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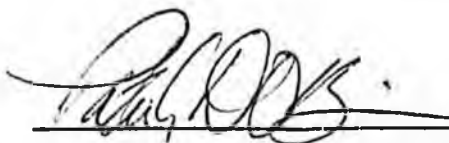
10498 SENATE COMMUNITY & REGIONAL AFFAIRS 393



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LOCAL BOUNDARY COMMISSION REPORT/HOMER
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(FILE 1 OF 2)

LOCAL BOUNDARY COMMISSION REPORT/HOMER
ANNEXATION, 2-07-02 AND 2-12-02
(FILE 2 OF 2)

KIVALINA - JOINT MEETING WITH SEANTE HESS,
4-03-02

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SB 4

SB 8

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Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska State Legislature

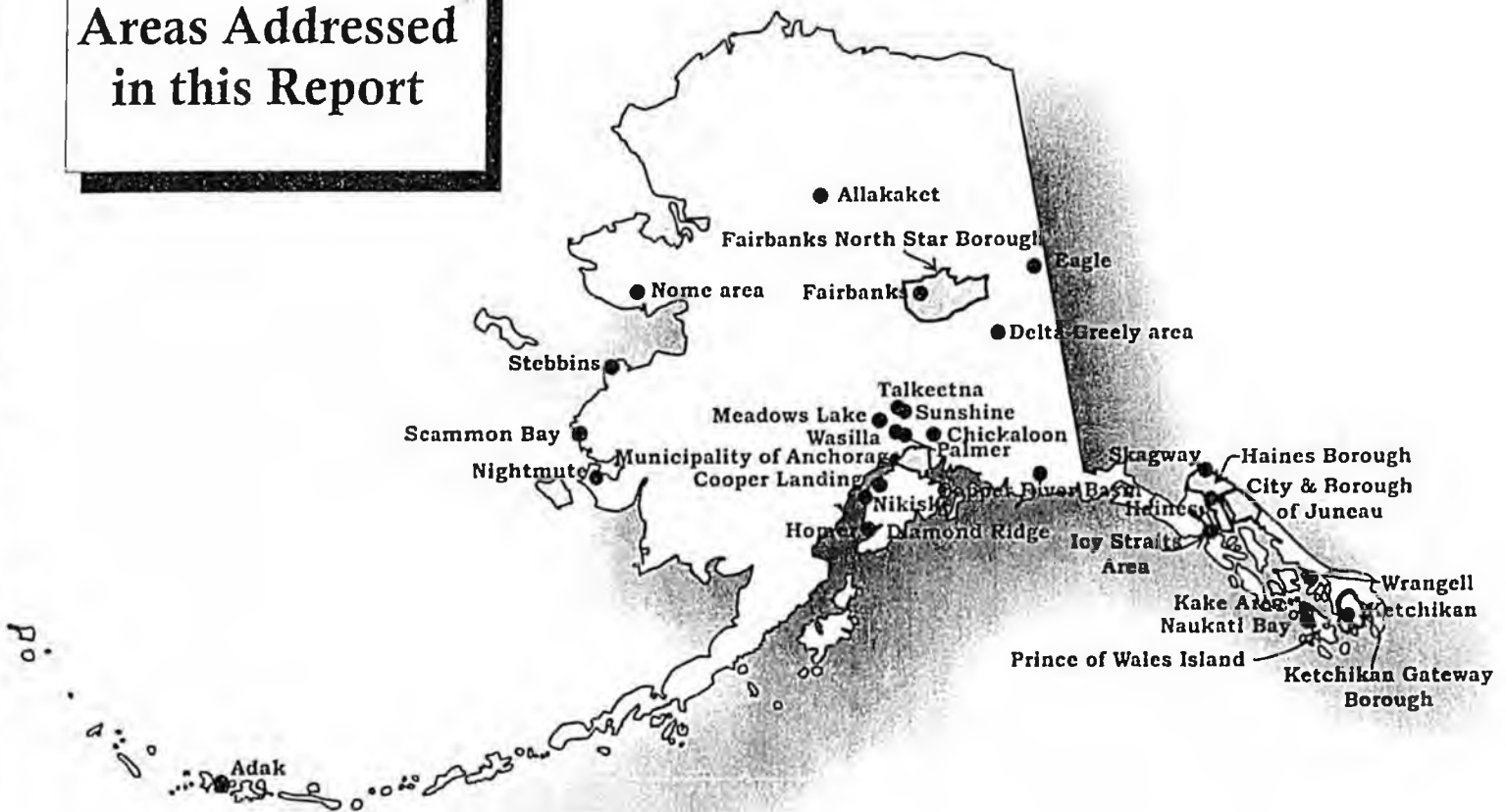
January 23, 2002

LBC Annual Report

Joint House and Senate C&RA Committee
February 7, 2002

Senator Torqerson

**Areas Addressed
in this Report**



Kevin Waring, Chairperson
Vacant, 1st Judicial District
Vacant, 2nd Judicial District
Allan Tesche, 3rd Judicial District
Ardith Lynch, 4th Judicial District



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This report is also available on the Local Boundary Commission's website at:

[Http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm](http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm)

Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska Legislature

January 23, 2002

Local Boundary Commission

Kevin Waring, Chairperson
Vacant, First Judicial District
Vacant, Second Judicial District
Allan Tesche, Third Judicial District
Ardith Lynch, Fourth Judicial District



Tony Knowles, Governor

Report prepared with assistance from:

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Message from the Chairperson

January 23, 2002

On behalf of the members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-Second Alaska State Legislature.

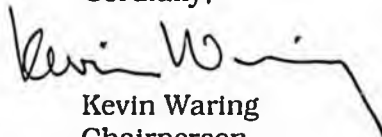
Chapter 1 provides background information concerning the Local Boundary Commission. Chapter 2 describes activities of the Commission and its staff during 2001. Chapter 2 also describes a number of proposals currently under consideration by municipalities and voters throughout Alaska. Chapter 3 contains discussion of vital public policy issues of particular interest to the Commission. These include the following matters

- Concerns regarding substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Alaska House of Representatives to adopt *CSSB 48(FIN) am* to reform State law governing borough incorporation and annexation of areas that are ready and capable of operating boroughs.
- Concerns over ambiguity regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.

Under separate cover, the Commission has presented to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives a formal recommendation by the Local Boundary Commission for annexation of approximately 4.58 square miles to the City of Homer. Under Article X, § 12 of Alaska's Constitution, the Commission's recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission's recommendation by adopting a joint resolution in both houses within forty-five days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,


Kevin Waring
Chairperson

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1

Background and Procedures

This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & Economic Development (DCED). Details of the procedures used by the Commission are also provided.

Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

- ◆ incorporation of cities and boroughs;
- ◆ annexation to cities and boroughs;
- ◆ detachment from cities and boroughs;
- ◆ dissolution of cities and boroughs;

- ◆ merger of cities and boroughs;
- ◆ consolidation of cities and boroughs; and
- ◆ reclassification of cities.¹

The Local Boundary Commission was established under Alaska's Constitution to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal corporations. In the words of the Alaska Supreme Court:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary com-

mission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

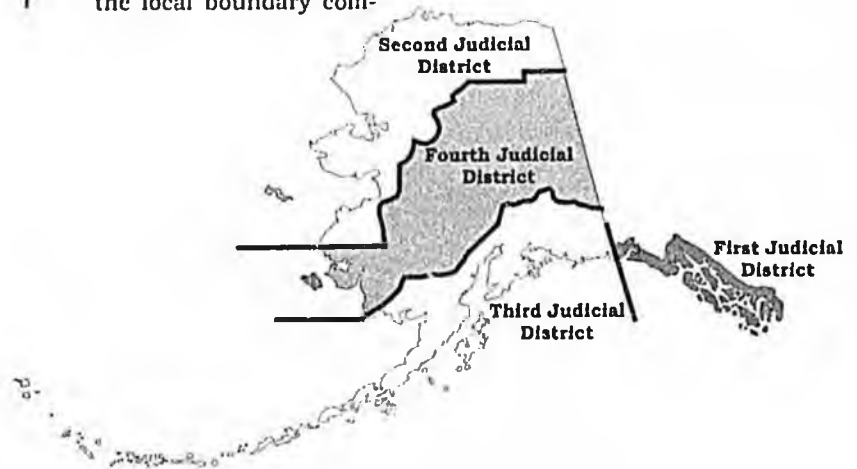
...lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.²

Among the 130 or so State Boards and commissions, only the Local Boundary Commission and four others have origins in Alaska's Constitution.³

¹ See AS 29.04, AS 29.05, AS 29.06, and AS 44.33.

² *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

³ The Local Boundary Commission was established pursuant to Article X, Section 12 of the Constitution of the State of Alaska and AS 44.33.810. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission of Judicial Conduct, and Redistricting Board.



Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. In 1974 and again in 1993, the Alaska Supreme Court remarked that:

"A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy ... The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."⁴

Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership."⁵

Information about current Commissioners follows.

Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner



Waring was one of the original division

directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10,



1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's current term on the Commission expires January 31, 2002.

Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area.



She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her current term on the Commission expires December 21, 2004.

⁴ Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232, 234 (Alaska 1993).

