



State of Alaska
Local Boundary Commission

Statement of Decision

IN THE MATTER OF THE
MARCH 19, 1999 PETITION
OF THE CITY OF KODIAK
FOR ANNEXATION OF
APPROXIMATELY 19.5
SQUARE MILES

Members

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial
District

Nancy Cannington
Member
Second Judicial
District

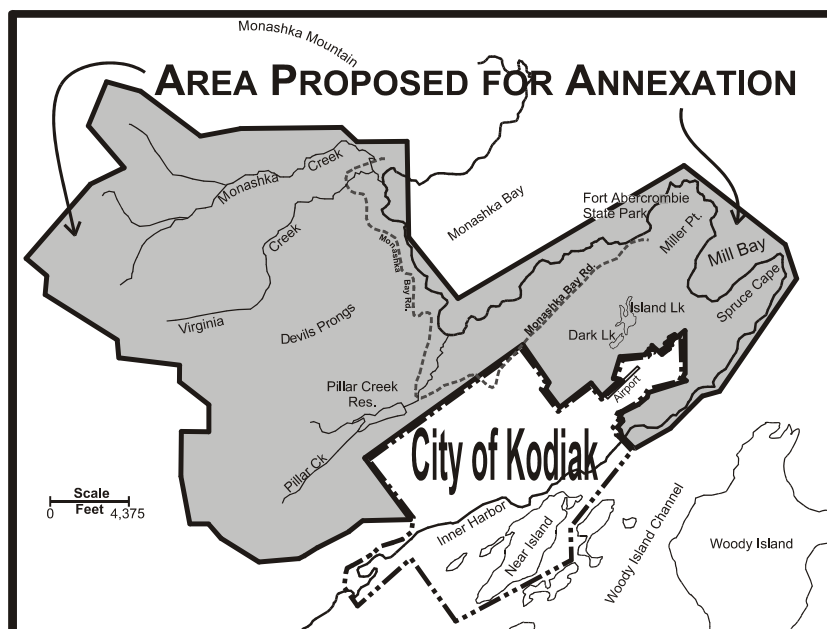
Allan Tesche
Member
Third Judicial
District

William Walters
Member
Fourth Judicial
District



SECTION I INTRODUCTION

As allowed by 19 AAC 10.410, the City of Kodiak petitioned the Local Boundary Commission on March 19, 1999 to annex 19.5 square miles within the Kodiak Island Borough. The Alaska Department of Community and Economic Development (DCED) estimates that 3,500 people reside within the territory proposed for annexation. The City's current jurisdictional boundaries encompass about 5.6 square miles and 6,859 residents.



SECTION II PROCEEDINGS

Upon a staff determination that the form and content of the City's annexation petition were sufficient, notice of filing of the petition was published and posted in accordance with 19 AAC 10.450. Notice was also mailed to 50 potentially interested individuals and organizations. Copies of the petition were served on potentially interested parties as required by 19 AAC 10.460.

Under 19 AAC 10.480, a responsive brief was filed by Sidney Pruitt, Jr. The City of Kodiak submitted a reply brief under 19 AAC 10.490. Preliminary and final staff reports together with written comments were made a part of the record.

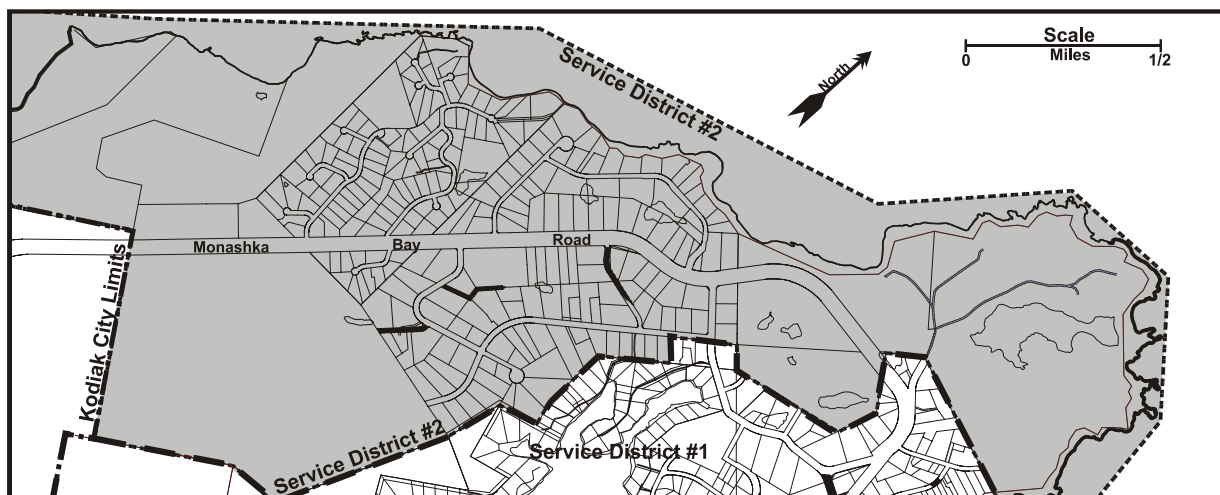
Notice of the Commission's August 28, 1999 hearing in the territory proposed for annexation was published in the *Kodiak Daily Mirror* in

accordance with 19 AAC 10.550. Copies of the notice along with the August 28 hearing agenda and guidelines for testimony were made available to the public through the offices of the Kodiak City Clerk and Kodiak Island Borough on July 19. Those same materials were distributed to the public at a Borough-sponsored informational meeting concerning annexation conducted on August 2, 1999. Further, the notice, agenda, and testimony guidelines were distributed to 75 individuals and organizations by DCED on August 6, 1999. DCED also requested that three radio stations serving Kodiak broadcast public service announcements concerning the hearing from August 6 until August 28. No objections to notice of the hearing were raised to staff or the Commission in this proceeding.

After an inspection of the territory proposed for annexation by automobile on Saturday, August 28, 1999, the Commission convened a formal hearing on the petition. The hearing began at 1:00 p.m. in the gymnasium of the North Star Elementary School within the territory proposed for annexation. Because of poor acoustics, the Commission recessed and relocated across the hallway to the Cafeteria at the North Star Elementary School. The hearing reconvened at 1:30 p.m.

During the hearing, the Commission received unsworn testimony from the Kodiak City Manager. Respondent Sidney Pruitt, Jr., provided unsworn testimony in opposition to the petition. Additionally, Mr. Pruitt called two witnesses who provided sworn testimony. Further, twenty-four individuals provided oral comment on the annexation proposal during the public comment phase of the hearing.

The hearing lasted approximately four hours. Following the hearing, the Commission deliberated for approximately 1.5 hours. Following its deliberations, the Commission unanimously approved the City of Kodiak's petition to annex 19.5 square miles. However, that action by the Commission was preceded by two unsuccessful attempts by Commissioner Tesche and Commissioner Walters to amend the petition. The first proposed the exclusion of Service District Number Two from the annexation proposal. The second proposed to bifurcate the petition, providing for separate votes in Service District Number Two and the remainder of the territory proposed for annexation.



Both proposals to amend the petition were rejected by 3 - 2 votes. In rejecting the proposal for the first amendment, the Commission recognized that although Service District Number Two might meet certain of the annexation standards to a lesser degree than the remainder of the territory proposed for annexation, it nonetheless fully satisfied those standards. In other words, the relative strength of the satisfaction of the annexation standards for the territory outside Service District Number Two is not a legitimate basis for the exclusion of Service District Number Two when the territory proposed for annexation as a whole clearly meets the requisite standards.

