discriminated against." The Commission prefers the more generally accepted definition of "creed" set out as follows in Black's Law Dictionary (Revised Fourth Edition):

The word "creed" has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief."

In addition to matters relating to the standards set out in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1, three other prominent "political rights" issues were raised in this proceeding.

First, a number of those who provided written comments and testimony expressed the view that it is a basic civil and political right to vote on annexation. However, such is not the case. In 1962, the Alaska Supreme Court held that the legislative review process for annexation – the same one employed in this proceeding by the City of Homer – does not infringe upon or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution.¹⁷ Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.¹⁸

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of 'liberty, or property, without due process of law.'¹⁹ The

¹⁷ § 1, Amendment XIV of the U.S. Constitution provides as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

¹⁸ 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

¹⁹ U.S.Const. amend. XIV, § 1.

determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.²⁰ The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.²¹ There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the *Gomillion*²² case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

The more recent ruling of the Alaska Supreme Court in *Area G Home and Landowners Organization, Inc., v. Anchorage*, 927 P.2d 728 (Alaska 1996) is also relevant to this issue. That case lends further support to the Commission's view that that courts would disagree with

²⁰ Kelly v. City of Pittsburgh, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); 1 Antieau, Municipal Corporation Law § 1.15 at 30 (1958).

²¹ Cf. Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); Mount Pleasant v. Beckwith, 100 U.S. 514, 524 525, 25 L.Ed. 699, 701 (1880).

²² Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

the proposition espoused by some in this proceeding that there is a constitutionally or statutorily recognized right to vote on annexation which would effectively grant voters the right to veto the pending annexation proposal.

Additionally, in 1881, the U.S. Supreme Court ruled in *Kelly v. City of Pittsburgh*, 104 U.S. 78 (1881), that a taxpayer whose land had been annexed without his vote, was not deprived of due process of law. Specifically, the court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

The second prominent political rights issue involves a statutory right of voters in certain service areas to ratify any adjustment to the boundaries of those service areas under AS 29.35.450(c).²³ In this

²³ AS 29.35.450(c) states as follows:

If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does

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case, the service areas in question consist of the Kenai Peninsula Borough Road Service Area (hereinafter "KPBRSA") and the Kenai Peninsula Borough Kachemak Emergency Service Area (hereinafter "KESA").

The Commission, DCED, and the State Attorney General's Office are in accord that AS 29.35.450(c) does not apply to a legislative review annexation on the basis of principles set out in Alaska's Constitution, including those addressed in the *Fairview* and *Area G Home and Landowners Organization* cases noted above.²⁴ If AS 29.35.450(c) applied to a legislative review annexation, it could result in a circumstance in which two local governments – in this case the City of Homer and the Kenai Peninsula Borough – were exercising the identical powers in the same territory. Such would contravene principles in Alaska's Constitution, particularly those set out in Article X, § 1, which promote "a minimum of local government units" and "prevent duplication of tax-levying jurisdictions."

In the landmark *Fairview* case, the Alaska Supreme Court held in a similar circumstance that although State statutes expressly provided that a public utility district could be dissolved only upon approval of the voters, annexation of the territory to a city would also result in dissolution of the district. Specifically, the Court stated (at 545):

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by

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not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

²⁴ See the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from Debby Sedwick, Commissioner of DCED, requesting the opinion.

statute.²⁵ We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.²⁶ When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.²⁷

It is the view of the Commission that annexation of territory to the City of Homer will, as a matter of law, result in the detachment of any such area within KPBRSA and KESA from those respective service areas of the Kenai Peninsula Borough.

The third additional prominent civil and political rights issue relates to truncation of terms of incumbent elected officials of the City of Homer. A number of those who provided written comments and testimony advocated truncation of terms of incumbent elected officials of the City of Homer as a condition of annexation.

The issue of truncation of terms of incumbent elected officials was addressed on pages 210 – 213, 363, and 364 of the Preliminary Report and on pages 23 – 26 and 34 of the Final Report. As outlined below, the terms of three of the seven incumbent elected officials of the City of Homer – 43% of the total – will expire approximately seven months after the presumed effective date of annexation (mid-March 2002). The terms of two others will expire nineteen months after annexation, while the terms of the remaining two incumbents will expire thirty-one months after annexation.

²⁵ Section 49-2-13 ACLA Cum.Supp.1957, supra note 8.

²⁶ In re Annexation to City of Anchorage, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

²⁷ In re Sanitary Board of East Fruitvale Sanitary Dist., 158 Cal. 453, 111 P. 368, 370 (1910); Dickson v. City of Carlsbad, 119 Cal.App.2d 809, 260 P.2d 226 (1953).

INTERVAL BETWEEN ANNEXATION OF EXPIRATION OF TERMS OF INCUMBENT ELECTED OFFICIALS		
Occurrence	Date	Interval Since Annexation
Assumed effective date of annexation	March 2002	
Expiration of current term of Mayor Cushing	October 2002	7 months
Expiration of current term of Council member Marquardt	October 2002	7 months
Expiration of current term of Council member Cue	October 2002	7 months
Expiration of current term of Council member Kranich	October 2003	19 months
Expiration of current term of Council member Ladd	October 2003	19 months
Expiration of current term of Council member Fenske	October 2004	31 months
Expiration of current term of Council member Yourkowski	October 2004	31 months

There are two essential questions with respect to the matter of truncation of terms. The first is whether the Commission has the authority, absent express statutory or regulatory provisions, to require truncation of terms as a condition of annexation. The second is – assuming the Commission has such authority – whether the facts in this proceeding warrant the imposition of such a condition.

Taking up the latter question first, the Commission acknowledges, in a broad sense, that the arguments for truncation of terms of elected officials of an annexing municipality hold some attraction. It is less than ideal that residents of newly annexed areas may, for varying periods, be represented at the local municipal level by officials they did not elect. The Commission notes, however, that the same occurrence results from a variety of reasons other than annexation (e.g., citizens reaching the age of eighteen, individuals relocating to a new local government jurisdiction, and the appointment of an individual to serve in a position vacated by an elected official).

The Commission, however, disagrees with certain fundamental characterizations made by advocates for truncation in this case. For example, despite characterizations to the contrary, newly annexed

citizens would clearly not lack representation by the incumbents. Incumbent elected officials, all of whom are elected and serve at large, would represent all citizens of the City of Homer, including every newly annexed citizen.

The Commission is unaware of any precedent for the truncation of terms of incumbent elected local government officials as a result of annexation. Given such, prudence is warranted on the part of the Commission in addressing the matter. The Commission notes that the fundamental argument for truncation of terms applies whether one citizen is annexed or, as in this case, several hundred citizens may be annexed. Moreover, a similar argument could be made regarding municipal detachment, where citizens are excluded from a municipality. For example, citizens of the remnant municipality could ask, "Why should anyone who is no longer a citizen of a municipality have had a voice in determining who is going to govern us for the next two and one-half years?" Truncation of the terms of incumbent elected officials for annexation or detachment of any inhabited property, regardless of the size of the population, is impractical.

The Commission does not consider the specific facts in this case to warrant the extraordinary and unprecedented step of truncating terms of elected officials, particularly with respect to the 4.58 square mile area approved for annexation. Limiting the size of the annexation to the 4.58 square miles approved by the Commission would increase the population of the City of Homer by an estimated 898 residents. Those individuals would constitute 18.5% of the post-annexation population of the City of Homer. In contrast, if the proposal to annex 25.64 square miles were approved, the estimated 2,204 residents therein would comprise 35.8% of the population of the expanded City. In the latter case, arguments favoring truncation of terms of incumbent elected officials would be much stronger.

Because the facts in this proceeding do not warrant the extraordinary and unusual step of truncation of terms, the Commission declines to address the question of whether the Commission has the authority to impose such a condition in the absence of a statute or regulation which

addresses truncation of terms.²⁸

E. Inclusion of Geographical Regions and Large Unpopulated Areas.

The relevant standard is found in 3 AAC 110.130(d).²⁹ DCED's analysis and conclusions regarding this standard are set out on pages 213 – 219 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

The City of Homer is currently the eleventh most populous city government in Alaska. The existing City of Homer ranks forty-fifth among Alaska's 146 cities in terms of the area within its corporate boundaries. Excluding water, the City of Homer ranks sixty-first among all city governments in Alaska.

If all 25.64 square miles were annexed to the City of Homer, it would become the nineteenth highest ranked city in terms of area. Excluding water, it would rank twentieth in total area. However, again, its ranking in terms of population would exceed its ranking in terms of area, given that it would then become the fifth most populous city in Alaska.