⁵ AS 39.05.060

AS 44.33.020(4)

(Vacant Seat) The seat from the First Judicial District is currently vacant. Until recently, Kathleen S. Wasserman, a resident of Pelican, served from the First Judicial District as the Vice-Chairperson of the Commission. She was appointed to the Commission on September 14, 1995 and reappointed in 1996 and 2001. Ms. Wasserman serves as Mayor of the City of Pelican. In the past, Ms. Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaii. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Ms. Wasserman resigned from the Commission on January 3, 2002.

(Vacant Seat) The seat from the Second Judicial District is currently vacant. Until recently, Nancy Galstad served on the Commission from the Second Judicial District. Ms. Galstad resigned from the Commission last year when she moved from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed in 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad recently served as the Manager of the City of Kotzebue. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and served as Vice Chair of the Alaska Municipal League Joint Insurance

Association. She also served as a member of the State's Task Force on Education Funding in 1995.

Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Division of Community and Business Development (DCBD), provides staff to the Commission.⁶

Commission staff provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. Types of assistance include:

- ◆ conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- ◆ conducting informational meetings;
- ◆ providing technical support during Commission hearings;
- ◆ drafting decisional statements;
- ◆ implementing decisions of the Commission;
- ◆ certifying actions; and
- ◆ maintaining incorporation and boundary records for each of Alaska's 162 existing municipal governments.

As required by law, staff analyzes formal petitions filed with the Commission and prepares reports conveying



DCED staff at a recent public information meeting.

DCED's recommendations for action by the Commission.⁷ DCED staff also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations, and reclassifications. The Commission and DCED are independent of one another with respect to policy matters. For example, the Commission is not bound to follow the recommendations that DCED is required by law to provide to the Commission.

Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the

Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

Preparation and Filing of the Petition. DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals.

Once a formal petition is prepared, it is submitted to DCED for technical review. If the petition contains all the information required by law, DCED accepts the petition for filing.

Public Notice and Public Review. Once a petition is accepted for filing, extensive public notice is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or op-



Materials filed for LBC review and consideration during a recent annexation proceeding.

posing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

Analysis. Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and DCED may conduct informational meetings. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and also notes any changes to DCED's recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

Commission Review of Materials and Public Hearing. Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED re-

⁷ See AS 29.04, AS 29.05, and AS 29.06.



Local Boundary Commission listening to testimony at a recent hearing.

ports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing. The Commission may take any one of the following actions:

- ◆ approve the petition as presented;
- ◆ amend the petition (e.g., expand or contract the proposed boundaries);

- ◆ impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- ◆ deny the petition.

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents, and others who request it. At that point, the

decision becomes final, but is subject to reconsideration. Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Commission does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation. If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must also receive favorable review under the Federal Voting Rights Act. DCED provides assistance with Voting Rights Act matters.

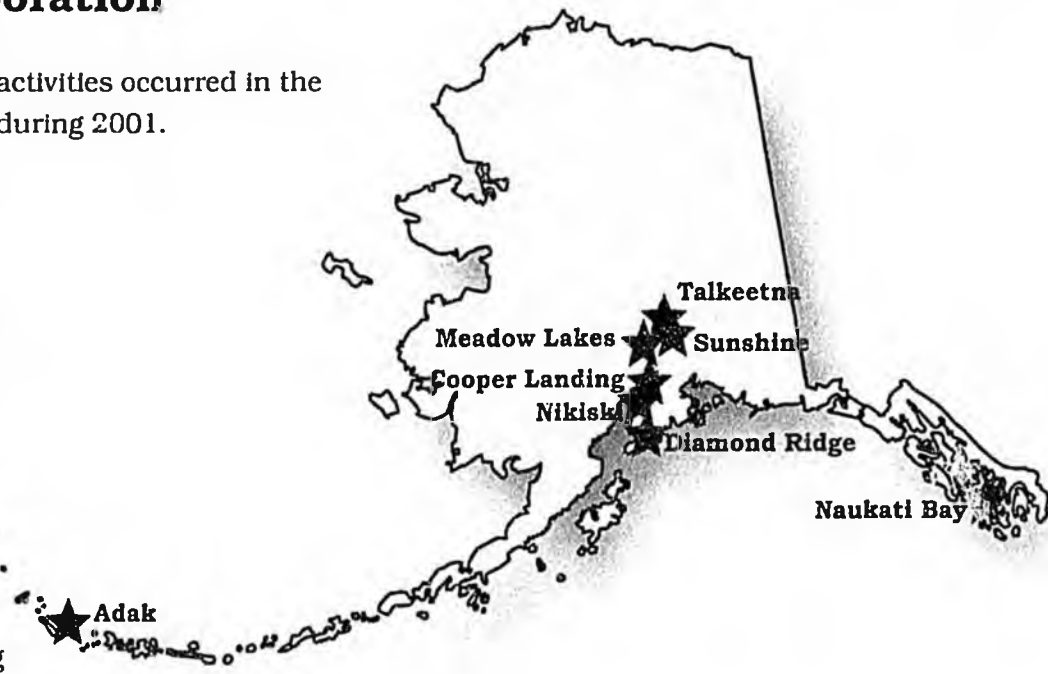


Activities & Developments During 2001

City Incorporation

City incorporation activities occurred in the following localities during 2001.

- ◆ Talkeetna
- ◆ Adak
- ◆ Meadow Lakes
- ◆ Naukati Bay
- ◆ Nikiski
- ◆ Sunshine
- ◆ Diamond Ridge
- ◆ Cooper Landing

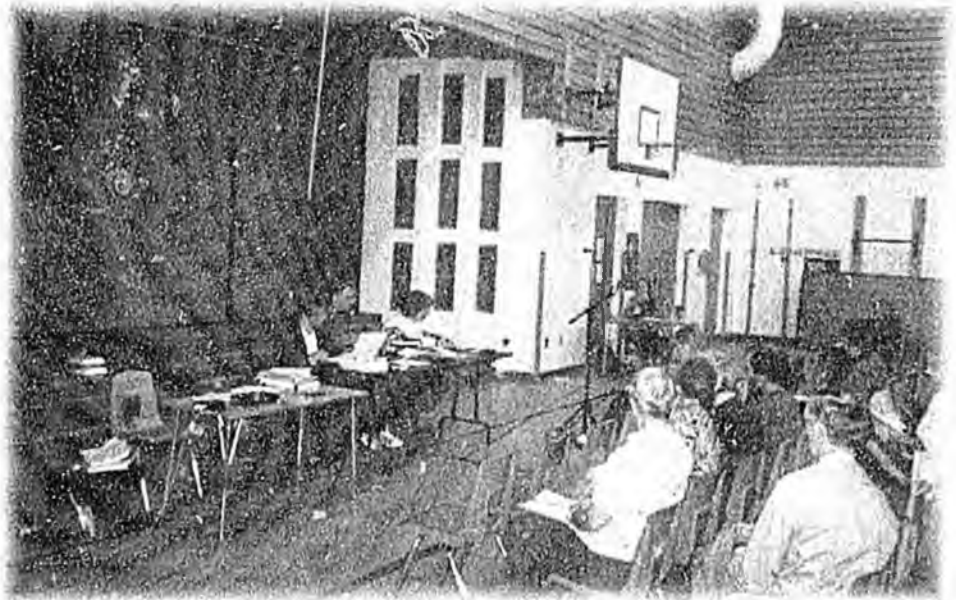


Talkeetna. The Local Boundary Commission conducted a public hearing on the proposal to incorporate the City of Talkeetna as a home rule city at the Talkeetna Elementary School on Saturday, August 25, 2001. The petition-

ers' representative, a representative of the respondent Matanuska-Susitna Borough, and members of the public provided oral comments concerning the city incorporation proposal.

At the conclusion of the public hearing, the Commission convened a decisional session. During the session, the Commission voted to approve the amended petition, subject to refinement of the proposed

Home Rule Charter by the petitioners to ensure that it complied with all provisions of law. The motion adopted by the Commission required the proposed Charter to be revised and approved by DCED no later than October 25, 2001.



LBC holding the Talkeetna incorporation hearing in August 2001.

The Commission met by teleconference on October 25, 2001 and approved the amended petition.

The Division of Elections subsequently ordered the election on the incorporation proposal to be conducted by mail on March 19, 2002. At the incorporation election, voters will consider the following three propositions:

Proposition One: Shall Talkeetna be incorporated as a Home Rule City?

Proposition Two: Shall the City of Talkeetna be authorized to levy the particular sales tax outlined in Proposition Number Three that receives the most votes cast at this election? *(Note: Approval of this proposition by a majority of*

the votes cast on this proposition is required as a condition of incorporation.)

Proposition Three: If the City of Talkeetna is authorized to levy a sales tax pursuant to Proposition Number Two, which of the following sales taxes shall be levied? (Choose One)

(a) A four percent sales tax to be levied from May 1 to September 30 annually, with the limitation that the tax not exceed \$10 on any single sales transaction.

(b) A two percent sales tax to be levied year-round, with the limitation that the tax not exceed \$10 on any single sales transaction.

In addition, the ballot shall provide for election of a mayor and six city council members.

Adak. The Local Boundary Commission had approved a proposal to incorporate the second class City of Adak in November 2000. The State Division of Elections conducted an election for incorporation of the City of Adak on April 3, 2001 by mail. Voters approved city incorporation by a margin of 61-6. Voters also authorized the levy of a 3% city sales tax and a 2% fuel transfer tax. The City of Adak was incorporated on April 20, 2001.

