



Local Boundary Commission Staff

Final Report and Recommendation
Regarding the City of Kodiak's Petition to
Annex Approximately
19.5 Square Miles

August 6, 1999

Introduction

In its role as staff to the Local Boundary Commission (LBC), State law requires that the Alaska Department of Community and Economic Development (DCED) analyze municipal annexation proposals and offer recommendations regarding such to the LBC. Specifically, DCED is required to prepare both a preliminary and final report on each annexation proposal. The final report is developed after due consideration is given to comments on the preliminary report. (19 AAC 10.530)

On June 25, 1999, DCED released its 58-page preliminary report (with 13 pages of appendices) regarding the pending proposal for annexation of approximately 19.5 square miles to the City of Kodiak. The preliminary report concluded that the City of Kodiak's annexation proposal satisfied all requisite annexation standards established in law. Consequently, the preliminary report recommended that the LBC approve the petition as filed.

Copies of DCED's preliminary report were provided to 87 individuals and organizations. Multiple copies of the report were also provided to the Kodiak Public Library, the Office of the Kodiak City Clerk, and the Office of the Kodiak Island Borough Clerk for public review. Additionally, the report was made available for public review on the Internet. Individuals and organizations were given until July 23, 1999 to comment on the preliminary report.

Timely comments were received from Eileen Probasco, Chair of Fire Protection Area Number 1, a borough service area wholly within the territory proposed for annexation. Ms. Probasco's comments on the preliminary report and other topics relevant to DCED's final recommendation are addressed below.

Consultation with the Bayside Fire Department Regarding the Annexation Transition Plan

Ms. Probasco's letter of July 23 disputed a statement by the City which was referenced in DCED's preliminary report indicating that the Kodiak City Manager had met with the service district board prior to the development of the annexation transition plan. Ms. Probasco also expressed the position that the LBC should not assume that the Fire

Protection Area Number One Board of Supervisors agrees with the City's annexation transition plan.

DCED asked the Kodiak City Manager to respond to the concerns expressed by Ms. Probasco. The City Manger noted in an August 4 letter that confusion over the issue of consultation may stem from the fact that when he met with the board, Ms. Probasco was not a member.¹ Additionally, the City Manager indicated that Bob Himes, the current Chief of the Bayside Fire Department, was not a member of the Fire Department at that time. The City Manager stated further that a quorum of the board was not present at the meeting in question, but that he did discuss annexation issues and concerns with those board members who were present. The City Manager concluded his discussion on this point by affirming his previous statement concerning consultation with the Fire Protection Area Number One Board of Supervisors.

The City's annexation transition plan is not without critics. However, it is one of the most comprehensive and detailed transition plans for city annexation ever submitted to the LBC. Further, the City went to great lengths to seek input with regard to the plan. Not only did the City consult with appropriate officials of the Kodiak Island Borough, but it carried out a number of public meetings to obtain input from the public in general. DCED affirms the views expressed in its preliminary report (pages 54 – 55) that the transition plan included with the City's petition satisfies the requirements set out in 19 AAC 10.900.

Effects of Fair Labor Standards Act in Terms of Volunteer Fire Protection Service

In addition to concerns over the transition plan, Ms. Probasco's letter of July 23 expressed fear that annexation might lead to diminished fire protection for the territory in question. Specifically, she noted concern that

. . . the level of fire protection to residents in the area may not be equal to the current level of protection. Not only will the fire station staffing be impacted, but the volunteer association could also potentially be negatively impacted (according to FLSA laws), as several Bayside Fire Department volunteers are currently City employees. This issue needs to be clarified.

¹ On August 2, 1999, Ms. Probasco verbally stated to LBC staff that she wished to clarify her July 23 letter to indicate that the City had not consulted with the board regarding annexation *during her tenure on the board*.

In response to that concern, the City Manager noted in his August 4 letter that:

. . . I was surprised to learn that the Board, or some of its members, told its volunteers that if they were employed by the City they could not be volunteer firefighters if annexed. This is not factual and ignores practice and policy. The fact is that a firefighter may not be a volunteer in the department where he/she is an employee. Being an employee of the City does not prohibit you from being a volunteer. The City of Kodiak also reserves the right to have its paid firefighters participate as volunteers should it deem it in the best interests of the community and only need pay overtime for the service.

It is DCED's understanding that two firefighters who are employed by the City of Kodiak are also volunteer firefighters at the Bayside Fire Department within the territory proposed for annexation. Federal regulations implementing the Fair Labor Standards Act provide with respect to local governments that, "An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer." (29 CFR 553.101(d)). DCED concurs with the City of Kodiak that the transfer of responsibility for fire protection services in the territory to the City will not prohibit the two current City employees in question (or other City personnel) from serving at the Bayside Fire Station. The City would, however, be unable to treat the two firefighters in question as volunteers when it comes to service at the Bayside Fire Station.