The population within the expanded City of Homer boundaries approved by the Commission is estimated to be 4,844. That would

²⁸ Nevertheless, the Commission notes that State Assistant Attorney General Marjorie Vandor issued a memorandum dated December 12, 2001 (File Number 663-02-0090) concluding that "... the LBC does not, absent regulations, have discretionary authority to require truncation of terms of the city council of Homer as a condition to approving the petition for annexation presently being considered."

²⁹ 3 AAC 110.130(d) states as follows:

The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.130.

make the enlarged City of Homer the seventh most populous city government in Alaska. With approximately 15.58 square miles of land and ten square miles of water within its expanded corporate boundaries, the City of Homer would rank as the sixty-first largest city in Alaska. Excluding water, the expanded City of Homer would rank as the forty-eighth largest city in Alaska. Clearly, the area within the expanded corporate boundaries of the City of Homer approved by the Commission is modest in relation to its population compared to other city governments in Alaska.

Portions of the 25.64 square miles petitioned for annexation to the City of Homer encompass large parcels. Moreover, several portions of the territory are uninhabited. However, the extent of such in the 4.58 square miles approved for annexation is substantially less than the remnant territory petitioned for annexation. Moreover, the standard set out in 3 AAC 110.040(c) is aimed at prohibiting the annexation of a vast borough-type region to a city government. The standard does not preclude city governments from annexing territory that is only partially inhabited. Neither does 3 AAC 110.040(c) preclude the annexation of territory encompassing undivided parcels of land.

Under these circumstances, the Commission concludes that the standard found in 3 AAC 110.130(d) is satisfied by the Petition, particularly with respect to the 4.58 square mile area approved for annexation by the Commission.

F. Size and Stability of Population.

The population size and stability standard is in 3 AAC 110.120.³⁰

³⁰ 3 AAC 110.120 provides as follows:

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and

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DCED's analysis and conclusions regarding this standard are set out on pages 219 – 226 of its Preliminary Report.

3,946 individuals lived in the City of Homer at the time of the 2000 census. As noted with respect to the immediately preceding standard, the City of Homer currently ranks as the eleventh most populous city government in Alaska.

DCED estimated that 2,204 residents inhabited the 25.64 square miles petitioned for annexation at the time of the last census. That population is equivalent to the twentieth most populated city in Alaska.

The 4.58 square miles approved for annexation by the Local Boundary Commission are estimated to be inhabited by 898 people based on 2000 census data. That area alone is populated by a number of residents sufficient to render it the twenty-seventh most populous city government in Alaska if it were incorporated. Thus, the territory approved for annexation encompasses a substantial population in its own right.

As noted above, annexation of the 4.58 square miles approved by the Commission would boost the ranking of the City of Homer to the seventh most populous city government in Alaska.

The Commission notes that the population of the expanded boundaries of the City of Homer as now approved is larger than the population of all first class city governments in Alaska, except the City of Wasilla.

The percentage of residents in households and the percentage of owner-occupied housing suggest that the population both in the City of Homer and the 25.64 square miles petitioned for annexation (including the 4.58 square miles approved for annexation by the Commission) is well established.

The record shows that the area in and around Homer experienced very substantial growth in population during the 1970s and 1980s.

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(5) age distributions.

Although it still grew during the 1990s, the rate of population increase in and around Homer moderated considerably compared to the two previous decades.

Many communities in Alaska, particularly those in which tourism and commercial fishing are major segments of the economy, experience substantial seasonal population fluctuations. There is no indication in this proceeding that the Homer City government is unable to manage the circumstances surrounding the seasonal population changes in the greater community.

Although there are slight deviations in the age distribution patterns of the areas in and around Homer, the record does not demonstrate the presence of an unstable population.

The Commission concludes that the population within the expanded boundaries of the City of Homer as approved by the Commission is sufficiently large and stable to support the extension of city government. As such, the City of Homer's annexation proposal satisfies the standard set out in 3 AAC 110.120.

G. Human and Financial Resources.

The standard is found in 3 AAC 110.110.³¹ DCED's analysis and

³¹ 3 AAC 110.110. Resources provides as follows:

The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the:

- (1) reasonably anticipated functions of the city in the territory being annexed;
- (2) reasonably anticipated new expenses of the city;
- (3) actual income and the reasonably anticipated ability to collect local revenue and income from the territory;
- (4) feasibility and plausibility of the anticipated operating budget of the city through the third full fiscal year of operation after annexation;

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conclusions regarding this standard are set out on pages 227 – 244 and 357 – 359 (footnote 85) of its Preliminary Report, and page 33 of its Final Report.

Based on the entire 25.64 square mile proposal, the Petition projects that the City of Homer’s operating expenditures would increase by \$414,463 annually. The Petition proposes to fund anticipated capital expenses through the sale of general obligation bonds subject to approval by the voters. The Petition indicates that debt service on a \$1.2 million ten-year general obligation bond would be \$166,966 annually. The City’s cost projections are considered by the Commission to be reasonable.

The City estimates that annexation of the 25.64 square miles would increase its property tax revenues by \$696,163 annually. The City based its property tax revenue estimates on the certified real property assessed values provided by the Kenai Peninsula Borough. The City also estimates that annexation will increase its sales tax revenues by \$493,600 each year. The estimate of sales tax revenues was derived from data provided by the Kenai Peninsula Borough; the City reduced the figure provided by the Borough in order to base its proposal on a conservative figure.

No sources of additional revenue other than property taxes and sales taxes were included in the City’s revenue estimates. The City’s total projected annual increase in revenue amounts to \$1,189,763, but the record suggests that \$1,539,950 would be a more realistic estimate of the anticipated increase in City revenues.

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- (5) economic base of the territory after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled people.

Based on estimates provided in DCED's Final Report, supplemented by information about the nine parcels added to that area by the Commission, it is reasonably estimated that annexation of 4.58 square miles would generate slightly more than \$950,000 in additional annual revenues for the City of Homer.³² It is projected that annexation of 4.58 square miles will require the City to incur additional expenditures of approximately \$354,000 to serve the territory. Projected additional revenues exceed projected additional expenditures by about \$600,000 annually.

While respondents disputed estimates of revenues and expenditures by the City of Homer and DCED, even the testimony of Abigail Fuller as an expert witness on behalf of Citizens Concerned About Annexation during the December 14 – 15 hearing indicated that anticipated new revenues from annexation would exceed anticipated new expenses.

The anticipated ability of the City to collect the revenue in question is substantial since all of the projected revenues stem from long-established sources. Given its long-established nature, size and scope of its operations, competency of its staff, and good financial reputation, the City's projections of revenues and expenditures for the existing City of Homer appear to be credible.

The existing and projected revenue and expenditure data represent a feasible and plausible anticipated operating budget for the proposed expanded City of Homer. The budget should remain feasible and plausible through the third full fiscal year of operation after annexation absent notable changes in the: (1) population of the City of Homer (apart from that due to annexation), (2) powers and duties of the Homer city government, (3) rate of inflation, (4) local economic

³² The nine parcels added by the Commission to the 3.9 square miles recommended for annexation by DCED in the Final Report have an assessed value of \$295,300. The nine parcels are undeveloped and uninhabited. There are no locally maintained roads within the nine parcels. Thus, the only impact that the inclusion of the nine parcels will have on City of Homer revenues and expenditures is limited to an increase in property tax revenues. At the current rate of 5.5 mills, the increase would amount to \$1,624.15 annually.

conditions, and (5) levels of State financial aid to local governments. While the population of the Homer area is growing, significant changes to the other four factors are not anticipated. It can be reasonably expected that any increased costs associated with future population growth will likely be offset with increased property tax and sales tax revenues.

The 25.64 square miles petitioned for annexation encompass a substantial economic base. There were forty commercial properties within the territory petitioned for annexation generating taxable sales of \$17.6 million in 1999.³³ The territory petitioned for annexation comprises about 15.2% of the economy (based on taxable sales) of the proposed expanded City of Homer. The vast majority of those commercial facilities lie within the 4.58 square miles approved for annexation by the Commission.

The economic base of the area within the City of Homer's current boundaries, as reflected by reported taxable sales, has exhibited steady growth over a period exceeding the past decade.

Contemporary personal income figures at the community level are not yet available. 1990 figures indicated that median household income in the City of Homer was \$36,652. Figures for the surrounding area were even higher. For example, the figures for Anchor Point and Fritz Creek were, respectively, \$42,847 and \$45,143. The comparable figure for the State of Alaska as a whole was \$41,408.

