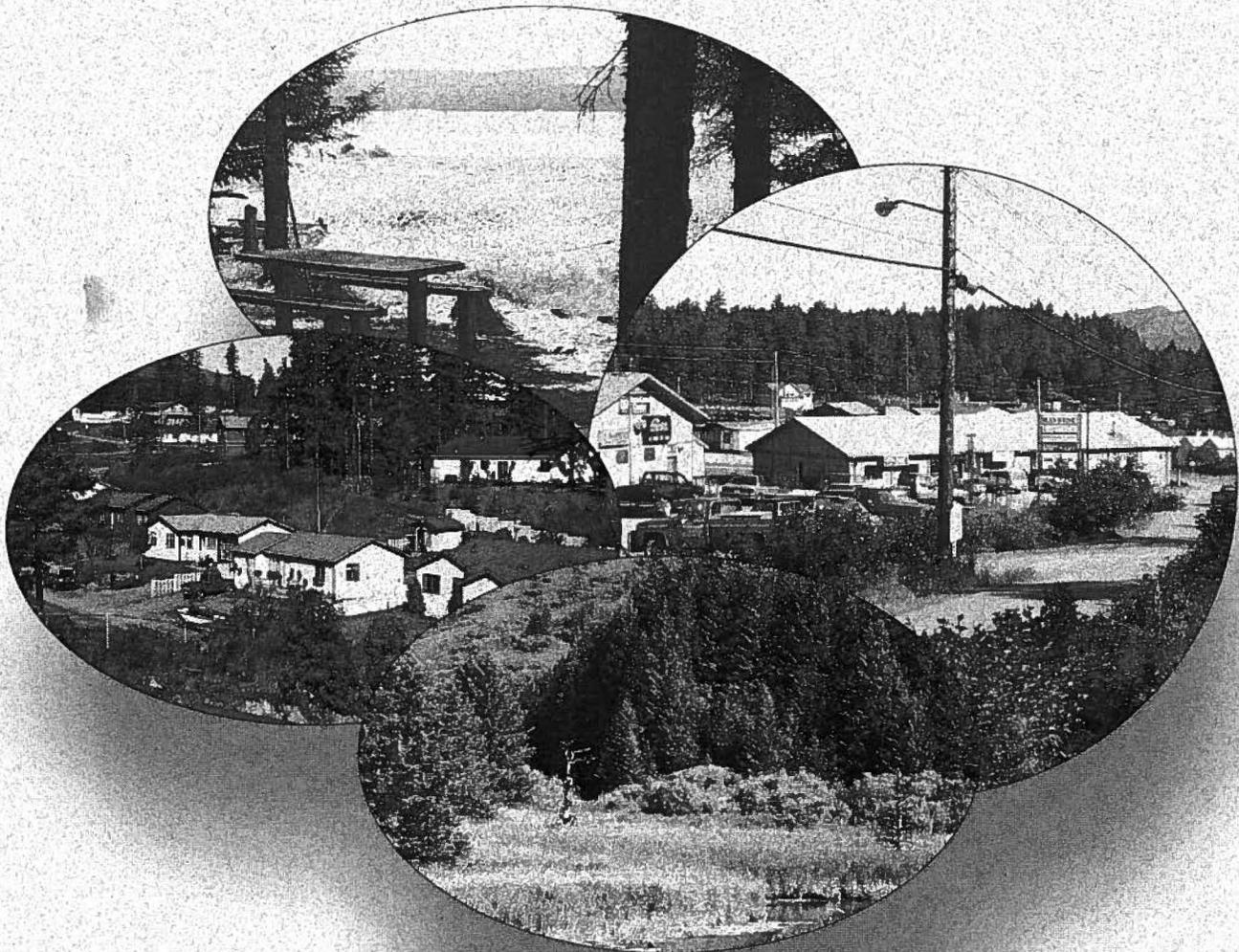




Preliminary Report

**Regarding the City of Kodiak's
Petition to Annex Approximately
19.5 Square Miles of Territory**



Tony Knowles, Governor

June 1999

Local Boundary Commission Staff
Department of Community & Regional Affairs
333 W. 4th Avenue, Suite 220
Anchorage, AK 99501
Tel: 907-269-4500 / Fax: 907-269-4539
E-mail: dbockhorst@comregaf.state.ak.us

This report is preliminary in the sense that it is issued as a draft for public review and comment in accordance with 19 AAC 10.530(b). The law requires the Department of Community and Regional Affairs (DCRA) to issue a final report after considering written comments on the preliminary report.

Occasionally, DCRA's preliminary reports to the Local Boundary Commission become final with little or no modification. If such occurs in this instance, it will be announced by a letter that will serve to meet the requirement for a final report. If circumstances warrant otherwise, a separate final report will be published in this matter.

Copies of the report are also available for review through the office of the Kodiak City Clerk, the Kodiak Island Borough Clerk, and the Kodiak Public Library.

DCRA complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at (907) 269-4500, or TDD (800) 930-4555.

Key to Acronyms and Terms with Particular Meanings

The following is a list of acronyms and terms with specific meanings in the report (unless the context in which the term is used suggests otherwise):

- "Borough" means the Kodiak Island Borough, a second class borough government;
- "City" means the City of Kodiak, a home rule city government;
- "Commission" means the Local Boundary Commission;
- "DCRA" means the Alaska Department of Community and Regional Affairs;
- "Kodiak" means the City of Kodiak, a home rule city government;
- "Territory" means the 19.51 square miles proposed for annexation; and
- "LBC" means the Local Boundary Commission.

Cover photographs show portions of the territory proposed for annexation. From the top going clockwise, they are:

- Recreation area on Monashka Bay beach;
- Commercial area on Rezanof Drive East, near Woodland Acres and Mill Bay;
- Monashka Creek, below City's pump station; and
- Residential area on Sean Circle in Woodland Acres 3rd Addition.

Acknowledgements

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Written by:

- Dan Bockhorst, Local Boundary Commission Staff

Page layout by:

- Jennie Morrison, Publication Technician

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Photos of Kodiak and surrounding areas were provided by the City of Kodiak

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INTRODUCTION

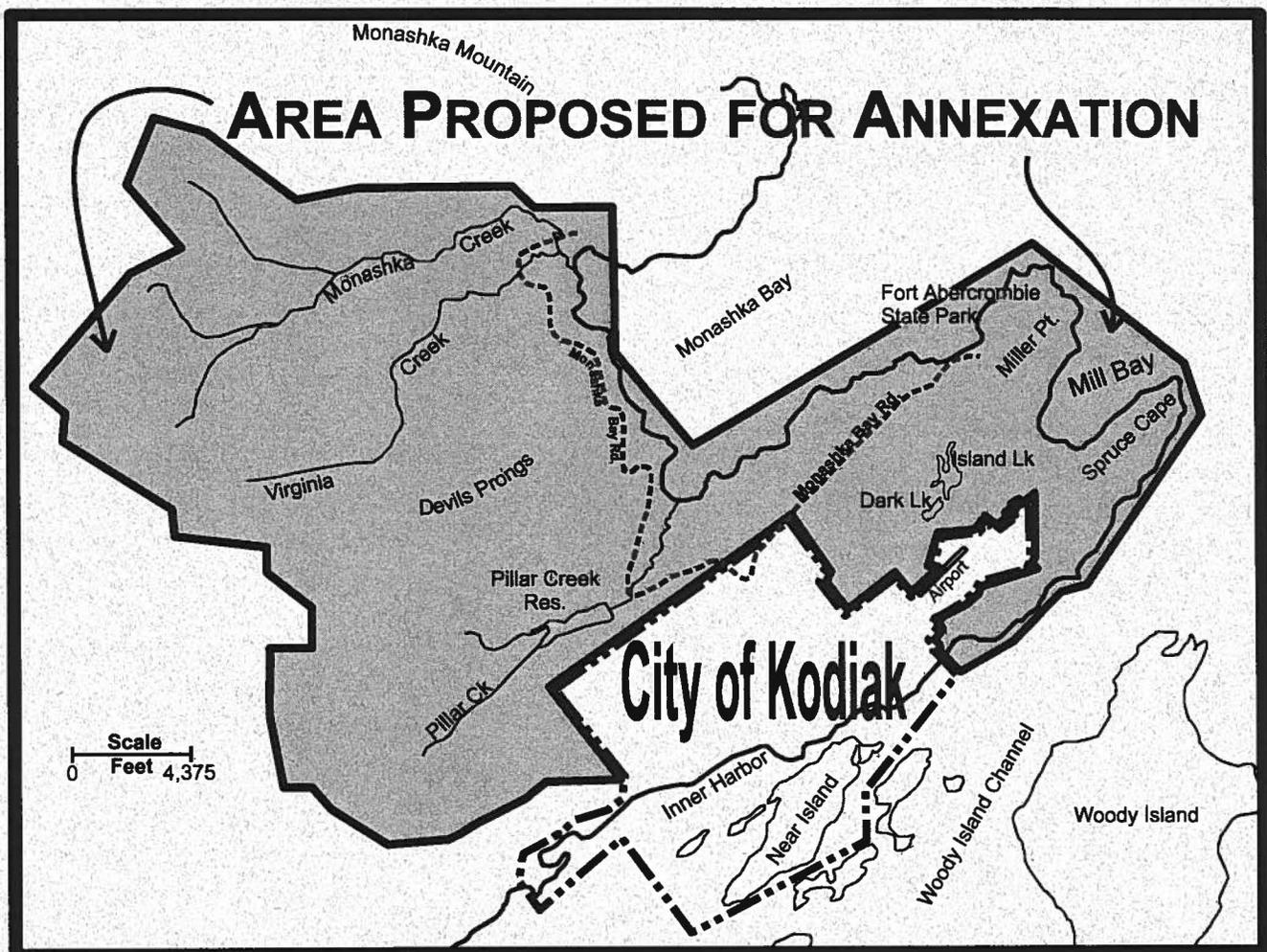
Sections 1 through 12 of this report examine the annexation proposal from DCRA's perspective in terms of the annexation standards established in law. Those standards are used by the LBC to make decisions concerning annexation proposals. Appendices A – C provide background information that readers may also wish to review.