Meadow Lakes. At the request of the Meadow Lakes community council, DCED staff participated in a February 14, 2001 public meeting of the Meadow Lakes Community Council regarding city in-

corporation. The standards and procedures for city incorporation and questions regarding city annexation were addressed at the meeting.

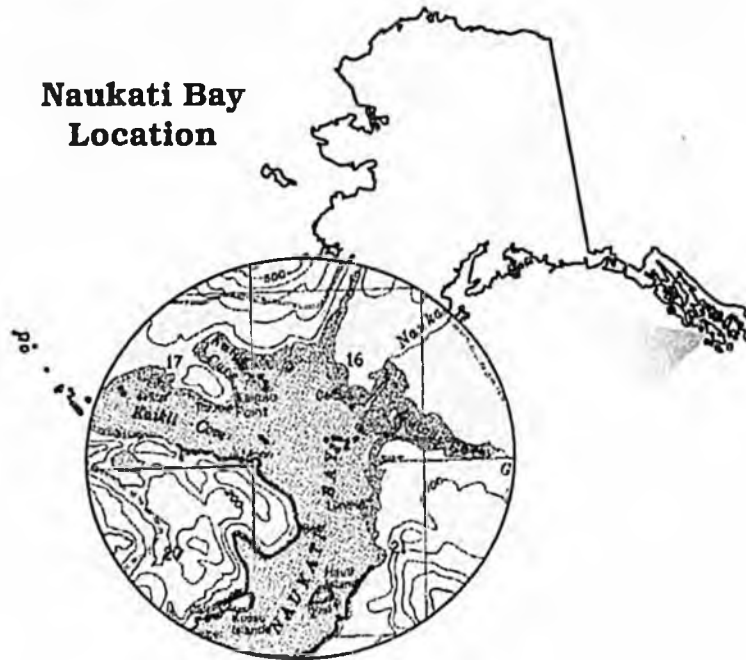
Naukatl Bay. In March 2001, a resident of Naukatl Bay requested and was provided with petition forms for second class city incorporation and background materials. Naukatl Bay residents have been exploring city incorporation for more than one year.

Nikiski. Nikiski residents held a community meeting regarding incorporation of a home rule City of Nikiski during November 2000. At that meeting, Nikiski residents discussed reviving a proposal advanced a decade ago that sought to incorporate a 2,113 square mile city encompassing greater Nikiski, Salamatof, and Tyonek.

On December 14, 2000, forms for petitioning for incorporation of a home rule city in an organized borough were provided to an attorney representing the group that was interested in incorporation.

At a February 1, 2001 meeting, Nikiski residents discussed three potential city boundary options. The largest encompassed 5,400 square miles, including greater Nikiski, a large portion of Cook Inlet, and Ty-

Naukatl Bay Location



onek. The second option included 503 square miles. The smallest option identified encompassed 72 square miles.

Sunshine. In December 2001, a resident of Sunshine indicated that the community has continued to examine the merits of city incorporation and that a Sunshine Chamber of Commerce inquiry showed that approximately 82% of Sunshine residents favored establishing a second class city in Sunshine. Three locally initiated Sunshine community informational meetings regarding city incorporation have occurred and another has been scheduled for March 24, 2002.

Diamond Ridge. In November 2001, an opponent of the proposed annexation to the City of Homer requested and

was provided with information regarding incorporation of a second class city. Residents of the Diamond Ridge neighborhood near Homer were reportedly considering city incorporation as an alternative to annexation of the area to the City of Homer.

Cooper Landing. In December, a Cooper Landing resident requested and was provided information regarding the standards and procedures for city incorporation.

Borough Incorporation

The following eight areas of Alaska are examining issues relating to borough incorporation.

- ◆ Skagway
- ◆ Delta-Greely
- ◆ Copper River Basin
- ◆ Kake Area
- ◆ Prince of Wales Island
- ◆ Wrangell Area
- ◆ Icy Straits
- ◆ Nome
- ◆ Chickaloon



Skagway. On January 22, 2001, Skagway voters petitioned for dissolution of the City of Skagway and incorporation of a first class borough. The proposed borough boundaries are identical to those of the City of Skagway, encompassing 462 square miles and a population of 862.

On October 23, 2001, notice of the filing of the petition was published, posted, and mailed to adjacent municipalities and interested parties. The deadline for submission of public comments regarding filing of the petition was December 28, 2001.

The Commission expects to render a decision on the Skagway borough incorporation proposal during 2002.

Delta-Greely. In January 2001, DCED staff was informed of renewed interest among residents of the Delta-Greely region in borough incorporation.

On October 3, 2001, the Delta Junction City Council adopted Resolution 2002-04 authorizing the City's application for a \$30,000 grant to develop a regional government feasibility study. That resolution reads, in part:

... there has not been funding for an accurate and in-depth study done to research the feasibility and practicalities of a borough in the Delta Junction area, including which services the public might desire along with the associated costs of service delivery and

potential sources of income, and if feasible, putting the question before Delta area voters.

Copper River Basin. In June 2001, representatives of the Denali Borough met with residents of the Copper River Basin to share information regarding the borough incorporation process. In December, a local study group met and expressed intent to initiate a borough feasibility study.

Kake. In October 2001, information regarding standards and procedures for borough incorporation was provided to a Kake City Council member.

Prince of Wales Island. In October, an official of the City of Craig indicated that communities on Prince of Wales Island were seeking funding for a borough feasibility study for Prince of Wales Island. An effort was undertaken to secure funding to defray the costs associated with such a study.

Wrangell Area. In November 2001, the City of Wrangell was reportedly preparing to solicit signatures from voters to authorize the filing of a borough incorporation petition. The boundaries of the area being

considered for borough incorporation encompass 2,477 square miles. The City of Wrangell made the petition available for public review at the Wrangell Library.

Icy Straits. On February 1, 2001, DCED staff met with residents of Gustavus and officials of the City of Hoonah, City of Pelican, City of Tenakee Springs, and the Haines Borough. Matters regarding borough incorporation, borough annexation, borough apportionment, and related matters were addressed. A borough feasibility study completed several years ago was updated.

Nome. In December 2001, City of Nome staff requested and was provided with information regarding the standards and procedures for borough incorporation.

Chickaloon. Information regarding borough detachment standards, incorporation standards, and procedures was provided to a representative of Chickaloon who was purportedly contemplating a petition to detach a large portion of the eastern Matanuska-Susitna Borough and include it in a new borough with additional territory to the east. ■

City Annexation

Two proposals for annexation of territory to cities were implemented or initiated during 2001, and three others are reportedly under consideration. Annexation related activities in the following five communities are outlined in this section of the report.

- ◆ Homer
- ◆ Wasilla
- ◆ Palmer
- ◆ Allakaket
- ◆ Eagle



Homer. On March 20, 2000, the City of Homer petitioned for annexation of an estimated 25.64 square miles with a population of 2,204. The petition was accepted for filing on March 29, 2000.

Fourteen responsive briefs and 168 letters commenting on the petition were filed with DCED in June 2000. In September 2000, the City of Homer filed its Reply Brief.

In July of last year, DCED conducted public informational meetings concerning the annexation proposal. In October 2001, DCED released its 412-page preliminary report concerning the proposed annexation for public review. After considering comments on its preliminary report from 32 individuals and organizations, DCED issued its final report on the matter in November 2001.

Prior to a public hearing on the matter in Homer, the Local Boundary Commission toured the estimated 25.64 square miles by helicopter and automobile. The Commission conducted a public hearing on the proposal on December 14 - 15, 2001. Following the hearing, the Commission amended the petition and approved annexation of an estimated 4.58 square



Millers Landing portion of the area being recommended for annexation to the City of Homer.

miles subject to legislative review under the provisions of Article X, § 12 of the Constitution of the State of Alaska.

A formal recommendation under Article X, § 12 for annexation of 4.58 square miles in question has been presented under separate cover to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives. That recommendation includes details about the proceedings along with the finding and conclusions of the Commission supporting annexation of the 4.58 square miles.

Under Article X, § 12, the Commission's recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission's recommendation by adopting a joint reso-

lution in both houses within 45 days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

Wasilla. On April 10, 2001, the City of Wasilla petitioned for annexation of 32 parcels collectively comprising about 314 acres. The petition was initiated at the request of all owners of the parcels comprising the territory sought for annexation and property owners.

The territory proposed for annexation is comprised of the following seven areas:

- ◆ **Carefree Subdivision** - 22.86 acres at the intersection of the Parks Highway and Seward Meridian Parkway;



Portion of Carefree subdivision being proposed for annexation to the City of Wasilla.

- ◆ **Waiverhill / Lakebrook** - 36.13 acres near the intersection of the Parks Highway and the Palmer-Wasilla Highway;
- ◆ **Silverleaf Estates** - 114 acres at the northwest corner of the existing city boundaries at the intersection of Spruce Road and Ashford Blvd;
- ◆ **Olson Subdivision** - 4.72 acres near the intersection of the Parks Highway and Palmer Wasilla Highway;
- ◆ **Airport South** - 89.09 acres south of the Wasilla Airport;
- ◆ **Airport North** - 7.35 acres north of the Wasilla Airport; and

- ◆ **Happy Mountain** - 39.69 acres adjacent to Happy Mountain Estates.

