



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*  
*Scott Ruby, Director*

# Report to the Local Boundary Commission

Regarding the proposal  
to annex by the unanimous consent local option method,  
approximately  
39.966 acres of land  
to the City of Kachemak

July 2011

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This is the *Report to the Local Boundary Commission Regarding the Proposal to Annex 39.966 acres of Land to the City of Kachemak*. The report was written by Don Burrell, staff to the Local Boundary Commission. LBC staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address:

[http://www.commerce.state.ak.us/dca/lbc/kachemak\\_annex.htm](http://www.commerce.state.ak.us/dca/lbc/kachemak_annex.htm)

This report is issued in accordance with Local Boundary Commission regulation 3 AAC 110.530 and 3 AAC 110.590 which require Commerce to issue a report after considering written comments regarding the city's annexation petition.

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4559 or [lbc@alaska.gov](mailto:lbc@alaska.gov).

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

Special thanks to Cheryl Bieseimer for her assistance in the distribution of the report.

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# Chapter I Background

## Local Boundary Commission's Constitutional Foundation

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Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").<sup>1</sup> The commission is responsible for establishing and modifying proposed municipal government boundaries. Those Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, but that the state should set municipal boundaries because “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.”<sup>2</sup> Placing decision making authority with a state body allows arguments for and against boundary changes to be analyzed objectively, taking area wide or statewide needs into account.<sup>3</sup>

## Local Boundary Commission's Statutory Authority

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The Local Boundary Commission derives its statutory authority from AS 29.06.040. Pursuant to 29.06.040(a) “the Local Boundary Commission may consider any proposed municipal boundary change.” AS 29.06.040(a) further reads that “the commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets the applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.”

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1 Article X, section 12 states, “A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. 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. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.”

2 *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing *Alaska Constitutional Convention Minutes of Committee on Local Government*, November 28 and December 4, 1955.

3 *Id.*

## LBC Duties and Functions

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The LBC acts on proposals for several different municipal boundary changes. These are:

- Incorporating municipalities<sup>4</sup>
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities
- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

In addition to the above, the LBC under AS 44.33.812 shall:

- Make studies of local government boundary problems
- Adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution

The LBC may present proposed local boundary changes to the legislature concerning boundary changes under article X, section 12 of Alaska's constitution.

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<sup>4</sup> The term "municipalities" includes both city governments and borough governments.

## Nature of the Commission

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Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes.

### Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that Alaska's constitution gives the LBC legislative authority to make fundamental public policy decisions. The court stated:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.<sup>5</sup>

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ." See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

### Quasi-Executive

Article X, section 12 of Alaska's constitution placed the LBC in the state's executive branch. The commission's duty under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the LBC's quasi-executive nature.

### Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

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<sup>5</sup> *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

## Limits on Directly Communicating the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves those rights.

To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is appealed to the court, the *ex parte* contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC.

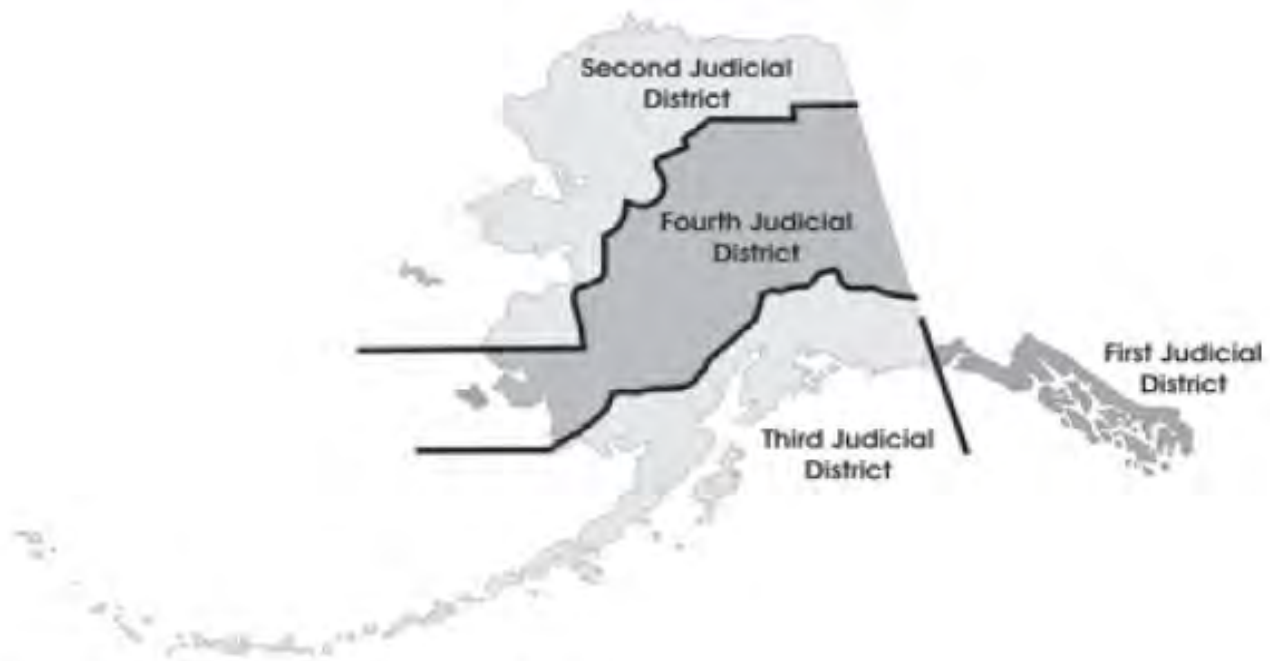
All communications with the commission must be submitted through the LBC's staff.

## **LBC Membership**

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

The LBC is comprised of five members. (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at-large. LBC members receive no pay for their service.



## Alaska Judicial Districts



The following are the current LBC members' biographies:



**Lynn Chrystal, Chair, At-Large Appointment, Valdez.** Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. On September 10, 2009, Governor Parnell chose him to be the LBC's chair. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has been in Alaska since 1963, and has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. The chair has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends on January 31, 2013.



**John Harrington, First Judicial District, Ketchikan.** Governor Parnell appointed John Harrington of Ketchikan to the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager. He previously worked as an adult education coordinator in Ketchikan from 1985-97, and as a special education teacher and administrator in Washington from 1972-84. He has served on the Ketchikan Gateway Borough Assembly since 2005, and is the vice mayor. Mr. Harrington's community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of Ketchikan Gateway Borough's school board from 1988-94. He earned a bachelor's degree in psychology and history from Western Washington University, and a master's degree in educational administration from Seattle University. His current term on the LBC ended January 31, 2016.



**Robert "Bob" Harcharek, Second Judicial District, Barrow.** Governor Knowles appointed Commissioner Harcharek to the LBC on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He has served as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. In 1977 he earned a Ph.D. in International and Development Education from the University of Pittsburgh. Commissioner Harcharek served for 3 years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. Dr. Harcharek served as a member of the Barrow City Council for 15 years, and is currently Barrow's mayor and chief administrative officer. His current LBC term ends on January 31, 2014



**Larry Semmens, Vice Chair, Third Judicial District, Soldotna.** Governor Parnell appointed Larry Semmens to the Local Boundary Commission on September 10, 2009. Mr. Semmens is a certified public accountant and the city manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He served in the finance department of the Kenai Peninsula Borough from 1981-1996. Mr. Semmens currently chairs the Alaska Public Entities Insurance Pool and was recently reappointed to the Alaska Municipal League Investment Pool Board. He is a member of the American Institute of Certified Public Accountants and the International City Managers Association. Commissioner Semmens served in the U.S. Air Force from 1973-76. He earned a bachelor's degree in business administration from Boise State University. His current term on the LBC ends on January 31, 2012.



**Lavell Wilson, Fourth Judicial District, Tok.** Governor Palin appointed Tok's Lavell Wilson to the LBC on June 4, 2007. He moved to Alaska in 1949, and has lived in the Northway/Tok area since. Mr. Wilson attended the University of Alaska Fairbanks and Brigham Young University. He became a licensed big game guide in 1963. Mr. Wilson served the area outside of the Fairbanks North Star Borough in the Alaska House of Representatives (eighth legislature). Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981- 95, retiring as the company's chief pilot and office manager. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineers' Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and Cape Newenham's radar site. Mr. Wilson has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current LBC term ends on January 31, 2015.

## Local Government Agency

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### Constitutional Origin

Alaska's constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as the constitutional local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce) pursuant to AS 44.33.020(a)(4).<sup>6</sup>

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<sup>6</sup> AS 44.33.020(a)(1) provides that Commerce "shall (1) advise and assist local governments."

Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. In addition to its more general duty to aid local governments, DCRA provides staff, research, and assistance to the LBC.

## LBC Staff Role

Commerce is required by 3 AAC 110.530<sup>7</sup> to investigate and analyze each boundary change proposal and to make recommendations regarding it to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public as well. Commerce follows a reasonable basis standard in developing recommendations on matters before the LBC. Its recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC staff provides support to the commission. Also, the LBC staff delivers technical assistance to municipalities; to residents of areas impacted by existing or potential petitions to create or alter municipal governments; to petitioners; to respondents; to agencies; and to others.

Assistance which the LBC staff provides includes:

- Answering citizen, legislative, and other governmental inquiries relating to municipal government issues
- Writing reports on petitions for the LBC
- Drafting LBC decisional statements
- Traveling to communities to hold meetings and to answer questions about proposed local boundary changes
- Writing an annual LBC report to the legislature
- Developing and updating municipal incorporation or alteration forms
- Sending local boundary change forms and materials to interested persons
- Providing a link between the LBC and the public
- Maintaining incorporation and boundary records for Alaska's municipal governments
- Coordinating and scheduling LBC public meetings and hearings
- Developing orientation materials and providing training for new LBC members
- Maintaining and preserving LBC records in accordance with Alaska's public records laws

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<sup>7</sup> See also AS 29.04.040, AS 29.05.080, AS 29.06.110; and AS 29.06.480 - 29.06.490.

The LBC staff can be contacted at the following address, telephone numbers, fax number, or email addresses:

<p><b>Local Boundary Commission staff</b> 550 West Seventh Avenue, Suite 1770 Anchorage, Alaska 99501-3510 <a href="mailto:lbc@alaska.gov">lbc@alaska.gov</a></p> <p><b>Brent Williams:</b> (907) 269-4559 <a href="mailto:brent.williams@alaska.gov">brent.williams@alaska.gov</a></p> <p><b>Don Burrell:</b> (907) 269-4587 <a href="mailto:don.burrell@alaska.gov">don.burrell@alaska.gov</a></p> <p><b>Fax:</b> (907) 269-4539</p>
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## Petition Procedures

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal's reasonable and timely determination. The procedures are also intended to ensure that commission decisions are based on analyzing the facts and the applicable legal standards. A procedures summary follows:

### Preparing and Filing a Petition

The LBC staff offers technical assistance, information, and petition forms to prospective petitioners. LBC staff routinely advises petitioners to submit draft petitions for staff to identify any technical deficiencies in the petition's form and content. This allows the petitioner to correct the petition before it is circulated for voter signatures, or before a municipal government formally adopts the petition.