Appendix A provides information about the LBC and DCRA.

Appendix B provides details about the past, ongoing, and future proceedings relating to this annexation proposal.

Appendix C provides background information about the Borough and City, including previous annexation efforts of the City.¹

¹ Readers are encouraged to read the Executive Summary before reading this full report. The executive summary provides introductory information which is not repeated here for the sake of brevity.



Map showing the existing boundaries of the City and the territory proposed for annexation.

SECTION 1 – COMPATIBILITY OF THE TERRITORY AND EXISTING CITY

A. THE STANDARD

“The residential and commercial areas of the City flow smoothly into the territory proposed for annexation with no significant geographic, cultural, or socio-economic differences.”

(Petition, Brief - Exhibit F)

State law provides that an area may be annexed to a city as long as the LBC determines that it is compatible in character with the annexing city. Specifically, the law provides as follows:

19 AAC 10.100.

Character.

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

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City states as follows regarding this standard:

The territory proposed for annexation is compatible in character with the city to which annexation is proposed. All land use within the existing City and in the territory proposed for annexation is governed by the same entity: the Kodiak Island Borough. That area of the territory proposed for annexation nearest the existing City (generally, Service District No. 1) is already populated to a density comparable to the City, and the farther areas are experiencing increasing population, as it is one of only two areas (the other being the Women's Bay Service District, several miles from town) in which significant tracts remain available for development. The residential and commercial areas of the City flow smoothly into the territory proposed for annexation with no significant geographic, cultural, or socio-economic differences. (Petition, Brief - Exhibit F)

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Respondent Sidney Pruitt, Jr., states as follows concerning this particular standard (quoted as written by Mr. Pruitt):

Commission Members: Please pay attention to the Un-Compatibility of this area (Service District Number Two) specifically, with the existing City. Please compare the population and development of the city to Svc. Dist. #2 & beyond.

		Per sq. mi.		
Population	Ratio	People	Area	
City 6859	100.0%	1225	5.6	sq. mi.
Svc. #2 578	8.4%	275	2.1	sq.mi.
Beyond 0	0.0	0	15.1	sq. mi.

I would like to request that Service District, #2. And the area Beyond it to the end of Monashka Highway be Subtracted from the Annexation Procedure. As the residents of the area DID NOT PETITION to become part of the City of Kodiak.

And on the basis of STANDARDS for ANNEXATION to CITIES article 03.

The Character of the land is at least not Compatible with the city of Kodiak as the severe differences in population and land mass (see chart above).

Also; according to Character the Use of the land, Intended and Current, differ severely. People in Service District #2 have large lots (one acre minimum). They like space and Quiet. There are 275 people Per square mile compared to the Cites 1225 people per square mile.

The area beyond Svc. Dist #2. (Remainder Fire Prot. #1 And water shed area) has zero residents and little development. With approximately 15.1 square miles of open space.

Giovanni Tallino wrote that he and his family reside in Service District Number

One and are opposed to annexation, in part, because of perceived incompatibilities with the City. More specifically, he expressed concern that annexation would result in the following:

- Loss of freedom (no hunting, no horses or barnyard animals, no ATV's or snowmobiles, no recreational shooting, no fireworks, forever chained dogs, etc.)
- Loss of subsistence rights (the addition of more than three thousand souls will automatically revoke our rural status and prevent us from subsistence fishing and hunting.

James P. "Jake" Jacobson expressed similar concerns, noting that he was opposed to annexation, in part, because it represented:

- a threat to subsistence status;
- new restrictions on keeping livestock;
- restrictions on discharging firearms; and
- restrictions on hunting.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

The City indicated in its reply brief in response to concerns expressed by Mr. Pruitt that, "The City believes that annexation will remove an artificial boundary and make us a single community in law where we are now a community by proximity."

"I would like to request that Service District, #2. And the area Beyond it to the end of Monashka Highway be Subtracted from the Annexation Procedure. As the residents of the area DID NOT PETITION to become part of the City of Kodiak."

Respondent Sidney Pruitt, Jr.

² The three areas are described as encompassing a total of 20 square miles, whereas the territory proposed for annexation actually encompasses only 19.5 square miles. The 0.5 square mile discrepancy results from the fact that the watersheds and Fire Protection Area Number One overlap one another in a small area.

³ There is some uncertainty among local officials whether Service District Number One actually includes Spruce Cape. The City's petition indicates that it does not. However, a map of Service District Number One provided by the Borough indicates that it does. For purposes of this discussion and analysis, Spruce Cape is assumed to be part of the service area.

⁴ The entire territory is reasonably estimated to encompass 3,500 residents. In 1991, the Borough counted 165 homes in that part of the territory outside Service District Number One. The Borough Community Development Director specu-

Continued on next page

In response to concerns from James P. "Jake" Jacobson about incompatibility of the territory and the City, the City wrote:

There is no threat to subsistence status by this annexation.

Restrictions on keeping livestock are outlined in the transition plan with grandfather provisions. [Note: The transition plan stated with respect to this issue, in part, that "There is currently no requirement that a person owning or having custody of a large farm animal register with either the Kodiak Island Borough or City of Kodiak. The City did conduct a 'drive by' survey and estimates that there are probably no more than two dozen or so such animals, or properties configured to accommodate them, in Fire Protection Area 1. It would be the intent of the City to accommodate, where possible, the existing animals under the City code. If the code provisions cannot be met, the Animal Control Officer would be asked to review the specific circumstance and make recommendations on permit conditions that would allow the animal as a grandfathered use. In each case the public safety, health and welfare would serve as the core criteria for permitting. Notice would be given to residents within 300 feet for comment prior to a permit being issued. . . . It would be unfair to imply that all existing animals could be kept regardless of conditions. There may be circumstances where a large animal simply is not appropriate and would have to be moved elsewhere. (Petition, Transition Plan, page 12)]

No change in firearms regulations as City is adopting State Statute which already governs the Borough.

No identifiable restrictions on hunting.

E. DCRA's VIEWS

The standard at issue concerns whether the territory proposed for annexation is "compatible" in character with the area inside the corporate boundaries of the City. "Compatible" is defined in Webster's New World Dictionary as, "capable of living together harmoniously or getting along well together; in agreement; congruous. . ."

The applicable standard does not require an area proposed for annexation to be identical or even similar in character with an annexing city. Rather, the character of the two areas must be harmonious — capable of working together. The individual factors listed in 19 AAC 10.100 are addressed below.

Land Use and Subdivision Platting.

The 19.5 square mile territory proposed for annexation (hereinafter "territory") is comprised of three somewhat distinctly different areas.² These are: (1) Service District Number One, (2) Service District Number 2 and the remainder of Fire Protection Area Number One lying outside of Service District Number One, and (3) the City's Watersheds.

Service District Number One encompasses approximately 2.4 square miles or slightly more than twelve percent (12.3%) of the territory.³ It is principally residential territory and is inhabited by an estimated 2,900 residents or approximately 83 percent of the residents of the territory.⁴

Real property in Service District Number One is currently assessed at \$133,960,800 (\$46,193 per resident). In comparison, the per capita assessed value of real property in the City is \$44,704 (3.2% less than the comparable figure for Service District Number One). The assessed value of property in Service District Number One comprises more than eighty percent (81.3%) of the assessed value of the entire territory.

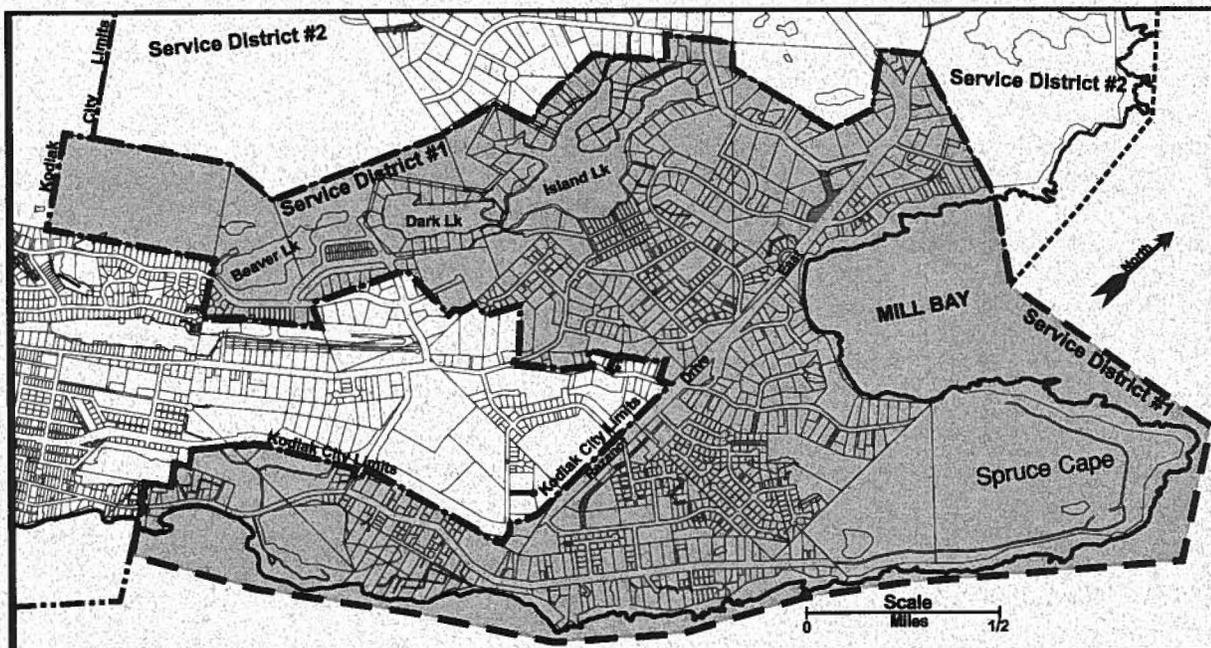
As is shown on the map below, all of Service District Number One is subdivided except for two small portions. The first comprises an estimated 0.23 square miles in the southwest portion of the service area around Beaver Lake. The second consists of an estimated 0.33 square miles at Spruce Cape.