By rejecting the proposal for the second amendment, the Commission recognized that such rejection would, in effect, result in a determination by the Commission that each of the two

areas, independent of the other, satisfied the annexation standards. At least theoretically, it raised the prospect that Service District Number Two alone could be annexed to the City. The Commission concluded that the satisfaction of the annexation standards for Service District Number Two was dependent upon the inclusion of the remainder of the territory proposed for annexation.

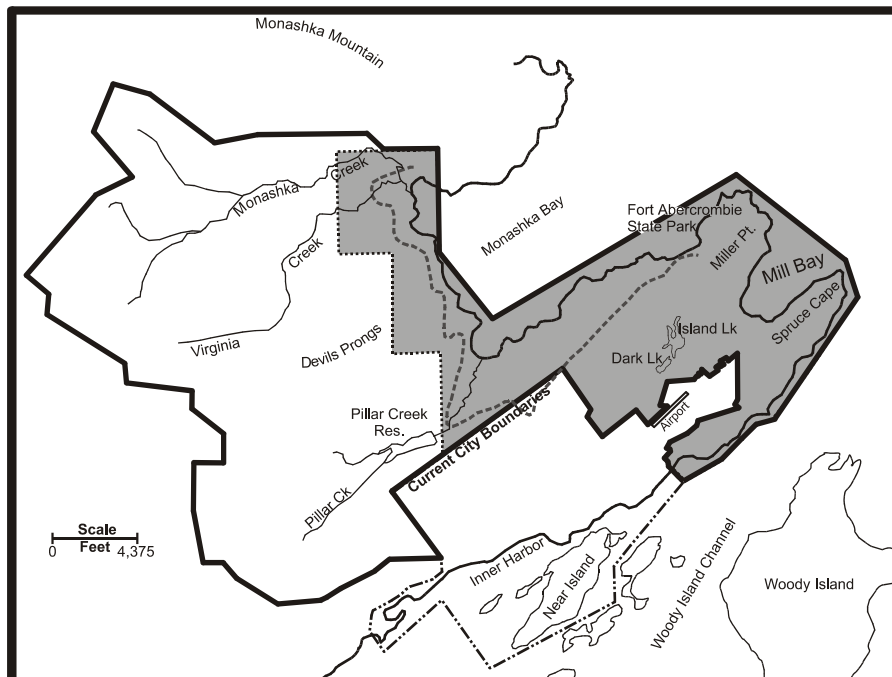
SECTION III FINDINGS AND CONCLUSIONS

The record in this proceeding includes the City of Kodiak's annexation petition, the responsive brief of Sidney Pruitt, Jr., written comments on the petition submitted directly to DCED by seven individuals, the City of Kodiak's reply brief, DCRA's June 25, 1999 preliminary report, written comments on DCRA's preliminary report from one individual, a letter from the Kodiak City Manager dated August 4, DCED's August 6, 1999 final report, and testimony received at the Commission's August 28, 1999 hearing on this matter.¹ Based on the evidence in that record, the Commission reaches the findings and conclusions set out in this section of the decisional statement.

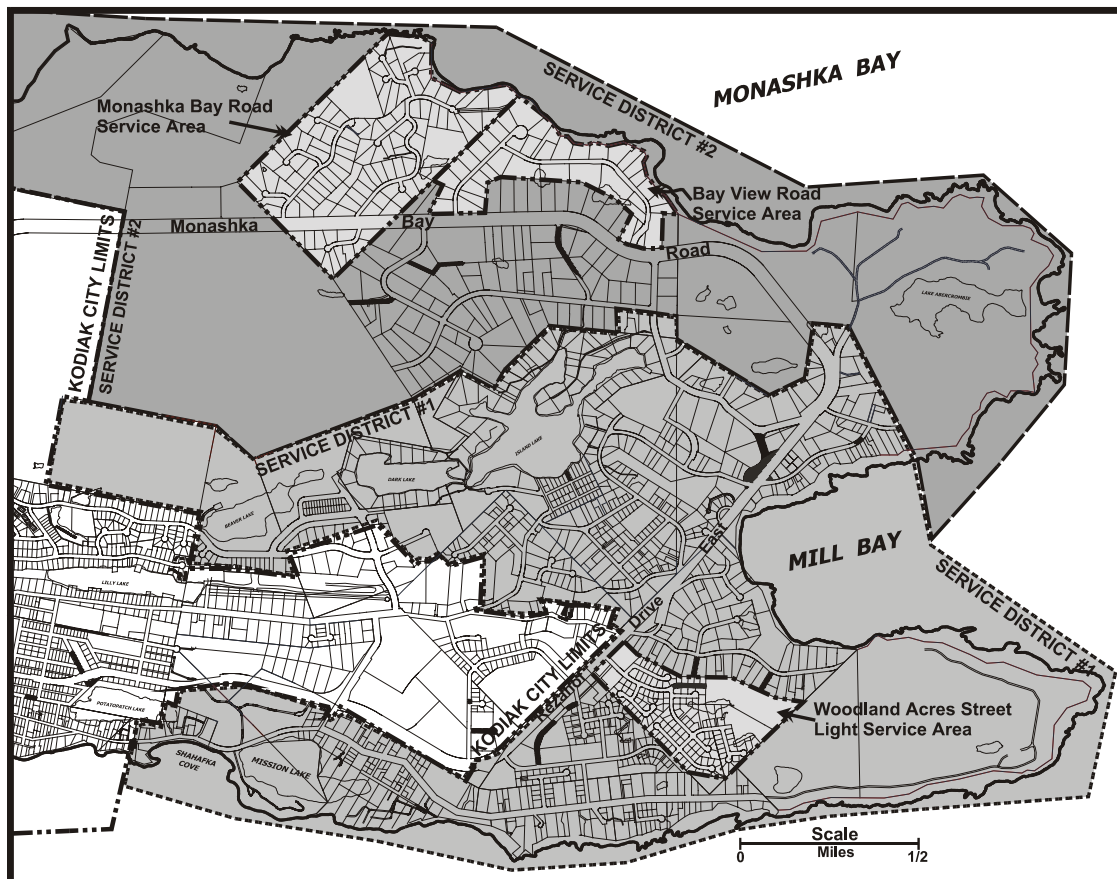
A. NEED FOR CITY GOVERNMENT IN THE TERRITORY PROPOSED FOR ANNEXATION.

An area may be annexed to a city provided, in part, that the Commission determines there is a reasonable need for city government in that area. [19 AAC 10.090(a)]

The territory proposed for annexation encompasses six different Borough service areas. All of the territory, except the watersheds, is located within Fire Protection Area Number One. Fire Protection Area Number One overlaps five other service areas. These include Service District Number One and Service District Number Two. Service District Number One, in turn, overlaps the Woodland Acres Street Light Service Area. Service District Number Two overlaps the Monashka Bay Road Service Area and Bay View Road Service Area. A map of the fire service area appears below. A separate map of the other five service areas also appears on the following page.



¹ DCED serves as staff to the Local Boundary Commission. Prior to July 1, 1999, staff support was provided by the Department of Community and Regional Affairs (DCRA). DCRA and the Department of Commerce merged on July 1, 1999 to become the Department of Community and Economic Development (DCED).



For purposes of this standard, the Commission examined the need for City government separately in each of three distinct parts of the 19.5 square mile area proposed for annexation. These are Service District Number One, Service District Number Two, and the watershed.

1. Service District Number One.

DCED stated in its preliminary report on the current proposal that in 1978, the Commission addressed the question of the need for local government services in the area currently approximating Service District Number One. The Commission concluded twenty-one years ago that the area was “in need of municipal services which can be most efficiently provided by the City of Kodiak.”² At the time, the area had an estimated population of 1,340 residents. The population of Service District Number One has since grown by an estimated 1,560 residents (116.4%).