Based on the foregoing, the Commission concludes that the economy within the expanded boundaries of the City as approved by the Commission includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard set out in 3 AAC 110.110 is satisfied by annexation of the 4.58 square miles approved for annexation by the Commission.

³³ The figure excludes sales from Kenai Supply, which has since closed.

H. Transition Plan for Extension of City Services

A transition plan is required by 3 AAC 110.900.³⁴ DCED's analysis

³⁴ 3 AAC 110.900 TRANSITION provides as follows:

(a) A petition for incorporation, annexation, merger or consolidation must include a practical plan in which the municipal government demonstrates its intent and capability to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for detachment or dissolution must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment.

(b) A petition for a proposed action by the commission must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city or service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) A petition for a proposed action by the commission must include a practical plan for the 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. The plan must be prepared in consultation with the officials of each existing borough, city, or service area affected by the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

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and conclusions regarding the transition standard are set out on pages 244 – 253 of its Preliminary Report.

The Commission emphasizes that the standards relating to transition plans are written in a broad fashion to pertain to all existing and prospective city and borough governments that come before the Commission. These range from relatively basic institutions of local government such as the City of Kupreanof, a second class city in the unorganized borough with a population of twenty-three, to large and complex local governments such as the Municipality of Anchorage, a unified home rule borough with a population of 260,283.

The intent of 3 AAC 110.900(a) is to require each petitioner to demonstrate that it has given forethought to the manner in which it will extend services to the territory proposed for annexation. It must also demonstrate the petitioner's good faith to extend services.

The City of Homer is clearly one of the more substantial and sophisticated city governments in Alaska. Its resources and staff capabilities are superior to the majority of its 145 counterparts in the state.

While the nine-page transition plan presented by the City of Homer in its Petition lacks minutiae regarding the manner in which services are proposed to be extended, the law does not require a petitioner to provide a detailed comprehensive plan for the extension of services. Again, each petitioner need only provide evidence that it has given forethought to what it must do to deliver municipal services to the area proposed for annexation.

The City of Homer has clearly demonstrated that it has given

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(d) Before approving a proposed change, the commission will, in its discretion, require that all affected boroughs, cities, service areas, or other entities execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

consideration to the services to be extended to the territory proposed for annexation. Moreover, it has expressed its good faith intention to extend all services provided by the City of Homer, with the exception of water and sewer utilities, within the shortest practicable time following annexation. Given the substantial capital investment involved in water and sewer utility extensions, the City of Homer plans to undertake such extensions over a long-term period, as demand and funding allow.

Based on the information provided by the City of Homer in its Petition and Reply Brief, analysis by DCED on pages 244 – 253 of its Preliminary Report, and statements by representatives of the City of Homer during the December 14-15, 2001 public hearing, the Commission concludes that the City of Homer has satisfied the intent of 3 AAC 110.900(a).

3 AAC 110.900(b) requires each petitioner to present a practical plan for the assumption of relevant powers, duties, rights, and functions presently being exercised by other service providers. In this case, the relevant responsibilities are principally limited to road maintenance, fire protection, and emergency medical service which are currently provided by the Kenai Peninsula Borough on a service area basis within the territory petitioned for annexation.³⁵ The Petition, Reply Brief, Preliminary Report, and statements during the December 14 – 15 public hearing clearly demonstrate that the requirements of 3 AAC 110.900(b) are plainly met. During the public hearing both Colette Thompson, Kenai Peninsula Borough Attorney, and Gordon Tans, City of Homer Attorney, expressed confidence that the two governments will amicably reach agreement as to the specific terms surrounding the transfer of road maintenance, fire protection, and emergency medical responsibilities from the Kenai Peninsula Borough to the City of Homer for the area in question.

³⁵ The Kenai Peninsula Borough also provides port and harbors, tourism promotion, special assessment authority for utility line extensions, and economic development on a nonareawide basis. The City of Homer also provides those services within its corporate boundaries.

3 AAC 110.900(c) requires each petitioner to provide a practical plan for the transfer and integration of relevant assets and liabilities. The Kenai Peninsula Borough Attorney testified that she contemplates no transfer of physical assets such as buildings or equipment as a result of annexation. Again, representatives from the Kenai Peninsula Borough and the City of Homer expressed confidence during the hearing that they will amicably agree to terms with respect to the transfer of assets and liabilities such as tax revenues and contracts for services. Given such, the Commission concludes that the requirements of 3 AAC 110.900(c) are satisfied.

The Commission notes here again that, as a matter of law, the area annexed to the City of Homer will be detached from the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area. Details about such were addressed previously under the civil and political rights standard. In sum, it is the view of the Commission, DCED, and the State Attorney General's Office that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations.³⁶

I. Inclusion of Areas Necessary to Provide Services on an Efficient, Cost-Effective Level

The standard at issue is set out in 3 AAC 110.130(a).³⁷ DCED's

³⁶ Again, see the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from DCED Commissioner Debby Sedwick, requesting the opinion.

³⁷ 3 AAC 110.130(a) provides as follows:

The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) land use and ownership patterns;

(2) population density;

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analysis and conclusions regarding this standard are set out on pages 253 – 268 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

On its surface, the standard is typically applied to determine only whether the proposed expanded boundaries of a city are expansive enough to encompass "all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level." However, the standard can also be properly applied to determine whether parts of the territory proposed for annexation will hinder the efficient, cost-effective delivery of services if such are included within the expanded boundaries of the city.

During the public hearing, requests were received from owners of three parcels adjoining the eastern portion of the so-called urban area recommended for annexation by DCED. Specifically, John Fowler requested the annexation of a 25.6-acre parcel and a 70.0-acre parcel that he owns. Additionally, Joseph L. Lester and Des Lester requested the annexation of their 54.4-acre parcel. Those parcels are depicted on the accompanying map.

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- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors;
- and
- (5) extraterritorial powers of cities.



Moreover, the Commission considered six parcels south of the Sterling Highway corridor recommended for annexation by DCED to warrant inclusion in the City of Homer at this time. Three of those parcels are owned by the State of Alaska. One of the State-owned parcels is 80 acres, another is 88.46 acres, and the third parcel consists of 9.09 acres. The other three parcels are privately owned. One is a 42.98-acre parcel owned by Cook Inlet Region, Incorporated, another is a 19.99-acre parcel owned by Charlene Wilkins, and the remaining property is a 5.58-acre parcel owned by James Murphy. None of the six parcels is developed. The six parcels in question are depicted on the accompanying map.



The 4.58 square mile area approved for annexation by the Commission consists of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties, and the six parcels south of the Sterling Highway corridor.

As noted in its analysis of this standard on pages 253 – 268 of the Preliminary Report, pages 5 – 19 of the Final Report, and pages 32 – 34 of the Final Report, the 3.9 square miles recommended for annexation by DCED has substantial residential, commercial and other development. Although the Fowler and Lester parcels are currently undeveloped, there are indications that those three parcels are likely to be subdivided and improved in the foreseeable future. The current assessed value of those three parcels is \$232,500. The six parcels south of the Sterling Highway corridor are also undeveloped but are vital to protection of the "viewshed" of the community. Annexation of those six parcels is warranted for reasons outlined in the October 30, 2001 written comments by the City regarding DCED's Preliminary Report and on the basis of testimony provided during the

Commission's December 14 – 15 hearing. Only two of the six parcels are taxable. The current assessed value of those properties is \$62,800.

The population density of the 3.9 square miles recommended for annexation by DCED is approximately 230 persons per square mile. With the addition of the nine parcels added by the Commission, the 4.58 square mile area approved for annexation has a population density of 196 people per square mile. In comparison, the average population density of all cities in Alaska is approximately 174 persons per square mile.

There are seven principal roadways that link the territory petitioned for annexation to the area within the City of Homer. Six of the seven roads are within the 4.58 square miles approved for annexation by the Commission. Additionally, air and marine transportation facilities serving the territory proposed for annexation are within the City of Homer.

In addition to transportation ties, the two areas share strong social, cultural, and economic interests. Testimony and comments were offered by a number of individuals during the hearing that the territory petitioned for annexation and the City of Homer are part of the same community.

The Kenai Peninsula Borough has granted extraterritorial powers to the City of Homer for land use regulation in the Bridge Creek Watershed. The City of Homer is currently developing an ordinance under which the City would exercise that power. The grant of extraterritorial powers to regulate the watershed provides the City of Homer with full legal authority to enact technically sound and socially responsible regulations governing the use and development of the watershed. As such, the Bridge Creek Watershed per se is not essential to the efficient, cost-effective delivery of services by the City of Homer at this time.