Natives of Kodiak, Incorporated, a village corporation formed under Section 14(h)(3) of the Alaska Native Claims Settlement Act, has received preliminary plat approval from the Borough for a 124-lot subdivision comprising 55 acres at Spruce Cape. Spruce Cape also includes a U.S. Coast Guard Loran Station and a US Navy SEALs training facility.

The area immediately west of Service District Number One (referred to earlier as Service District Number Two and the remainder of Fire Protection Area Number One lying outside of Service District Number One) comprises the second distinct portion of the territory. This area encompasses an estimated 5.4 square miles, approximately twenty-eight percent (27.7%) of the territory. This second area is inhabited by an estimated 600 residents.

Continued from previous page

lated that approximately twenty homes had been built in the area since then. If each home had a population density of 3.17 (a factor accepted by DCRA for population estimates used in funding programs), that area would have a population of 586. For purposes of this analysis, DCRA rounded the population estimate for that area to 600. Thus, the remaining 2,900 individuals are projected to reside in Service District Number One.



Service District Number 1 is inhabited by about 2,900 people. It is virtually identical in character to predominately residential areas within the existing city.

Nearly ninety percent (87%) of the land in this second area is publicly owned. The publicly owned lands



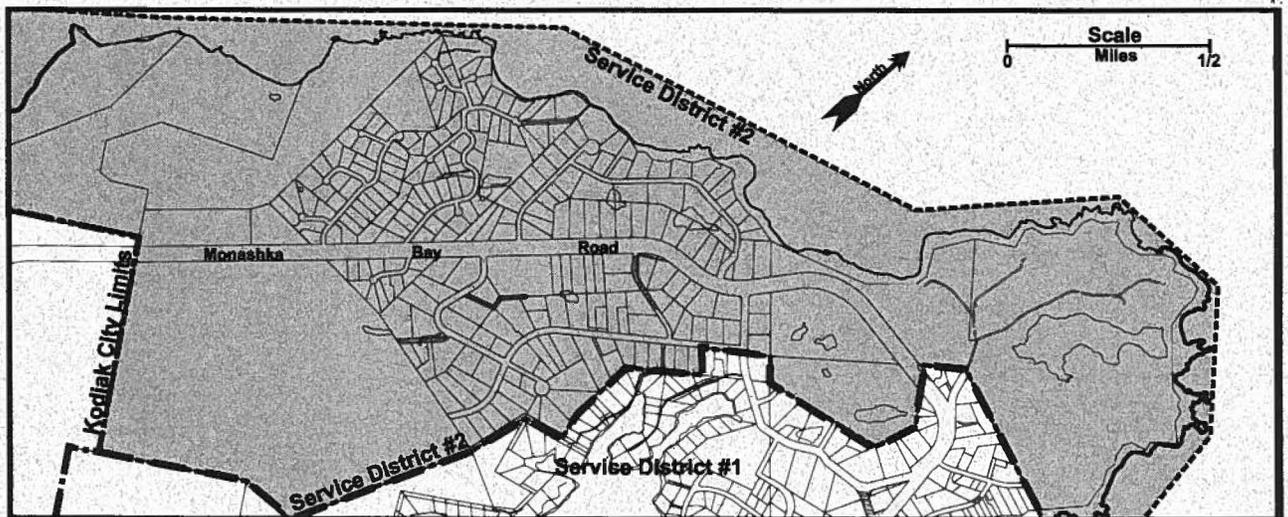
Building addition under construction on Bay View Drive within the Monashka Bay Subdivision.

include Fort Ambercrombie State Historical Park, uninhabited property owned by the City, and extensive uninhabited Borough holdings. The City holdings in this area consist of approximately 35 acres. A portion of

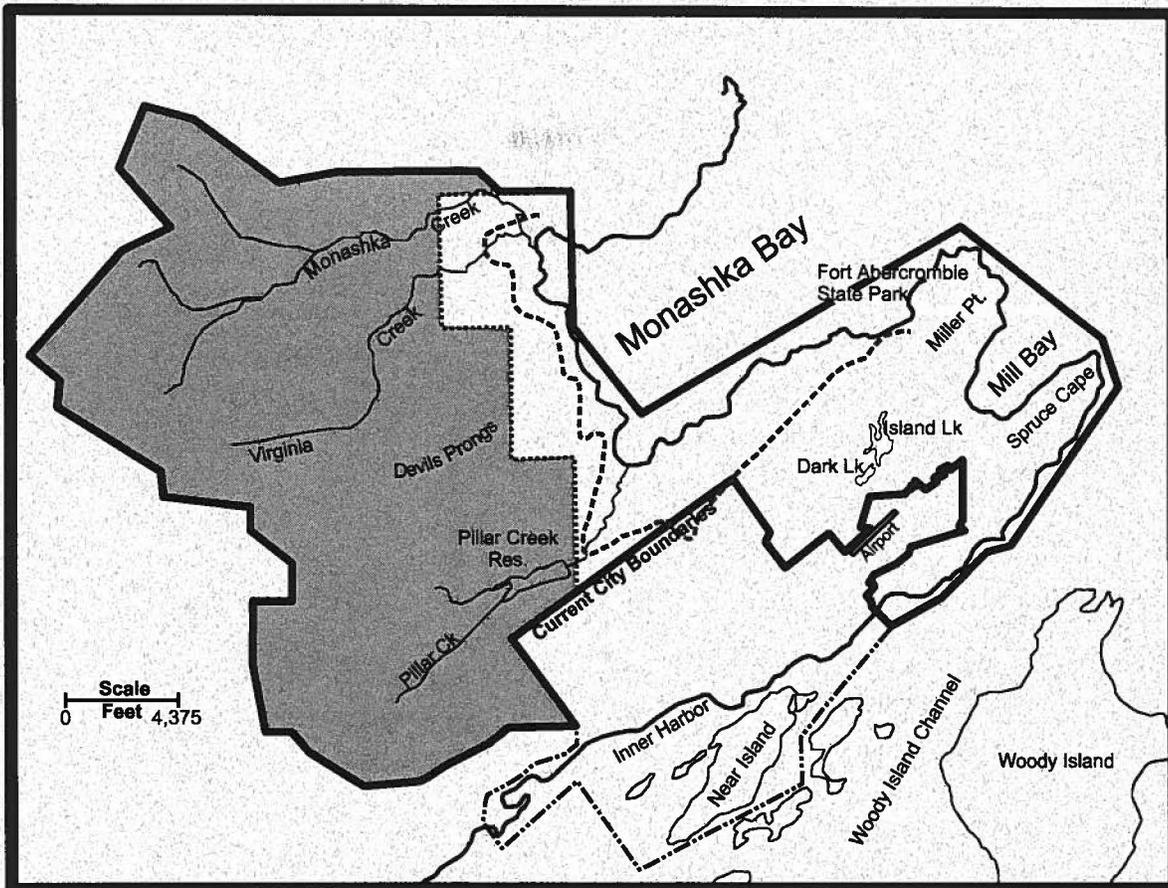
those 35 acres is leased to the Elks club for scouting and other youth activities. The remainder is used as a park. The Borough property in this area includes the community landfill. The Veterans of Foreign Wars has developed a recreational vehicle park on land leased from the Borough in this area. An indoor shooting range is also located on Borough property nearby.

Only about 0.7 square miles of this area is subdivided. The subdivided portion of the territory is shown on the map below.

Real property in this second area is currently assessed at \$30,823,700 (\$51,373 per resident). The per capita assessed value of real property in this area is thirteen percent higher than the comparable figure for the City.



Service District No. 2 is inhabited by about 600 people. Much of the land in this area is publicly owned.



Adequate land use control in the City watersheds is vital to avoiding expensive federal requirements for filtration of the City's water supply.

The third distinct area consists of the City's watersheds. This area encompasses an estimated 12.2 square miles (as defined in Borough Ordinance 92-02). The watersheds are uninhabited. The land in the watershed is undivided in the sense that is composed nearly entirely of large parcels owned by the 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.

There are two watersheds in the territory, the Monashka Creek watershed and the Pillar Creek watershed. The Monashka Creek

watershed serves as the primary source of water for the community of Kodiak. The Pillar Creek watershed is used as an emergency water supply source.

Salability of Land for Residential, Commercial, or Industrial Purposes.

The privately owned lands in the territory proposed for annexation are theoretically salable. Most of the privately owned property in the territory is either developed as residential property or is available for residential development.

Population Density. Service District Number One is fairly densely populated (1,208 residents per square mile). The

⁵ The subdivided portion of Service District Number One encompasses an estimated 1.6 square miles. It is assumed that all 2,900 residents of Service District Number One live in the subdivided portions of that area.