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

### Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. There is ample opportunity for public comment during the process. Interested parties are given opportunity to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided opportunity to file one brief replying to responsive briefs.

## Analysis

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials. The petitioner, and the LBC staff, can conduct informational meetings. When LBC staff completes its analysis, a report is issued which includes a recommendation to the LBC. The report is circulated for public review.

## Commission Review of Materials and Public Hearings

The LBC is an autonomous commission. Members review the petition, responsive briefs, written comments, reply briefs, and the staff report when considering the petitioner's request. While the commission is not obligated to follow the staff's recommendations, it has historically considered Commerce's analyses and recommendations to be critical components of the record in municipal boundary proceedings. The LBC considers the entire record which includes the public hearing when it renders a decision.

The commission may also tour the area before the hearing to better understand the proposal and the circumstances surrounding the petition. Following extensive public notice, the LBC conducts a hearing. After the hearing, the LBC holds a decisional meeting. At the decisional meeting, the LBC may act by:

- Approving the petition as presented
- Amending the petition (e.g., expanding or contracting the proposed boundaries)
- Imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability)
- Denying the petition

## LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpreting the applicable legal standards and its evaluating the evidence in the proceeding must be rational.<sup>8</sup> The LBC must proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

The LBC must adopt a written decision stating the basis for its decision. Decision copies are provided to the petitioner, respondents, and others who request them. The decision is final once adopted and mailed, but is subject to reconsideration. Any person may ask the LBC to reconsider its decision under 3 AAC 110.580. For unanimous consent petitions, such requests must be filed within 10 days after the decision is mailed per 3 AAC 110.590(a)(9). The LBC may also order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

## Implementation

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. The action must also receive favorable review under the federal Voting Rights Act of 1965. If all requirements of 3 AAC 110.630(a) have been met, the department shall issue a certificate describing the effective change.

## Legal Standards for Annexation to Cities

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The criteria to be used by the commission to evaluate the City of Kachemak annexation proposal are set out in 3 AAC 110.090 - 3 AAC 110.140, 3 AAC 110.900 and 3 AAC 110.910. A summary of the criteria follows:

1. There must be a reasonable need for city government in the territory proposed for annexation.

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<sup>8</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.

2. The territory may not be annexed if essential city services<sup>9</sup> can be provided more efficiently and more effectively by another existing city or by an organized borough.
3. The territory must be compatible in character with the annexing city.
4. The economy in the city's proposed expanded boundaries (territory within existing city, plus territory proposed for annexation) must include sufficient human and financial resources to provide essential city services on an efficient, cost-effective level.
5. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
6. The proposed city boundaries must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.
7. Absent a specific and persuasive showing to the contrary, the LBC will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.
8. The proposed boundaries of the city must be on a scale suitable for city government and include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following annexation.
9. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards, and are otherwise suitable for city government.
10. If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, the petition 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 enlarged city from the existing organized

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<sup>9</sup> "Essential city services" are defined by 3 AAC 110.990(8) to mean "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; 'essential city services' may include: (A) assessing, levying, and collecting taxes; (B) providing primary and secondary education in first class and home rule cities in an unorganized borough; (C) public safety protection; (D) planning, platting and land use regulation; and (E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community."



borough. If a petition for annexation describes boundaries overlapping the boundaries of another existing city, the petition must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

11. The proposed annexation is in the best interests of the state under AS 29.06.040(a).
12. A petition for annexation must include a practical transition plan:
  - demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practicable time after the effective date of the proposed boundary change;
  - providing for the assumption of all relevant and appropriate powers, duties, rights and functions exercised by an existing borough, city, unorganized borough 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, and unorganized borough service area. It 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;
  - providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partly in the boundaries proposed for change. The plan 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. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities;
  - stating the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.
13. The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
14. If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory

and discretionary powers and facilities that are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

15. In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.
16. Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

## Conclusion

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This chapter has described the Local Boundary Commission's background, including its legal basis, powers, membership, and procedures. It also gave an overview of legal standards for annexations to cities. Chapter 2 will discuss this petition's proceedings to date.

## Chapter II Proceedings to Date and Future Proceedings

### Submission and Review of Petition

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The petition was submitted to LBC staff on March 18, 2011, and accepted for filing on April 28, 2011.

### Public Notice

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Notice was published in the *Homer News* on May 5, 2011.

On May 3, 2011, a public service announcement was sent to the following radio station to request broadcast for 14 days:

- KBBI

### Service of Petition

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On May 4, 2011, the city of Kachemak served the following communities, in person or via United States Postal Service, complete copies of the petition:

**City of Homer**

**Kenai Peninsula Borough**

### Posting of Notice

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On May 3, 2011 notice was posted at the following locations surrounding the area proposed for annexation:

**Kenai Peninsula Borough Office**

**Homer Municipal Office**

**Homer Municipal Library**

**Bear Creek Winery**

**Home Run Oil**

On May 3, 2011, notice of the filing of the Petition was also posted within the existing boundaries of the City of Kachemak:

**Fritz Creek Post Office**

**Kachemak city mayor's office  
bulletin board**

**Bulletin board at Redden Marine Supply Bulletin board at Glacier Building**

## Deposit of Petition

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On May 3, 2011, the City of Dillingham provided a copy of the City's prospective petition in notebooks at the following location:

**Kachemak city clerk's office**

## Deadline for Initial Comments and Responsive Briefs

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The notice of filing invited written public comment concerning the proposed annexation by May 19, 2011. No responsive brief was filed in opposition to the petition.

Comments were submitted to LBC staff by the parties listed.

Name	Date Received	Position Regarding Annexation Petition
Dale & Wanda Conn	5/16/2011	Support
Nelson & Lilia Co	5/16/2011	Support
Sharon Froeschle	5/9/2011	Support
Sue & Paul Kewin	5/17/2011	Support
Ted & Barbara Heuer	5/13/2011	Support
Charlie Trowbridge* **	6/13/2011	Support
Kenai Peninsula Borough*	5/28/2011	Non-Objection
*Received late with no communication prior to the deadline. The late filing request was submitted and accepted by LBC chair.		
** Comment was filed representing all the additional residents requesting inclusion in this annexation petition.		

## Deadline for Comments on this Report

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The deadline for receipt of written comments concerning this report and recommendation by LBC staff is 4:30 p.m., Wednesday, July 15, 2011. Submit written comments to:

LBC staff  
550 W. 7<sup>th</sup> Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Fax: 907-269-4539  
Email: [lbc@alaska.gov](mailto:lbc@alaska.gov)

## LBC Public Hearing

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The Local Boundary Commission has scheduled a telephonic public hearing in Anchorage on the Kachemak annexation proposal for Thursday, July 21<sup>st</sup>. The hearing is scheduled to begin at 10 a.m. Entities that wish to attend telephonically should contact LBC staff for the phone number. Please be advised that the call is at the caller's own expense and can only be made from a land based phone, and not from a cell phone.

Formal notice of the public hearing was published in the *Homer News* June 16<sup>th</sup>, June 23<sup>rd</sup>, and June 30<sup>th</sup>. Public notice of the hearing has also been posted in prominent locations throughout the community. Additionally, notice was mailed to the Petitioner. (3 AAC 110.550)

The hearing will begin with a summary by LBC staff of its conclusions and recommendations concerning the pending proposal. Following LBC staff's summary, the law allows the Petitioner to make an opening statement limited to ten minutes.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. No time limit on testimony by the Petitioner is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

At the conclusion of the testimony phase of the hearing, the commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes.

No brief or other written materials may be filed at the time of the public hearing unless the commission determines that good cause exists for such materials not being presented in a timely manner for written response by the petitioner or respondents, or for consideration in the LBC reports.

In compliance with Title II of the Americans with Disabilities Act of 1990, LBC staff will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact LBC staff at [lbc@alaska.gov](mailto:lbc@alaska.gov) at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

## **LBC Decisional Meeting**

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The LBC must render a decision within 10 days of the hearing (3 AAC 110.570). If the commission determines that it has sufficient information to properly judge the merits of the annexation proposal following the hearing, the LBC could convene a decisional session shortly after the conclusion of the hearing. During the decisional meeting, no new evidence, testimony, or briefing may be submitted. However, commission members may ask their staff or other persons for a point of information or clarification.

Within thirty days after the commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the City of Kachemak's annexation petition. A copy of the statement will be provided to the Petitioner and any others who request a copy.

## **Reconsideration**

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Any interested person or organization may ask the commission to reconsider its decision in this matter. A request for reconsideration may be filed within 10 days after the written decisional statement has been mailed to the Petitioner.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. The LBC will reconsider a decision only if:

- there was a substantial procedural error in the original proceeding;
- the original vote was based on fraud or misrepresentation; or
- the commission failed to address a material issue of fact or a controlling principle of law;  
or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the commission. Ten days are allotted for the filing of such a brief.

## **Federal Voting Rights Act of 1965 Preclearance**

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If the Commission approves the petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the federal Voting Rights Act of 1965. The Voting Rights Act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of Columbia. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (see 28 CFR § 51.22). Annexation will not take effect until the City provides LBC staff with evidence that the Justice Department or the U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630). LBC staff is available to answer questions from cities in understanding their obligations under the Voting Rights Act.

## **Judicial Appeal**

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A decision of the LBC may be appealed to Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2).

## **Local Action**

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Annexation by local action using the method informally known as unanimous consent requires all property owners and registered voters residing in a territory adjoining the city to sign a simple petition for annexation. The city must then adopt an ordinance to authorize a petition to the LBC and submit a petition in the form and content required by law. (AS 29.06.040(c)(4); 3 AAC 110.150(2); 3 AAC 110.590).

## **Conclusion**

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This chapter has described the proceedings to date, and the future proceedings and deadlines. Chapter 3 will discuss the department's analysis.

# Chapter III Department's Analysis

## Introduction

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This report provides recommendations to the Local Boundary Commission.

The Local Boundary Commission staff (hereafter "LBC staff," "staff," "Commerce," or "department") received five timely received and two late filed comments during the public comment period that ended May 19, 2011. The petition and all public comments have been read, reviewed, and considered by the department in writing this report. All of comments are attached in Appendix A.