The petition was accepted for filing on April 16, 2001. On October 25, 2001, the Local Boundary Commission approved a request from the City of Wasilla for relaxation of procedural regulations concerning the petition. The Commission expects to act on the petition early this year.

Palmer. In February 2001, a consulting firm retained by the City of Palmer issued a study analyzing "potential effects of annexing areas outside current boundaries of the City of Palmer". The report "also identifies policies the City should consider in providing municipal services be-

yond its boundaries, as well as current LBC policies that are relevant to the City's annexation policy."

The areas considered encompass approximately 12 square miles. At the direction of the Palmer City Council, the study analyzed an area that encompasses the City's sewer service area boundary and three square-miles located south of the sewer service area.

City staff subsequently indicated that a petition for annexation of an as-yet-undetermined area would likely be submitted by March 2002, for possible consideration by the Legislature in 2003.

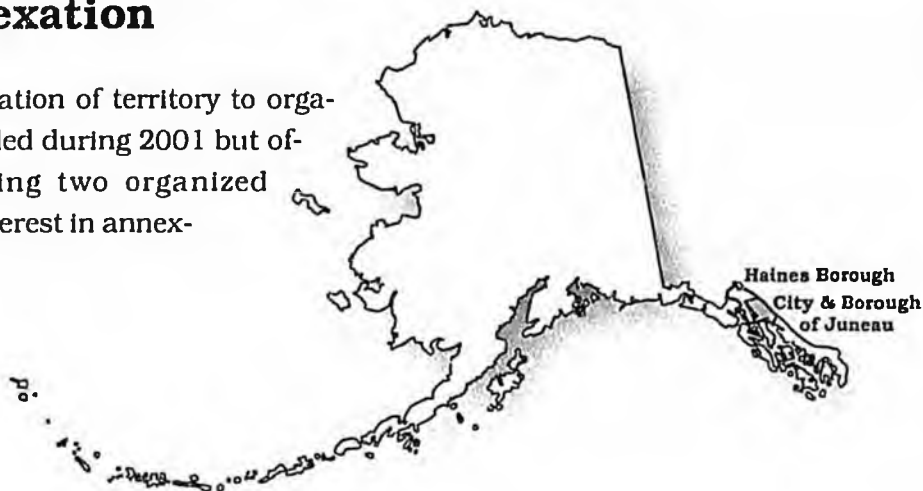
Allakaket. DCED staff provided assistance to the City of Allakaket in its efforts to develop a petition for annexation of developed areas adjacent to the existing City boundaries. The area to be considered for annexation was developed after floods that inundated the community in 1994.

Eagle. In December, the Eagle City Clerk indicated that the City is considering extending the City's boundaries. She requested and was provided with information regarding standards and procedures for annexation. ■

Borough Annexation

No petitions for annexation of territory to organized boroughs were filed during 2001 but officials of the following two organized boroughs expressed interest in annexation.

- ◆ Haines Borough
- ◆ City and Borough of Juneau



Haines Borough. A Haines Borough official requested and was provided forms and sample materials needed to petition for annexation.

Borough officials were exploring extension of the Borough's boundaries in a westerly direction to the boundaries of

the City and Borough of Yakutat (thereby encompassing Gustavus) and in a northeasterly direction (thereby encompassing Skagway).

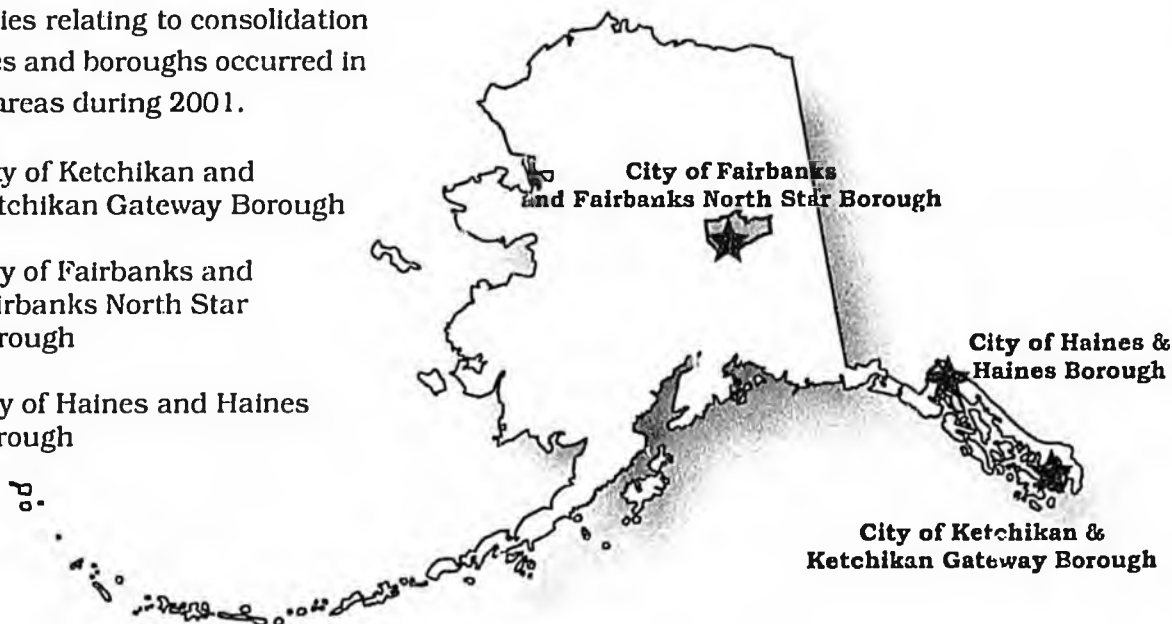
Borough officials subsequently determined not pursue annexation.

City and Borough of Juneau. On December 17, 2001, the Manager of the City and Borough of Juneau indicated that local officials were exploring the prospects of extending the boundaries of the City and Borough of Juneau to include Hobart Bay in the context of harbor development. ■

City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in three areas during 2001.

- ◆ City of Ketchikan and Ketchikan Gateway Borough
- ◆ City of Fairbanks and Fairbanks North Star Borough
- ◆ City of Haines and Haines Borough



City of Ketchikan/Ketchikan Gateway Borough. On May 8, 2000, the City of Ketchikan petitioned to consolidate the Ketchikan Gateway Borough and the City of Ketchikan into one local government (a home rule borough).

In February of last year, DCED issued its preliminary report on the petition. The Report concluded that the proposal offered credible prospects for significant advances regarding efficiencies, effectiveness, economies, and equities with regard to Ketchikan's local government structure. The preliminary report also concluded that the

Ketchikan consolidation proposal satisfied all legal standards governing consolidation. The report recommended that the Local Boundary Commission approve the petition with limited technical amendments.

Five parties submitted timely comments on DCED's preliminary report. After considering those comments, DCED issued its final report on the matter.

The Commission held a public hearing on the proposal in Ketchikan on Saturday, April 21, 2001. Following the hearing, the Commission unanimously approved

the petition, with minor technical amendments. The State Division of Elections conducted the consolidation election on July 17, 2001.

The proposition was approved by voters inside the City of Ketchikan by a two to one margin. However, voters outside the City of Ketchikan rejected the proposal by a margin of roughly four to one. The areawide tally, which determined the outcome, resulted in the rejection of the proposal by a margin of 1,642 to 2,273.

STATE OF ALASKA
DIVISION OF ELECTIONS
JUNEAU

CERTIFICATE

I, Janet Kowalski, Director of the Division of Elections for the State of Alaska, do hereby certify that in accordance with AS 29.06.090, a Consolidation Election was held by mail in the Community of Ketchikan on July 17, 2001. Following are the results:

SHALL THE EXISTING HOME RULE CITY OF KETCHIKAN
AND THE EXISTING SECOND CLASS KETCHIKAN GATEWAY
BOROUGH BE CONSOLIDATED AS THE NEW HOME RULE
MUNICIPALITY OF KETCHIKAN?

YES 1642 NO 2273



In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 2nd day of August, A.D. 2001.

*Janet Kowalski, Director
Division of Elections*

STATE OF ALASKA
DIVISION OF ELECTIONS
JUNEAU

CERTIFICATE

I, Janet Kawahiki, Director of the Division of Elections for the State of Alaska, do hereby certify that in accordance with AS 29.06.090 and AS 29.06.140, a Consolidation Election was held by mail in the City of Fairbanks and the Fairbanks North Star Borough on August 28, 2001. Following are the results:

SHALL THE CITY OF FAIRBANKS AND THE FAIRBANKS NORTH STAR BOROUGH BE CONSOLIDATED AS THE MUNICIPALITY OF FAIRBANKS, A NEW SECOND CLASS BOROUGH?

YES 3,521 NO 12,519



In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 11th day of September, A. D. 2001.

Janet Kawahiki, Director
Division of Elections

Division of Election's certification of the Fairbanks consolidation election held in August 2001.

City of Fairbanks/Fairbanks North Star Borough.

On March 20, 2000, voters in the Fairbanks North Star Borough submitted a petition to consolidate the Borough and the City of Fairbanks. The proposal called for the replacement of the two governments with a new second class borough.

The petition was signed by 4,042 voters of the Fairbanks North Star Borough, of whom 1,416 were also voters of the City of Fairbanks.