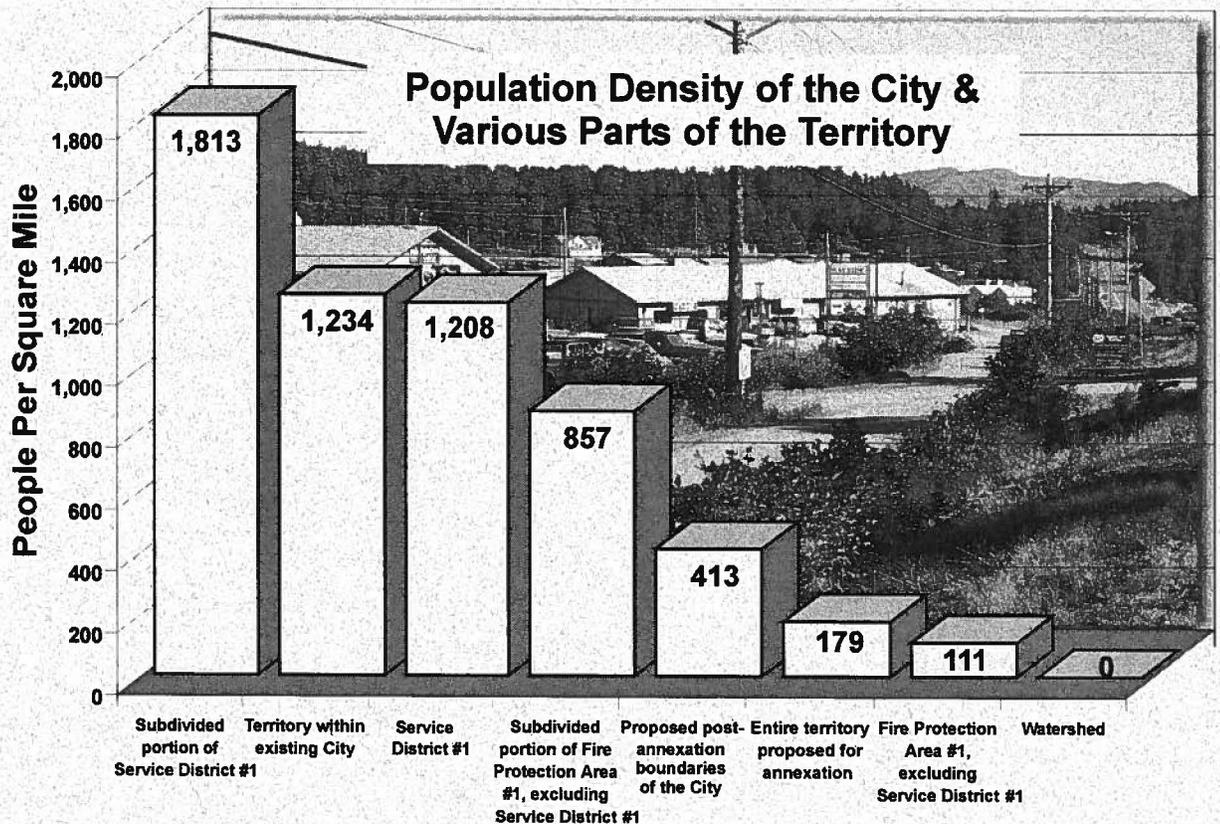
population density of this area is comparable to the population density of the area within the existing boundaries of the City (1,234 persons per square mile).

The population density of the remainder of Fire Protection Area Number One is 111 persons per square mile. That figure is less than ten percent of the population density figure for Service District Number One. The lower population density in this second area is attributed to three principal factors.

First and foremost, nearly ninety percent (87%) of the land in this second area is publicly owned. Virtually all the residents of this second area live in subdivisions that collectively comprise approximately 0.7 square miles. The

population density of the subdivided portion of this second area is 857 persons per square mile. In comparison, the population density of the subdivided portion of Service District Number One is approximately 1,813 persons per square mile.⁵

The second reason for the lower population density of this area is the lack of water and sewer utilities. Because sewer and water utility service is unavailable, the Borough requires that each lot in this second area encompass a minimum of 40,000 square feet (0.9 acres). In contrast, most lots in Service District Number One are much smaller, some are only 7,500 square feet. The third reason for the lower density is that the geographic configuration of this second area renders it less suitable for dense development.



As noted previously, the watersheds which comprise the third distinct area, are uninhabited

A summary of population densities of the City and various parts of the territory is provided in the chart on the preceding page.

At 1,234 residents per square mile, Kodiak is currently the third most densely populated city government among the 145 cities in Alaska. If annexation occurs, the population density of Kodiak will drop to 413 residents per square mile. Obviously,

annexation population density figure. Still, the proposed post-annexation boundaries would make Kodiak the fifteenth most densely populated city government in the state. Population densities of other cities in Alaska range from 2,226 persons per square mile (Ketchikan) to 0.9 persons per square mile (Platinum).

The average population density of all 145 city governments in Alaska is 41 persons per square mile. The area within the proposed post-annexation boundaries of Kodiak would be ten

times more densely populated than the average city government in Alaska.

The population densities of the eleven most heavily populated city governments in Alaska are listed in the adjacent table. Also included are the figures for the proposed expanded City. If annexation is approved, four of Alaska's eleven most heavily populated city governments would have greater

City Government	1998 Population	Population Density per square Mile
Fairbanks	31,601	934.9
Kodiak (expanded)	10,359	413.2
Ketchikan	8,460	2,226.3
Kenai	7,058	208.2
Kodiak (existing)	6,859	1,233.6
Bethel	5,463	109.3
Wasilla	5,134	420.8
Barrow	4,397	209.4
Palmer	4,318	1,167.0
Unalaska	4,285	20.0
Homer	4,155	155.6
Valdez	4,155	15.2

the inclusion of the uninhabited watersheds and other sizable publicly owned properties skews the post-

population densities than Kodiak, while six would have lesser population densities.

Cause of Recent Population Changes.

By all accounts, the population of the territory has increased significantly. In 1977, the Borough estimated that the territory had a population of 1,440. (Report to the Local Boundary Commission on the Proposal to Annex Certain Lands in the Kodiak Urban Area to the City of Kodiak, DCRA, May 17, 1978). In the past twenty-two years, the population of the territory has increased by 2,060 residents, or 143%. The increase in population is attributed to natural growth of the community outside the political boundaries of the City.

Suitability of the Territory for Reasonably Anticipated Community Purposes. Subdivided portions of the territory, comprising approximately 2.3 square miles, are used predominantly for residential purposes. Approximately 12.2 square miles consist of watersheds that supply water for the City operated water utility that serves not only City residents, but the estimated 2,900 residents of Service District Number One. The remaining five square miles consist principally of lands, tidelands, and submerged lands owned by the Federal, State, Borough, and City governments as previously described.

Conclusion. The 2.4 square mile Service District Number One is generally indistinguishable from predominantly residential property within the existing boundaries of the

City. The 5.4 square mile remainder of Fire Protection Service Area Number One has fewer residents, larger lots, and much more publicly owned property in comparison with either the City and Service District Number One. This larger area also lacks water and sewer utility services. The City's 12.2 square mile watershed is even more distinctly different than the area within the current boundaries of the City. It is uninhabited and almost exclusively owned by State and local governments.

However, nothing in the differences between the various areas suggests that those areas are incompatible. Indeed, 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. Further, as was addressed in this section of the report and is more specifically discussed in Section 8, the territory and the area within the existing City are one in the same community. Thus, DCRA concludes that the 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 in DCRA's view.

SECTION 2 – NEED FOR CITY GOVERNMENT IN THE TERRITORY

A. THE STANDARD

State law specifies that an area may be annexed to a city provided, in part, that the LBC determines there is a reasonable need for city government in the area. The particular standard is set out in full below:

19 AAC 10.090. (a) The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

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

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City states as follows regarding this standard:

The area of the territory proposed for annexation nearest the existing City is already urban in character in many places. It receives water and sewer utilities from extensions of City systems, has marginal police protection from an under-staffed Alaska State Troopers post, fire protection and emergency medical services from a volunteer fire department aided by the City Fire Department, and gets road services (apart from the State highway) from private contractors based on a complaint-received basis. It is clear from the nature of the community that this area needs more comprehensive municipal services than it receives, which the City could and should provide.

The remainder of the Fire Protection Area is included both because it includes the second large area of population growth, Service District No. 2, and because a fragmented Fire Protection Area would not have the resources at this time to continue providing the services for which it was created.

The watershed areas are included in the territory proposed for annexation to better allow the City to manage and control these lands as the needs increase along with population growth and the environmental and public health demands of state and federal regulations increase the need for such control. (Petition, Exhibit A)

"It is clear from the nature of the community that this area needs more comprehensive municipal services than it receives, which the City could and should provide."

(Petition, Exhibit A)

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Comments relevant to this standard offered by correspondents and the respondent opposed to annexation include the following:

There is a "lack of clear, tangible benefits to be gained from annexation." (James Jacobson)

Respondent Sidney G. Pruitt, Jr., wrote with respect to this issue (quoted as written by Mr. Pruitt):

As soon as City Sewer and Water services became available, lots in Svc. # 1 were Sub-Divided. A rage of Development began. Which still has not stopped. Trees were cleared either by man or wind. (Due to reduce buffers and more sales). More and more people built, sub-divided and sold more land. Population increased, traffic increased, crime increased. Life styles became

more congested and less Rural. . . .

. . . . The Original Petition for Annexation was from Service District # 1. Service District #2. **DID NOT PETITION for ANNEXATION.** The City of Kodiak took in upon themselves to include Svc. Dist. #2., as not to fracture the Fire District (i.e. Bayside Fire Dept., Which is volunteer manned, except for the Chief). . . . Fire Protection Area #1 includes Svc.

Dist. #1. And #2., plus extends five miles past Svc. Dist #2. To the end of Monashka Hwy. The fire District was extended to include a Public Rest Room at the end of the road. The Rest Room is to accommodate a Monashka Bay Park, acquired from a settlement from Exxon Oil Spill. Monashka Bay Park at the end of Monashka Hwy., has a creek, turn around, bridge and sand beach. Before it was designated a park people used the area for Public Recreation. Since its acquisition by the Borough of Kodiak (approx. 4 yrs. Ago) a walking path has been built, garbage collection stations installed, a walking bridge over the creek and the **CEMENT BLOCK OUT-HOUSE** assembled.

The Park has been the target of Vandals and Destruction. It is 5 miles beyond the end of Svc. Dist. #2. And 10 miles from the existing City Boundary. Within the 5 miles past Service District #2. There is no houses, no residents, only a Fish hatchery at Pillar Creek, and explosive magazine (safe haven).