The report addressed the standards by analyzing the factors which the LBC may consider. The comments addressed some standards more heavily than others, and the department's analysis reflects that.

Although each comment has been read and considered, not every comment is specifically addressed. Also, while the comments are reproduced in the appendix of this report, the department may quote or refer to what it feels is the most pertinent part of the comment in its analysis and findings.



## Section I: Needs of the Territory

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The standard established in law:

3 AAC 110.090. Needs of the territory.

(a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including

- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city;
- (2) existing or reasonably anticipated health, safety, and general welfare conditions;
- (3) existing or reasonably anticipated economic development;
- (4) adequacy of existing services;
- (5) extraterritorial powers of the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and
- (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

(b) 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 on an areawide basis or non-areawide basis, or through an existing borough service area.

### Commerce Findings and Conclusion:

The City of Kachemak (hereafter “Kachemak” or “city”) is a second class city. It incorporated in 1961. It is adjacent to the City of Homer and located within the Kenai Peninsula Borough (“KPB” or “the borough”) 2010 Census data report a population of 472. The petition outlines three reasons for the petition and why the residents/voters have unanimously requested annexation into Kachemak:

1. Half of the Kachemak Estates Subdivision is within the Kachemak city limits while the other half is outside the city, but within a Kenai Peninsula Borough service area.

2. Morning Star Road, the only road into and out of the subdivision, is maintained by neither Kachemak nor the borough for various reasons.
3. The subdivision has different emergency responders with varied response abilities due to the split boundaries of the subdivision.

These issues are compounded by the fact that the residents in the borough service area pay significantly more for services that would be more effectively and efficiently provided if they were in Kachemak.

The residents and voters currently residing outside the city limits privately maintained Morning Star Road. The residents and voters of Dietz Lane also privately maintain their roads through association dues. They all pay the borough a 1.4 mill property rate for road service but because the road begins within the Kachemak city limits, the borough has determined it will not provide or maintain road maintenance for the Kachemak Emergency Service Area because Morning Star Road, and the residential service area roads connected to Morning Star Road, originate within the Kachemak city limits. Commenter Ted Heuer stated that they also pay for road maintenance through homeowner association dues. The portion of the subdivision within Kachemak is not assessed any road maintenance tax by the city of Kachemak because the city does not maintain its roads. The city does, however, provide subsidies for road maintenance in the form of a matching grant to those parcels of Kachemak Estates subdivision that are within the city limits. All residents requesting annexation into Kachemak would, after annexation, receive the same subsidies as those Kachemak Estate subdivision residents that currently reside within the current city limits.

In addition, the subdivision's residents residing outside the city limits pay a 2.25 mill rate for emergency services (fire and EMS) to the borough. The borough's closest fire station is 7.5 miles from the entrance to Morning Star Road. Kachemak residents, by comparison, only pay a 1 mill property rate for emergency services which are contracted by the petitioner through the City of Homer, the Homer fire station that serves Kachemak is within 4.5 miles from the entrance of Morning Star Road. Fire service is also provided from the Kachemak Community Center, which is less than two miles from the entrance of Morning Star Road.

After the petition was filed, 15 residents and voters within Dietz Homes Estates requested, by unanimous consent to be added to the petition (See Appendix D for names and addresses of individuals). This request came in the form of a comment, and is not part of the original petition. These additional residents/voters face the exact same concerns with regard to the road maintenance, emergency responders, and duplicate taxation within the provision of essential municipal services, as do the original properties proposed for annexation. For this reason staff recommends that the LBC approve both the properties mentioned in the petition, and those of the 15 later residents/voters.

Commerce finds that the properties of the Kachemak Estates Subdivision as well as the Dietz Homes Estates would benefit from the effective and efficient provisions of one municipal service provider. Further, Commerce finds that the fire/EMS services that would be provided by the petitioner (by contract through the city of Homer) are more efficient as the Homer Fire Department station is 3 miles closer to the entrance of Morning Star Road than is the service area fire department station. Commerce finds that the fire/EMS services that would be provided by the petitioner are more cost-effective since the road maintenance and emergency response services cost less through the petitioner than the services currently provided by the borough.

The territory proposed for annexation exhibits a reasonable need for city government because the city's fire/EMS services would be closer, and because road service would improve because the territory would receive road subsidies from the city.

The borough sent a letter of non-objection to the annexation requested by the petition. It addressed the issue of non-objection for the 15 residents and voters within Dietz Homes Estates in the July 5<sup>th</sup> assembly meeting. The staff recommendation is that the LBC approve all the properties for annexation because Commerce concludes that the petition, including the additional residents, has met the necessary requirements of 3 AAC 110.090(a) based on the above outlined factors. 3 AAC 110.090(b) is also met because Kachemak is the closest municipality to the territories proposed for annexation. Furthermore, the essential municipal services Kachemak would provide the territory are on a more cost effective basis. The city can provide road maintenance subsidies without any additional taxation. This will substantially lower the mill rate assessed for the residents requesting annexation. As well, the city can provide services on a more efficient level because the emergency services are closer to the residents requesting annexation than those of the Kachemak Emergency Service Area. The petition has met 3 AAC 110.090(b).

## **Section 2: Character of the territory**

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The standard established in law:

3 AAC 110.100. Character.

The territory must be compatible in character with the annexing city. In this regard, the commission may 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.

### **Commerce Findings and Conclusion:**

The City of Kachemak is a predominantly residential in nature. The territory requesting annexation is also completely residential. This makes the land use and ownership patterns of both the city and the territory requesting annexation compatible. The annexation of all the residents/voters requesting inclusion into Kachemak -the original 39.966 acres as well as the additional acreage with the 15 new residents requesting inclusion in this annexation petition-would add to the character of the city. No major change or development will occur through annexation, and as indicated in the petition,<sup>10</sup> “If the 14.86-acre undeveloped tract (parcel 17406309) is developed, Morning Star Road will likely loop back into Licorice Street. Long-term development plans for this parcel are for additional single-family residences.” This further implies the residential nature of this community.

Commerce concludes the territory proposed for annexation is compatible with the petitioner. The land use and subdivision platting is all residential and any reasonably anticipated growth in the territory is indicated above as planned for residential purposes. The petition has met 3 AAC 110.100.

### **Section 3: Resources**

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The standard established in law:

3 AAC 110.110. Resources.

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 may 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 that would result from annexation;

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<sup>10</sup> City of Kachemak Petition, p. 46

- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the third full fiscal year of operation after annexation;
- (5) economic base of the city 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 persons to serve the city as a result of annexation.

### **Commerce Findings and Conclusion:**

“City services within the proposed annexation area (as within all of Kachemak City) would be minimal . . . [t]here would be no need to increase the City’s payroll or municipal taxes as a result of the annexation.”<sup>11</sup> The petitioner’s Comprehensive Community Plan “minimizes government and retention of low taxes.”<sup>12</sup> The City of Kachemak indirectly provides the essential municipal services required by the territory to be annexed by creatively, efficiently, and effectively eliminating the duplication of services and outsourcing these services to the neighboring community of Homer. This enables the city to provide those direct services that it must provide, while minimizing the cost of government personnel, labor, etc. The city does not levy a municipal sales tax on its residents, yet through the low mill rate it is able to provide subsidizes to the subdivisions within its city limits for road maintenance, along with other essential municipal services efficiently and cost-effectively.

The limited involvement of city government in planning, zoning, and land usage, etc. has helped the Kachemak community maintain its “rural essence.”<sup>13</sup> The city indicates in its petition that the funding to increase the emergency services contract is available to fully fund

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<sup>11</sup> See petition, pp. 46, 47.

<sup>12</sup> See petition, p. 37

<sup>13</sup> See petition, p. 37

the originally requested annex area. The petitioner does not, through no fault of its own, indicate whether or not the additional residents requesting they be added to the petition will cause an undue burden to the resources of the city. The petitioner further states that the pass-through cost to the residents are minimal and that annexation would not result in additional taxation or an increase in needed revenue to maintain the existing municipal services provided.

U.S. Census Bureau data indicate the current Kachemak population has less than six percent below poverty. The data also indicate the median family income to be \$44,432<sup>14</sup>. The one mill property rate is sufficiently low and petitioner indicates that has been and will continue to be accommodated by the city residents<sup>15</sup>.

Commerce concludes the petitioner has adequate resources to provide essential city services on an efficient, cost-effective level to both its current boundaries and the territories proposed for annexation. We find this because the territory proposed for annexation is physically small and has a low population. We further find the city provides few services, and the cost of providing these services to the territory will be minimal. The cost of those services will be paid through the property tax. We find that 3 AAC 110.110 has been met.

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<sup>14</sup> See DCRA Detailed Community Information database. This data was collected from U.S. Census Bureau

<sup>15</sup> See petition, p. 46

## Section 4: Population

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The standard established in law:

3 AAC 110.120. Population.

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 may consider relevant factors, including

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.
- (6) contemporary and historical public school enrollment data; and
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.

### **Commerce Findings and Conclusion:**

In 2000, the City of Kachemak population was 431. This population has grown to 472, or a populous increase of 4.1 new residents per year since 2000. This is a 9.5% increase over the past decade. The city's population is healthy, growing, and sustainable. As a second class city, school enrollment data is irrelevant, and the majority of the city and territories residents occupy their homes year round.

If annexation is approved for both the individuals named in the petition, and the individuals who later asked to be annexed, the population would increase by 32 residents to a total of 503 city residents. There is no indication, in the petition or census data, that this fairly large influx of new city residents will negatively affect the city's ability to provide essential municipal services in any way (see 3 AAC 110.110 Resources above).

Commerce concludes that the population of the City of Kachemak is sufficiently large and stable to support the extension of city government, and therefore meets the population standard of 3 AAC 110.120.

## Section 5: Boundaries

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The standard established in law:

### 3 AAC 110.130 Boundaries

(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may 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.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

(c) To promote the limitation of community, the proposed expanded boundaries of the city

- (1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and
- (2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, 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 enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for



annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

### **Commerce Findings and Conclusion:**

In analyzing 3 AAC 110.130(a), Kachemak is a residential municipality of 1.6 square miles with few commercial properties within the city. The territory requesting annexation (including the commenters who asked to be annexed, but were not in the petition) is approximately 50 acres. Kachemak offers few essential municipal services. The fire/EMS is currently provided by a borough service area, and if annexation is approved, would be from the city of Homer by contract. Taxes levying does not depend on having sufficient land or water. There has been no showing made that Kachemak has insufficient land or water to provide essential municipal services.