Residents and property owners within the 25.64 square miles petitioned for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the City of Homer, whether rendered or received inside or outside the territory proposed for annexation. Such includes water

utility service and bulk water sales, sewer utility service, fire protection service, and emergency medical service to limited parts of the 25.64 square miles petitioned for annexation. Emergency police services are provided to a broader area. Moreover, citizens living throughout the territory petitioned for annexation use facilities owned and operated by the City of Homer, such as the library, port, harbor, and airport.

The per capita assessed value of the 25.64 square miles petitioned for annexation is estimated to be \$60,238. In comparison, the per capita assessed value of the 4.58 square miles is approximately \$64,994.

Based on the foregoing, the Commission concludes that the standard set out in 3 AAC 110.130(a) is best met *at this particular* time if the expansion of the boundaries of the City of Homer is limited to the 4.58 square miles approved for annexation by the Commission.

However, the Commission notes that as the outlying territory continues to grow and develop, so too may the ability of the City of Homer to serve that territory efficiently and effectively. There are many individuals and organizations with overlapping interests regarding the future delivery of essential local government services in the area in question. They include the Homer and Kachemak city governments, the Kenai Peninsula Borough, and citizens of those three governments. All would be well served by recognition of their mutual interests in that regard so that better planning for future alterations of the structure of local government in the greater Homer area may occur in a productive manner.

J. City Boundaries Limited to Community plus Ten Years' Growth.

The standard at issue is set out in 3 AAC 110.130(c).³⁸ DCED's

³⁸ 3 AAC 110.130(c) provides as follows:

The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs

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analysis and conclusions regarding this standard are addressed on pages 269 – 280 of its Preliminary Report. Additional information about boundaries that is relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED’s Final Report.

The determination by the Commission whether the 4.58 square miles approved for annexation and the area within the existing corporate boundaries of the City of Homer comprise a local community must be made in light of a number of factors set out in 3 AAC 110.920.³⁹

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during the 10 years following the effective date of annexation of that city.

³⁹ 3 AAC 110.920 DETERMINATION OF COMMUNITY provides as follows:

(a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people

(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community or social unit if

(1) public access to, or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by

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The first factor is whether residents of the area within the existing corporate boundaries of the City of Homer as well as the 4.58 square miles approved for annexation generally have exhibited a long-term presence. The testimony of those who spoke to the Commission during the December 14 – 15 hearing, coupled with DCED's analysis and conclusions on the matter, generally indicate that this is clearly the case.

Second, the current residents of the City of Homer and the residents in the 4.58 square miles in question live in close geographic proximity to one another. In many cases, residents of the two areas live within blocks of one another. Given the close proximity of the two areas, it would be difficult for residents of one area to avoid frequent personal contacts with residents of the other, even if that were their wish.

Testimony by representatives of neighborhood homeowners' associations and others indicate that the patterns of development in the 4.58 square miles approved for annexation have evolved from that of remote and isolated homesteads to that of neighborhood living. The areas have become more integrated, such that they are now part of the same community.

Respondents Sallie Dodd Butters and Peter Roberts testified that residents the territory petitioned for annexation chose to live outside the City of Homer to avoid its jurisdiction or because they wanted nothing to do with the city government. However, respondents Michael Kennedy and Margaret Seelye testified that residents of the City of Homer and the entire 25.64 square miles petitioned for annexation are part of the same community. The Commission considers the testimony given by respondents Kennedy and Seelye to be better supported, more persuasive, and more pertinent on this point.

The Commission notes that residents of the 4.58 square miles in question visit the area within the corporate boundaries of the City of Homer on a regular basis for economic, social, and other occasions. As

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persons who do not consider the place to be their permanent residence.

DCED indicated in its Preliminary Report, people in the 25.64 square miles petitioned for annexation and residents of the existing City of Homer generally utilize the same governmental offices and facilities, patronize the same library, shop at the same commercial facilities, attend the same clubs, associations, and churches, read the same newspapers, listen to the same radio stations, and utilize the same medical service facilities. Moreover, many of the area's major roads, such as the Sterling Highway, Diamond Ridge Road, Skyline Drive, West Hill Road, East Hill Road, East End Road, and Kachemak Drive bind portions of the territory petitioned for annexation with adjacent areas within the current City boundaries. All of those roads, with the exception of Diamond Ridge Road, pass through the 4.58 square miles approved for annexation by the Commission.

School enrollment is another factor that supports the conclusion that both areas are part of the same community. The Homer High School and Homer Middle School attendance area boundaries encompass all of the territory proposed for annexation and the City of Homer. Plainly, students who live in the City of Homer and the territory proposed for annexation generally attend the same schools.

Residents of the community are employed in a broad range of public and private sector jobs including fishing, fish processing, trade and service, and a considerable seasonal tourist industry. Evidence in the record indicates that a number of those who live in the Diamond Ridge, Millers Landing, Fritz Creek, and Anchor Point areas are employed within the corporate boundaries of the City of Homer.

The Commission's site visit by helicopter and automobile, coupled with the testimony and comments presented at the Commission's public hearing along with other evidence in the record, demonstrate that the places of residency in the territory petitioned for annexation are generally permanent and quite substantial.

The territory proposed for annexation is largely a residential extension of the area within the City of Homer. Moreover, Millers Landing and the Sterling Highway corridor within the territory approved for annexation encompass significant commercial development.

Several of those who testified at the public hearing indicated that they volunteer in a number of areas (e.g., fire protection, emergency medical services, animal control, museum, and library) for the betterment of the entire community. By their actions, they recognize that there is but one community encompassing both the area within the existing City of Homer and the territory petitioned for annexation.

The Commission notes that public access to the area petitioned for annexation is unrestricted. There is no evidence that the area is tied to another community or social unit. Additionally, there is no evidence that the 4.58 square miles approved for annexation by the Commission are generally inhabited by individuals who work in that area and are present as a condition of their employment.

The requirement that the 25.64 square miles sought for annexation by the Petition encompass reasonable predicable growth and development for the next ten years is demonstrably met. Reviews of aerial photographs, tours by the Commission, testimony of area residents as to development patterns, and physical proximity of the area suggests that a logical pattern of urban or suburban development is extending northward from the area within the City's present boundaries.

Homer serves as a trading and service center for nearly eleven thousand residents, including residents inhabiting the territory petitioned for annexation. The character of commercial establishments and other service providers in the territory proposed for annexation suggests that they are part of the greater community of Homer.

The area proposed for annexation is part of a reasonably compact city and immediately adjacent suburbs that together comprise the core of the greater Homer area. Corporate boundaries notwithstanding, the area proposed for annexation is, without question, part of the social and economic fabric of the greater Homer community.

Although the territory petitioned for annexation and the area within the City of Homer are divided by a now-obsolete political boundary, the record indicates that the de facto Homer community encompasses the entire territory petitioned for annexation. Since a larger area satisfies the standard, a more conservative approach would readily encompass the 4.58 square miles approved for annexation. If anything, the

annexation initiative is tardy rather than premature. Given the facts in this matter, the 4.58 square miles approved for annexation clearly satisfies the standard set out in 3 AAC 110.130(c).

K. Comparative Ability to Provide Essential Municipal Services

3 AAC 110.090(b) provides that the Commission may approve annexation to the City of Homer only if the City is best able to provide essential city services to the territory proposed for annexation.⁴⁰ The phrase "essential city services" as used in 3 AAC 110.090(b) is defined in 3 AAC 110.990(8).⁴¹ DCED's analysis and conclusions regarding this standard are set out on pages 280 – 313 of its Preliminary Report.

3 AAC 110.090(b) does not list specific factors for the Commission to consider in determining whether an annexing city is best able to provide services. However, it is relevant in this case to consider (1) proximity of other municipalities, (2) geographic features, (3) legal capacity of municipalities, (4) fiscal capacity, (5) existing capital facilities, and (6) staff capabilities.

⁴⁰ 3 AAC 110.090(b) provides that :

A territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

⁴¹ 3 AAC 110.990(8) states:

“essential city services” means those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state...

Four municipal governments have jurisdiction wholly or partially within a twenty-five mile radius of the territory proposed for annexation. These are the Kenai Peninsula Borough, City of Homer, City of Kachemak, and City of Seldovia.

The considerable distance and lack of a road connection between the City of Seldovia and the territory petitioned for annexation render it impractical for the City of Seldovia to serve the territory petitioned for annexation.