Police Services in the Territory

In addition to the written comments on DCED's preliminary report, certain issues that were raised during a recent informational meeting on the annexation proposal are worthy of consideration.² At the meeting in question, Sergeant Darlene Turner, Supervisor of the Kodiak Post of the Alaska State Troopers, indicated that the City's petition underreported the number of calls for service by the State Troopers in the territory proposed for annexation.³ Page 2 of Exhibit D of the City's petition (Transition Plan) indicates that 609 calls for Trooper service were made within the territory proposed for annexation during 1998.

² The informational meeting was sponsored by Kodiak Island Borough Service District Number One. It was held in the Bayside Fire Station on August 2, 1999. The meeting began at 7:30 p.m., and lasted approximately 2 hours. An estimated 80 individuals were present at the meeting, including DCED's LBC staff.

³ Ms. Turner was speaking as an individual citizen at the meeting, not as a representative of the State Troopers.

In response to a request by DCED for further information on that point, Sergeant Turner subsequently provided statistics showing that the Troopers reported 1,772 "offenses" in the territory proposed for annexation from July 1, 1998 to June 30, 1999. Ms. Turner provided additional information indicating that 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.

Much of the difference in the figures provided by the City and the Troopers appear to stem from alternative standards for quantification of data. For example, the statistics offered by Sergeant Turner included 302 reports of service of summons and subpoenas. It is DCED's understanding that such routine activities were excluded from the statistics reported by the City.

Nonetheless, a number of those in attendance at the August 2, 1999 information meeting in Kodiak suggested that the City's transition plan, which calls for the extension of police services to the territory with two additional officers, was unrealistic. Those concerns were based on the higher number of calls for Trooper service in the territory reported by Sergeant Turner, coupled with the understanding that the Troopers would redirect their resources to areas other than the territory in question if annexation occurs.

Sergeant Turner expressed her belief to DCED staff that a rough standard for adequate police protection is one police officer (plus support staff) for every 1,200 residents. If one were to consider the territory proposed for annexation alone, the City would fall short of that rough standard by one officer.⁴ However, if one were to consider the proposed post-annexation

⁴ The territory is estimated to be inhabited by 3,500 residents. At a ratio of 1 officer per 1,200 residents, an area of 3,500 residents would demand 2.9 officers. The City has proposed to hire two additional officers to maintain the current level of police service in the proposed expanded boundaries of the City.

boundaries, the City would have 2.3 times the number of officers called for by the standard.⁵ The latter approach is certainly reasonable.

Regardless of which of the reported figures are used for analysis, the need for police services in the territory proposed for annexation clearly exists. The City's more conservative number indicates that the demand for Trooper service was equivalent to nearly one call from half of the homes in the territory proposed for annexation during 1998. That figure is substantial in its own right. The statistics offered by Sergeant Turner support the conclusion that a need for police services exists in the territory.

DCED affirms the conclusion in its preliminary report that there is clearly a need for city services, including police protection, in the territory proposed for annexation. Further, DCED reasserts its preliminary position that the City's transition plan relating to the extension of services, including police services, is credible. Lastly, DCED maintains its earlier conclusion that the City of Kodiak is best able to provide essential city services to the territory and that it has the resources to do so.

Effect of Annexation Upon Subsistence Rights

Rumors and allegations that annexation will eliminate or diminish subsistence rights of Kodiak residents have persisted throughout this proceeding. After investigating, DCED stated in its preliminary report that ". . . annexation will not affect the rights of citizens of Kodiak to engage in subsistence hunting and fishing activities on either State or Federal lands." (Executive Summary, page 5).

An individual present at the August 2 informational meeting disputed DCED's view on this matter. In particular, the individual challenged

⁵ DCRA intends no inference that the Kodiak City Police Department may be overstaffed. It is recognized that standards such as 1 officer per 1,200 residents are, at best, broad guidelines that may be relevant when applied to a large sample. Officials of the City of Kodiak are the best judge of the level of police services needed in that particular community. Regarding the above statement that the City would have 2.3 times the number of officers called for by the standard, it is noted that the proposed post-annexation boundaries are inhabited by an estimated 10,359 individuals. The aforementioned standard would call for 8.6 officers (plus support personnel) to support that level of population. The City indicates on page one of its Transition Plan that "*The City of Kodiak employs 18 sworn officers providing police patrol and crime investigation on a 24-hour basis every day of the year. The Police Department has an additional 17 employees who perform dispatching, corrections and administrative duties. This plan contemplates maintaining the same level of service within the existing City limits and increasing resources and manpower to provide that level of service throughout the annexed area.*" On page three of the transition plan, the City contemplates that two additional officers would be employed. Thus, the total number of sworn City police serving the 10,359 people in the expanded boundaries would be increased to 20 (a ratio of 1 officer per 518 residents or 2.3 times the standard mentioned above).