Service District Number One currently receives a number of services directly or indirectly from the City. These include emergency medical services, emergency services dispatching (for EMS, Fire Protection Area Number One, and, occasionally, the State Troopers), water utility service, sewer utility service, library, animal control, building plan review, and building inspection service.

Generally, from a public policy standpoint, the Commission considers the exercise of powers on an extraterritorial or indirect basis to be less desirable than direct jurisdictional control. A municipality exercising powers extraterritorially or indirectly typically does so without the ability to exert the level of control it would have if the powers were exercised within its corporate boundaries. Further, although the law is unclear, it is possible that authority for extraterritorial or indirect services could be unilaterally rescinded by another entity.³

² The Commission approved the annexation of the area currently approximating Service District Number One in 1978. That annexation proposal was subject to legislative review under the terms of Article X, Section 12 of the Constitution of the State of Alaska. The 1979 Legislature rejected the LBC’s recommendation for annexation.

³ AS 29.35.020 does not expressly authorize the revocation of extraterritorial authority once granted. This is contrasted, for example, with the AS 29.40.010(b) concerning delegation of borough planning

Additionally, municipalities providing extraterritorial or indirect services sometimes fail to receive adequate financial support from those benefiting from such services. Lastly, individuals receiving extraterritorial or indirect services are not enfranchised with the entity providing such services and, therefore, lack equal standing to shape public policy relating to the delivery of such services.

In addition to the services noted above, DCED reported to the Commission that there has been interest among residents of the territory proposed for annexation in establishing a Borough police service. Given the size and density of the population of this area, it is reasonable to find that there is a need for local police service. DCED noted that if Service District Number One were a city government, it would be the seventeenth most populous city in Alaska. With an estimated 2,900 residents, it has a population that exceeds that of Wrangell (2,589), Cordova (2,571), Dillingham (2,332), Craig (2,145), Haines (1,741), and North Pole (1,619). All six of those cities maintain city police departments.

According to DCED, the State Trooper's office in Kodiak indicated the level of Trooper activity in the territory proposed for annexation exceeded the figure reported by the City in its petition. The City's petition indicates that 609 calls for Trooper service were made within the territory proposed for annexation during 1998. The Troopers reported 1,772 "offenses" in the territory proposed for annexation from July 1, 1998 to June 30, 1999. Additionally, the Division of Fish and Wildlife Protection officers of the Alaska Department of Public Safety reported an additional 90 "offenses" in the territory during the same time. Thus, the total number of "offenses" reported by the Department of Public Safety in the territory proposed for annexation during Fiscal Year 1999 equaled 1,862.

DCED noted that much of the difference in the figures provided by the City and the Troopers appeared to stem from alternative standards for quantification of data. For example, the statistics offered by the Troopers included 302 reports of service of summons and subpoenas. Such routine activities were apparently excluded from the statistics offered by the City.

The Commission concludes from the foregoing findings that the need for city government in Service District Number One is patently clear.

2. Service District Number Two.

When the Commission examined the jurisdictional needs of the City of Kodiak in 1978, it concluded that there was not a substantial need for city services in the area currently approximating Service District Number Two. DCED noted in its preliminary report on the current annexation proposal that the population of the area was estimated to be 100 at the time. The population has since grown to an estimated 600.

Still, several Commissioners considered the need for city services in this part of the territory proposed for annexation to be attenuated when compared to Service District Number One. Although concerns exist over both the quantity and quality of potable water in Service District Number Two, water and sewer utility services do not appear to be feasible at the present time in Service District Number Two. Consequently, Service District Number Two is likely to grow and develop at a much slower pace than Service District Number One.

Further, the population of Service District Number Two is much smaller and more sparsely settled than Service District Number One. This portion of the territory proposed for annexation is also further from the center of the community. Additionally, roads in Service District Number Two are less developed than those in Service District Number One.

Unlike Service District Number One, Service District Number Two lacks the City services of water and sewer utilities. It does, however, receive emergency medical services, emergency services dispatching, library, animal control, building plan review, and building inspection services from the City.

authority: "If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining the consent of the city, revoke any power or duty delegated under this section." Thus, it may be possible that authorization for extra-territorial services could be rescinded.

However, portions of two roads in Service District Number Two receive no road maintenance. These consist of that portion of Sawmill Circle lying east of its intersection with Lakeview Drive, and that portion of Lakeview Drive lying south of its intersection with Sawmill Circle.

In addition, it is reasonable to assume that a need exists for police services in this area as well as Service District Number One. According to DCED, if this area were a city government, it would rank ahead of 101 other city governments in Alaska in terms of the size of its population. DCED reported that forty-four of those 101 existing city governments with smaller populations fund community-based police positions and that an additional fourteen of the 101 smaller cities provide facilities as in-kind financial support for State-funded police positions in the communities.

3. Watersheds.

When the Commission considered annexation of the City's watersheds in 1978, it determined that there was not a substantial need for city services in the area. The Commission was confident at the time that proper regulation of the City's watersheds could be accomplished under a grant of extraterritorial jurisdiction to the City.

DCED reported to the Commission in the current proceedings that the City's watersheds have been zoned by the Borough as "W – Watershed" since the late 1970s. Further, it was reported that the watersheds are publicly owned with the exception of one small parcel.

In 1984, the Borough granted the City extraterritorial authority to adopt and enforce regulations protecting its watersheds as permitted by State law. Shortly thereafter, the City accepted the grant of extraterritorial authority from the Borough and imposed a prohibition against camping in the watershed.

In 1989, the U.S. Environmental Protection Agency (EPA) adopted regulations establishing treatment requirements for public water systems that use surface water sources. Under those requirements, water utilities that use surface water sources and do not filter the water would be allowed to continue such practices only if they met ten criteria specified in the regulations by December 30, 1991.

An assessment of the City's water utility in July of 1991 resulted in a determination by EPA that the City did not comply with five of the ten criteria. One of the criteria which the City failed to meet was adequate control over its watersheds. In December 1992, EPA found that the City still failed to comply with the requirement for adequate watershed controls. Notwithstanding, EPA allowed the City to continue to use surface water sources without filtration, but ordered that it "must achieve compliance with the watershed control program by establishing a program to determine if a correlation exists between wildlife populations and the quality of the source water, complete the fencing of the Upper Reservoir Watershed, and the on-site inspection requirements." The City advised DCED that imposition of a requirement by EPA to filter its water system would cost an estimated \$15 million in capital funding and \$400,000 in annual costs of operating the water utility.

One Commission member considered the need for city services in the watersheds to be marginal at best. That Commissioner noted that it had not been demonstrated that annexation would grant the City any greater ability to regulate the watersheds than it currently enjoys. That Commissioner noted that the City Manager testified that he would not send a police vehicle into the watersheds unless it were within the City's boundaries, however, that position was considered to be a matter of preference rather than lack of authority.

The other four members of the Commission viewed the proposal to annex the watersheds more favorably, albeit to varying degrees. One Commissioner stressed that the Commission does not usually look favorably upon the inclusion of large uninhabited areas within a city. However, this was considered to be an untypical situation in certain respects. In particular,

the watersheds are in close proximity to a fairly large population with reasonably easy access. Further, the watersheds are relatively small.

Further, as a matter of general policy, the Commission tends to favor territorial incorporation to the exercise of extraterritorial powers as noted under the discussion of the need for city government in Service District Number One. In this particular case, EPA is concerned about the ability of the City to effectively control the watersheds if they remain outside Kodiak's city limits. It would be seem prudent to make an exception in this case and approve the watersheds for annexation.

One Commission member considered the inclusion of the watersheds to be very critical. It was clear that EPA had concerns that the City lacked direct jurisdictional authority over the watersheds. Given the previously noted characteristics of the watersheds, it is reasonable to include them within the corporate boundaries of the City. Annexation of the watersheds might enable the City to avoid significant expenditures to filter its water.