If the Kenai Peninsula Borough were to extend services such as water utility service, sewer utility service, and police protection to the territory proposed for annexation, it would seem abundantly more reasonable and practical for it to do so on a service area basis rather than on an areawide or nonareawide basis. To do otherwise would require substantially greater resources. Approval by the voters in a far more expansive area than the territory petitioned for annexation would be required. Under those circumstances, voters in areas beyond the territory petitioned for annexation are less likely to accept a proposal to extend services that are arguably needed in the territory proposed for annexation, but perhaps may not be in all other parts of the Borough's areawide or nonareawide jurisdictions. It is unlikely to be reasonable or practical for the Borough to provide such services on an areawide or nonareawide basis.

Article X, § 5 of Alaska's Constitution and AS 29.35.450(b) place particular limitations on the creation of new service areas. Both express a preference for city annexation over the creation of a new service area. However, exceptions to the constitutional and statutory preference for a city government versus a borough service area generally exist in cases involving merger, consolidation, or unification of city and borough governments.

As a first class city, the City of Homer possesses slightly greater existing legal capacity than the City of Kachemak (a second class city) because the latter lacks the unilateral power of eminent domain under AS 29.35.030 and unilateral power to levy property taxes under AS 29.45.590.

Based on the foregoing, the City of Homer possesses the greatest legal capacity to extend services to the territory proposed for annexation. Because of the significant restrictions on its ability to create new service areas, the Kenai Peninsula Borough ranks last among the three municipalities in terms of its legal capacity to extend city-type services to the territory proposed for annexation.

The Kenai Peninsula Borough has the highest per capita value of taxable property among the three municipalities. However, that is based on areawide jurisdiction. Because it would generally be unreasonable or impractical to extend new borough services on an areawide or nonareawide basis to serve needs of the territory proposed for annexation for reasons already noted, it is more relevant to compare the assessed values of the City of Kachemak, City of Homer, and the Kachemak Emergency Service Area.

The City of Kachemak has the highest per capita assessed value of the three. The City of Homer is a close second in the ranking (3.3% less than the City of Kachemak). The Kachemak Emergency Service Area is a more distant third (11.1% less than the City of Kachemak).

By a wide margin, the City of Homer has the highest capacity of any of the areas examined to generate revenues from taxable sales. In per capita terms, the ability of the City of Homer to generate sales tax revenue is nearly twice that of the Kenai Peninsula Borough and nearly three times greater than that of the territory proposed for annexation. No figures are available for the City of Kachemak, but it is reasonably assumed, based on the record, that the sales tax generating capacity of the City of Kachemak would place it last in the rankings.

The 1999 per capita locally generated revenues of the City of Kachemak amounted to \$253. Only thirteen of Alaska's 145 cities in existence at that time had smaller per capita locally generated revenues. The statewide average per capita locally generated revenues for all 145 cities in Alaska during 1999 was \$2,365, more than nine times the level of the City of Kachemak. The City of Homer's per capita locally generated revenues in 1999 totaled \$2,508.

It is evident that the City of Homer has the superior fiscal capacity to provide services to the territory proposed for annexation. The City of Kachemak, by virtue of its relatively higher property values (compared to the Kachemak Emergency Service Area) ranks second. The Kenai Peninsula Borough's fiscal capacity to provide services on a service area basis follows closely behind the City of Kachemak.

The City of Homer has superior capacity to serve the territory proposed for annexation. In particular, the City has substantial capital investments with respect to facilities to provide water utility service, sewer utility service, fire protection, police protection, emergency medical services, jail, library, port, parks and recreation, road maintenance, and harbors. Altogether, the City has nearly \$80 million in fixed assets to provide public services.

Similarly, the City of Homer has superior existing staff resources needed to serve the territory proposed for annexation. The current budget of the City of Homer allocates funding for 90.3 full-time equivalent positions.

The fact that the City of Homer is currently providing a broad range of services and facilities that directly or indirectly benefit the territory petitioned for annexation is prima facie evidence of its greater capability to provide those services to the territory proposed for annexation.

The legal ability of the Kenai Peninsula Borough to provide services to the territory proposed for annexation is circumscribed by the provisions of Article X, § 5 of the Constitution of the State of Alaska and AS 29.35.450(b). Accordingly, no overriding significance is ascribed to the establishment of the Kachemak Emergency Service Area with respect to the capability of the Kenai Peninsula Borough to serve the territory proposed for annexation.

The City of Homer enjoys superior fiscal capacity, capital facilities, and staff resources to serve the territory petitioned for annexation as compared to other existing municipal governments. In sum, the record demonstrates that no other existing city government or organized borough can provide essential city-type services to the area petitioned for annexation more efficiently or more effectively than the City of

Homer. Thus, the City of Homer’s annexation proposal satisfies the comparative ability standard set out in 3 AAC 110.090(b), both for the area petitioned for annexation and the area approved for annexation.

L. Need for City Government

3 AAC 110.090(a) specifies that an area may be annexed to a city provided, in part, that the LBC determines there is a reasonable need for city government in the area.⁴² DCED’s analysis and conclusions regarding this standard are set out on pages 314 – 331 of its Preliminary Report.

The Commission finds that it is clearly evident that extensive municipal services are already provided throughout the territory proposed for annexation, either by the Kenai Peninsula Borough or the City of Homer.

When the Petition for annexation was filed, formal arrangements for fire protection and emergency medical services were lacking in the territory proposed for annexation. The subsequent creation of the

⁴² 3 AAC 110.090 NEEDS OF THE TERRITORY provides as follows:

(a) The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) existing or reasonably anticipated social or economic problems;
- (2) existing or reasonably anticipated health, safety, and general welfare problems;
- (3) existing or reasonably anticipated economic development;
- (4) adequacy of existing services; and
- (5) extraterritorial powers of adjacent municipalities.

Kachemak Emergency Service Area provided such formal arrangements in the area petitioned for annexation, except Millers Landing. In other proceedings, the Local Boundary Commission has largely ignored increases in borough services within an area proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.

The lack of formal arrangements to provide fire protection and emergency medical services to Millers Landing clearly represents an economic problem for the City of Homer. The City of Homer is providing services to the area in question without compensation and the City lacks express extraterritorial authority to provide fire protection which may expose the City of Homer to certain liabilities.

The lack of formal arrangements for fire protection and emergency medical services is also an economic problem for the residents and property owners in Millers Landing. The City of Homer might abandon such services if the area is not annexed which would expose Millers Landing property owners and residents to risk of significant property loss. While Millers Landing could be added to the Kachemak Emergency Service Area, such action would raise issues relating to previously noted constitutional and statutory limits regarding service areas.

The City of Homer makes bulk water sales to commercial water carriers. The City estimates that the bulk water carriers serve about 370 households outside the City, most of which are in the territory proposed for annexation. While those projections have been disputed, it is apparent that the lack of adequate sources of water has potential for severely limiting growth and development in the territory petitioned for annexation. As such, a shortage of potable water is an economic problem. Concerns on the part of officials of the City of Homer regarding the capacity of the City's existing water utility system led to the recent establishment of formal procedures for the cancellation of water sales for the area outside the City of Homer's "certificated service area" in times of need.

In addition to creating an economic problem, the lack of a public water utility can constitute a significant threat to public health, particularly

in heavily developed areas. The Alaska Department of Environmental Conservation (hereinafter "DEC") was asked to review relevant aspects of the Homer annexation proposal. DEC noted that soil conditions in the Homer area sometimes preclude the use of conventional septic systems. In such cases, septic systems may have to be designed or engineered for specific site conditions that deal with "tight soils or slopes."

DEC noted further that the functional life of septic systems is affected by site conditions. DEC expressed the view that the territory petitioned for annexation can accommodate more individual septic systems if they are designed and installed properly. In prior proceedings, however, DEC has expressed the general view that growth and development can be constrained by the lack of water and sewer utilities. Additionally, DEC has previously expressed the general view that significant public health risks may arise in areas of concentrated development that lack water and sewer utilities.

The potential for conflicts over land use increases in proportion to the level of development. Since the level of development is substantially greater in the 4.58 square miles approved for annexation by Commission, the need for land use regulation can be reasonably expected to be greatest in that area. Land use conflicts might reasonably be considered to be both a social problem and an economic problem.

Population and development within the 4.58 square miles approved for annexation were addressed previously. Given its substantial population and level of development, the 4.58 square miles approved for annexation generate a significant demand for fire protection and emergency medical service response capability.

The number of emergency services calls outside the City of Homer has generally been rising. Last year had the highest reported number of emergency medical service responses by the City of Homer outside its boundaries. While some contend that the statistics cited in the record are erroneous or do not pertain definitively to the territory petitioned or approved for annexation, the population density and level of development reasonably suggest otherwise. Further, it is possible, even probable, that a number of the calls inside the City of Homer

were made on behalf of residents of the territory approved for annexation who were working, shopping, or conducting other affairs within the City of Homer.