DCED's statement on page 50 of the preliminary report that areas with more than 7,000 residents can overcome the presumption in Federal law that they should be designated as non-rural for subsistence purposes.

DCED affirms its earlier position regarding this matter. 50 CFR 100.15(a)(3) provides that, "A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature." Kodiak's current eligibility for subsistence rights is not based on consideration of separate populations inside the corporate boundaries of the City of Kodiak (population 6,859) and the remainder of the greater community of Kodiak (5,800). Rather it is based on the aggregate population of the greater community of Kodiak.⁶

The population of the greater community of Kodiak was far in excess of 7,000 at the time of the last Federal determination regarding subsistence. However, Kodiak overcame the presumption of non-rural character based on considerations other than population. Those considerations consisted of characteristics that "may include, but are not limited to: (i) use of fish and wildlife; (ii) development and diversity of the economy; (iii) community infrastructure; (iv) transportation; and (v) educational institutions." (50 CFR 100.15(a)(5)).

Effect of Annexation on Property Taxes

DCED noted on page 4 of the executive summary of its preliminary report that, based on current tax rates, property taxes in the existing Monashka Bay Road Service Area would be reduced by 1 mill and property taxes in Service District # 1 would remain the same if annexation occurred. It was learned subsequently that a limited number of properties within those two road maintenance service areas are not subject to the respective road service area tax levies. Properties are exempted from the road service area tax if their only public access is from roads maintained by the State of Alaska.

In the case of the Monashka Bay Road Service Area, the Borough Assessor reported that only a few (2 or 3) lots are exempt from the road service area levy. Thus, those few lots would see a 0.5 mill increase in property taxes (\$50 per \$100,000 of assessed value). The Borough Assessor also offered a rough estimate that as many as 20% of the properties in Service District #1 are exempt from the road service area

⁶ 50 CFR 100.15(a)(6) requires that, "Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate."

levy. Those particular properties would also see a 0.5 mill increase in property taxes following annexation.

Hearing Schedule

The LBC has scheduled its hearing on the City's annexation proposal to be held on Saturday, August 28, 1999. The hearing will begin at 1:00 p.m. at the North Star Elementary School located at 961 Mallard Way in the territory proposed for annexation.

Provisions have been made for formal notice of the LBC's hearing as required by law. Efforts to provide notice of the hearing were initiated with the publication of a display advertisement in the *Kodiak Daily Mirror* on July 23. Additional publication of the notice will occur prior to the hearing.

Notice of the hearing has been posted in several locations in the territory proposed for annexation and within the existing boundaries of the City. The hearing notice, hearing agenda, and guidelines for testimony were also distributed at the August 2, 1999 informational meeting in Kodiak. Additionally, radio stations in Kodiak have been asked to broadcast public service announcements regarding the hearing.

Prospective Ballot Wording and Notice of Election

19 AAC 10.600(b) implies that the LBC will review the City of Kodiak's election notice requirements and proposed ballot wording for annexation.⁷ The Kodiak City Clerk suggested that the following ballot language be used for the annexation proposition if the LBC 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?

DCED considers the language offered by the Kodiak City Clerk to be clear and concise. Regarding provisions for notice of elections, the Kodiak City

⁷ 19 AAC 10.600(b) states that "If AS 29.06 requires a local election for a proposed annexation or detachment, the commission will notify the clerk of the affected municipality of the commission's acceptance of a local option petition. The election must be administered by the affected municipality at its own cost, and in the manner prescribed by its municipal election code, *except that the commission will, in its discretion, specify the wording of the ballot measure and broaden the election notice requirements*" (emphasis added)

Code provides as follows for general elections (it is presumed that the proposition will appear on the October 5, 1999 general election ballot if the petition is approved by the LBC):

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. DCED considers the provisions for public notice of the prospective election to be suitable.

Final Conclusions and Recommendations

Based on the discussion in this final report, DCED affirms the analysis presented in Sections 1 – 12 of its preliminary report as supplemented herein. DCED concludes from such that all of the requisite standards for city annexation are satisfied by the annexation proposal filed by the City of Kodiak.

Accordingly, DCED hereby recommends that the LBC approve the March 19, 1999 annexation petition of the City of Kodiak without amendments or conditions. Further, DCED recommends that the LBC accept the City's proposed ballot language and election notice provisions.