Based on the foregoing, the Commission concludes that there is a reasonable need for city government in the entire 19.5 square miles proposed for annexation. Thus, the standard set out in 19 AAC 10.090(a) is satisfied.

B. COMPARATIVE ABILITY OF THE CITY OF KODIAK AND OTHERS TO PROVIDE ESSENTIAL CITY SERVICES

An area may be annexed to a city provided, in part, that the Commission determines that the annexing city can provide essential city services as defined by 19 AAC 10.990(8) to the area more efficiently and effectively than another existing municipality [19 AAC 10.090(b)]. The determinations of the Commission on this point are summarized below.

In terms of which local government today is able to most efficiently and effectively provide essential city services to the territory, the Commission considers it noteworthy that the City is presently providing a multitude of services to the territory. These include sewer and water utility services in Service District Number One, land use control over its watersheds, emergency medical services, emergency dispatching services, and library services. Additionally, the City is, in effect, providing animal control, building plan review, and building inspection services throughout the territory (albeit as a contractor to the Borough).

It is reasonable to find that the City provides these services on an extraterritorial and quasi-extraterritorial basis because it is able to do so more effectively and efficiently than the Borough.

Further, it is reasonable to find that the City is best able to provide local police services to the territory since it has the personnel and facilities to provide those services within its current boundaries. City police personnel also provide back-up assistance to the Alaska State Troopers throughout the territory proposed for annexation.

Extension of City water and sewer utilities do not currently appear to be feasible for Service District Number Two. However, should those services ever be provided, they will likely be done through the City. The City owns and operates the water and sewer utilities serving the area within the existing City limits and Service District Number One. Service District Number One utilities were recently conveyed to the City by the Borough.

Other services at issue include economic development, parks and recreation, road maintenance, fire protection, and street lighting. Economic development is carried out by the Kodiak Chamber of Commerce through joint funding by the City and the Borough. As such, that particular service does not lend itself to a determination about which local government is best able to provide the service.

As far as parks and recreation are concerned, the City's transition plan indicates that the Borough has agreed to convey 36.2 acres of parks to the City in the territory upon annexation. The transition plans states further that, "The Borough Park Facilities currently

do not have the benefit of dedicated staff for maintenance. The existing improvements are in some instances relatively poor and have been subject to vandalism.” The City has projected that it will spend \$20,000 to repair and replace park facilities. The City has also budgeted \$28,000 for equipment to be used for park maintenance. The City projected that it will spend \$27,000 annually for maintenance of the parks.

Concerning road maintenance, the City states in its petition that the territory “gets road services (apart from the State highway) from private contractors based on a complaint-received basis.” The City plans to purchase \$305,000 in additional equipment to take on the responsibility of maintaining the estimated thirteen miles of local roads in the territory. During the first year, the City projects that it will also spend \$42,000 in gravel for the streets, \$6,000 for signs and posts, and \$5,000 for review of rights-of-way. The City expects to spend \$196,450 annually thereafter for maintenance of the roads. The latter figure includes \$7,600 for street lights in Woodland Acres Street Light Service Area.

Regarding fire protection, the City’s petition states that it currently “provides fire aid to the Fire Protection Area No. 1 through a Fire Aid Agreement with the Kodiak Island Borough, and to the watersheds and other wildlands through a Fire Protection Agreement with the State of Alaska.” The City’s petition also notes that the territory receives “fire protection and emergency medical services from a volunteer fire department aided by the City Fire Department.” If the territory is annexed, all assets and liabilities of Fire Protection Area Number One would be transferred to the City. The City would add two firefighter positions to the single position currently employed by Fire Protection Area Number One. The City estimates that it will spend \$233,435 annually to provide fire protection to the territory.

The City’s sales tax revenues are a critical tool in its ability to provide services. In 1998, the City’s six percent sales tax generated \$6,574,480. The City indicated that shopping patterns of the 6,859 City residents and the non-City residents connected to Kodiak by roadways are the same. In other words, the City believes that non-City residents connected by road to Kodiak are just as likely to shop in businesses located within the City (and pay sales taxes) as are City residents. DCED estimated that the population of the non-City residents along the road network is 5,800. If the City’s belief as to spending patterns is correct, then the 3,500 residents of the territory contributed more than \$1.8 million in City sales tax revenues during 1998.

The City’s sales tax collections enable it to keep property taxes to a minimum. The 1998 sales tax collections were equivalent to nearly a 22 mill levy of local property taxes (21.86 mill equivalent.)

Annexation will dilute the City’s sales tax revenues when considered both on a per capita basis and mill rate equivalent basis. In 1998, the City’s sales tax generated \$960 for each of the 6,859 residents of the City. If the territory is annexed to the City, the petition projects that City sales tax revenues will increase by \$236,040 (3.6%). However, the City’s population would increase by fifty-one percent. *Per capita* sales tax revenues would decline from \$960 to \$657 or 31.5%. The mill rate equivalent of the sales tax would decrease from 21.86 mills in 1998 to 14.45 mills, a decrease of 33.9%.

The value of taxable property, expressed in per capita terms, is slightly higher in the territory than it is in the City. Real property within the existing boundaries of the City is currently assessed at \$306,622,455 or \$44,704 per resident. Property in the territory is assessed at \$164,784,500 or \$47,081 per resident. If the territory is annexed to the City, the assessed value of the City will increase to \$45,507 per resident.

Based on the preceding findings, the Commission concludes that the City is best able to provide essential city services to the territory proposed for annexation. It is currently providing a number of such services to the territory on an extraterritorial basis. It is also has the infrastructure to efficiently extend other services such as police protection. Lastly, the City’s sales tax resources are a decided advantage with regard to the City’s ability to provide services efficiently and effectively.

The Commission concludes from its analysis and findings that the proposed annexation fully satisfies the standard set out in 19 AAC 10.090(b). That is, the City can provide essential city services to the territory more efficiently and more effectively than another existing local government.

C. COMPATIBILITY OF THE TERRITORY PROPOSED FOR ANNEXATION WITH THE AREA INSIDE THE CURRENT CITY BOUNDARIES.

Under 19 AAC 10.100, an area may be annexed to a city if the Commission determines the two areas are compatible in character.

Here again, the Commission recognized that the territory proposed for annexation is comprised of three distinct parts. Service District Number One encompasses approximately 2.4 square miles. It is inhabited by an estimated 2,900 residents. Real property in Service District Number One is currently assessed at \$133,960,800 (\$46,193 per resident). All of Service District Number One is subdivided except for an estimated 0.23 square mile parcel around Beaver Lake and an estimated 0.33 square mile area at Spruce Cape.

The area generally referred to as Service District Number Two (consisting of the remainder of Fire Protection Area Number One) encompasses approximately 5.4 square miles. It is inhabited by an estimated 600 residents. Nearly ninety percent of the land in that area is publicly owned. Only about 0.7 square miles of this area is subdivided. Real property in that area is currently assessed at \$30,823,700 (\$51,373 per resident).

The third distinct area consists of the City's watersheds. This area encompasses an estimated 12.2 square miles (approximately ½ square mile of the watersheds and overlaps the fire service area). The watersheds are uninhabited. The lands in the watersheds are undivided in the sense that they are composed almost entirely of large parcels owned by the Kodiak Island Borough and the State of Alaska. Two small parcels in the watersheds are owned by the City. The Ouzinkie Native Corporation owns one small parcel.

Commissioners Walters and Tesche recognized that Service District Number One was clearly compatible with the area presently inside the corporate boundaries of the City of Kodiak. However, they viewed Service District Number Two differently. They recognized that in some ways Service District Number Two is compatible with the area inside the City of Kodiak. For example, parts of it are residential in nature and clearly linked to the City. Further, Service District Number Two is part of the City's economy.