This entire area has Traditionally been used for RECREATION ; sport fishing, hiking, ATV's, hunting, camping, climbing, ect.. **What Business does the City of Kodiak have with approximately 15 square miles of recreation land, undeveloped 5 miles outside of town? Is it just to provide Fire Protection to a OUT-HOUSE???** I find this idea of Annexation of Service District # 2 and all the empty land beyond it Unnecessary.

Correspondent Marian Johnson offered the following comments that are relevant to this standard:

. . . in the 1960's my mother in law's home was broken into, and the troopers wouldn't come until morning,

"What Business does the City of Kodiak have with approximately 15 square miles of recreation land, undeveloped 5 miles outside of town? Is it just to provide Fire Protection to a OUT-HOUSE??? I find this idea of Annexation of Service District # 2 and all the empty land beyond it Unnecessary."

Sidney G. Pruitt, Respondent

and the City police couldn't because we were out of the City. At this time her son and grandsons were all out of town which made it difficult for her to find help in the middle of the night. . . I am in favor of annexation because of our size and population. I would appreciate City services.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

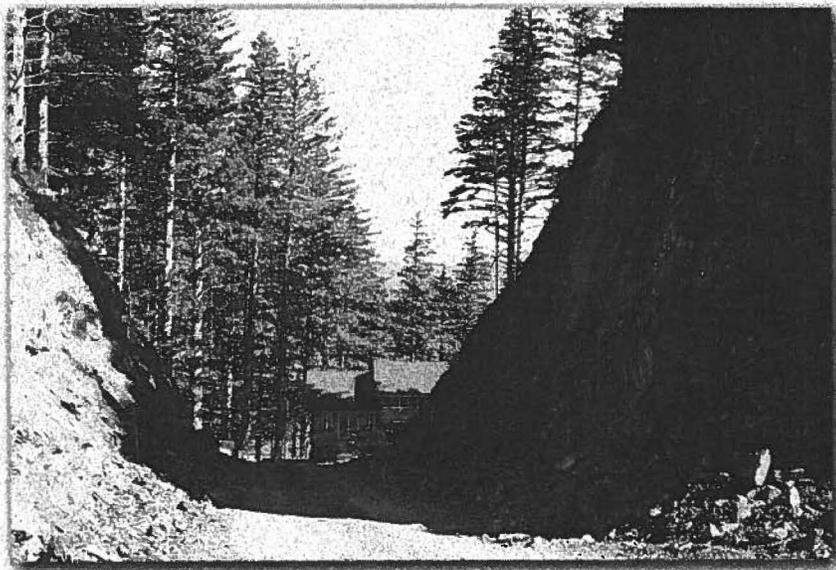
The City's reply brief offered the following rebuttal to views expressed by Respondent Sidney G. Pruitt, Jr.

On page 3 the respondent is partially correct. The City of Kodiak responded to a petition from residents of Service District 1 only as an expression of interest and subsequently submitted the petition you have before you. The inclusion of the entire Fire Service District was done at the suggestion of the Kodiak Island Borough Assembly. The City of Kodiak made a conscious decision not to set conditions upon which it would consider annexation. The Fire service District had only recently expanded to include the area to the end of the road. Ironically it is Mr. Pruitt as a resident of the Fire Service District who is currently providing protection to the **CEMENT BLOCK OUT-HOUSE**. Annexation would spread the cost of that protection more broadly.

The area proposed for annexation is accessed by the continuation of the community's major highway. To annex

only Service District 1 would leave a relatively small enclave of residents to continue existing services.

Page 5 of the affidavit again speaks to the quality of life issue. Although I appreciate Mr. Pruitt's perception I do not agree that lot size and population are the determining factors. Again the land use is the issue and the City of Kodiak will not assume that responsibility. The potential of the City to provide sewer and water is a factor of



Residence on Bay View Drive in Monashka Bay subdivision

need and ability, not cost. If on-site water and septic systems were to become contaminated or inoperable then I can only assume that public services would be "required" and provided for in the same manner as was done in Service District 1.

E. DCRA'S VIEWS

The territory encompasses six different Borough service areas. All of the territory, except the watersheds, is located within Fire Protection Area Number One.

6 As is discussed in Appendix C, in 1978 the LBC approved the annexation of the area currently approximating Service District Number One. That annexation utilized the legislative review process which, unlike the process utilized in the current proceeding, did not require a vote of the residents of the territory. The earlier annexation was subject only to approval by the LBC and the legislature under the terms of Article X, Section 12 of the Constitution of the State of Alaska. The annexation was never implemented because the 1979 Legislature rejected the LBC's recommendation for annexation.

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 map of the other fire service areas is provided on page 53.

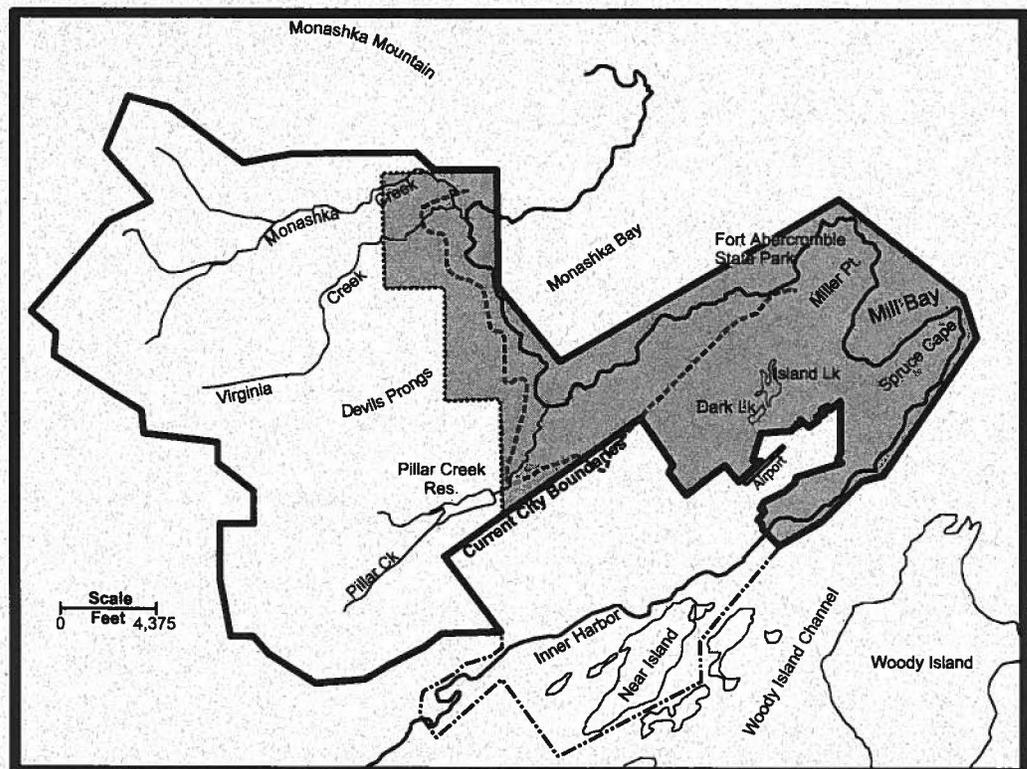
The following examines the need for city government in each of the three different areas identified in Section 1 of this report.

Service District Number One

The question of the need for local government services in this area was

addressed by the LBC in 1978. The Commission concluded at the time that this area was "in need of municipal services which can be most efficiently provided by the City of Kodiak." (Recommendation for Annexation of Territory to the City of Kodiak, Alaska, LBC, January 24, 1979).⁶ At the time, the area had an estimated population of 1,340 residents (Report to the Local Boundary Commission on the Proposal to Annex Certain Lands in the Kodiak Urban Area to the City of Kodiak, DCRA, May 17, 1978). The population of this portion of the territory has since grown by 1,560 residents or 116.4%.

In addition to areawide Borough services (which will not be affected by annexation) Service District Number One currently receives the following local governmental services:

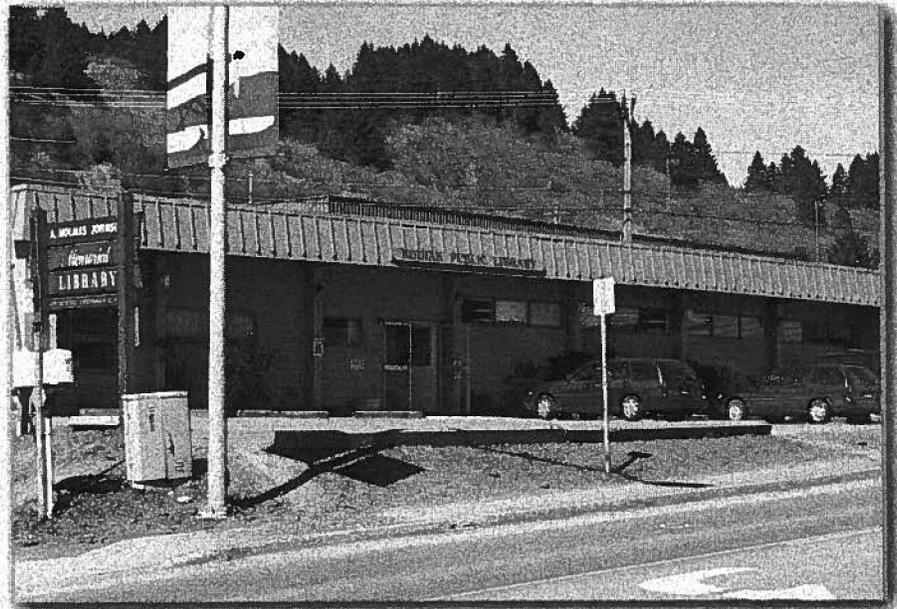


Fire protection Area Number One encompasses approximately 7.8 square miles and 3,500 residents

- fire protection (Borough Fire Protection Area Number One);
- emergency medical services (City service on an extraterritorial basis);
- emergency services dispatching (City service for EMS, fire protection, and at limited times for State Troopers);
- road maintenance (Borough Service District No. 1 which maintains 9.83 miles of roads);
- water utility service (City service on an extraterritorial basis);
- sewer utility service (City service on an extraterritorial basis);
- library (City facility available to residents of the territory);
- animal control (nonareawide Borough service);
- parks and recreation (nonareawide Borough service);
- economic development (nonareawide Borough service); and
- street lights (Woodland Acres Street Light Service District).