In analyzing 110.130(b), both territories requesting annexation are contiguous to the current city boundaries, and annexing these territories would not create enclaves. Annexing these territories will allow for the full development of essential city services on an efficient, cost-effective level.

For 3 AAC 110.130(c)(1), the proposed expanded boundaries of the city are on a scale suitable for city government. The present city is 1.6 square miles, and the territories proposed for annexation include less than twenty parcels of land (approximately 50 acres). The annexation of these territories does not include any undeveloped land. The proposed expanded boundaries of the city include the existing local community of the city of Kachemak. The proposed expanded boundaries of the city include reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

For 3 AAC 110.130(c)(2), the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. If, arguendo they did, we find that these boundaries are justified by the application of the standards in 3 AAC 110.090 – 3 AAC 110.135, and are otherwise suitable for city government.

In analyzing 3 AAC 110.130(d), we find that the proposed expanded boundaries of the city do not overlap the boundaries of an existing organized borough, or of another existing city. Commerce concludes that the petition meets the boundaries standard of 3 AAC 110.130.

## Section 6: Best Interests of the State

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The standard established in law:

**3 AAC 110.135. Best interests of state.** In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), which states,

“The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).”

the commission may consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local services.

### Commerce Findings and Conclusion:

By allowing the annexation of the proposed territories, the Local Boundary Commission serves the best interests of the state pursuant to article X of the Alaska Constitution and AS 29.06.040 in several ways:

1. The territories proposed for annexation would receive the benefits of better fire, EMS, and other essential municipal services on a more efficient, cost effective level as indicated previously in 3 AAC 110.090(a) and (b).
2. Annexation would simultaneously reduce the cost of the services paid for, but not currently provided to the territories’ residents because Kachemak assesses a lower mill rate to its residents than does the borough. The city does not assess property taxes exceeding the one mill rate for road maintenance, which is a complete elimination of that tax for the residents requesting annexation into the city. The city has also shown its ability to provide these services adequately, thereby not requiring any state intervention on the city’s behalf.
3. As shown below in our analysis of 3 AAC 110.981, Commerce finds that the annexation would promote minimum local self government because the residents in the territories proposed for annexation would be enfranchised by being part of Kachemak. They could fully participate in city affairs, including holding city office.

They would enjoy improved essential municipal services. At the same time, they would still be in the KPB, and enjoy the benefits of that as well.

4. As shown below in our analysis of 3 AAC 110.982, the annexation would promote a minimum local of local government units because no additional units would be formed. Instead, the existing second class city of Kachemak would expand.

Commerce concludes from the findings above that annexation is in the best interests of the state. Thus, Commerce concludes that the standard set out in 3 AAC 110.135 is met.

## Section 8: Transition

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The standard established in law:

3 AAC 110.900. Transition.

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government 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 city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition 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, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough 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) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for 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

occur 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 may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change 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.

### **Commerce Findings and Conclusion:**

In 3 AAC 110.900(a), the city indicates in its transition plan that there are no challenges to extending the road maintenance grants to the territories proposed for annexation because the 1 mill property tax covers the increased costs. Further, the city does not impose a municipal tax, therefore no additional taxation would occur in the territories post-annexation. Immediately following the approval of annexation, the city would notify the affected municipalities of Kenai Peninsula Borough, and the City of Homer,<sup>16</sup> which will automatically entitle the territories to the same emergency services contracted by the petitioner through the City of Homer.

The only transition that has not already been extensively covered in this report that would occur is the inclusion of the new Kachemak city residents in the city's municipal election(s). Within 30 days of the annexation approval, the city clerk will contact the Division of Elections to have those new residents' names and addresses transferred into the City of Kachemak.

For 3 AAC 110.900(b), as above, the transition is fairly minimal. The petition has described how Kachemak will assume powers, rights, duties, and functions. The plan was prepared in consultation with borough officials, and while some times are not specifically determined, would likely take effect in under two years.

Regarding 3 AAC 110.900(c), there was no mention of transfer of any assets or liabilities of another municipality or other entity.

3 AAC 110.900(d) is not a requirements, but it's an option that the LBC may exercise to require an agreements for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

For 3 AAC 110.900(e), the petition listed the officials consulted for the transition plan. The petitioner also listed the dates and subjects discussed.

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<sup>16</sup> See petition, p. 39

This transition plan is simple, feasible, and meets the standard. 3 AAC 110.900 has been met.

## **Section 9: Statement of Non-discrimination**

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The standard established in law:

3 AAC 110.910. Statement of non-discrimination. 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.

### **Commerce Findings and Conclusion:**

Nothing in these proceedings suggest that the proposed annexation will adversely affect the enjoyment of any individual's civil or political rights, including voting rights, because of race, color, creed, sex, or national origin. Commerce sees no other indication that the proposed annexation would adversely affect the enjoyment of any individual's civil or political rights.

Based on the foregoing, Commerce concludes that annexation will not result in any form of discrimination. Thus, the standard set out in 3 AAC 110.910 is satisfied.

### **3 AAC 110.970. Determination of essential municipal services**

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(c) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that

- (1) are reasonably necessary to the community;
- (2) promote maximum, local self-government; and
- (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

(d) The commission may determine essential municipal services for a city to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing the value of taxable property;
- (3) levying and collecting taxes;

- (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;
- (5) public safety protection;
- (6) planning, platting, and land use regulation; and
- (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.

### **Commerce Findings and Conclusion:**

Commerce finds that the essential municipal services related to this petition are specifically road maintenance and emergency/EMS services. Commerce concludes that these services are considered essential municipal services and are reasonably necessary for the community. Further the ability of the petitioner to levy and collect taxes to provide the services required for the territory proposed for annexation are also necessary, promote maximum local self government, and cannot be provide more efficiently or cost effectively by any other political subdivision of the state. Therefore, Commerce concludes that 3 AAC 110.970 is met.

### **3 AAC 110.981. Determination of maximum local self-government**

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In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

- (8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area;

### **Commerce Findings and Conclusion:**

Commerce finds that the Kachemak City petition would extend local government to territory of the Kenai Peninsula Borough where local government need of fire/EMS cannot be met as well by the borough's Kachemak Emergency Service area. Further, the local government need of road service is not met by the KPB. As Kachemak can provide these local governments needs more effectively, this proposal meets the maximum local self government determination and Commerce concludes the petition meets this consideration.

### **3 AAC 110.982. Minimum number of local government units**

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Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;

#### **Commerce Findings and Conclusion:**

Commerce finds that by annexing this territory, the city would not enlarge its boundaries to the degree that would better promote the incorporation of a new city. The 50 acres of land proposed for annexation would not promote a minimum number of local government units and would be highly unlikely to be self-sustainable if it were to incorporate as its own local government unit. Commerce concludes the petition does promote a minimum number of local government units and therefore meets this regulation.

## Chapter IV General Conclusion and Recommendation

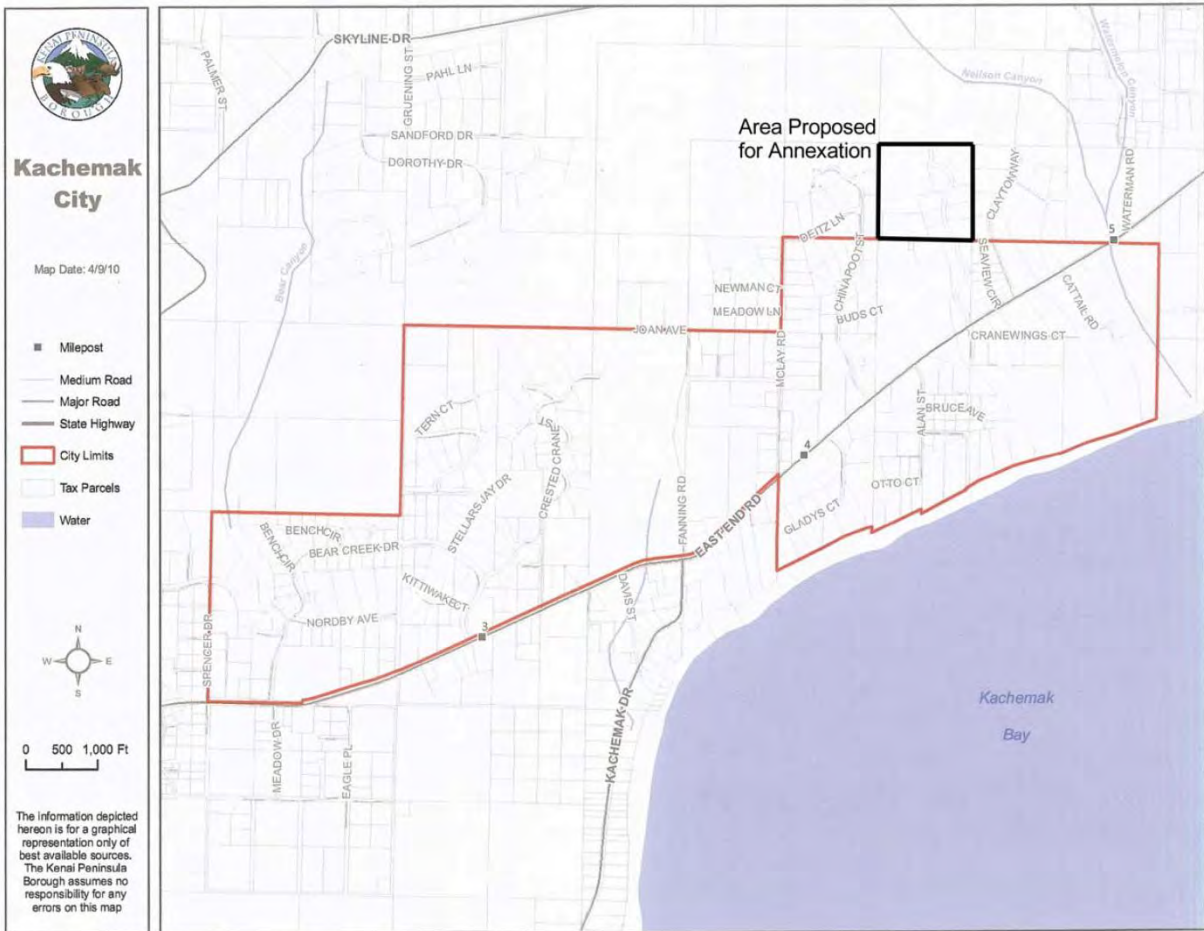
Commerce concluded in Part III of this report that all of the applicable standards for annexation of the territories are met. Based on the findings and conclusions set out in Part III, Commerce recommends that the LBC grant the city's petition for annexation of 39.966 acres as well, as the additional territory of approximately 10 acres of land not mentioned in the petition. If approved, the city of Kachemak would encompass the existing 1.6 square miles of land and an additional 50 acres of.