After a steady decline in the number of property crimes and violent crimes in Homer during the 1990s, the incidence of such crimes increased significantly in 2000. The State Troopers cannot provide twenty-four hour per day service in the southern Kenai Peninsula. Such would require a minimum of six Troopers. The Homer Trooper post is staffed with one sergeant and two troopers. A single trooper attached to the Ninilchik post is also available to serve Homer. The ratio of residents per trooper in the area served by the Homer-Ninilchik posts is on the order of 3,175 residents per trooper (3.1 troopers per ten thousand residents) – more than three times the ratio in E Detachment as a whole.

The current fiscal year budget of the City of Homer authorizes 9.6 full-time equivalent positions in its police department (excluding dispatchers and jail staff). The 1996 average number of full-time sworn local officers and primary State officers in Alaska (seventeen) and the entire nation (also seventeen) was 38.2% greater than the level available in the southern Kenai Peninsula area (12.3).

Bureau of Justice statistics also indicated that during 1996, sixty-one local police departments in Alaska employed 740 full-time sworn police officers. On average, those departments employed twelve full-time sworn officers for every ten thousand residents. In comparison, the national average was fifteen full-time local sworn officers for each ten thousand residents.

The City of Homer has authorized 9.6 full-time equivalent police officers to serve 3,946 residents (or 24.3 officers for every ten thousand residents). The City proposed to employ two additional officers following annexation of the 25.64 square miles petitioned for annexation. The City of Homer would then employ 11.6 officers to serve 6,150 residents (or 18.9 officers per ten thousand residents). Although higher than the state and national averages, the existing and proposed ratios of City of Homer police to residents appear reasonable given fundamental characteristics of the Homer economy. The City may choose to employ fewer than two additional officers as a result of

the boundary amendment made by the Commission.

Bureau of Justice statistics indicated that in 1996, five primary sworn State police officers were employed for every ten thousand residents in Alaska. As noted above, the ratio in the southern Kenai Peninsula area is 3.2 troopers per ten thousand residents. The 1996 ratio of State troopers in Alaska is estimated to be 56.3% greater than the current ratio in the southern Kenai Peninsula.

Lieutenant Bowman of the Troopers said that annexation could reasonably be expected to facilitate faster police service to the annexed area, make more marked units visible with greater frequency in the annexed area, and thus be beneficial to delivery of law enforcement in the Homer area.

With its greater commercial development and more concentrated residential development, the greatest need for expanded police service exists in the 4.58 square miles approved for annexation by the Commission.

It is reasonably assumed that residents of the territory petitioned for annexation generally make use of City facilities and services such as the library, parks and recreation, and ports and harbors.

No extraterritorial powers of adjacent municipalities constitute an impediment to annexation by the City of Homer.

In sum, there is a clear need for city services in the 4.58 square mile area approved for annexation by the Commission. That area includes the 3.9 square miles recommended for annexation by DCED and the additional nine parcels added by the Commission. The need for city services in the remnant territory is markedly less. Thus, the standard set out in 3 AAC 110.090(a) is satisfied with respect to the 4.58 square mile area approved for annexation. The need for city government in the remnant territory, while not *de minimus*, generally exists to a noticeably lesser degree, particularly with respect to water and sewer utilities, land use regulation, and police service.

M. Balanced Best Interests

3 AAC 110.140 provides that the Commission may approve annexation to the City of Homer only if it is demonstrated that the boundary change is in the best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation.⁴³

⁴³ 3 AAC 110.140 provides as follows:

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

- (1) territory is an enclave surrounded by the annexing city;
- (2) 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;
- (3) 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;
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without 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;

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DCED's analysis and conclusions regarding this standard are set out on pages 332 – 346 of its Preliminary Report.

No part of the territory proposed for annexation is an enclave. However, approval of the City of Homer's annexation proposal would effectively render the area within the corporate boundaries of the City of Kachemak an enclave within the boundaries of the City of Homer. The Commission views the prospect of altering the boundaries of the City of Homer in a manner that would create an enclave – particularly one encompassing another entire city government – to be inappropriate. Such a boundary configuration would contravene the fundamental constitutional policy against proliferation of local governmental units. It would also be counter to general and long-standing principles relating to the creation and alteration of municipal boundaries.⁴⁴

The degree to which ground water and surface water is contaminated or threatened by contamination as a consequence of conditions existing or developing in the area proposed for annexation is open to argument. However, DEC has advised the Commission in prior proceedings that, generally, significant public health risks may arise in

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(5) 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; and

(6) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

⁴⁴ Only two of Alaska's 162 municipal governments have enclaves. Those are the City of Palmer and the Haines Borough. The Commission and DCED have expressed public policy concerns about the existence of such enclaves in prior proceedings involving both of those governments. Moreover, the Commission has denied boundary proposals for other municipal governments that would have created enclaves.

areas of concentrated development that lack sewer and water utilities.

Given the potential for serious contamination, it is evident that the City of Homer and portions of the area proposed for annexation, particularly the 4.58 square miles approved for annexation by the Commission, have a mutual interest in addressing water and sewer utility matters. The 4.58 square mile area generally has more concentrated development, smaller parcels, and greater population density compared to the remainder of the territory petitioned for annexation. Annexation of the 4.58 square miles in question would enable the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory petitioned for annexation.

As noted previously, substantial commercial growth of the Homer community has occurred beyond the City of Homer's now-obsolete jurisdictional boundaries. This is particularly the case in Millers Landing and along the Sterling Highway corridor in the 4.58 square miles approved for annexation. Sales taxes are an especially significant element of the City of Homer's ability to fund essential services. The City of Homer's sales tax generates nearly three times more revenue than its property tax.

Unless its boundaries are expanded, the City of Homer will likely face the prospect of continued long-term erosion of its tax base as further commercial and residential development occurs adjacent to the City's present boundaries. The Petitioner's contention that the City of Homer delivers a range of services to residents in all or portions of the territory proposed for annexation is valid, particularly with respect to the 4.58 square miles approved for annexation by the Commission. Examples include fire protection and emergency medical service, jail, emergency dispatch services, back up to Alaska State Troopers, animal control, port and harbor services, economic development, parks, city roads, and public library.

Those who regularly patronize commercial establishments within the existing boundaries of the City of Homer contribute to the City of Homer's sales tax revenues. Moreover, citizens in the territory proposed for annexation contribute in other ways, such as donating their services to the City of Homer fire department, animal control,

museum, and library. Notwithstanding, the City's argument about the lack of commensurate property tax contributions is legitimate. Tax inequality is evident in the status quo and annexation would be instrumental in relieving it.

Alternatives such as (1) new or higher user fees for City services, (2) transferring powers from the City of Homer to Kenai Peninsula Borough service areas, and (3) raising the City sales taxes are not viable alternatives.

The City of Homer currently imposes user fees in the traditional areas of water utilities, sewer utilities, boat harbor, and port. Imposing new user fees for services such as fire protection, emergency medical service, police service, or libraries is not considered practical or equitable. User fees in those areas are non-traditional among local governments in Alaska. User fees, by definition, are not taxes. They are voluntary and not comprehensive in scope. It is simply not realistic, for example, to suggest that the City of Homer would deny fire protection service or emergency medical service to any resident of Millers Landing in need of such services because they were not a "subscriber" to fire and emergency medical services. Neither is it realistic to suggest that the City would deny emergency backup to the Alaska State Troopers when called upon to assist in any portion of the territory proposed for annexation.

Moreover, the prospect of imposing user fees for certain fundamental services is widely criticized from a public policy standpoint because such would require those who earn less to utilize a greater percentage of their disposable income for the library, fire protection, police, and emergency medical services. Further, in many cases, user fees that cover both operating and capital costs would have to be greater than patrons would be willing to pay. Lastly, user fees would add to the City's operating costs. In contrast, the Kenai Peninsula Borough bears the cost of collecting sales taxes and property taxes levied by the City of Homer. The Borough remits the entire proceeds of taxes levied by the City of Homer to the City of Homer without any charge.

The alternative of transferring powers from the City of Homer to the Kenai Peninsula Borough for operation in service areas raises the same fundamental legal and policy issues that were addressed previously.

Moreover, the Kenai Peninsula Borough would be compelled to levy taxes in the service area to support new services. For example, the Borough recently imposed a 1.75 mill property tax to support the newly created Kachemak Emergency Service Area. As a result of that levy, the property tax differential between the City of Homer and the territory proposed for annexation has narrowed considerably.