However, Commissioners Tesche and Walters noted that Service District Number Two is less compatible with the City in other important ways. Its population density is substantially less than the area inside the City or Service District Number One. It lacks water and sewer utility service whereas those services are available in the City and Service District Number One. Unlike the City and Service District Number One, the land in Service District Number Two is predominately publicly owned. Further, far less of the land in Service District Number Two is subdivided. Those areas that are subdivided are platted into lots that are typically much larger than those in the City and Service District Number One. Additionally, there are rules and regulations presently in the City that would not seem appropriate for Service District Number Two (e.g., regulations limiting large farm animals). In sum, Commissioners Walters and Tesche viewed the area in the City and Service District Number One as urban in character whereas the area in Service District Number Two is rural.

Commissioner Tesche indicated that in his view, the watersheds were also incompatible in character with the area inside the current boundaries of the City. He indicated that the issues concerning the need for direct City regulation of the watersheds relate to the standard dealing with the need for city government. However, as far as the standard at issue is concerned, Commissioner Tesche concluded that the watersheds were not compatible with the area presently within the boundaries of the City of Kodiak.

Commissioner Walters indicated that even though the watersheds are uninhabited, they are critical to the needs of the City. City residents clearly depend upon the watersheds to provide potable water for personal use and commercial purposes. Consequently, he concluded that the watersheds are compatible in character with the area inside the City.

Commissioners Waring, Cannington, and Wasserman considered the entire territory proposed for annexation to be compatible with the area in the City. While they recognized that differences exist among the three areas, nothing in those differences warranted a conclusion that those areas are incompatible in character with the territory in the existing boundaries of the City of Kodiak. Residents of the City and Service District Number One are dependent upon the watersheds proposed for annexation. Strong interrelationships also exist between the City and that portion of Fire Protection Area Number 1 outside Service District Number 1. The territory and the area within the existing City are one in the same community.

The Commission majority stressed that the issue of compatibility between the areas proposed for annexation and the area now within the city should be viewed in the context of other municipal governments in Alaska.

The majority noted that many cities in Alaska accommodate a variety of lifestyles. Rules that apply in one part of a city may not be appropriate for other parts of the same city. There is enough flexibility in the governmental system to accommodate the kind of variety that exists in the territory proposed for annexation and the area presently within the boundaries of the City of Kodiak.

Further, the majority stressed that the differences in certain characteristics of various areas are not necessarily as great as they may appear. It was noted, for example, that although DCED indicated in its preliminary report that the population density of Fire Protection Area Number One outside Service District Number One was 111 persons per square mile, the density of the subdivided portions of the same area was nearly 8 times higher. When the population density of the subdivided area was considered, the two areas were more similar (857 vs. 1,234 persons per square mile). The differences in the character in various portions of the territory proposed for annexation are not so incompatible as to fail the standard at issue.

Based on the preceding findings, the Commission concludes that the 19.5 square mile territory proposed for annexation is compatible in character with the area inside the current boundaries of the City. As such, the standard set out in 19 AAC 10.100 is fully satisfied.

D. ADEQUACY OF THE RESOURCES NEEDED TO PROVIDE CITY SERVICES.

19 AAC 10.110 allows an area to be annexed to a city provided, in part, that the Commission determines the area within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

The City of Kodiak projected that its costs of extending services to the territory would \$867,577 during the first year and \$631,777 annually thereafter. Details of these cost estimates are as follows:

Service	First Year	Long-Term
Parks and Recreation	\$63,400	\$27,000
Economic Development	0	0
Fire Protection/EMS	234,153	233,435
Road Maintenance/St. Lights	377,500	196,450
Police/Animal Control	192,524	174,892
Library	0	0
General Government	0	63,178
Total	\$867,577	\$631,777

DCED estimated that annexation would bring increase City revenues by \$497,293 annually. The reasonably anticipated revenue gains and loses are summarized as follows:

Property taxes	\$329,569
Sales taxes	236,040
Elimination of extraterritorial water utility surcharge	(61,873)
Elimination of extraterritorial sewer utility surcharge	(78,490)
State Municipal Assistance/Revenue Sharing	84,598
Shared Fisheries Tax	7,549
Reduced building inspection fees	(20,100)
Total	\$497,293

When considering the resources of the City, it is important to put into context the expenditures and revenues that are projected to result from annexation. The anticipated expenditure of an additional \$631,777 to serve the territory would represent less than a three percent (2.7%) increase in total planned expenditures of the City based on the current fiscal year budget. Similarly, the projected additional revenues of \$497,293 from the territory would represent slightly more than a two percent (2.1%) increase in the City's anticipated revenues based on the current fiscal year.

The reasonably estimated annual expenditures associated with annexation exceed the reasonably estimated annual revenues estimated from annexation by \$134,484 (27.0%). However, that "deficit" makes no allowance for sales taxes paid by the residents of the territory. The record indicates that residents of the territory pay slightly more than \$1.8 million in City sales taxes annually. If those revenues are added to the equation, the territory would more than support the projected cost of providing services.

Commissioner Cannington noted that the City's financial assets are substantial and far exceed the City's liabilities, which demonstrates the City's sound financial status. She also noted that the Petitioner's transition plan clearly details costs of providing essential city services and confirmed that the City's resources are very adequate to meet such costs. As of June 30, 1998, the fund balances for the six service areas within the territory totaled \$719,093. Revenues for those six service areas exceeded expenditures during the first ten months of this fiscal year by approximately \$150,000. If the revenue/expenditure balance remained constant for the remainder of the fiscal year, the fund balances of the six service areas within the territory would have been roughly \$870,000 as of June 30, 1999.

Commissioner Cannington also indicated that recent growth and development in the area proposed for annexation was noteworthy in that such supported the ability of the area proposed for annexation to reasonably assist in meeting the costs associated with delivery of City services after annexation.

Commissioner Waring noted that no testimony received at the August 28 hearing suggested that the City of Kodiak lacked either the human or financial resources to provide essential city services throughout the proposed post-annexation boundaries on an efficient, cost-effective level. Commissioner Wasserman expressed a similar observation.

Commissioner Walters stated that the City of Kodiak was demonstrably capable of delivering both routine and extraterritorial services within the limitations of its present revenues. Since the two

service districts had been securing and administering funds separately, annexation could lead to reductions in costs relating to delivery of certain services.

Commissioner Tesche expressed concurrence with statements by other Commissioners that the proposed post annexation boundaries exhibit a reasonable level of human and financial resources to satisfy the standard.

The Commission noted that if annexation occurs, all surplus funds for those service areas must be transferred to the City as part of the package of assets and liabilities. The Borough could not retain the funds for other purposes. It appears as if Borough and City officials have already agreed to such under the terms of the joint resolution of the Borough Assembly and City Council dated February 5, 1998. That resolution provides, in part:

The Borough and City agree that assets acquired and constructed with public funds for the purpose of discharging responsibilities and delivering services to the residents of the annexation area, and liabilities against public bodies relating to such responsibilities and services should properly be transferred simultaneously with the responsibilities and services for which they are intended.

The Commission also concludes that the City may use the service area funds only for the benefit of the respective former service areas in which the funds were generated *and* only for the purpose for which those funds were intended. For example, funds from Fire Protection Area Number One could only be used for fire protection services within that former fire service area. State laws, particularly AS 29.35.470, AS 29.35.110, and AS 29.60.050 require tax revenue and State Revenue Sharing funds that were generated for a particular purpose or tax unit to be restricted to that purpose and tax unit.