If the LBC approves the petition, annexation will take effect when the city provides notification to the commission that the U.S. Department of Justice has granted preclearance for the annexation under 42 U.S.C. 1973c (Voting Rights Act of 1965). Following such notification, DCCED will issue a certificate describing the annexation.



# Chapter V Appendix

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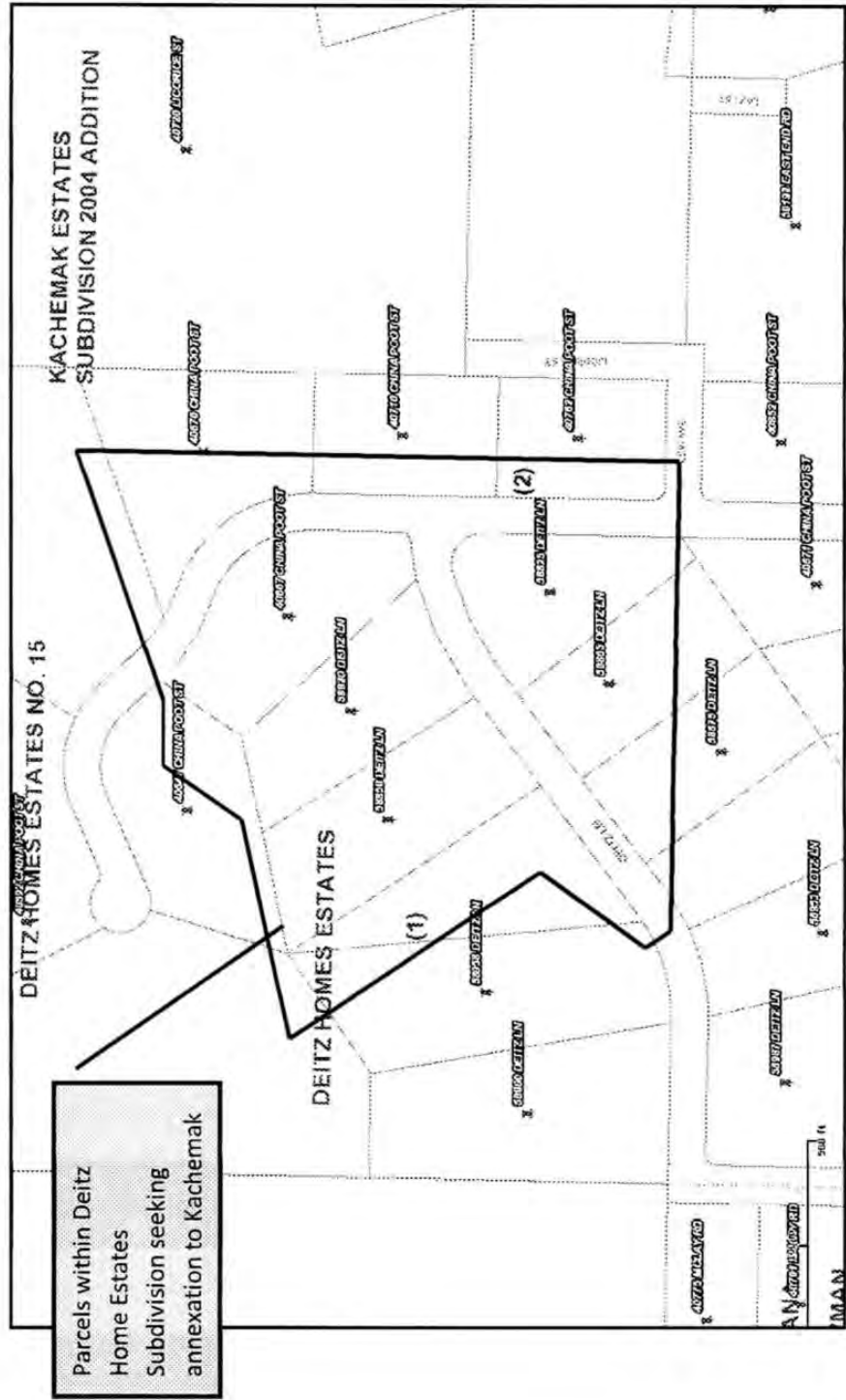
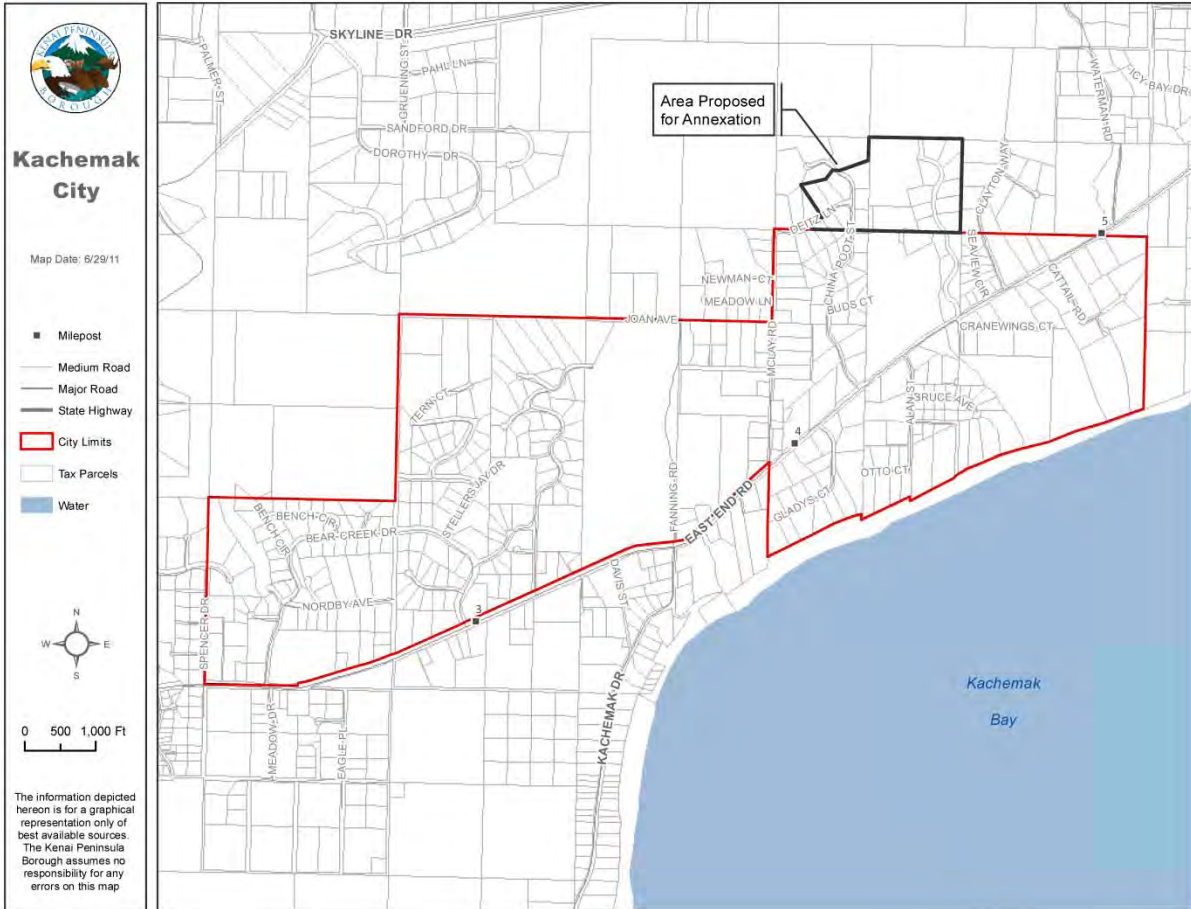


Figure 1. Map depicting those lots within Deitz Home Estates subdivision requesting LBC consideration for annexation to Kachemak City.



**Appendix B      Kachemak City Resolution/Kachemak City Ordinance**

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CITY OF KACHEMAK

KACHEMAK, ALASKA

RESOLUTION 2011-02

A RESOLUTION OF THE CITY OF KACHEMAK, ALASKA AUTHORIZING MAYOR PHILEMON D. MORRIS TO SIGN DOCUMENTS RELATING TO PETITION FOR ANNEXATION SUBMITTED TO THE LOCAL BOUNDARY COMMISSION

WHEREAS, owners of certain properties that are part of Kachemak Estates Subdivision and are adjacent to the City of Kachemak have requested to be annexed into the City; and

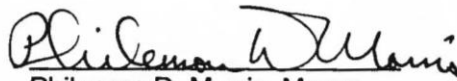
WHEREAS, the owners of the property proposed for annexation have proposed that they be annexed to the City of Kachemak using the Local Option Method of annexation by unanimous consent; and

WHEREAS, the Kachemak City Council has reviewed the petition and has no objection to the proposed annexation; and

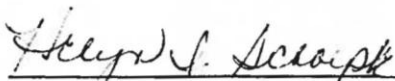
NOW THEREFORE BE IT RESOLVED that the City Council of the City of Kachemak authorizes Kachemak's Mayor Philemon D. Morris to sign all documents related to the petition of Annexation of those properties requesting annexation to the City of Kachemak using the Local Option Method by unanimous consent.

ADOPTED BY THE COUNCIL OF THE CITY OF KACHEMAK ON THIS   9th   DAY OF   February  , 2011.

CITY OF KACHEMAK

  
Philemon D. Morris, Mayor

ATTEST:

  
Helyn F. Schoepke, City Clerk

CITY OF KACHEMAK  
KACHEMAK, ALASKA  
ORDINANCE 2011-04

AN ORDINANCE AUTHORIZING THE CITY OF KACHEMAK TO FILE A PETITION  
FOR ANNEXATION FOR THAT PORTION OF KACHEMAK ESTATES SUBDIVISION  
THAT HAS REQUESTED ANNEXATION.