It is conceivable that service areas could proliferate to the extent that overall property tax rates in those service areas would exceed the rates in the City of Homer. For example, in Kodiak, borough service areas have proliferated around the corporate limits of the City of Kodiak. Many residents of the area outside the City of Kodiak now pay higher property taxes for fewer services than their counterparts within the City of Kodiak. Additionally, rates charged for water and sewer utility services in the areas adjoining the City of Kodiak are 25% higher than they are within the City of Kodiak.

Increasing the City of Homer sales tax rate does not appear to be a practical and equitable alternative for the City over the long-term. Such could prove counterproductive since it might provide an incentive for businesses to locate immediately outside City boundaries to achieve a competitive advantage.

There have been several instances when the Commission has approved annexations, in large part, to address shifting tax bases. For example, the Commission approved the annexation of 6.5 square miles to the City of Haines that took effect in March 1999. The Commission approved that annexation, partly, to respond to concerns by the City of Haines that its property and sales tax bases were being eroded. The Commission noted as follows: (LBC decisional statement regarding annexation to the City of Haines, page 5) (Emphasis added)

. . . it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face

a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation is the most appropriate means to ensure that the City of Homer acquires both the jurisdiction and enhanced financial ability necessary to deliver services that benefit the residents of both the City and the outlying areas. Empowering the City of Homer by expanding its jurisdiction is in the interests of the residents and property owners of the City as well as those in the territory proposed for annexation, particularly Millers Landing and the urban area. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. Such could degrade the quantity and quality of essential services available to a substantial number of residents of the territory proposed for annexation and place greater burdens on the Kenai Peninsula Borough and the State of Alaska.

As noted in earlier, the record clearly demonstrates that the territory petitioned for annexation, particularly the 4.58 square miles approved for annexation, has undergone substantial commercial and residential growth and that the area is reasonably anticipated to continue to grow and develop in the foreseeable future. Unless annexation of the 4.58 square miles approved by the Commission occurs, both the City and the area approved for annexation could be negatively affected because, absent planning, development detrimental to both areas will occur.

The record demonstrates that the area petitioned for annexation is populated to the degree that if it were a separate city, it would rank as the twentieth most-populous city in Alaska. However, development patterns in the 4.58 square miles approved for annexation generally demonstrate much higher population densities and more commercial activities than the remnant area.

The record does not conclusively demonstrate that the territory proposed for annexation is extensively inhabited by persons who are not landowners.

Extending the City of Homer's jurisdiction to the 4.58 square miles approved for annexation would benefit the Kenai Peninsula Borough and the State of Alaska by relieving each of responsibility for the delivery of services assumed by the City. For the Borough, annexation would shift planning related functions, fire protection, emergency medical services, and responsibility for road maintenance within any territory added to the City of Homer. Annexation would also relieve the Alaska State Troopers of primary responsibility for serving those areas. The jurisdiction of Alaska State Troopers is, of course, statewide. Nevertheless, annexation of the 4.58 square miles approved for annexation would shift additional responsibility for local law enforcement duties in those areas to the City of Homer and to a limited extent relieve some of the burden of service delivery currently borne by the Alaska State Troopers.

As a fundamental public policy, empowerment of qualified local governments to assume greater responsibilities is appropriate when such local governments exhibit the willingness and capability to do so.

Actions taken by the Homer City government can have considerable effect (or the potential for such) upon residents beyond the corporate boundaries of the City. For example, the City of Homer has the authority to "restrict, interrupt, decrease, or terminate the sale of water for export or consumption outside the certificated service area whenever the city council determines it is in the best interest of the city to do so." There are a number of other aspects of the daily lives of residents in the territory proposed for annexation that are affected by decisions rendered by elected and appointed officials of the City of Homer (e.g., port and harbor tariffs, public safety issues, maintenance of streets where people shop, go to work, attend schools and churches, et cetera). Enfranchisement of those so directly affected by the City of Homer would be ideal.

Moreover, it is reasonably assumed that residents of the territory proposed for annexation generally shop at businesses within the existing boundaries of the City of Homer. Those individuals pay a

3.5% sales tax to the City of Homer on all taxable purchases made within the corporate boundaries of the City of Homer. However, they have no formal role in determining how those monies will be spent. In an informal sense, such amounts to "taxation without representation." Ideally, regularly recurring sales tax contributions should reasonably be reflected by direct participation of the taxpayers in the body politic of the City of Homer.

It would be preferable to enfranchise citizens of the territory proposed for annexation in order to provide them with a formal voice in the affairs of a local government that generally affects their daily lives.

If the City of Homer's boundaries are not adjusted, the demand for establishment of additional local governmental units (cities or borough service areas) to provide services in the territory proposed for annexation will likely grow as the area's population and level of development increases. One new borough service area encompassing most of the territory proposed for annexation was created during the course of this annexation proceeding. Additionally, DCED fielded an inquiry from one of the respondents in this proceeding about the prospects of forming a "City of Diamond Ridge."

Certain aspects of the foregoing analysis suggest that the balanced best interest standard would be satisfied if all 25.64 square miles were annexed to the City of Homer. For example, doing so would extend City of Homer citizenship to residents of an area who are part of the community of Homer, who already rely on the City of Homer for a number of essential services, and who are otherwise significantly affected by that local government. It would also address, in a more comprehensive fashion, concerns over the provision of services without commensurate local tax contributions.

However, a number of other aspects relating to the standard at issue weigh against expanding the boundaries to encompass all 25.64 square miles. For example, approving the City's annexation proposal would create an enclave encompassing another entire municipal government. Further, concerns over health, safety, and general welfare are more evident in the 4.58 square miles approved for annexation. Additionally, the threat of erosion of the City of Homer's sales tax base is limited largely to Millers Landing and the Sterling Highway

corridor within the territory approved for annexation by the Commission.

The Commission concludes that the balanced best interest standard is satisfied in the most favorable manner *at this time* by limiting the expansion of the City of Homer's boundaries to the 4.58 square miles approved for annexation by the Commission. Such an annexation would clearly meet the requirements set out in 3 AAC 110.140.

N. Best Interests of the State

AS 29.06.040(a) provides that the Local Boundary Commission consider the best interests of the state when it acts on any proposed municipal boundary change.⁴⁵ DCED's analysis and conclusions regarding this standard are set out on pages 346 – 348 of its Preliminary Report.

This recently enacted statutory standard and the preceding long-standing regulatory standard are essentially redundant. The redundancy will be eliminated once regulations adopted by the Commission earlier this year take effect. Nonetheless, the Commission is compelled to address this standard separately.

The previous findings and conclusions reached with respect to the standard set out in 3 AAC 110.140 apply equally to the best interests of the best interests of the state standard set out in AS 29.06.040(a).

Moreover, maximum local self-government is fostered by the Alaska Constitution. Local self-government is often enhanced when it is most proximate to the constituents of the government. Decisions are now being made in Soldotna, the seat of the Kenai Peninsula Borough, that would be better made in Homer, particularly with respect to such

⁴⁵ AS 29.06.040(a) provides that, "The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change.

fundamental local services such as land use planning, fire protection, emergency medical services and road maintenance.

Moreover, annexation would allow a favorable response to requests from John Fowler, Joseph L. Lester, and Des Lester who seek inclusion of their respective properties within the City of Homer's jurisdiction. Without annexation of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties would not be contiguous to the corporate boundaries of the City of Homer. For reasons outlined previously in this Statement of Decision, the Commission would be disinclined to approve annexation of non-contiguous territory to the City of Homer.

Based on the foregoing, the Commission concludes that the "best interests of the state" as set out in AS 29.06.040(a) are served to the greatest degree if the expansion of the boundaries of the City of Homer is limited *at this time* to the 4.58 square miles approved for annexation.

**Section III
Order of the Commission**

Based on the findings and conclusions set out in Section II of this Statement of Decision, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied (and are satisfied to the greatest degree) by the annexation to the City of Homer of the 4.58 square miles approved by the Local Boundary Commission. Accordingly, the Commission hereby amends the Petition to limit the territory approved for annexation of the following two areas described below.