The prospective \$870,000 service area fund balance and other assets of the Borough to be conveyed to the City following annexation should not be viewed as a “windfall” for the City. The City also brings significant assets to the prospective partnership of the two areas. As of Fiscal Year 1997, the City had assets of nearly \$151 million and liabilities of less than \$12 million. The assets included equity in the central treasury of nearly \$31 million.

Based on the foregoing, the Local Boundary Commission concludes that the area within the proposed *post-annexation* boundaries of the City clearly has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. As such, the standard set out in 19 AAC 10.110 is satisfied.

E. ABILITY OF THE POPULATION TO SUPPORT THE EXTENSION OF CITY GOVERNMENT.

State law allows an area to be annexed to a city provided, in part, that the Commission determines the population within the proposed post-annexation boundaries of the city is large and stable enough to support the extension of city government. (19 AAC 10.120)

The City and DCED estimated that the 19.5 square miles proposed for annexation are inhabited by 3,500 individuals. The 1998 population of the City was 6,859. Kodiak presently ranks as the fourth most populous city government in Alaska. The population of the proposed *post-annexation* boundaries of the City is 10,359. If annexation occurs, Kodiak will become the second most populous city government in Alaska.

The population of the territory has grown from 1,440 in 1977 to 3,500 today. That represents a growth of 143% over the past twenty-two years. The Commission is aware of no evidence to suggest that the population in the territory or the current City is subject to erratic seasonal changes. In that context, the population within the existing and proposed City boundaries is stable.

The Commission concludes from the foregoing that the population within the proposed expanded City is clearly large and stable enough to support the extension of city government. Thus, the standard set out in 19 AAC 10.120 is satisfied.

F. INCLUSION OF ALL AREAS NECESSARY TO PROVIDE CITY SERVICES.

19 AAC 10.130(a) specifies that an area may be annexed to a city provided, in part, that the Commission determines that the proposed city boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.

There may be areas beyond the territory currently proposed for incorporation that are *suitable* for inclusion within the corporate boundaries of the City, however, no evidence had been presented which shows that areas have been omitted from the City's annexation proposal that are *critical* for the full development of essential city services on an efficient, cost-effective level.

DCED stressed in its report to the Commission that the portion of Fire Protection Area Number One which lies outside Service District Number One was considered essential to the annexation proposal by the Kodiak Island Borough and the City of Kodiak. In 1994, the City petitioned for the annexation of Service District Number One only. The Borough and the City were unable to reach agreement concerning distribution of assets and liabilities connected with the proposed annexation. The lack of agreement centered on assets and liabilities relating to fire protection since the annexation proposal would have bisected Fire Protection Area Number One. The fire station, equipment, and other facilities to support fire protection in that service area were included in the area proposed for annexation by the City. However, much of the fire service area was excluded.

In addition to concerns over the distribution of assets and liabilities, the Borough also expressed anxiety that the proposed remnant fire service area would be rendered financially unfeasible by annexation. Consequently, the Borough encouraged the City in 1994 to annex the entire fire service area. However, the City was unwilling to enlarge its annexation proposal.

DCED reported that the City balked at expanding its annexation proposal in 1994 for two principal reasons. First, the City perceived that residents of Fire Protection Area Number One outside Service District Number One might be less supportive of annexation than those in Service District Number One. Consequently, the City was concerned that expanding the boundaries of the proposal might alter the outcome of a vote on annexation.

The second reason was a belief that residents of the larger area might hold unreasonable expectations that annexation would bring about an easy solution to growing water and sewer utility service needs in that area. The City indicated at the time that the extension of utilities to that area would be expensive and that the residents would have to bear a portion of the burden. Because of the impasse between the City and the Borough, the City withdrew its petition in August of 1994.

With regard to the current proceedings, the Borough has maintained its position that the entire fire service area should be annexed. This time, the City concurred with the Borough's position. DCED also took the position that it would be ideal to avoid dividing the fire protection service area.

Based on the foregoing discussion, the Commission concludes that the standard in 19 AAC 10.130(a) is satisfied.

G. CONTIGUOUS NATURE OF TERRITORY PROPOSED FOR ANNEXATION.

19 AAC 10.130(b) specifies that an area may be annexed to a city provided, in part, that it is contiguous to the annexing city, unless a compelling reason exists for annexation of non-contiguous territory.

It is readily apparent to the Commission that the territory adjoins the current boundaries of the City. Thus, the Commission concludes that the standard set out in 19 AAC 10.130(b) is satisfied.

H. ANNEXATION LIMITED TO EXISTING COMMUNITY PLUS REASONABLY PREDICTABLE GROWTH.

19 AAC 10.130(c) specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.

As DCED noted in its preliminary report, even in 1978 the LBC implicitly found that much, if not all, of the territory in the current proceeding was part of the community of Kodiak. Although the 1979 Legislature rejected the LBC's recommendation for annexation to Kodiak, it too recognized that the territory currently proposed for annexation and the area within the City were one and the same community. Specifically, the Legislature stated:

. . . the road system extending north and northeast of the present boundaries of the City of Kodiak to those areas popularly known as Spruce Cape, Island Lake, Mill Bay, and Monashka Bay defines a natural community of residents whose lives and activities generally involve interaction with residents of and services provided in the City of Kodiak; . . . (Legislative Resolve No. 5, First Session of the Eleventh Alaska State Legislature)

In the contemporary proceeding, the Commission concludes that the territory proposed for annexation and the area within the current boundaries of the City are part of the same community. It is one community divided by a tangle of political lines. The territory proposed for annexation is relatively compact and contiguous to the area presently within the City. The estimated 3,500 residents of the territory make extensive use of the area within the corporate boundaries of the City for their social, economic, educational, medical, governmental, and other service needs. Similarly, the 6,859 residents of the City rely on facilities in the area proposed for annexation to meet certain of their needs (e.g., water supply source, landfill, and parks).

Testimony from the City Manager indicated that there has been relatively little population growth within the City's boundaries in recent years. In contrast, DCED noted in its preliminary report that the population of Service District Number One has grown by 116.4% since 1978 while the population of Service District Number Two has grown by 500% during the same time. Testimony was provided at the hearing that limited amounts of vacant land remain available for development in Service District Number One and Service District Number Two.

It appears that much of that growth in the territory proposed for annexation has occurred because there is an inadequate capacity within the City to absorb the growth. Most members of the Commission shared the view that if the recent rapid rate of growth experienced by Kodiak continues, Service District Number Two should be included in the corporate boundaries of the City.

While Commissioner Tesche expressed the belief that the territory as a whole satisfied the standard at issue, he noted that a different conclusion could be reached with respect to Service District Number Two if parts of the territory proposed for annexation were examined independently. He reminded his fellow Commissioners that there are no long-term plans by

the City to provide water and sewer utility service in that area. Further, he noted that the real estate market does not appear to be terribly robust in that area. Additionally, the limited extent to which land has been subdivided in the area, coupled with the predominant public ownership of lands suggest that Service District Number Two is not going to be subject to urban development during the next ten years.

Based on the foregoing, the Commission concludes that the territory and the area within the corporate boundaries of the City are one in the same community. As such, the standard set out in 19 AAC 10.130(c) is met.

I. EXCLUSION OF LARGE UNPOPULATED AREAS.

19 AAC 10.130(d) specifies that an area may be annexed to a city provided, in part, that the proposed city boundaries do not include entire geographical regions or large unpopulated areas, except when justified by other annexation standards.

The terms “entire geographical regions” and “large unpopulated areas” are subjective and should be considered in the context of other city governments in Alaska. Although Kodiak is one of the most populous city governments in the state (4th among 145), it ranks well down the list in terms of the size of the area within its direct jurisdiction. Ninety-four of the 145 cities in Alaska have larger jurisdictional areas than the 5.56 square miles currently included within Kodiak’s boundaries.