WHEREAS, as 29.06.040(c)(4) provides that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body;

WHEREAS, the territory proposed for annexation exhibits a reasonable need for city government; and

WHEREAS, services determined to be essential city services under 3 AAC 110.970 can be provided more efficiently and effectively by the City of Kachemak than by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area; and

WHEREAS, the territory proposed for annexation is compatible in character with the annexing city; and

WHEREAS, the economy within the proposed expanded boundaries of the City include the human and financial resources necessary to provide services determined to be essential city services under 3 AAC 110.970 on an efficient, cost-effective level; and

WHEREAS, the population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government; and

WHEREAS, the proposed expanded boundaries of the City include all land and water necessary to provide the development of services determined to be essential city services under 3 AAC 110.970 on an efficient, cost-effective level; and

WHEREAS, the territory proposed for annexation is contiguous to the existing boundaries of the City and would not create enclaves in the expanded boundaries of the City; and

WHEREAS, the proposed expanded boundaries of the City include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and

WHEREAS, the proposed expanded boundaries of the City do not include entire geographical regions or large unpopulated areas, except where justified by the application of the standards in 3 AAC 110.090 – 3 AAC 110.135; and

WHEREAS, if the Petition describes boundaries overlapping the boundaries of an existing organized borough, it will address the procedures and the brief will address the standards for either annexation of the enlarged city to the existing organized borough or annexation of the enlarged city from the existing organized borough; if the Petition describes boundaries overlapping the boundaries of another existing city, it will address the procedures and the brief will address the standards for annexation of territory from a city, merger of cities, or consolidation of cities; and

WHEREAS, annexation to the City is in the best interests of the State as required by AS 29.06.040(a) and 3 AAC 110.135; and

WHEREAS, the territory proposed for annexation meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135. Although not subject to the legislative review annexation standard set out in 3 AAC 110.140, the brief to accompany the Petition will also demonstrate with detailed facts and analysis any of the circumstances outlined in 3 AAC 110.140(1) – (9) that exist with respect to the annexation proposal; and

WHEREAS, all property owners in the territory proposed for annexation, as defined by 3 AAC 110.990(12), and all registered voters in the territory proposed for annexation have petitioned the City Council for annexation in accordance with AS 29.06.040(c)(4); and

WHEREAS, the proposed annexation to the City will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin; and

WHEREAS, the Petitioner has prepared a proper transition plan under 3 AAC 110.900; and

WHEREAS, other constitutional principles are served by the annexation proposal, such as the equal-protection clause and the equal-responsibility clause of Article I, section 1 of the Constitution of the State of Alaska and the maximum local self-government clause and minimum of local government units clause of article X, section 1 of the Constitution of the State of Alaska, and 3 AAC 110.981 – 982;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF KACHEMAK, as follows:

Section 1. Authorization. That the Mayor is authorized to file a petition with the Alaska Local Boundary Commission for annexation using the method of annexation set out in AS 29.06.040(c)(4). The petition shall propose the annexation of the territory generally described as a forty-acre block within section 1, township 6 south, range 13 west, Seward Meridian, as depicted on the attached maps. The legal boundary description of the territory proposed to be annexed is attached hereto as "Attachment A" and shown on the map attached here as "Attachment B", both of which are hereby incorporated by reference.

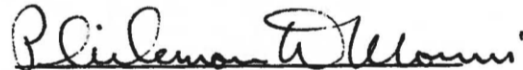
Section 2. Petitioner's Representative. That the Mayor is designated as the representative of the City for all matters relating to the annexation proceeding.

Section 3. Terms and Conditions. That the annexation will be on the following terms and conditions:

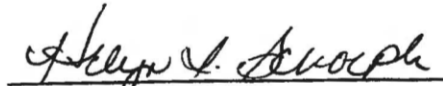
Services provided to the area requesting to be annexed will be the same as provided to other areas of the City of Kachemak. Fire and Emergency Services are provided City wide through a contract with the City of Homer. Road grants are awarded annually by the Kachemak City Council with a two to one match to provide road maintenance in the City. Taxes are set by the City of Kachemak by June 15th of each year--all property in Kachemak City is taxed at the same rate unless it is exempt from taxation.

Section 4. Effective Date. That this ordinance shall become effective immediately.

ADOPTED by a duly constituted quorum of the City Council of Kachemak, Alaska, this 8<sup>th</sup> day of June, 2011.

  
Philemon D. Morris, Mayor

ATTEST:

  
Helyn I. Schoepke, City Clerk

First Reading: 5/11/11

Public Hearing: 6/8/11

Second reading 6/8/11



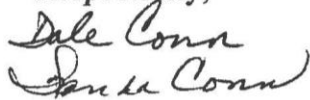
40570 Morning Star Road  
Homer, AK 99603  
May 14, 2011  
Local Boundary Commission  
Local Boundary Commission Staff  
550 West Seventh Avenue  
Suite 1770  
Anchorage, Alaska 99501-3510

Dear Local Boundary Commission,

Subject: Kachemak Estates Subdivision, Homer, AK

We are writing with comments in support of the annexation of Kachemak Estates Subdivision, 2004 addition, into Kachemak City. We believe that the annexation will be of benefit to all parties involved. Thank you for your efforts in this accomplishment.

Respectfully,



Dale and Wanda Conn

**Burrell, Don (CED)**

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**From:** Nelson Co [nelsonco88@gmail.com]  
**Sent:** Monday, May 16, 2011 2:03 PM  
**To:** Commission, Boundary (CED sponsored)  
**Subject:** Annexation into Kachemak City

To: Local Boundary Commission  
Re: Annexation into Kachemak City

We reside on Morning Star Rd, and are among the residents who have unanimously asked to be annexed into Kachemak City. The formal petition lists all the reasons why it makes sense to be annexed. We would like to provide our personal reasons for it.

Since moving into Morning Star Rd. in 2006, we have requested Kenai Peninsula Borough to provide snow plowing during winter, as they do for neighboring streets. The consistent reply from KPB is that they will not, because our road starts within Kachemak City. However, they still require us to fully pay our taxes to KPB, which includes 1.4 mills for road maintenance. It is extremely frustrating and unfair to be in a situation where we have to pay taxes to KPB for something that they refuse to do, and then pay again to a third party to provide that service.

We believe it is highly unjust, if not immoral, for KPB to be explicitly charging us a tax for a service that they can, but refuse to provide. Therefore, our recourse is to seek annexation into Kachemak City. Would we reconsider our petition if KPB decides to provide road maintenance? The answer is "NO", since we have discovered, in the course of researching solutions to our problem, that there are many other benefits to being part of Kachemak City. These are described in detail in the petition.

This is an exercise in self-determination by a group of like-minded neighbors, within the legal framework provided by Alaska law. We pray that the Local Boundary Commission will act on it favorably.

Nelson and Lilia Co  
40700 Morning Star Rd  
Homer, AK 99603

**sharon froeschle**

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**From:** sharon froeschle [akfroeschle@gmail.com]  
**Sent:** Monday, May 09, 2011 10:06 PM  
**To:** 'LBC@alaska.gov'  
**Subject:** Petition by City of Kachemak for Local Action Annexation

Dear Sirs:

RE: Petition by City of Kachemak for Local Action Annexation

We wish to express our support for this Annexation request.

As current residents of "The Kachemak Estates Subdivision, 2004 addition", we urge the approval of this annexation request to be granted. Approval will provide the residents more reasonable and efficient services in the areas of road maintenance and emergency response. These services are very important to the health, safety, and general welfare of the individuals residing within the proposed annexation area.

Respectfully submitted,  
Jerry and Sharon Froeschle

5/10/2011

**May 14, 2011**

**Local Boundary Commission**

**550 West 7th Ave., Suite 1770**

**Anchorage, AK 99501-3510**

**We approve annexing the 40 acres of unincorporated borough land in the small city north of the intersection of Kachemak Drive and East End Road. Our property is one of those located in Kachemak City on the lower half of Morning Star Road. The following are reasons the 10 property owners that are now in the Borough want to be included in Kachemak City.**

- 1. Inequity in emergency response service provided to the homeowners who reside just outside the current boundaries of Kachemak City.**
- 2. Availability of -- and equitable access to -- road maintenance services.**
- 3. Annexation to the City would allow residents of the area to vote in City elections, run for City Council, and participate in City matters.**
- 4. Recognition of the efforts of the City of Kachemak to encourage the extension of a natural gas pipeline to the City, which would significantly reduce heating costs within the City boundaries.**

**Sue and Paul Kewin**

**40813 Morning Star Road**

**Homer, AK 99603**

40630 Morning Star Road  
Homer, Alaska 99603

May 13, 2011

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

Local Boundary Commission:

We are writing in support of the petition filed by the City of Kachemak for annexation of 39.966 acres of land, an area encompassing the Kachemak Estates Subdivision, 2004 addition.

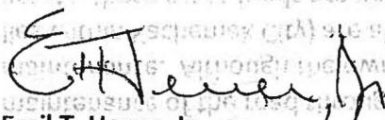
We are residents of the area proposed for annexation and support the proposal as set out in Petition for Annexation. The annexation, if approved by the Local Boundary Commission, would remedy two problems for residents of the affected area.

The first of these is the lack of Borough road maintenance on the top half of Morning Star Road, which lies just outside Kachemak City. Morning Star Road is a dead-end road and is the single entry point into the subdivision. Ten lot owners in our subdivision pay 1.4 mills for Borough road maintenance, which we do not receive due to the fact that Morning Star Road begins in Kachemak City. We pay for private maintenance of the road through homeowners association dues, thus paying twice for road maintenance. Although the owners of the five lots on the lower portion of Morning Star Road (which lies within Kachemak City) are able to avail themselves of Kachemak City road maintenance matching grants, those grant funds are not available for use on the section of road outside the City limits. Annexation of the proposed area would alleviate the difficulty our homeowners association faces in allocating road maintenance costs in a fair and equitable manner among the 15 lot owners who utilize the common resource of our subdivision road.

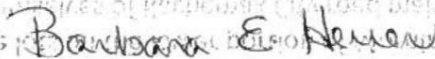
The second problem that would be remedied is the inequity in emergency response. Owners of property living on the upper half of Morning Star Road receive emergency services from a responder located at McNeil Canyon, which is 7.5 miles away from the entrance to the subdivision. If the area were annexed into Kachemak City, emergency services would come from the Homer Fire Department which is only 4.5 miles away from the subdivision entrance, or from the Kachemak Community Center, less than two miles from the subdivision.

We appreciate your consideration of the City of Kachemak's petition for annexation.

Sincerely,



Emil T. Heuer, Jr.



Barbara E. Heuer

Sent by email 5/13/2010

Local Boundary Commission  
Division of Community and Regional Affairs  
Dept of Commerce, Community and Economic Development  
Suite 1770  
550 West 7th Ave.,  
Anchorage, AK 99501-3510

June 13, 2011

Dear Commissioners,

Recent notice to residents indicates the LBC will consider a petition for annexation of a 40 acre parcel on Morning Star Road within Kachemak Estates Subdivision located adjacent to and east of Deitz Home Estates. This acreage was described as being within Section 1 Township 6 South, Range 13 West of the Seward Meridian. The undersigned resident owners of Deitz Home Estates fully support approval of the Kachemak Estates annexation request.