If this area is annexed, the City would assume direct responsibility for all of the services listed above. As is discussed in Section 3 of this report, *several of the services would be provided by the City at higher levels than is presently the case.* In particular, enhanced levels of service are planned for parks and recreation, road maintenance, and fire protection.

In addition to the existing services, there has reportedly been interest among residents in establishing a Borough police service area for the territory. Given the size and density of the population of this area, it is reasonable to assume that there is a need for local police service. If Service



A. Holmes Johnson Memorial Library, owned and operated by the City of Kodiak.

District Number One were a city government, it would be the seventeenth most populous city in Alaska, ranking well above Wrangell (population 2,589), Cordova (population 2,571), Dillingham (population 2,332), Craig (population 2,145), Haines (1,741), and North Pole (1,619). All six of those cities maintain city police departments.

Kodiak stated in its petition that the

⁷ The Borough Community Development Director provided information indicating that there were 1,237 housing units in the area proposed for annexation in 1998.

territory currently has “marginal police protection from an under-staffed Alaska State Troopers post.” (Petition, Exhibit A). According to the City, the territory proposed for annexation accounted for “approximately 60% of the Kodiak Detachment call volume.” The City reported further that 609 calls were made to the Troopers from the entire area proposed for annexation in 1998. (Petition, Transition Plan, page 2) The 1998 call volume was equivalent to one call to the Troopers from nearly half (49.2%) of the homes in the territory.⁷

Even respondent Sidney Pruitt, Jr., seemed to corroborate the need for police services in this area when he noted that it has undergone significant development over the years which has resulted in increased population, traffic, and crime.

On the basis of the preceding discussion, DCRA concludes that there is clearly a need for city governmental services in Service District Number One. Some of those needs are currently being fulfilled by the City on an extraterritorial basis. Others are being served by the Borough on a nonareawide basis and through service areas. One additional needed service, local police protection, is not being fulfilled at the present time. The question of which local governmental entity – the City or Borough – can provide the existing and unfulfilled needed services most efficiently and effectively is the subject of review in Section 3 of this report.

Balance of Fire Protection Area Number One

When this area was considered for annexation to the City in the late 1970's, the LBC concluded that there was not a substantial need for city services in the area. However, at the time, the population of the area was estimated to be 100. (Minutes of the Local Boundary Commission Decisional Meeting, August 16, 1978). The population has since grown by 500%. *In relative terms, the population growth in this area has been 4.3 times greater than the population growth in Service Area Number One over the past twenty-two years.*

In addition to areawide Borough services, this area currently receives the following local governmental services:

- fire protection (Borough Fire Protection Area Number One);
- emergency medical services (City service on an extraterritorial basis);
- emergency services dispatching (City service for EMS, fire protection, and at limited times for State Troopers);
- library (City facility available to residents of the territory);
- animal control (nonareawide Borough service);
- parks and recreation (nonareawide Borough service); and
- economic development (nonareawide Borough service).

Portions of this area also receive road maintenance. There are two Borough road service areas wholly

within this area that collectively maintain 3.15 miles of roads. Much of the remainder of the area is served by roads that are maintained by the State. Portions of two roads in the area receive no road maintenance. These consist of that portion of Sawmill Circle lying east of the intersection with Lakeview Drive, and that portion of Lakeview Drive lying south of the intersection with Sawmill Circle as shown on the map below.

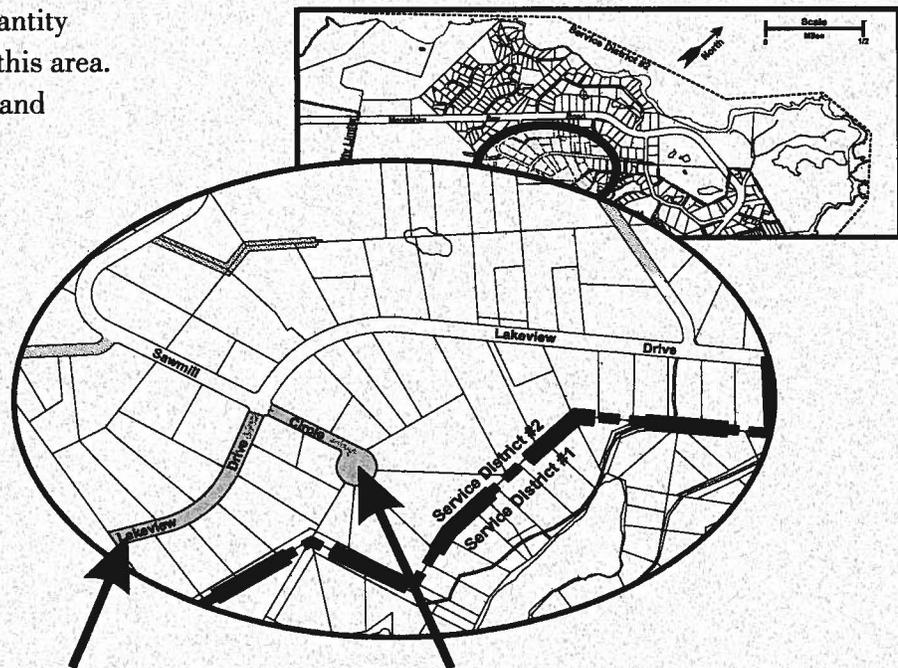
Here again, beyond simply assuming responsibility for the existing nonarea-wide and service area functions, the City plans to enhance the level of existing services provided to this area. In particular, higher levels of service are planned for road maintenance, parks and recreation, and fire protection.

The Borough Community Development Director indicated that concerns exist over both the quantity and quality of potable water in this area. She perceived a need for water and sewer utilities in this area and indicated that the Borough had performed a study of the feasibility of providing such services. A service area was formed for development of water and sewer utilities in the area (Service District Number Two). However, no utilities were ever extended to

the area. Service District Number Two is dormant and would be dissolved following annexation.

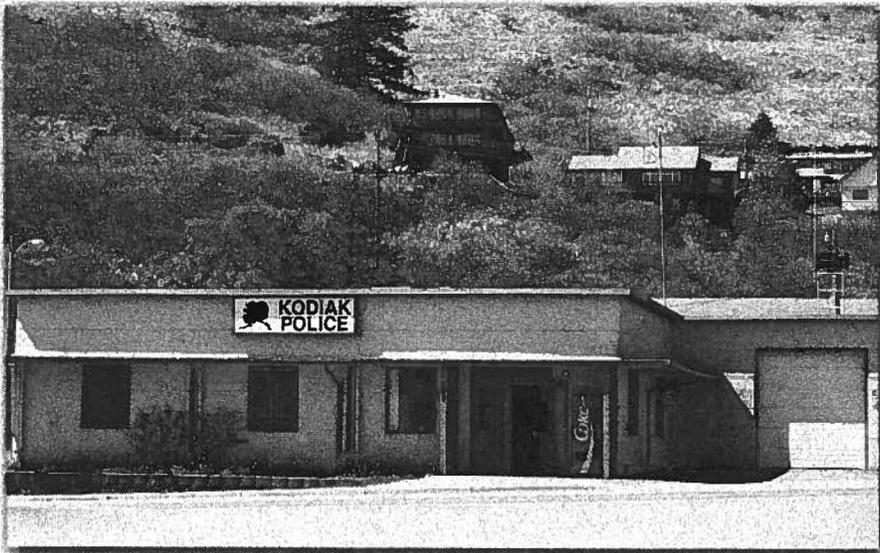
The City indicates that it has received a grant to undertake “a comprehensive sewer and water design for the area.” (Transition Plan, page 4). The City also states that its policy is to extend utility service where it is desired and where it is practical to do so. However, no specific plan for the extension of utilities to this area has yet been offered by the City.

In addition to the services discussed above, here again, it is reasonable to assume that a need exists for police services. 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. Forty-four of those 101 existing city



Portions of two roads in Service District #2 receive no road maintenance

governments with smaller populations fund community-based police positions. An additional fourteen of the 101 smaller cities provide facilities as in-kind financial support for State-funded



Kodiak Police provide dispatch services for Bayside VFD and, during off-hours, for Alaska State Troopers.

police positions in the communities.

Regarding the need for police services in this area, respondent Sidney Pruitt, Jr., noted that the Monashka Bay Park in this part of the territory “has been the target of vandals and destruction.”

On the basis of the preceding discussion, DCRA concludes that there is a reasonable need for city governmental services in the area. Certain of those needs are being served by the Borough on a nonareawide and service area basis. However, there are unfulfilled needs for road maintenance, water utility service, sewer utility service, and police protection.

City Watersheds

When the LBC considered annexation of the City’s watersheds in the late 1970’s, the Commission determined that there was not a substantial need for city services in the area. The LBC 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 (Minutes of the Local Boundary Commission Decisional Meeting, August 16, 1978).

The City’s watersheds have been zoned by the Borough as “W – Watershed” since the late 1970’s (Borough Ordinances 77-26-0, 84-35-0, and 92-02). The watershed classification allows “conditional use recreation or communication activities.” (EPA communication 7/15/92). In 1984, the Borough also granted the City extraterritorial authority to adopt and enforce regulations protecting its watersheds as permitted by State law (Borough Ordinance 84-36-0). In 1984, the City accepted the grant of extraterritorial authority from the Borough and imposed a prohibition on camping in the watershed (City Ordinance 736).