Annexation would make Kodiak the second most populous city government in the state. However, in terms of the size of its jurisdictional territory, Kodiak would rank as the 39th largest area among the 145 cities. The average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. The average size of the jurisdictional area of the ten most populous cities in Alaska (other than Kodiak) is 67.3 square miles. If annexation occurs, the City’s new boundaries would encompass 25.07 square miles, 7.5% less than the average of all cities and 62.7% less than the average of the ten most populous cities (excluding Kodiak).

Of course, the Commission recognizes that the jurisdictional needs of each city in Alaska are unique and must be considered on a case by case basis. Nonetheless, the statistical comparisons are helpful in applying the terms “entire geographical regions” and “large unpopulated areas.”

Much of the territory in the current proposal is uninhabited. According to DCED, only about 2.3 square miles of the 19.5 square miles proposed for annexation are inhabited. However, the remaining 17.2 square miles generally contain areas that are important to the community, need city services, or are otherwise part of the legitimate jurisdictional needs of the City.

These include the following:

- City’s watersheds (12.2 square miles);
- “End of the Road” Borough park;
- Otmeloi Park (Borough owned);
- the Borough-owned landfill;
- Mill Bay Beach Park (Borough owned);
- Island Lake Trail (Borough owned);
- Spruce Cape Park (City owned);
- Wastewater treatment plant (City owned);
- Island Lake Park (Borough owned);
- Island Lake boat access (Borough owned);
- Kodiak Sport Complex – Smokey’s (Borough owned);
- Woodland Acres Park (Borough owned);
- Fort Abercrombie State Historical Park;
- other Borough property that has been leased to and developed by others as a recreational vehicle park and indoor shooting range;

- City property that has been leased for scouting and youth activities;
- the 55-acre, 124-lot subdivision at Spruce Cape for which the Borough has recently granted preliminary plat approval;
- U.S. Coast Guard Loran Station;
- US Navy SEALs training facility; and
- tidelands and submerged lands within certain Borough service areas in the territory, including all of Mill Bay and parts of Monashka Bay.

Several Commission members stressed that while much of Service District Number Two is uninhabited and publicly owned, its exclusion from the annexation proposal would, in effect, create an enclave. The Commission has a long-standing policy to avoid doing so unless there is some compelling circumstance. There does not appear to be any circumstance that would warrant creating an enclave in this case.

The Commission stressed that although the watersheds are of substantial size but uninhabited, their inclusion is justified by application of the other annexation standards as specifically allowed by law. Specifically, watershed protection is essential enough to the interests of the City that including the watershed in the City boundaries would be prudent.

In sum, the Commission concludes that while much of the territory is unpopulated, the proposed new boundaries of the City would still encompass less area than the average city government in Alaska. Even more striking is the fact that the average size of the jurisdictional area of the ten most populous cities in Alaska (excluding Kodiak) is 2.5 times greater than the proposed expanded size of Kodiak. The uninhabited areas proposed for annexation are clearly part of the same community as the area within the present City. For the most part, these areas need City services. Therefore, the Commission concludes that the standard set out in 19 AAC 10.130(d) is met.

J. PROTECTION OF CIVIL AND POLITICAL RIGHTS.

19 AAC 10.910 provides that an annexation proposal may not be approved by the Commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

No evidence exists that the proposed annexation would deny or affect any civil right or political right of any resident in the area proposed for annexation. If granted, annexation would extend voting rights to persons who are now disenfranchised with respect to City voting rights. Thus, the standard set out in 19 AAC 10.910 is satisfied.

K. ADEQUACY OF ANNEXATION TRANSITION PLAN.

The annexing city must demonstrate its intent and capability to extend essential city services into the territory proposed for annexation. In this case, the City of Kodiak must provide a plan for the assumption of all appropriate non-areawide and service area powers, duties, rights, functions, assets, and liabilities of the Kodiak Island Borough. The plan must have been prepared in consultation with the Borough. Further, the plan must provide for such assumption on an orderly, efficient, and economical basis within the shortest practicable time, not to exceed two years after annexation. Lastly, the plan must provide for the transfer and integration of assets and liabilities without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

The transition plan prepared by the City consists of thirteen pages. The City's plan sets out a blueprint for the extension of services and taxes to the area proposed for annexation on January 1, 2000. It also addresses the capability of the City to extend essential city services to the area in question. Details about the extension of City laws, regulations, and policies to the area proposed for annexation are also provided in the transition plan.

Further, the plan addresses integration of relevant Borough assets and liabilities into the City. The petition indicates that “The Transition Plan included with this petition was prepared in consultation with all appropriate City and Borough department heads.” The Commission concludes that the City’s transition plan fulfills the requirements of 19 AAC 10.900.

L. BEST INTERESTS OF THE STATE.

Chapter 86, SLA 1999 (which takes effect September 28, 1999) amends State statutes relating to annexation and other actions that come before the Commission. In part, the amendment specifically provides that the Commission may approve an annexation only if it is in the best interests of the state. Although the current law does not *expressly* apply that standard for to an annexation utilizing the local election method such as Kodiak’s pending petition, the Commission has, nonetheless, considered the best interests of the state in all of its deliberations. Further, Commission construes the “interests of the state” to mean the broad public interest, including affected political subdivisions of the State and affected citizens of Alaska.

Two constitutional principles are particularly relevant in terms of this standard. The first is Article X, Section 1 of the Constitution of the State of Alaska which promotes maximum local self-government with minimum numbers of local governments. The second is Article X, Section 5 which expresses a preference for annexation to a city over the creation of new service areas.

Maximum local self-government. The express purpose of the local government article of Alaska’s constitution is, in part, to “provide for maximum local self-government.” (Article X, Section 1) Alaska’s constitutional convention delegates considered home rule local governments to be the epitome of maximum local self-government. As noted by Thomas A. Morehouse and Victor Fischer:

An oft-repeated theme of the [Alaska constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. As envisioned, the self-government concept would apply not only to formal home rule cities and boroughs, but extend also to general law units and even to unorganized areas, where it could take the form of local participation in state policy making and provision of state services. *Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political conditions.* (emphasis added)

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, *particularly in the case of home rule units.* (emphasis added) Moreover, a “strong state role” also meant that the state would support local governments with financial aid and technical assistance.

(Borough Government in Alaska, by Thomas A. Morehouse and Victor Fischer, page 56)

Residents of Alaska have often demonstrated their preference for home rule cities and boroughs over general law cities and boroughs. Overall, 62.5% of Alaskans live in home rule cities and boroughs. The four most populous cities in Alaska are home rule cities. Kodiak attained home rule city status in 1965 and has maintained it successfully for the past thirty-four years.

Minimum of Local Government Units. In addition to maximum local self-government, Article X, Section 1 of Alaska’s constitution promotes “a minimum of local government units.” The Alaska Supreme Court interpreted that provision to be a “constitutional policy of minimizing the number of local government units.” (emphasis added). City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1044 (Alaska 1971).

The proposed annexation will serve that provision of Article X, Section 1, as well as Article X, Section 5, by eliminating six borough service areas. The Alaska Supreme Court has expressly stated that service areas are local government units in the context of Article X, Section 1. Specifically, the court held that:

It is reasonable to interpret AS 29.35.450(b) and article X, section 5 as preferring incorporation of a city over the creation of new service areas. This interpretation is supported by legislative history and is not inconsistent with article X, section 1 of the Alaska Constitution.⁴ Constructing a barrier to approving an excessive number of government units does not prohibit the creation of them when they are necessary.⁵ *Whether a service area or a city is established, another government unit is created.* If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, once a city is established, it can provide many services, and other communities can annex to the city in the future.⁶ Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.⁷ (emphasis added) Keane v. Local Boundary Commission, 893 P.2d 1239, 1243 (Alaska 1995).