In addition, the undersigned residents of Deitz Home Estates Subdivision request concurrent consideration for annexation of our properties to Kachemak City. Specifically, we seek LBC action to include the properties depicted in Figure 1. Currently, the Kachemak City boundary divides some of the lots on the south side of Deitz Lane which places an additional administrative burden on the respective government entities (duplicate tax bills). Other properties along the northern tier of the subdivision are wholly within Kenai Peninsula Borough (KPB). Consistent with 3 AAC 110.090 (a)(6), all of these properties benefit, directly and indirectly through matching grants, from road maintenance funds made available through Kachemak City. Similarly, in a conversation with our local road maintenance group, Upper Deitz Road Group (UDRG), Kachemak City mayor Philemon Morris stated the city's intent to vigorously pursue installation of natural gas distribution lines throughout the city and this is of strong interest to our residents. Additional development of lands north of the Deitz Subdivision is very unlikely due to the steep slope of the adjacent bluff. KPB has denied road services (plowing, gravel, grading, CaCl application for dust control, ditching, and etc.) to these "stranded" properties (3 AAC 110.090 (a)(4)) with the result that owners must both pay KPB property taxes for road and emergency services while also paying up to an additional \$300 per year to UDRG to ensure consistent and safe access to our homes. This boundary issue also causes us concern due to the potential for confusion among emergency service providers. Finally, the character, resources, and population of our proposed annexation addition are consistent with those in adjacent Kachemak City. Specifically, land use and ownership patterns (3 AAC 110.100 (1)(3)), valuations of taxable properties based upon established homes (3 AAC 110.110 (6), and duration of residency (3 AAC 110.120 (2) as we are all year round residents and long term property owners.

Please find following the description and names of supporting property owners.

Sincerely,

Charlie Trowbridge for  
affected Deitz Home Estates residents.

**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

The owner(s) of the property and all registered voter(s) in the property described below hereby petition Kachemak City for annexation into Kachemak City (hereafter "City").

**Description of the property proposed for annexation:**


A forty-acre block within section 1, township 6 south, range 13 west, Seward Meridian, as depicted on the attached map. This block is composed of: 1) 10 residential lots within the Kachemak Estates Subdivision 2004 (and 2007) additions, 2) a 14.86 undeveloped tract within the Kachemak Estates Subdivision 2004 addition, 3) a 4.82 acre portion of tract C2 north of the Kachemak City Limits, 4) a .018-acre portion of tract A1 lying outside of Kachemak City, and the northern half of Morning Star Road.

WE, THE UNDERSIGNED, hereby petition for the annexation of the territory to the City.


This exhibit presents the signatures and residential addresses of property owners and registered voters in the territory seeking annexation to the City.

To help verify your voter registration status, please:

- sign your name as it is listed in the Alaska voter registration records;
- print your name legibly;
- list a numerical identifier. "Numerical identifier" means a voter's date of birth, the last four digits of a voter's social security number, a voter's Alaska driver's license number, or a voter's Alaska identification card number or voter identification number;
- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

Signature  Printed Name Jerry D Froeschle

Residence Address (or best equivalent) 40564 Morning Star Rd. Homer AK 99603

Numerical Identifier  Date Signed 9-24-10



**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

The owner(s) of the property and all registered voter(s) in the property described below hereby petition Kachemak City for annexation into Kachemak City (hereafter "City").

**Description of the property proposed for annexation:**

A contiguous group of parcels within the Deitz Home Estates within section 1, township 6 south, range 13 west, Seward Meridian, as depicted on the attached map (Figure 1). This block is composed of nine residential lots within the Deitz Home Estates Subdivision (1) and (2).

WE, THE UNDERSIGNED, hereby petition for the annexation of the territory to the City.

This exhibit presents the signatures and residential addresses of property owners and registered voters in the territory seeking annexation to the City.

	Printed Name	Residence Address	Numerical Identifier	Signature	Signature Date
1	Charles E. Trowbridge	40710 China Poot St.			6-14-11
2	Elizabeth A. Trowbridge	40710 China Poot St.			6-14-11
3	Elizabeth J Weldon	58855 Deitz Lane			6-15-11
4	Sherry Johnson	40667 China Poot St.			6-14-2011
5	David E. Weber	58875 Deitz Lane			6-14-2011
6	Maxine G. Weber	58875 Deitz Lane			6/14/11
7	Sandra L. Rollins	40670 China Poot St.			6-14-2011
8	Dennis D. Rollins	40670 China Poot St.			
9	Larry R. Rappuhn	58850 Deitz Lane			6/14/2011
10	Kathi A. Rappuhn	58850 Deitz Lane			6-14-11
11	Michael K. Tonga	58825 Deitz Lane			6-14-11
12	Heather M. Tonga	58825 Deitz Lane			6-14-11
13	David A. Webb	40762 China Poot St.			6/14/2011
14	Ronald A. Johnson	58820 Deitz Lane			6/14/2011
15	Melanie M. Webb	40762 China Poot St.			6/14/2011

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A forty-acre block within section 1, township 6 south, range 13 west, Seward Meridian, as depicted on the attached map. This block is composed of: 1) 10 residential lots within the Kachemak Estates Subdivision 2004 (and 2007) additions, 2) a 14.86 undeveloped tract within the Kachemak Estates Subdivision 2004 addition, 3) a 4.82 acre portion of tract C2 north of the Kachemak City Limits, 4) a .018-acre portion of tract A1 lying outside of Kachemak City, and the northern half of Morning Star Road.

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- list a numerical identifier. "Numerical identifier" means a voter's date of birth, the last four digits of a voter's social security number, a voter's Alaska driver's license number, or a voter's Alaska identification card number or voter identification number;
- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

Signature  Printed Name Sanford Beachy  
 Marilyn Beachy  
Residence Address (or best equivalent) 58075 Icy Bay Rd, Homer, AK 99603  
Numerical Identifier  Date Signed 9/28/2010  
9/28/2010

**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

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- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

Signature  Printed Name MICHAEL PATE  
M. KATHLEEN PATE

Residence Address (or best equivalent) 4014 LARE ST #101 HOMER, AK 99603

Numerical Identifier  Date Signed 10 / 7 / 10

**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

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- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

Signature  Printed Name AVAN R. TURKENTON

Residence Address (or best equivalent) 59190 EAST GUN ROAD / KACHEMAK CITY

Numerical Identifier  Date Signed 9/28/10

**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

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- list a numerical identifier. "Numerical identifier" means a voter's date of birth, the last four digits of a voter's social security number, a voter's Alaska driver's license number, or a voter's Alaska identification card number or voter identification number;
- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

Signature  Printed Name ROBERT B TURKINGSTAD

Residence Address (or best equivalent) 59192 East End Road - Kachemak City

Numerical Identifier  Date Signed 9/23/10

**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

The owner(s) of the property and all registered voter(s) in the property described below hereby petition Kachemak City for annexation into Kachemak City (hereafter "City").

**Description of the property proposed for annexation:**

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- list your residence address (e.g. street number, milepost) – **do not list a post office or other mail box**; and
- list the date you signed the petition.

---

Signature [REDACTED] Printed Name Barbara E. Heuer

Residence Address (or best equivalent) 40630 Morning Star Rd Homer AK 99603

Numerical Identifier [REDACTED] Date Signed 9/28/2010

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**DOCUMENTATION OF CONSENT OF THE PROPERTY OWNERS AND REGISTERED VOTERS FOR ANNEXATION INTO KACHEMAK CITY**

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Signature  Printed Name F. T. Heuer, Jr

Residence Address (or best equivalent) 40630 Morning Star Rd, Homer, AK 99603

Numerical Identifier  Date Signed 9/28/2010

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Signature  Printed Name LILIA CO  
Residence Address (or best equivalent) 40700 MORNING STAR RD  
HOMER, AK 99603  
Numerical Identifier  Date Signed 9/27/2010



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- list the date you signed the petition.

Signature \_\_\_\_\_ Printed Name NELSON CO

Residence Address (or best equivalent) 40700 MORNING STAR RD  
HOMER, AK 99603

Numerical Identifier \_\_\_\_\_ Date Signed 9/27/2010

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Signature  Printed Name Wanda A. Conn

Residence Address (or best equivalent) 40570 Morning Star Road

Numerical Identifier  Date Signed 11/2/2010

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- list the date you signed the petition.

Signature  Printed Name DALE CONN

Residence Address (or best equivalent) 40570 MORNING STAR ROAD, HOMER, AK 99603

Numerical Identifier  Date Signed 11/2/2010

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Signature  Printed Name Carl M. Lorentson

Residence Address (or best equivalent) 40589 Morning Star Road Homer, Alaska 99603

Numerical Identifier  Date Signed 09.28.2010

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- list the date you signed the petition.

Signature: [REDACTED] Printed Name Darlene Lorentson

Residence Address (or best equivalent) 40589 Morning Star Rd, Homer AK 99603

Numerical Identifier [REDACTED] Date Signed 11-3-10

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Signature  Printed Name SHARON M. FROESCHIE

Residence Address (or best equivalent) 40564 MORNING STAR RD HOMER, AK 99603

Numerical Identifier  Date Signed 9/24/2010

Appendix E Kenai Peninsula Borough Non-objection Resolutions

Introduced by: Mayor
Date: 06/07/11
Action: Adopted
Vote: 9 Yes, 0 No, 0 Absent

KENAI PENINSULA BOROUGH
RESOLUTION 2011-065

A RESOLUTION OF NONOBJECTION TO ANNEXATION OF 39.966 ACRES OF
PROPERTY ACCESSED BY MORNING STAR ROAD WITHIN THE KENAI
PENINSULA BOROUGH TO THE CITY OF KACHEMAK

- WHEREAS, property owners and registered voters outside the City of Kachemak within the boundaries of the Kenai Peninsula Borough have unanimously consented to annexation by the City of Kachemak pursuant to AS 29.06.040(c); and
WHEREAS, Morning Star Road begins within the city limits of the City of Kachemak and extends outside city boundaries to properties within the Kenai Peninsula Borough; and
WHEREAS, the Kenai Peninsula Borough does not maintain Morning Star Road within its boundaries; and
WHEREAS, the City of Kachemak does not provide road maintenance services but does reimburse citizens who perform private maintenance on Morning Star Road within the city limits; and
WHEREAS, if the additional properties along Morning Star Road were annexed by the City of Kachemak the property owners would also be eligible for reimbursement for private maintenance; and
WHEREAS, the Kachemak Estates Subdivision, Addition 2004, along Morning Star Road is partially within the Kenai Peninsula Borough and partially within the city limits of Kachemak; and
WHEREAS, the residents of Kachemak Estates Subdivision are governed by the same conditions, restrictions, and covenants whether they are inside or outside the city limits; and
WHEREAS, the City of Kachemak Comprehensive Plan provides for reliance of subdivision covenants to guide land usage; and
WHEREAS, if all the residents of Kachemak Estates Subdivision were in the city limits it would facilitate subdivision projects; and