However, 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 (which took effect December 31, 1990), 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 (Proposed Decision Document, Public Drinking Water Supply – Kodiak, Alaska, EPA 7/15/92). One of the criteria with which the City did not comply involved control over its watersheds. In that regard, the assessment stated:

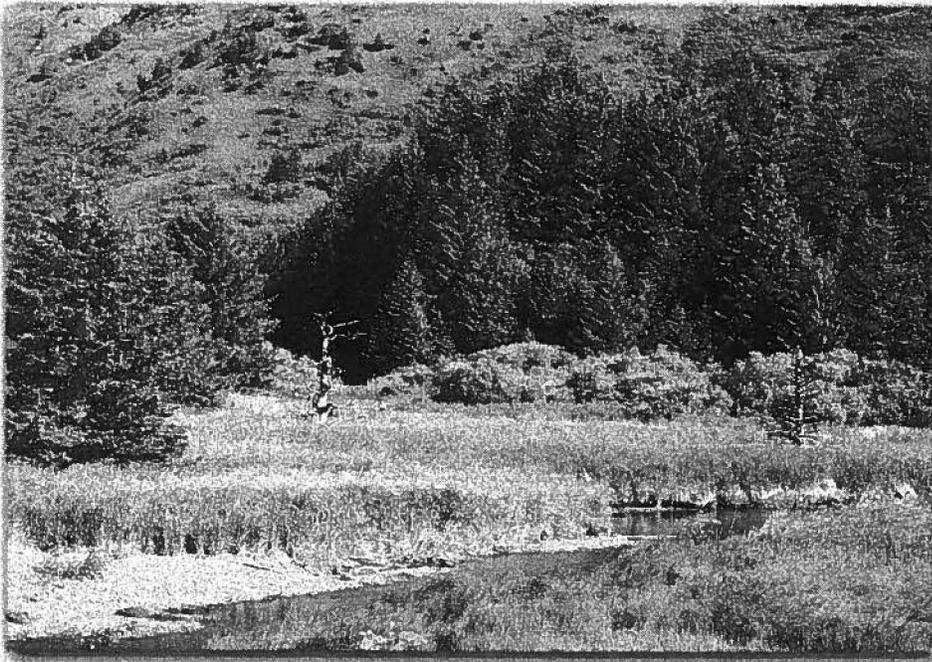
[The Monashka watershed] is accessible via a fenced maintenance road. Although the access is fenced, there seems to be limited control over human access to the watershed. The October 1991 sanitary survey indicated that beer cartons, pop cans, shotgun shells, etc., were found in the watershed. The human activity which occurs in the watershed consists principally of hunting and hiking. Use appears to be isolated to the southern slope near the dam. . .

“Public water supply” signs are posted on the road gate and the system operators ask people to leave the area whenever they are encountered during the operator's daily pump house inspections. . .

. . . The [Watershed Control Program for the Monashka Creek Watershed and Upper Reservoir Drainage Basis for the City of Kodiak, Alaska] recommends that the existing zoning laws and regulations be enforced to limit activities in the watershed which will contribute to erosion. EPA agrees with the system's proposed action. However, it is unclear who will enforce them and when the laws and regulations will be enforced. If these controls already exist, it is unclear why the trails and unauthorized vehicle access and subsequent roads still exist.



Monashka Creek, part of the City's watershed.



Another view of Monashka Creek.

The plan concludes that hunting can be curtailed or eliminated by enforcing current city regulations. Additional public education is also recommended. Monitoring includes observation of activities on the watershed and reporting any incidence daily.

It is unclear how the system plans to enforce the current watershed regulations which restrict hunting. Will the system be enforcing such regulations, or will they be enforced by another entity? What type of public education activities will be implemented? When does the system plan to initiate the public education program? Does the system plan to coordinate with the local wildlife officials to accomplish these activities?

CONCLUSION: . . . The system has not fully implemented a watershed control plan although Kodiak has written and recently adopted a watershed control plan. The plan identifies potential detrimental

activities in the watershed and recommends steps to reduce or mitigate those problem activities. However, based on the results of the watershed inspection and activities observed in the watershed, it was apparent that many watershed controls have not been implemented. The system needs to provide evidence that controls are being implemented in the watershed to minimize potential detrimental activities.

In early September 1992, the City responded to EPA's findings that it failed to meet five of the

ten criteria necessary to allow continued use of unfiltered surface water sources. After considering the City's response, EPA found with respect to the issue of watershed controls that:

On August 27, 1992, the Kodiak City Council amended the Monashka Creek Watershed Control Program by adopting additional watershed access controls. The controls included posting of additional signs prohibiting trespassing in the watershed, patrolling the watershed daily and issuing citations when appropriate. The City also agreed to establish a wildlife monitoring program to determine if a correlation exists between the quality of the source water and wildlife populations. (*Final Decision Document*, Public Drinking Water Supply – Kodiak, Alaska, EPA 12/21/92)

The December 1992 review by EPA determined that the City had achieved compliance with two more of the ten

requisite criteria. However, EPA found that the City still failed to comply with three others, *including 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.” (*Ibid.*)

The City’s Public Works Director advised DCRA that the decision by EPA to allow the City’s water system to remain unfiltered has saved the City an estimated \$15 million in capital funding and \$400,000 in annual costs of operating the water utility.

The City’s watersheds currently have three levels of protection. First, they are nearly exclusively owned by state and local governments. Second, the watersheds are protected by the Borough’s zoning of the area as “W – Watershed”. Lastly, the City has been authorized by the Borough to exercise extraterritorial authority to protect its watershed.

It is evident from the preceding discussion that control over the City’s watersheds is an important public issue. The watersheds in question are in close proximity to a fairly large (at least by

Alaska standards) population with reasonably easy access to the watershed. The owners of the watersheds have expressed no objection to annexation. Those owners include the Borough, which also exercises land use regulation power over the property and which granted extraterritorial authority to the City for regulation of the watersheds. DCRA takes the position that if the watersheds were brought under the direct territorial jurisdiction of the City, the ability of the City to provide proper watershed control would be enhanced.

Further, as a matter of general public policy, DCRA takes the position that it is reasonable to include municipal watersheds within the *direct territorial jurisdiction* of the municipality utilizing those watersheds when that municipality seeks the inclusion of such area, provided there are no compelling reasons to exclude the area.

With regard to DCRA’s view favoring a general public policy of direct territorial jurisdiction rather than extraterritorial jurisdiction, DCRA notes that it *might* be theoretically possible that the extraterritorial authority in question could be rescinded.⁸ However, DCRA has no reason to believe in this particular case that the Borough would revoke its grant of extraterritorial power to the City for watershed regulation.

⁸ 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 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.” Still, it may be possible that authorization for extra-territorial services could be rescinded.

⁹ Specifically, AS 29.35.020 permits extraterritorial services and facilities as follows: facilities for the confinement and care of prisoners, parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports, streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities, water supply and watershed protection, containment, clean up or prevention of the release of oil or hazardous substance, and vessel traffic control and monitoring of oil barges and tank vessels carrying oil. In addition to the extraterritorial options expressly authorized by statute, some municipalities provide fire protection outside their boundaries under the provisions of mutual aid agreements and also provide police protection outside their boundaries under arrangements with the Alaska State Troopers.

DCRA notes further regarding its position favoring direct territorial jurisdiction, that municipalities have a broad array of other extraterritorial options.⁹ To deny the need for city government because a city could

exercise powers extraterritorially would be poor public policy in that it would weaken arguments concerning the need for city government generally, not just regarding watersheds.

SECTION 3 – COMPARATIVE ABILITY OF THE CITY TO DELIVER ESSENTIAL SERVICES

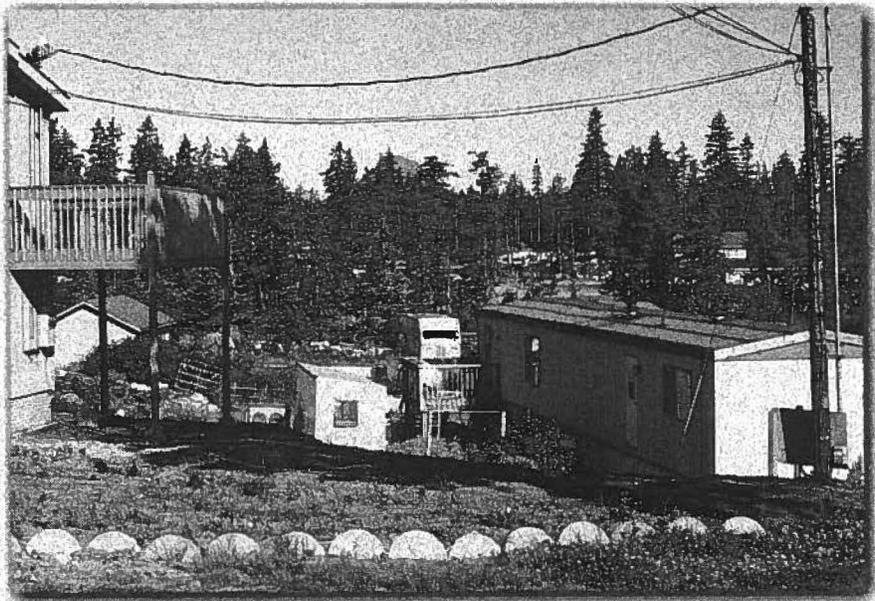
A. THE STANDARD

19 AAC 10.090(b) provides that territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

The phrase “essential city services” as used in 19 AAC 10.090(b) is defined in 19 AAC 10.990(8) as:

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

The territory proposed for annexation exhibits a reasonable need for city government. Residents of the territory proposed for annexation do a great deal of their shopping within the existing City, where they pay City sales tax on purchase; however, they have no voice in how those tax-generated revenues are spent. The residents of the territory



Residential area along Spruce Cape Road

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City acknowledges that residents of the territory contribute substantially to the City’s sales tax revenues. As noted in part E of this section of the report, DCRA considers the City’s sales tax to be a critical tool in its ability to provide services effectively and efficiently. The City commented in its petition that:

proposed for annexation who get water and sewer utilities from the City pay a 20% surcharge on those utility rates as a consequence of not sharing in the system’s potential liability. Law enforcement coverage is minimal due to continually-reduced budgets and staff in the Alaska State Troopers. Road maintenance is marginal, conducted on

a complaint-received basis rather than through a program of preventive maintenance. (Petition, Exhibit F)

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Correspondent John A. Parker, who favors annexation, also recognized the importance of the City's sales tax in terms of its ability to provide efficient and effective services. Specifically, Mr. Parker stated:



Road equipment at the City's Public Works shop. Dome at the right holds the salt-sand mixture for winter road de-icing.