During the ten-week period allowed for public review and comment on the proposal, the City of Fairbanks, Fairbanks North Star Borough, and In-

terior Taxpayers' Association filed briefs opposing consolidation. Two other interested parties submitted timely letters opposing consolidation and the petitioners filed a reply brief.

DCED issued its preliminary report regarding the consolidation proposal on December 28, 2000. After reviewing comments on its preliminary report, DCED issued its final report regarding the matter on March 16, 2001.

On April 7, 2001, the Commission conducted a public hearing in Fairbanks on the consolidation petition. During the hearing, a witness for the City of Fairbanks urged

the LBC to delay action on the proposal to allow for the establishment of an elected commission to prepare a home rule charter, which would be added to the petition through an amendment. The petitioners' representative, the Fairbanks North Star Borough, and the City of Fairbanks also requested that the Commission defer action on the petition. More specifically, the parties requested that the Commission allow the Borough Assembly until May 22, 2001 to adopt a resolution calling for the election of a charter commission, and allow the Fairbanks City Council to adopt a resolution approving the charter commission election. The Com-

mission recessed the meeting and provided that if either body failed to pass resolutions by May 22, 2001, the LBC would act on the petition.

The charter commission election was never held. Accordingly, on May 23, 2001, the Commission granted the petition with limited modifications that had been endorsed by the petitioners' representative. The Commission issued its decisional statement on June 7, 2001.

The consolidation issue was placed before Fairbanks North Star Borough voters at an election conducted on August 28, 2001. Voters rejected the consolidation petition by a vote of 3,521 in favor and 12,519 opposed.

City of Haines/Haines Borough. On December 27, 2000, the City of Haines petitioned to consolidate the City of Haines and the Haines Borough as a single Home Rule Borough.

In February of last year, the Haines Borough filed a responsive brief opposing consolidation. In addition, eleven parties submitted written comments on the consolidation proposal. In April, the City of Haines submitted a reply brief in answer to the Borough's responsive brief and the written comments from the individuals and groups.

In July, DCED issued its preliminary report on the matter. DCED concluded that the petition satisfied applicable le-

gal standards for consolidation and recommended that there are fundamental public policy reasons supporting consolidation of the City of Haines and the Haines Borough.

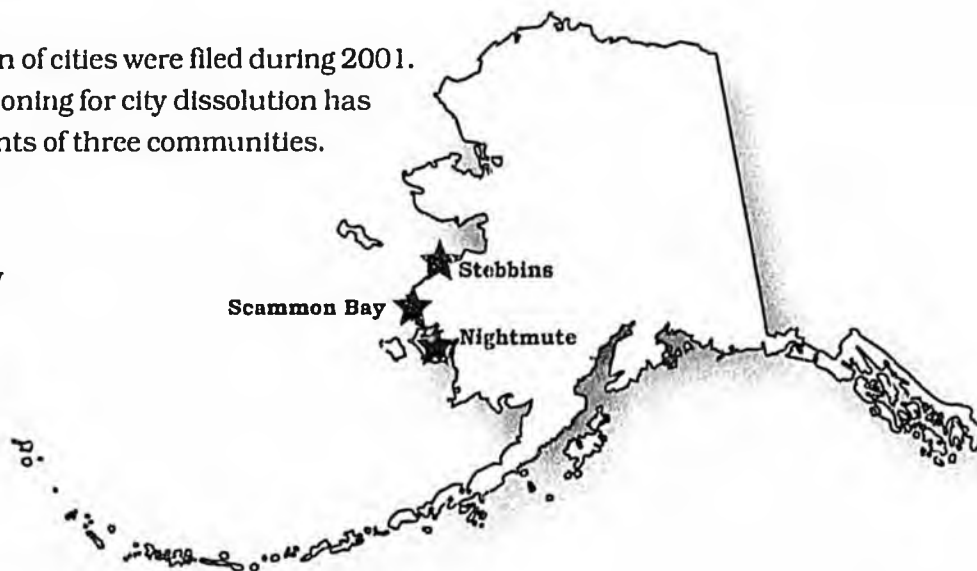
The Commission anticipates that it will conduct a public hearing on the Haines consolidation proposal early this year.

The *Chilkat Valley News* recently reported interest on the part of the local officials in exploring ways to modify the pending consolidation petition, including the Charter, to make consolidation more acceptable to Haines voters. ■

City Dissolution

No petitions for dissolution of cities were filed during 2001. However, interest in petitioning for city dissolution has been expressed by residents of three communities.

- ◆ City of Nightmute
- ◆ City of Scammon Bay
- ◆ City of Stebbins



Nightmute. On November 3, 2001, a community meeting regarding dissolution of the City of Nightmute was conducted. No petition for dissolution has yet been submitted.

Scammon Bay. Petition forms, standards, and procedures were requested by and provided to a Scammon Bay resident on June 8, 2001. No petition for dissolution has been filed in the matter.

Stebbins. Stebbins residents are developing a petition to dissolve the second class City of Stebbins and designate the Stebbins IRA Council as the successor to the City. ■

City Detachment

No petitions for detachment of territory from cities were filed during 2001. However, interest has been expressed in detachment of territory from one city.

Allakaket. Continued local interest in seeking detachment of Alatna from the City of Allakaket has been reported. ■



Borough Detachment

No petitions for detachment of territory from organized boroughs were filed during 2001. However, interest in detachment of territory from one borough was evident.

Municipality of Anchorage. Eagle River area residents are exploring the merits of formation of an Eagle River-Chugiak borough. Other governmental structures are also being contemplated. These reportedly include detachment of Eagle River-Chugiak from the Municipality of Anchorage and annexation of that area to the Matanuska-Susitna Borough. Another option reportedly being explored is the reconstitution of the Municipality of Anchorage from a unified borough to a non-unified borough, thereby permitting communities such as Eagle River and Girdwood to form city governments. ■



Changes to the Regulations of the Local Boundary Commission

During the past two years, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The revisions were warranted since the last comprehensive review of the Commission's regulations occurred more than ten years ago. Since then, there have been numerous changes in State statutes concerning matters involving the Commission.

Work sessions to address the proposed changes were conducted on April 28, April 30, May 24, June 27, and October 30, 2000. The Commission held a public hearing on the proposed changes on June 27, 2001. The hearing was teleconferenced to five sites. The Commission met again on July 27, 2001 to review the written and oral testimony concerning the proposed regulations. At that time, the Local Boundary Commission approved the proposed regulation changes. The proposed changes to the Commission's regulations are currently being reviewed by the Alaska Department of Law. ■

Litigation Involving the Local Boundary Commission

During 2001, there were no new or on-going court challenges concerning actions by the Local Boundary Commission. ■

3 Policy Issues

The Local Boundary Commission wishes to bring the following policy issues to the attention of the 2002 Legislature:

- ◆ Substantial disincentives for borough incorporation and annexation continue to impede development of local government in Alaska. The Commission has raised this issue with the legislature annually since the 1980s. Last year, the Commission submitted a detailed policy paper on the topic ("The Need to Reform State Laws Concerning Borough Incorporation and Annexation"). The policy paper included a proposal to address impediments to development of borough government. Senate Bill 48, which embodied the reforms recommended in the policy paper, was introduced. It passed the Senate in modified form (*CSSB 48(FIN) am*) and is awaiting consideration by the House of Representatives.

The Commission encourages the House of Representatives to give serious consideration to the legislation. Additional comment on the issue and SB 48 are provided in this Chapter of the report.

- ◆ Ambiguity exists regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.
- ◆ Last year, the Alaska Housing Finance Corporation resolved certain concerns expressed by the Commission with respect to impacts that the Small Community Mortgage Loan program was having on

municipal boundary proposals. Specifically, the AHFC Board of Directors adopted regulations that neutralized the impact of the loan program with regard to municipal mergers and consolidations. However, a solution to similar concerns on the part of the Commission regarding municipal annexations and incorporations remains elusive.

- ◆ Article X, Section 3 of the Constitution of the State of Alaska requires that each borough, including each unorganized borough, "embrace an area and population with common interests to the maximum degree possible." However, there is now, and always has been, a lack of common interests within the unorganized borough.

Senate Bill 48 Addresses Impediments to Development of Local Government in Alaska

Since the 1930s, the Local Boundary Commission has urged the Legislature to examine and address the substantial disincentives for borough incorporation and annexation. The Legislature and the Commission have complementary duties relating to that issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (see Article X, Section 3 of the Constitution of the State of Alaska). The Commission has the statutory duty to make studies of local government boundary problems (see AS 44.33.812[a][1]).

Alaska's Constitution encourages the creation of organized boroughs.⁸ The authors of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. According to Constitutional Convention Delegate Vic Fischer:⁹

... the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The [Local Government] committee had previously decided that although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where "it should take on the burden of its own government."¹⁰ Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum,¹¹ and that the state would offer adequate in-

ducement to local people to accept organized borough status and to initiate incorporation.¹²

The founders recognized that the Legislature would have divergent alternatives available to carry out its constitutional duty to prescribe methods for borough formation.

As noted above, delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they also recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. Constitutional Convention Delegate Maynard D. Londborg reflected such in his comments to the Convention:

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.¹³

⁸ See *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

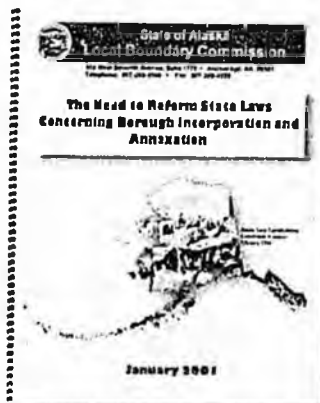
⁹ *Borough Government in Alaska*, Thomas A. Morehouse and Victor Fischer, page 39 (1971).