The Commission believes that elimination of the six service areas in the territory will promote greater equity and will allow the City to deliver services more efficiently and effectively. Such will benefit the City of Kodiak, the Kodiak Island Borough, and the citizens and property owners in the annexed area. The fact that the City of Kodiak prepared, filed,

⁴ See Morehouse & Fischer, *supra*, at 42 (“the stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for [article X, section 5 of the Alaska Constitution].”); see also 4 Proceedings of the Alaska Constitutional Convention (PACC) 2714-15 (January 20, 1956) (Delegate Rosswog stated that the main intention of section 5 was “to try not to have a lot of separate little districts set up . . . handling only one problem.”) It is noteworthy that an amendment to eliminate the option of “incorporation as a city” from article X, section 5 was defeated by the convention. 4 PACC 2712-17 (January 20, 1956).

Indeed, the LBC has recognized that the provisions for service areas in article X, section 5 would be “particularly applicable to conditions in Alaska. Thus many areas which have not yet attained a sufficient tax base or population to incorporate as a city will be assisted.” Local Boundary Commission, First Report to the Second Session of the First Alaska State Legislature at I-7 to I-8 (1960).

⁵ Victor Fischer, an authority on Alaska government, “advises that the ‘minimum of local government units’ language . . . was aimed at avoiding special districts such as health, school, and utilities districts having separate jurisdiction or taxing authority. He notes no policy was stated limiting the number of cities and boroughs.” *DCRA Report to the Alaska Local Boundary Commission on the Proposed Yakutat Borough Incorporation and Model Borough Boundaries for the Prince William Sound, Yakutat, Cross Sound/Icy Strait Regions* 50 (December 1991) [hereinafter *Yakutat Report*]. Nonetheless, in *City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040 (Alaska 1971), we noted that article X, section 1 “expresse[s] [a] constitutional policy of minimizing the *number* of local government units.” *Id.* at 1044 (emphasis added). In addition, the DCRA has concluded that “the constitutional language ‘minimum of local government units’ does admonish the LBC to guard against approving the creation of an excessive number of local governments.” *Yakutat Report, supra* at 52. We note that neither view supports the addition of unnecessary government units.

⁶ Delegate Doogan referred to a city as a “combination of service areas within a borough.” 4 PACC 2652 (January 19, 1956).

⁷ In an attempt to simplify local government and prevent the overlapping of governmental functions,” consistent with the purpose of article X, section 1, “the framers of the constitution . . . considered establishing a single unit of local government with the abolition of cities altogether.” *City of Homer v. Gangl*, 650 P.2d 396, 400 (Alaska 1982). Although advantageous, the framers considered it a “concept whose time had not yet come.” *Id.* “Section 2 of Article X presents the compromise solution: ‘All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.’” *Id.* (quoting Alaska Const. art. X, Sec. 2).

and supported its annexation petition is evidence that the City itself considers the proposal to be in its best interests. Similarly, while the Borough has not formally endorsed the annexation proposal, it has raised no objection to it. The record shows that the Borough Assembly and the Kodiak City Council met jointly to shape the annexation proposal. The Borough's participation in formulating the annexation proposal and lack of objection once the proposal was filed suggest that the proposal serves the interests of the Borough.

A number of residents of the territory proposed for annexation expressed the misconception that annexation would adversely affect their rights for subsistence hunting and fishing. The record in this proceeding suggests otherwise. There are, however, genuine concerns on the part of some local residents that annexation would eliminate the area's eligibility to receive new rural home mortgage loans. However, such potential adverse impacts may be offset by benefits such as the extension of City police, better road maintenance, improved fire protection and in some cases, lower fees and taxes. Since annexation would be subject to approval by the voters of the territory proposed for annexation, they will have the opportunity to collectively express their perception of the extent to which annexation serves their interests.

The standard involves a balancing of the interests of all interests. In this case, taking into consideration the constitutional provision, the apparent positive effect on the two local governments, and the various effect on the area proposed for annexation, the balanced best interests are served by the petition.

Thus, the Commission concludes that the annexation proposal serves the balanced best interests of the State, the affected local governments, and the territory proposed for annexation.

M. PROSPECTIVE BALLOT WORDING AND NOTICE OF ELECTION

19 AAC 10.600(b) implies that the Commission will review the City of Kodiak's election notice requirements and proposed ballot wording for annexation. The Kodiak City Clerk suggested that the following ballot language be used for the annexation proposition if the Commission approves the petition.

Shall the corporate boundaries of the City of Kodiak, Alaska, be extended to encompass the territory lying to the east and north of the current boundaries, to include the area currently comprising Fire Protection Area No. 1 and the City watersheds?

The Commission considers the language offered by the Kodiak City Clerk to be clear and concise. Regarding provisions for notice of elections, the Kodiak City Code provides as follows for general elections (it is presumed that the proposition will appear on the October 5, 1999 general election ballot):

Sec. 2.24.030 Notice of general election. The city clerk shall cause to be published in a newspaper of general circulation in the city for four consecutive weeks preceding the annual general election a notice of election. The first publication shall commence not less than thirty days prior to the date on which the general election will be held.

Sec. 2.24.050 Contents of notice. Notice of election prescribed by the provisions of this chapter shall state:

- (a) The date of election;
- (b) The time of opening and closing the polling place;
- (c) The location of precinct polling place and a description of the voting precinct by boundary;
- (d) The qualifications of voters and the manner, time, method, and place of registration;

- (e) The manner of nominating candidates if candidates are to be elected;
- (f) The type of election; i.e., general or special; and
- (g) The offices to be filled or propositions to be submitted to the electors.

The City noted that since the annexation question would be placed exclusively before the voters in the territory proposed for annexation, it would have a separate ballot printed for that question. The City proposed to publish notice of the annexation proposition in the same advertisements as the City election, but would identify the annexation proposition in a separate part of the ad pursuant to Section 2.24.050(g) of the Kodiak City Code. Additionally, the City publishes and distributes an election brochure each year, as required by the City Code which states as follows.

Sec. 2.20.070 Election pamphlet. (a) Before each election, the city clerk shall prepare, publish, and mail an election pamphlet to every registered voter household.

- (b) Each election pamphlet shall contain:
 - (1) A map of the election precincts within the city of Kodiak;
 - (2) Sample ballots;
 - (3) An absentee ballot application;
 - (4) The full text of each ballot measure submitted to the voters by initiative or referendum petition or by the council, including the ballot title and summary as it will appear on the ballot;
 - (5) The full text of the ballot measure specifying the charter or code provisions proposed to be affected, including the ballot title and summary as it will appear on the ballot, and including the summary of the proposition prepared by the city clerk;
 - (6) For each bond question, a statement of the scope of each project as it appears in the bond ordinance; and
 - (7) Additional information on voting procedures that the city clerk considers necessary.

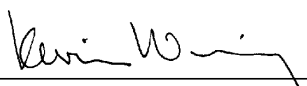
Brochures are distributed to registered voters and are also placed in several public locations for public review. Upon review of the foregoing, the Commission concludes that the provisions for public notice of the prospective election are suitable to ensure a fair and proper election.

SECTION IV ORDER OF THE COMMISSION

Based on the findings and conclusions set out in Section III of this decisional statement, the Local Boundary Commission concludes that all of the relevant standards and requirements for annexation are satisfied by the annexation proposal filed by the City of Kodiak. Accordingly, the Commission hereby approves the March 19, 1999 annexation petition of the City of Kodiak without amendment or condition. Further, the Commission accepts the proposed ballot language and election notice provisions provided by the Kodiak City Clerk.

Approved in writing this 3rd day of September 1999.

LOCAL BOUNDARY COMMISSION

BY: 
Kevin Waring, Chairperson

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

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