Area Number One

Beginning at the Meander Corner of Sections 22 and 23, Township 6 South, Range 14 West, Seward Meridian;

thence Westerly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 22;

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thence Northwesterly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 16;

thence North 2326 ft, more or less, along the line common to Sections 15 and 16 to the N 1/16 corner of Sections 15 and 16;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 14 and 15;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 13 and 14;

thence East 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 13;

thence North 1320 ft, more or less, along the quarter section line to the W 1/16 corner of Sections 12 and 13;

thence East 3960 ft, more or less, along the line common to Sections 12 and 13 to the common corner of Sections 12 and 13, Township 6 South, Range 14 West, and Sections 7 and 18, Township 6 South, Range 13 West;

thence North 100.39 ft, along the line common to said Sections 7 and 12 to the point intersecting with the North edge of the Right-of-Way of Diamond Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Skyline Drive to the west edge of its intersection with Crossman Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Crossman Ridge Road to the common corner of Lot 12 and Lot 13 Diamond Ridge Estates as per Plat No. 71-1238 HRD;

thence North 1220 ft, more or less, along the quarter section line to the E 1/16 corner of Sections 6 and 7;

thence North 990 ft, more or less, along the quarter section line to the C-N-S-SE 1/256 corner of Section 6;

thence East 1320 ft, more or less, to the N-S-S 1/256 corner of Sections 5 and 6;

thence South 330 ft, more or less, to the S-S 1/64 corner of Sections 5 and 6;

thence East 1320 ft, more or less, to the C-S-SW 1/64 corner of Section 5;

thence South 330 ft, more or less, along the quarter section line to the C-S-S-SW 1/256 corner of Section 5;

thence East 1320 ft, more or less, to the S-S-CS 1/64 corner of Section 5;

thence North 330 ft, more or less, along the N-S centerline of Section 5 to the S-CS 1/64 corner of Section 5;

thence East 660 ft, more or less, to the SW-SE 1/64 corner of Section 5;

thence South 660 ft, more or less, to the W-E 1/64 corner of Section 5;

thence West 660 ft, more or less, along the line common to Sections 5 and 8 to the 1/4 corner of Section 5 and Section 8;

thence South 660 ft, more or less, along the N-S centerline of Section 8 to the N-CN 1/64 corner of Section 8;

thence West 1320 ft, more or less, to the C-N-NW 1/64 corner of Section 8;

thence North 330 ft, more or less, to the C-N-N-NW 1/256 corner of Section 8;

thence West 1320 ft, more or less, to the N-N-N 1/256 corner of Sections 7 and 8;

thence South 3630 ft, more or less, along the line common to Sections 7 and 8 to the S 1/16 corner of Sections 7 and 8;

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thence East 3363 ft, more or less, along the quarter section line to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence Northeasterly along the North edge of the Right-of-Way of Skyline Drive to the Southwest corner of Lot 14 Block 4 Bayview Gardens Subdivision Addition 1 as per Plat No. 76-104 HRD;

thence North 1049 ft, more or less, along the quarter section line to the CE 1/16 corner of Section 8;

thence East 1320 ft, more or less, along the E-W centerline of Section 8 to the 1/4 corner of Sections 8 and 9;

thence North 2640 ft, more or less, along the line common to Sections 8 and 9 to the common corner of Sections 4, 5, 8, and 9;

thence East 1320 ft, more or less, along the line common to Sections 4 and 9 to the W 1/16 corner of Sections 4 and 9;

thence South 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 9;

thence East 3960 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 9 and 10;

thence continuing East 138 ft, more or less, along the matching quarter section line in Section 10 to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence in a Northeasterly direction along the North edge of the Right-of-Way of Skyline Drive to the East Edge of its intersection with the half Right-of-Way of Woodman Lane, said point of intersection also being on the N-S quarter section line;

thence South 1062 ft, more or less, along the quarter section line to the NW 1/16 Corner of Section 10;

thence East 1320 ft along the quarter section line to the CN 1/16 corner of Section 10

thence East 330 ft, more or less, along the quarter section line to the C-W-E-NE 1/256 corner of Section 10, said corner being common with the Southwest corner of the Fowler Tract;

thence North 1320 ft, more or less, to the W-W-E 1/256 corner of Sections 3 and 10;

thence East 2310 ft, more or less, to the common corner of Sections 2, 3, 10, and 11, said corner being Corner 5 of Kachemak City;

thence South 2635.5 ft along the line common to Sections 10 and 11 to the 1/4 corner of Sections 10 and 11, said line being common with the Corporate Limits of Kachemak City;

thence West 2639.7 ft along the E-W Centerline of Section 10 to the Center 1/4 corner of Section 10, said E-W Centerline being common with the Corporate Limits of Kachemak City;

thence South along the N-S Centerline of Section 10 to the intersection point with the center of the Right-of-Way of East End Road, said N-S Centerline being common with the Corporate Limits of Kachemak City and said intersection point being the 1/4 corner of Sections 10 and 15 and a point on the northerly boundary of the Corporate Limits of the City of Homer;

thence West 2640 ft, more or less, along the line common to Sections 10 and 15 to the common corner of Sections 9, 10, 15, and 16, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 9 and 16 to the common corner of Sections 8, 9, 16, and 17, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 8 and 17 to the common corner of Sections 7, 8, 17, and 18, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 17 and 18 to the 1/4 corner of Section 17 and 18, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 18 to the 1/4 corner of Section 18, Township 6 South, Range 13 West, and Section 13, Township 6 South, Range 14 West, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 13 to the 1/4 corner of Section 13 and 14, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 14 to the 1/4 corner of Section 14 and 15, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 14 and 15 to the common corner of Sections 14, 15, 22, and 23, said line being common with the Corporate Limits of the City of Homer;

thence South 554 ft, more or less, along the line common to Sections 22 and 23 to the Meander Corner of Sections 22 and 23, said line being common with the Corporate Limits of the City of Homer and said corner the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

Area Number Two

Beginning at the Meander Corner of Sections 11 and 12, Township 6 South, Range 13 West, Seward Meridian, said corner being Corner 10 of the Corporate Limits of Kachemak City;

thence Southwesterly along the 1917 GLO mean high water line of Kachemak Bay to the meander corner of Sections 11 and 14;

thence West along the line common to Sections 11 and 14 the common corner of Sections 10, 11, 14, and 15, said line being common with the Corporate Limits of the City of Homer;

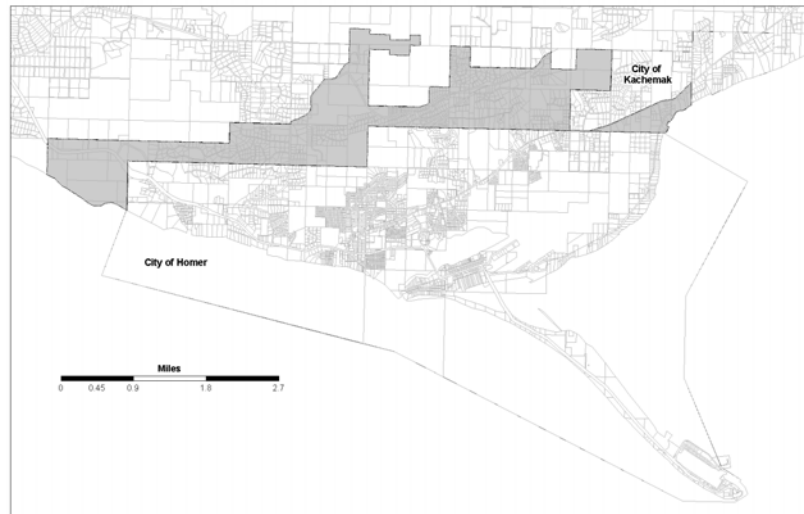
thence West along the line common to Sections 10 and 15 to the point of intersection with the centerline of the Right-of-Way of East End Road, said line being common with the Corporate Limits of the City of Homer;

thence Northeasterly along the centerline of the Right-of-Way of East End Road to its intersection with the line common to Sections 11 and 12, said portion of centerline being common with the Corporate Limits of Kachemak City and said point of intersection being Corner 9 of the Corporate Limits of Kachemak City;

thence South along the line common to Sections 11 and 12 to the Meander Corner of Sections 11 and 12, being the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

A map of the 4.58 square miles described above follows.



The Commission stipulates that, to the extent the 4.58 square miles approved for annexation to the City of Homer lies within the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area, the annexed territory shall, under Article X, § 12 of the Constitution of the State of Alaska and other principles of law, be detached from those borough service areas as a result of annexation of the territory to the City of Homer.

The Commission will submit a recommendation for the annexation of the 4.58 square miles in question to the Second Session of the Twenty-Second Alaska Legislature under Article X, Section 12 of the Constitution of the State of Alaska.

Approved in writing this 26th day of December 2001.

LOCAL BOUNDARY COMMISSION

Signed: Kevin Waring, Chairman

Attested by: Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within twenty days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within thirty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the Petitioner or any respondents opposing the reconsideration will be allotted ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.