¹⁰ *Alaska Constitutional Convention Proceedings*, (Juneau: Alaska Legislative Council, March 1965) pp. 2673-74.

¹¹ *Ibid.*, pp 2674-76

¹² *Ibid.*, pp 2650-51

¹³ *Proceedings of the Alaska Constitutional Convention*, Alaska State Legislature, Legislative Council, page 2651.



¹⁴ Tales of Alaska's Bush Rat Governor, Jay Hammond, page 149 (1994).

¹⁵ Borough Government in Alaska, page 73.

¹⁶ Metropolitan Experiment in Alaska, page 93.

¹⁷ The bill was ultimately amended to exclude the Haines-Skagway area from the mandate to incorporate a borough.

¹⁸ Areawide Local Government in the State of Alaska, Ronald Cease, pages 71-72 (1964).

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs. With minor exceptions, those laws remain in place today. The 1961 Legislature opted to try the voluntary approach to borough formation.

However, inducements to organize were lacking. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives when the Borough Act of 1961 was adopted, characterized the matter as follows:¹⁴

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?

Constitutional Convention Delegate Victor Fischer and Thomas Morehouse portrayed the Borough Act of 1961 as follows:¹⁵

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?" Jay Hammond

... the 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

By the end of the fourth year of statehood, only one undersized organized borough had formed. It encompassed only about 600 residents. A number of officials were critical that Alaska's only organized borough was a drastic departure from the regional concept envisioned by the Constitutional Convention Delegates. Each of the nine regions of the state that had created independent school districts - legal under Territorial law, but not recognized under Alaska's Constitution - clung to those single purpose governmental units.

When the 1963 Legislature convened, Representative John Rader took the position that the lack of progress to-

ward borough formation was the "greatest unresolved political problem of the State":¹⁶

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

To address the pressing issue, Representative Rader drafted and introduced a bill that mandated incorporation of boroughs in all areas of Alaska that had independent school districts. Nine areas were named in the legislation. Those consisted of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Lynn Canal - Icy Straits Election District, and Fairbanks.¹⁷

In promoting his bill, Representative Rader stressed:¹⁸

We must make local government and, in this instance, boroughs, financially desirable and gener-

ally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.¹⁹

The legislation was amended during deliberations to remove the Haines-Skagway region from the bill. Following the amendment, the bill narrowly passed and was signed into law by Democratic Governor William A. Egan.

An agreement had reportedly been reached among legislators during the First Session of the Third Alaska Legislature prior to approval of the 1963 Mandatory Borough Act that additional boroughs would later be mandated by the legislature.²⁰ However, neither the Second Session of the Third Alaska State Legislature nor any other subsequent legislature has mandated additional boroughs.

While neither the Borough Act of 1961 nor the 1963 Mandatory Borough Act provided adequate incentives to form boroughs voluntarily, the 1963 Mandatory Borough Act did promise that organized boroughs would not be penal-

Mandatory Borough Act, organized boroughs are severely penalized with respect to certain State financial aid. Consider, for example, public education.

¹⁹ Ibid., page 47.
²⁰ Personal communication with Clem Tillton, member of the House of Representatives in the Third Alaska Legislature, April 28, 2000.

Last fiscal year, organized boroughs received \$143 million less in State educational foundation aid than they would have received had they not been organized as boroughs.

ized because of incorporation. Specifically, Section 1 of Chapter 52, SLA 1963 provided as follows:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. *No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.* (Emphasis added)

Notwithstanding the promise of equity in the 1963

Organized boroughs are mandated by State law (AS 29.35.160) to carry out, within their boundaries, the duties of the State of Alaska under Article VII, Section 1 of the Constitution for public education. Moreover, organized boroughs are mandated by State law (AS 14.17.410) to pay a significant portion of the State's cost of education in the form of a "local contribution."

The local contribution required of organized boroughs is deducted from the level of State education foundation funding that would otherwise be paid to the district. Last fiscal year, organized boroughs received \$143 million less in State educational

²¹ Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. However, the remainder of the unorganized borough, made up of regional educational attendance areas which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, regional educational attendance areas (REAA's) suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAA's in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

²² Matanuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

foundation aid than they would have received had they not been organized as boroughs.²¹ Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$143 million in required "local contributions", the sixteen organized boroughs made "voluntary local contributions" of \$159,401,604 or \$1,508 per student last year. The total contributions in support of schools by organized boroughs last year amounted to \$302,866,353 or \$2,866 per student.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.²² Justices Matthews and Rabinowitz stated that any remedy of the per-

ceived inequities must be pursued through the legislature rather than the courts.

... the legislature can decide whether and how much to tax property in REAA's free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.²³

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ◆ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ◆ Borough formation would bring about consolidation of school districts in the unorganized borough,
- ◆ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ◆ Borough formation or annexation would mean the loss of eligibility on the part of REAA's and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ◆ The extension of borough government would result in the loss of eligibility on the part of cities for federal

an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13% of the state's population, the unorganized borough encompasses 70% of Alaska's school districts.

payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.

- ◆ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ◆ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ◆ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ◆ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ◆ In some cases, borough formation carries with it the prospect of significant

funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were formed voluntarily.²⁴ In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Alaska Municipal League shares the Commission's concerns. The 2002 Policy Statement adopted by the Alaska Municipal League States:

Encouragement of Municipal Government in the Unorganized Borough: The League supports state policies that remove disincentives and encour-

age the formation and annexation to boroughs in the unorganized areas of the state . . .

Call for a Review of the Role of Government. The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating "maximum local self-government with a minimum of local government units. . ." According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments.

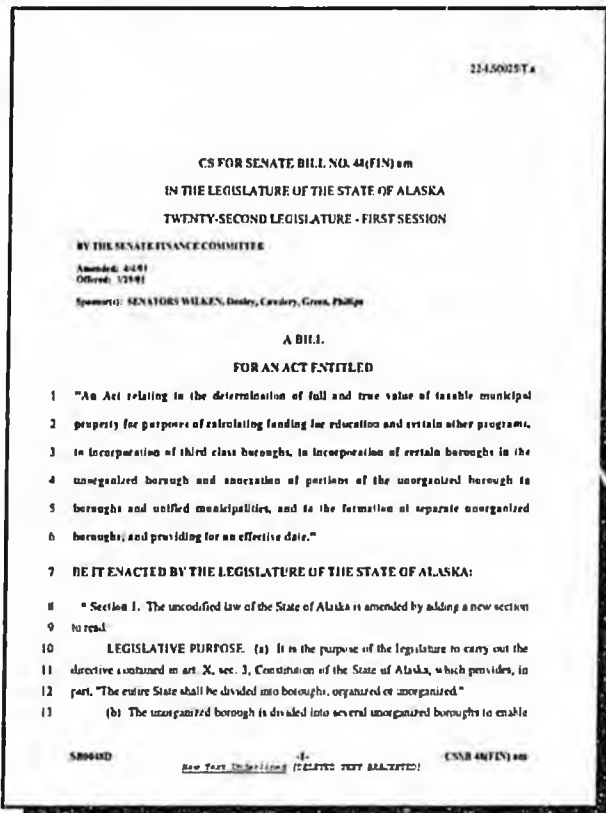
It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for the type of reform provided by Senate Bill 48. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process."

²³ Ibid., 406.

²⁴ Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.



Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48.



The Local Boundary Commission takes the position that *CSSB 48(FIN) am* provides a carefully designed process to promote borough incorporation and annexation in those areas of Alaska that have the human and financial resources to support fundamental local governmental operations. The bill provides a well thought-out public evaluation of the capabilities of unorganized areas to assume a reasonable measure of local responsibility for the delivery of fundamental

mission takes the position that there is benefit in addressing the concerns raised about this issue.

To assuage such concerns, the Commission recommends that the 2002 Legislature amend *CSSB 48(FIN) am* to establish a specific economic threshold below which it would be presumed that an unorganized region lacks the financial resources to operate a borough. For example, the legislation could be amended to provide that if an unorganized region lacked at least two-thirds of the median per capita income of organized boroughs, a formal presumption would exist that the region lacks the financial resources needed to operate an organized borough.

For illustrative purposes, a table is provided on the following page which lists organized and unorganized regions of Alaska according to per capita income as reported in the 1990 Census. Comparable data from the 2000 Census will not be released until sometime between March and May of this year. Notwithstanding the eleven-year old data, economists indicate that the relative rankings of the regions generally remain unchanged over time, absent major economic developments affecting a particular region.

Cordova City officials drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

The Local Boundary Commission developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature. That proposal was introduced as Senate Bill 48. The legislation passed the Senate in modified form (*CSSB 48(FIN) am*) and is awaiting consideration by the House of Representatives.

public services.