**WHEREAS,** the property owners within Kachemak Estates Subdivision within the city limits pay 1 mill for emergency and fire services which is provided through contract with the City of Homer; and

**WHEREAS,** the property owners within Kachemak Estates Subdivision outside the city limits pay 2.25 mills in property tax for KESA services; and

**WHEREAS,** the KESA station is 7.5 miles from the entrance to Morning Star Road while the City of Homer Station is 4.5 miles from the entrance of Morning Star Road; and

**WHEREAS,** annexation would provide consistent emergency responses and taxation for residents along Morning Star Road; and

**WHEREAS,** annexation would facilitate road and other subdivision improvement projects for property owners within Kachemak Estates; and

**WHEREAS,** annexation would reduce the inefficiencies of dealing with two different political subdivisions for residents; and

**WHEREAS,** the land within the area proposed for annexation has lot sizes consistent with Kachemak Ordinance 09-03 and consistent with Kachemak City Comprehensive Plan;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** The Kenai Peninsula Borough Assembly does not object to the City of Kachemak filing a petition for annexation of the 39.966 acres accessed by Morning Star Road as defined in the proposed petition to the Local Boundary Commission.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF JUNE, 2011.**

ATTEST:

  
Johni Blankenship, Borough Clerk

  
Gary Knopp, Assembly President





**Yes:** Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp  
**No:** None  
**Absent:** None

Introduced by: Smith  
Date: 07/05/11  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-076**

**A RESOLUTION EXPRESSING NONOBJECTION TO ADDING NINE RESIDENTIAL  
LOTS IN DEITZ HOME ESTATES SUBDIVISION TO THE PETITION TO ANNEX  
PROPERTY TO THE CITY OF KACHEMAK**

- WHEREAS**, through Resolution 2011-065 the Borough Assembly stated its nonobjection to the City of Kachemak filing a petition for 39.966 acres accessed by Morning Star Road as defined in the proposed petition to the Local Boundary Commission; and
- WHEREAS**, since the submission of that petition property owners from an adjacent subdivision, the Deitz Home Estates Subdivision, have requested that their parcels be included in the annexation petition; and
- WHEREAS**, this group of parcels is adjacent to the city of Kachemak and the proposed Morning Star Road annexation; and
- WHEREAS**, Dietz Subdivision lies partially within and partially outside the Kachemak City limits and is accessed solely across Kachemak City; and
- WHEREAS**, the residents in Deitz Subdivision do not receive road services from the Kenai Peninsula Borough on the two subdivision roads adjacent to their properties, and emergency services vehicles can only access their properties by travelling through Kachemak City; and
- WHEREAS**, emergency services provided to Kachemak City are housed closer to these properties than the borough emergency services; and
- WHEREAS**, all of the properties benefit, directly and indirectly, through matching grants from road maintenance funds made available through Kachemak City; and
- WHEREAS**, owners of these properties must pay both Kenai Peninsula Borough property taxes for road and emergency services while also paying up to an additional \$300 per year for neighborhood road service groups to ensure consistent road maintenance; and
- WHEREAS**, according to the property owners the character, resources, and population of the proposed annexation addition are consistent with those in the adjacent Kachemak City; and

**WHEREAS,** at its meeting of June 8, 2011, the Kachemak City Council had no objections to adding one or more adjacent lots to the current annexation petition; and

**WHEREAS,** the Local Boundary Commission is charged with making the final recommendation regarding this petition;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** The Kenai Peninsula Borough Assembly does not object to the addition of nine lots in the Deitz Home Estates Subdivision as shown in the map accompanying this resolution and incorporated herein by reference, to the annexation petition of the City of Kachemak.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF JULY, 2011.**

  
Gary Knopp, Assembly President

ATTEST:

  
Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp  
No: None  
Absent: None

**PUBLIC NOTICE**NOTICE OF FILING OF  
PETITION FOR ANNEXATION  
BY THE CITY OF KACHEMAK TO  
LOCAL BOUNDARY COMMISSION (LBC)

The City of Kachemak (Petitioner), a second class city in the Kenai Peninsula borough, has filed an annexation petition by local action with the Local Boundary Commission (LBC). The petitioner's representative is Kachemak Mayor Philemon Morris. The territory proposed by the City for annexation consists of approximately 39.966 acres of land. The territory contemplated for annexation is generally described as follows: the Kachemak Estates subdivision, 2004 addition. The legal description of the territory proposed for annexation is set out in the Petition.

Standards governing the annexation to cities are established in Article X, Constitution of the State of Alaska; AS 29.06.040 – 29.06.060; 3 AAC 110.090 – 3 AAC 110.150; and 3 AAC 110.900 – 3 AAC 110.990. Procedures governing city annexation by the local action method are set out in Article X, Section 12 of Alaska's constitution, AS 29.06.040, and 3 AAC 110.400 – 3 AAC 110.700.

Any interested person may file with the LBC written comments regarding the annexation petition. Additionally, a person with the capacity to sue may file with the LBC a responsive brief in support of or in opposition to the petition. Responsive briefs must be filed in accordance with 3 AAC 110.480 and 3 AAC 110.590(4). A person who files a responsive brief (as distinguished from written comments) gains certain procedural rights and duties during the petition proceedings. The deadline for filing responsive briefs and written comments with the LBC is 4:30 p.m., May 19, 2011. See 3 AAC 110.480 and 3 AAC 110.590(4) for the procedural requirements to file written comments, or responsive briefs. Responsive briefs and written comments must be received in the office below by that deadline:

Local Boundary Commission staff, 550 West Seventh Avenue, Suite 1770, Anchorage, AK 99501-3510  
Phone: 907-269-4587 • Fax: 907-269-4539 • Email: LBC@alaska.gov

Questions concerning the proposed annexation may be directed to LBC staff at the mailing address, email address, or fax number listed above. Additionally, inquiries may be directed to LBC staff by telephone at (907) 269-4587.

After the Petitioner has an opportunity to answer any responsive briefs and comments, the Alaska Department of Commerce, Community and Economic Development (Commerce) will prepare a report on the proposal. Procedures governing departmental reports are set out in 3 AAC 110.530. The LBC will then hold a public hearing on the proposal. The LBC may conduct the hearing by teleconference. The decisional meeting for this proposal will follow the public hearing.

**State of Alaska  
Local Boundary Commission (LBC)**

**Notice of Public Hearing Regarding the City of  
Kachemak's Annexation Proposal**

The LBC will meet to convene a telephonic public hearing under 3 AAC 110.560 regarding the proposal to annex territory to the city of Kachemak. The territory proposed for annexation is an aliquot part (NE1/4 SW1/4) of section 1, Township 6 S, Range 13 W, Seward Meridian encompassing 39.966 acres of land.

**Thursday, July 21, 2011 – 10:00 a.m.  
Via teleconference  
Atwood Building, 550 West 7th Avenue, Suite 1640**

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

**Thursday, July 21, 2011  
Via teleconference  
Atwood Building, 550 West 7th Avenue, Suite 1640**

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

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

All petition materials are available for public review in the Kachemak city hall at 59906 Bear Creek Drive, Kachemak, AK 99603. The city's mailing address is Box 958, Homer, AK 99603. The city's phone number is 907-235-8897, and fax is 907-235-8854. The city's email address is [Kachemak@xyz.net](mailto:Kachemak@xyz.net). The materials are also available on the LBC website: [http://www.commerce.state.ak.us/dca/lbc/kachemak\\_annex.htm](http://www.commerce.state.ak.us/dca/lbc/kachemak_annex.htm).

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

To participate in the teleconference, please call 1-800-315-6338. Participation is at the caller's own expense. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff by July 7, 2011.

## **PUBLIC NOTICE**

### NOTICE OF PUBLIC COMMENT PERIOD ON THE REPORT CONCERNING THE CITY OF KACHEMAK ANNEXATION PETITION, REVISED NOTICE OF THE KACHEMAK HEARING, AND NOTICE OF THE LBC MEETING TO APPROVE OR AMEND MINUTES FROM THE APRIL 25 – 27, 2011, DILLINGHAM ANNEXATION PETITION HEARING AND DECISIONAL MEETING

The report concerning the City of Kachemak's annexation petition was released on July 8, 2011. The territory proposed for annexation is an aliquot part (NE1/4 SW1/4) of section 1, Township 6 S, Range 13 W, Seward Meridian encompassing 39.966 acres of land. The report includes the staff recommendation to approve the current petition, and further recommends that the LBC amend the petition to also approve annexing the territory of roughly 10 acres generally described as the Deitz Home Estates subdivision, as requested by that subdivision's residents.

The report, petition, and other related documents are available for public review Mondays from 9:00 a.m. to 3:00 p.m., or by appointment, at the Kachemak city hall at 59906 Bear Creek Drive, Kachemak, AK 99603. The city's phone number is 907-235-8897, its fax is 907-235-8854, and its email address is [Kachemak@xyz.net](mailto:Kachemak@xyz.net). The materials are also available on the LBC website: [http://www.commerce.state.ak.us/dca/lbc/kachemak\\_annex.htm](http://www.commerce.state.ak.us/dca/lbc/kachemak_annex.htm).

Any interested person may file with the LBC written comments regarding the report by 4:30 p.m., July 15, 2011. See 3 AAC 110.480(d) for the procedural requirements to file written comments. Written comments must be received in the office below by that deadline:

Local Boundary Commission staff, 550 West Seventh Avenue, Suite 1770, Anchorage, AK 99501-3510  
Phone: 907-269-4559 • Fax: 907-269-4539 • Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Questions concerning the proposed annexation may be directed to LBC staff at the above mailing address, email address, phone number, or fax number.

The LBC has scheduled a public hearing on the proposal for Thursday, July 21, 2011, at 10:00 a.m. in the Atwood Building, 550 West 7th Avenue, Suite 1770 conference room, Anchorage, AK. Please note that the room has changed since the original notice. The LBC will conduct the hearing by teleconference. Participants may attend in Anchorage, or participate by teleconference. To participate in the teleconference, please call 1-800-315-6338. Please be advised that the call is at the caller's own expense and can only be made from a land line. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff by as soon as possible. The decisional meeting for this proposal will follow the public hearing.

In the July 21 meeting, the LBC will also approve or amend minutes from the April 25 – 27, 2011, Dillingham annexation petition hearing and decisional meeting.