There are a number of unorganized regions that have expressed concern that they may be compelled to form boroughs even though they might not be able to afford to do so. *CSSB 48(FIN) am* would require the Commission to make a thorough review of the financial capabilities of any region proposed for incorporation based on standards that have long been established in State law. The Commission certainly recognizes that it would be counter to the interests of the State to create organized boroughs that were not financially viable. Notwithstanding, the Com-

The unorganized regions (i.e., census areas) listed in the table generally do not conform to prospective boroughs. However, unlike Bureau of Economic Analysis income data, Census Bureau data on per capita income are available at the community level. The use of Census Bureau data would allow the Commission to make determinations specific to each prospective borough. The table lists fourteen boroughs. Two additional boroughs were created subsequent to the 1990 Census (Denali Borough in 1990 and City and Borough of Yakutat in 1992).

While the Commission endorses *CSSB 48(FIN) am*, there is one aspect of the legislation that the Commission opposes. Section 5 of *CSSB 48(FIN) am* would repeal a 1985 law prohibiting the incorporation of new third class boroughs.

The Commission views the third class borough form of government as archaic. Laws allowing the incorporation of a third class borough were enacted to respond to a unique set of circumstances in the Haines area that will never occur again.²⁵

Beyond its archaic nature, the third class borough concept has been distorted in its implementation. Under statute, a third class borough is expressly prohibited from ex-

ercising any areawide power other than "education and tax assessment and collection" (see AS 29.35.220(b)). Yet, under the liberal interpretation of municipal powers provided by Article X, Section 1 of Alaska's Constitution and AS 29.35.400 - 29.35.420, the "education" powers of the third class borough have been

stretched to include the operation of a public library, public museum, and cultural facilities center.

Further, a third class borough is authorized to exercise only one power on a non-areawide basis (i.e., in the area of the borough outside of city governments as defined in AS 29.71.800[14]). That sole authorized non-areawide function is the power necessary to

²⁵ As noted earlier in this discussion, Representative Rader originally included the Lynn Canal - Icy Straits Election District in the 1963 legislation mandating borough incorporation because Haines was operating an independent school district. While the Lynn Canal - Icy Straits Election District was ultimately excluded from the Mandatory Borough Act, the Act nonetheless provided for the dissolution of all independent school districts on July 1, 1964.

ORGANIZED AND UNORGANIZED REGIONS OF ALASKA RANKED ACCORDING TO PER CAPITA INCOME	
Boroughs listed in capital letters and bold text (1990 Census Data)	
BOROUGH AND CENSUS AREAS	PER CAPITA INCOME
Valdez-Cordova Census Area	\$22,772
KODIAK ISLAND BOROUGH	\$19,979
CITY AND BOROUGH OF JUNEAU	\$19,920
MUNICIPALITY OF ANCHORAGE	\$19,620
BRISTOL BAY BOROUGH	\$19,123
Wrangell-Petersburg Census Area	\$19,012
KETCHIKAN GATEWAY BOROUGH	\$18,789
NORTH SLOPE BOROUGH	\$18,231
KENAI PENINSULA BOROUGH	\$18,173
Median of organized boroughs	\$17,708
ALEUTIANS EAST BOROUGH	\$17,242
CITY AND BOROUGH OF SITKA	\$16,962
HAINES BOROUGH	\$16,204
FAIRBANKS NORTH STAR BOROUGH	\$15,914
MATANUSKA-SUSITNA BOROUGH	\$15,898
Prince of Wales-Outer Ketchikan Census Area	\$15,510
Skagway-Yakutat-Angoon Census Area	\$15,463
Aleutians West Census Area	\$15,035
Dillingham Census Area	\$12,782
Southeast Fairbanks Census Area	\$12,505
66.67% of the median of organized boroughs	11,806
LAKE AND PENINSULA BOROUGH	\$11,560
Yukon-Koyukuk Census Area	\$11,554
Nome Census Area	\$10,701
NORTHWEST ARCTIC BOROUGH	\$10,040
Bethel Census Area	\$8,833
Wade Hampton Census Area	\$6,519

contain, clean up, or prevent a release or threatened release of oil or a hazardous substance" (see AS 29.35.220[e]). However, the Haines Borough has, in fact, assumed other powers on a 'de facto non-areawide basis' through the creation of a service area encompassing the identical territory which AS 29.71.800(14) defines as the non-areawide part of the borough. Doing so effectively annuls the legislative prohibition set out in AS 29.35.220(e).

Moreover, since the Borough has assumed powers on a 'de facto non-areawide basis' that are prohibited on a 'de jure non-areawide basis', there is nothing to suggest that a similar occurrence will not some day exist on an areawide basis.

The City of Haines recently commented to the Commission as follows with respect to the third class form of borough government:

... there comes a time where such a classification can be "outgrown" and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfaction with the Third Class Borough in

Service Areas

The Borough is correct in its note that the Riverview Drive Road Maintenance Service Area was omitted from exhibit J (though it was included in other sections) of the petition and should continue to exist after consolidation. It is also true that four (4) governmental units (service areas) will be streamlined into the one (1) new consolidated government. This is yet another example of the benefits of consolidation.

Constitutional Standards

It is clear and should have no misinterpretation as implied in the Borough's dissertation. The purpose as stated is to provide for the maximum local self-government with a minimum of local government units. It will also prevent duplication of tax-levying jurisdictions.

While we appreciate the Borough's lecture to the State "that a third class borough has more to offer to cities and the unorganized areas of the state than the current options allowed by the state", we feel that, even if true, there comes a time where such a classification can be "outgrown" and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfaction with the Third Class Borough in October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

The Borough's selective memory fails on the argument for "the combination of the school board and assembly". While the Borough's brief champions such a benefit, the voters, by a substantial margin, voted against a combined school board/assembly when asked at the ballot box in June of 1990 and then again by a margin of over two to one in 1997.

Staffing

Consolidation offers the potential to effect long-term savings and general improvements in overall government efficiency. The lack of administrative depth in a small community becomes an issue of cost effectiveness and efficiency. The Borough's operations appear to suffer from the lack of centralized administrative support. That is evidenced here by the Borough's Assessor/Land Manager having to prepare the Borough's brief at the expense of his own responsibilities.

Tax Revenue

Taxes collected will benefit those from whom they are collected.

CITY OF HAINES
4
REPLY BRIEF

October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

Given the circumstances cited here, the Local Boundary Commission opposes provisions in CSSB 48(FIN) am that would allow the incorporation of new third class boroughs.

The Commission looks forward to the opportunity to address CSSB 48(FIN) am further with the Legislature this year. ■

Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification

State statutes are unclear with respect to municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification. Ambiguity exists with respect to whether a municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.110(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This issue, as it relates to annexation, was addressed by the State Attorney General's office at the request of the Senate Finance Committee thirteen years ago.²⁶ The Attorney General's office concluded that as long as the local government in question had time to add the property in question to its tax rolls, it had the authority (and probably the duty) to levy and collect the tax.

However, the question of whether AS 29.45.110(a) and AS 29.45.120(a) prohibit the levy of taxes during the initial year if jurisdiction is not established by January 1, appears to have become more uncertain as a result of a recent decision of the Alaska Supreme Court. In the case at issue, the Court interpreted AS 29.45.110(a), AS 29.45.120(a), AS 29.45.240(a), and AS 29.45.300 collectively to mean that "The tax 'accrues' in full each year on January 1."²⁷

The Commission urges the Legislature to eliminate the ambiguity to avoid needless litigation and unintended adverse consequences for affected municipalities. Elimination of the ambiguity serves the public interest by promoting both taxpayer equity and financially sound local governments.

The Commission's authority to approve incorporations, boundary changes, and city reclassifications implies a general authority to empower local governments to levy taxes. The Legislature has already granted specific authority for the Commission to deal with the property taxation issues relating to step annexations to cities (see AS 44.33.812[a][4]).²⁸ As a matter of policy, there is no reason why similar specific authority should not be expressly extended to all annexation and incorporations.

The Commission stresses that every proposal that comes before it is unique and demands flexibility. Although the Commission is not committed to any particular language, one way to resolve the issues raised here is to enact a clear grant of authority for the Commission to make determinations concerning property taxation in the course of its proceedings. This could be done by a statutory requirement for petitioners to present transition plans as a part of their petitions. Transition plans would be prepared in consultation with affected local governments and State instrumentalities (e.g., regional educational attendance areas). As provided under current law for other elements of a petition, the

²⁶ Memorandum from Assistant Attorney General Marjorie L. Odland, March 1, 1989, file number 663-89-0387.

²⁷ *Kenai Peninsula Borough v Arndt*, 958 P.2d 1101, 1104 (Alaska 1998).

²⁸ AS 44.33.812(a)(4) states that the "Local Boundary Commission shall develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services."

²⁹ The Commission has adopted regulations (3 AAC 110.900) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.

transition plans should be subject to amendment by the Commission following a public hearing on the proposal.²⁹

The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Ac-

tions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, and/or (3) subject to tacit approval by the Legislature.

The Commission offers the following draft language for consideration as a means to implement the proposed change. The draft language offered by the Commission would provide for the enactment of a new section as AS 44.33.830 to read as follows:

AS 44.33.830. Transition Plan. (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a). The transition plan may provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law. ■

Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals

Historically, provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) have affected the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will

exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is reasonable to conclude that the Haines consolidation

would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved the concerns of the Local Boundary Commission relating to merger and consolidation. However, concerns regarding annexation and incorporation were not addressed.

A means of resolving the remaining concerns of the Local Boundary Commission in a manner that maintains the Small Communities Housing Assistance program but eliminates the unintended adverse impacts on legitimate municipal boundary changes without a fiscal impact on the State of Alaska appears to be elusive. ■

Promotion of Maximum Common Interests within Boroughs

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recom-

mendation was rejected. Instead, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57% of the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough:

- ◆ encompasses portions of each of Alaska's four judicial districts;
- ◆ wholly encompasses eleven census areas;

- ◆ encompasses all or portions of nine state house election districts;
- ◆ wholly encompasses nineteen regional education attendance areas;
- ◆ encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- ◆ partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model boroughs, each of which is to some extent comprised of an area with common social, cultural, and other characteristics.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS

29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been thirteen years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances, social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educational attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if

the Commission were defining model borough boundaries for the unorganized borough portion of the Aleutian region, those boundaries would encompass all of the territory west of the Aleutians East Borough.

This issue is addressed by *CSSB 48(FIN) am*. As it is currently worded, the legislation would require the Alaska Department of Community and Economic Development to submit a proposal to Commission by November 30, 2001 for the establishment of multiple unorganized boroughs. Further, the Local Boundary Commission is required to

submit its proposal to divide the unorganized borough into multiple unorganized boroughs to the 2002 Legislature which take effect unless rejected by Legislature within 45 days. The Commission endorses the provision. However, the dates provided in the current legislation must obviously be altered. ■

Funding for Borough Feasibility Studies.

AS 44.33.840 – AS 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. The Commission is aware of two regions that have recently expressed interest in conducting borough feasibility studies. Those are the Prince of

Wales Island region and the Delta-Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to the fund to facilitate local borough study efforts. ■

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1-2002

Tony Knowles, Governor



State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501
Telephone: 907-269-4560 • Fax: 907-269-4539

January 23, 2002

The Honorable Rick Halford
President
Alaska State Senate
Juneau, Alaska

Subject: Annexation of 4.58 Square Miles to the City of Homer

Dear Senator Halford:

The Alaska Local Boundary Commission hereby presents its recommendation to the Second Session of the Twenty-Second State Legislature under Article X, Section 12 of the Constitution of the State of Alaska for annexation of 4.58 square miles to the City of Homer.¹ Under Article X, Section 12, "The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house."

Alaska's constitution-makers expected that local governmental annexations would often be very controversial. The City of Homer's original petition to annex 25.64 square miles certainly fulfilled that expectation. Consequently, the Commission's review and decision process for the petition has been painstakingly lengthy and detailed. The process spanned nearly two years. The written record of the proceedings stands 14 inches tall and weighs 35 pounds. Given the extent of the record, the Commission will provide a summary of the reasons for its recommendation to the Senate Community and Regional Affairs Committee.

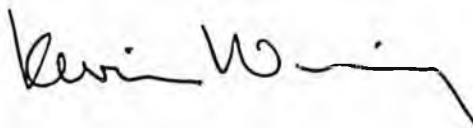
In the end, the Commission did not approve the City of Homer's original petition to annex 25.68 square miles, approving instead annexation of a reduced area of 4.58 square miles.

¹ A map and legal description of the 4.58 square miles recommended for annexation is provided on pages 38 – 41 of the enclosed *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*.

The Honorable Rick Halford
January 23, 2002
Page Two

The Commission looks forward to reviewing its recommendation for this annexation to the City of Homer with the Senate Community and Regional Affairs Committee.

Cordially,

A handwritten signature in black ink, appearing to read "Kevin Waring". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin Waring
Chairman

cc: The Honorable John Torgerson, Chairman, Senate Community and Regional Affairs Committee and Senator from District D



State of Alaska
Local Boundary Commission

Statement of Decision

Members

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

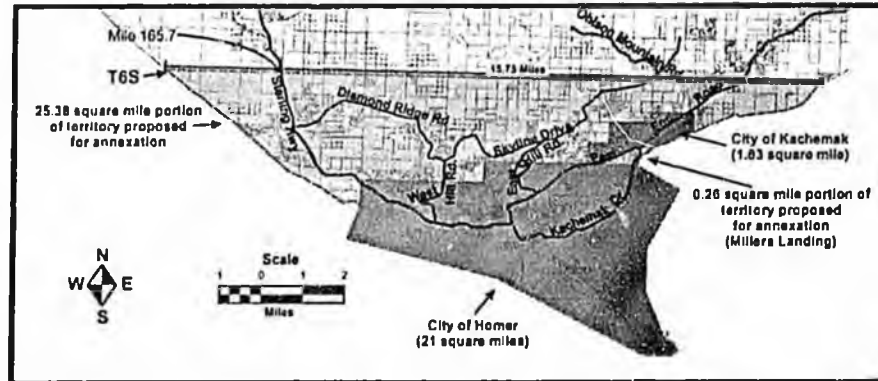
Ardith Lynch
Member
Fourth Judicial District



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" 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 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

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

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 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 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 Rieout	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.

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

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 organizations including the Petitioner, respondents, Local Boundary Commission members, State Representative Drew Scalzi, State Senator John Torgerson, City of Kachmak, 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.

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 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.

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.

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

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

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.

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.

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.

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:

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. Lcmay
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

- 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 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.

⁷ Numbering is continued sequentially from Findlay Abbott.

⁸ Numbering is continued sequentially from Wendy Lefton.

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.

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 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 miles petitioned for annexation along the Sterling

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

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 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.

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

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 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

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, 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,

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

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

Table continued on next page

(Continued from previous page)

or in contravention of the guarantees set forth in section 19.3b(1)(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 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 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.

Table continued from previous page

Right	Effect	Area Affected
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

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).

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

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."

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 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 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.

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.

²⁰ *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); *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 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 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 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.

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 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.

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).

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.

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 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,

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.

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 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.

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
 - (5) age distributions.

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

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;
 - (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 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.

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.

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 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 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

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.

(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.

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.

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 Kachmak 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

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

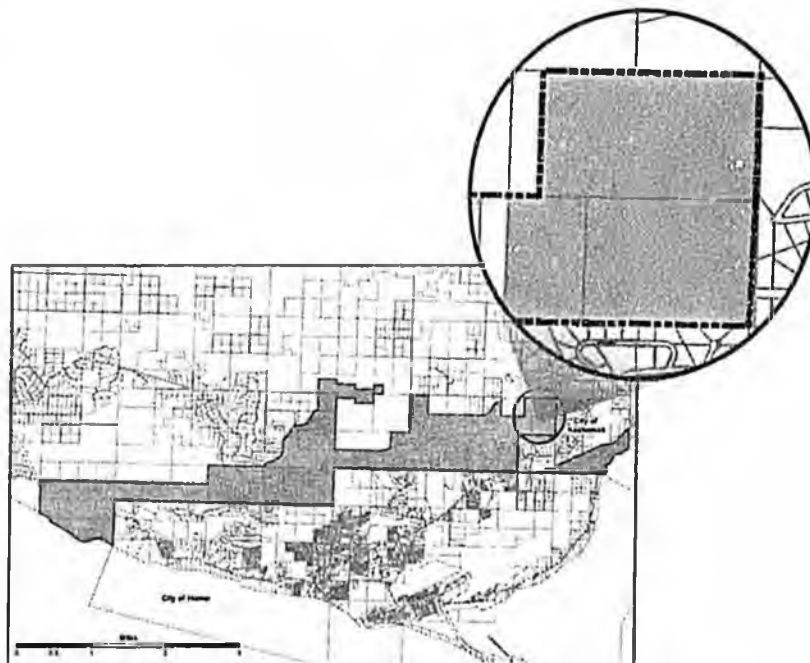
³⁶ Again, see the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from DCED Commissioner Debby Sedwick, requesting the opinion.

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 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.

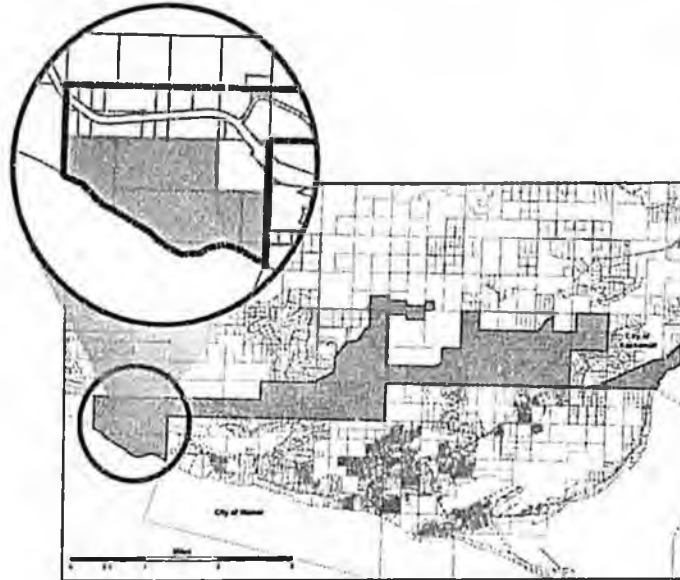
During the public hearing, requests were received from owners of three parcels adjoining the eastern portion of the so-called urban area recommended for annexation by DCED. Specifically, John Fowler requested the annexation of a 25.6-acre parcel and a 70.0-acre parcel that he owns. Additionally, Joseph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



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;
 - (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 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

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 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;

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 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

(Continued from previous page)

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

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 predictable 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.

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

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...

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 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.

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.

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 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 areas of concentrated development that lack sewer and water utilities.

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;
- (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.

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.