The City of Kodiak has applied to annex 19.5 square miles of lands into the City boundaries. I would like to go on record as a strong advocate for this proposal.

The City of Kodiak is currently holding the residents of the proposed area in a hostage situation in matters

of sewer and water utilities. While the City of Kodiak provides services to some of the residents of part of this area; it does so at a premium rate. For the City charges a premium for water and sewer services to users who are not within the City limits. In effect this is an extortion situation (sic) which is only justified by the City on the basis that they can charge more to these users.

More importantly is the matter of Sales Tax collection. The City over the last ten to fifteen years has been able to selectively annex properties into the City which were capable of generating

large sales tax revenues. In particular I write of the annexation of the real property leased by Safeway. Before the development of that complex the property was outside the City limits. Once the property became developed the City annexed the property strictly for the purpose of collecting sales tax.

The real property owners in the area proposed for annexation currently operate several "service districts" (i.e. roads and street lighting). These residents pay a premium rate in additional taxes to fund

these services. Meanwhile residents of the City receive these same services at no additional cost. When the City is allowed to selectively annex properties as in the case of Safeway the increase the revenue base to the City and decrease the revenue base for the service districts.

Kodiak is unique in that almost all its business are located within the city limits. A large portion of the sales tax revenue collected by the City is paid by non-city residents who reside in the proposed annexation area. The City of Kodiak uses sales tax revenues as a major revenue source for the operation of City services such as roads and public works. However, the residents of that area do not receive any services for the taxes paid. In essence the sales tax revenues are paid by one group (nonresidents) for the benefit of another (City residents). One might say the nonresidents are paying residents true cost for services received.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

The City offered no reply in response to the comments from Mr. Parker, presumably because it concurred with his views on the matter.

E. DCRA'S VIEWS

As noted in Section 2-E of this report, in 1978 the LBC determined that the City was then best able to provide needed services to an area approximating Service District Number One.

In terms of which local government today is able to most efficiently and effectively provide essential city services to the territory, DCRA considers it noteworthy that the City is presently providing a multitude of services to the territory. As noted in Section 2 of this report, 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.

It is also reasonable to find that the City is best able to extend water and sewer utilities to the subdivided portion of Service District Number Two since it owns and operates the water and sewer utilities serving the area within the existing City limits and Service District Number One.¹⁰ Further, it is reasonable to find that the City is best able to provide local police services to the territory since, again, it has the personnel and facilities to provide those services. City police personnel currently provide back-up assistance to the Alaska State Troopers throughout the territory.

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

¹⁰ DCRA recognizes that the City currently has no plans for the extension of water and sewer utilities to Service District Number Two.

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 (page 7) 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



Spruce Cape Park.

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 that the territory "gets road services (apart from the State highway) from private contractors based on a complaint-received basis." (Petition, Exhibit A) The City also characterized the current road maintenance as "marginal, conducted on a complaint-received basis rather than through a program of preventive maintenance." (Petition, Exhibit F) 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 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.” (Petition, Paragraph 9). Elsewhere in its petition, the City notes that the territory receives “fire protection and emergency medical services from a volunteer fire department aided by the City Fire Department.” (Petition, Exhibit A) 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.

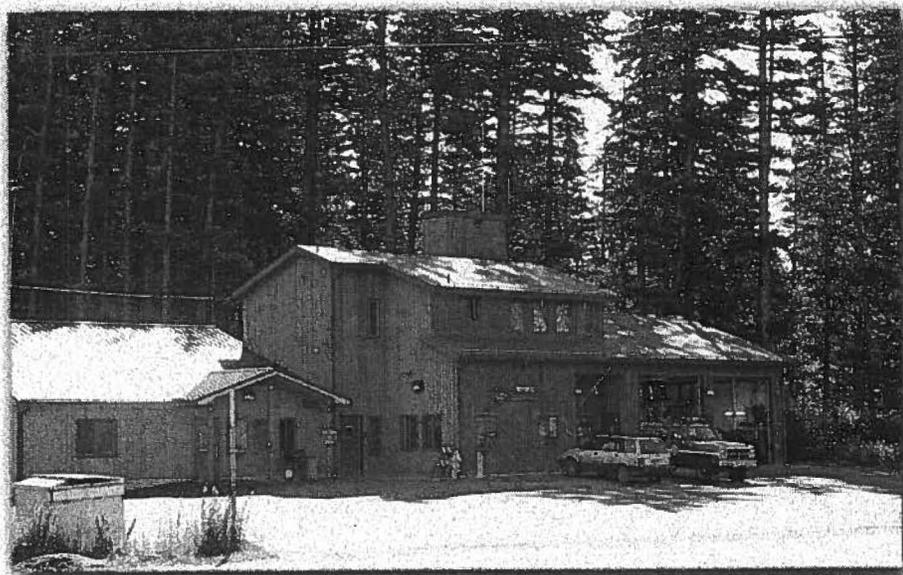
The City’s sales tax revenues are a critical tool in its ability to provide services. In 1998, the City’s six percent sales tax generated \$6,574,480 (*Alaska Taxable*, DCRA, 1999). The City indicated that shopping patterns of the 6,859 City residents and the non-City residents connected to Kodiak by roadways are the same. (Petition, Transition Plan, page 9) 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. DCRA estimates that the population of the non-

City residents along the road network is 5,800. If the City’s belief is correct, then the 3,500 residents of the territory contributed more than \$1.8 million (\$1,817,733) in City sales tax revenues during 1998.¹¹

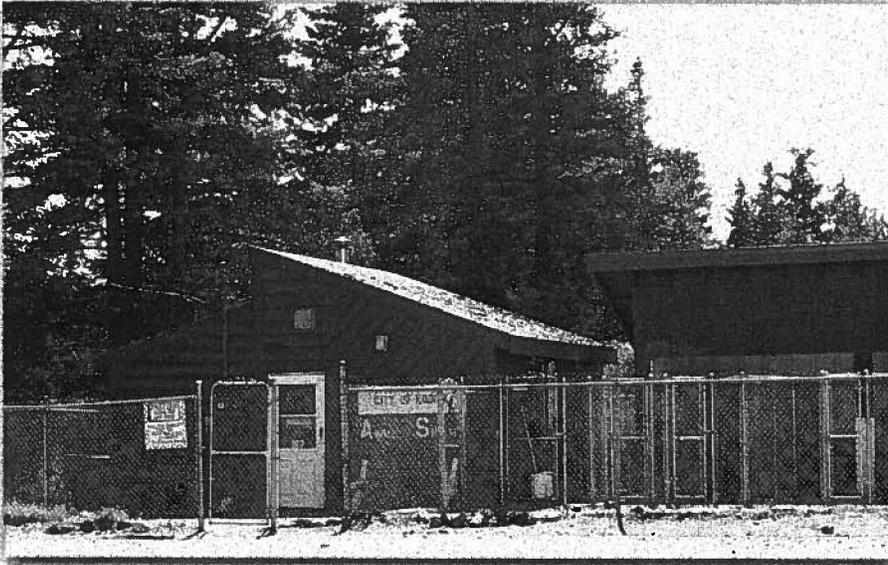
The City’s sales tax collections enable it to keep property taxes to a minimum. The 1998 sales tax collections were equivalent to nearly a 22 mill levy of local property taxes (21.86 mill equivalent.)

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

¹¹ If the City’s premise is otherwise correct, the projected \$1.8 million sales tax payment by residents of the territory is probably conservative since 1,638 of the 5,800 non-City residents (28%) live at the Coast Guard Station. It is presumed that those 1,638 residents shop to some extent at the commissary, base exchange, convenience store, and gas station located at the Coast Guard base.



Bay View fire station on Monashka Bay Road serves Fire Protection Area Number One.



Kodiak Animal Shelter. Animal control is managed through the Kodiak Police Department.

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.

Conclusion. Based on the foregoing discussion, DCRA determines that the City is best able to provide essential services to the territory. 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.

DCRA 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.

SECTION 4 – RESOURCES OF THE PROPOSED EXPANDED CITY

A. THE STANDARD

State law allows an area to be annexed to a city provided, in part, that the LBC 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. Specifically, the law provides as follows:

19 AAC 10.110. Resources.

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

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

(5) economic base of the territory after annexation;

(6) property valuations in the territory proposed for annexation;

(7) land use in the territory proposed for annexation;

(8) existing and reasonably anticipated industrial, commercial, and resource development;

(9) personal income of residents in the territory and in the city; and

(10) need for and availability of employable skilled and unskilled people.

"All City services (other than operation of harbor facilities, of which there are none in the territory proposed for annexation), all City services will be extended to the new area on an equal basis with the services provided within the existing City."

Petition, Brief - Exhibit F

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City states as follows regarding this standard:

The economy within the proposed post-annexation boundaries of the city include (sic) the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. All City services (other than operation of harbor facilities, of which there are none in

"To put a point on it, the City assumed ownership and operation of the sewer and water system in Service District 1 in late 1997. The initial savings on the monthly bill to the residents of the district was \$22.00. It is my opinion that the residents are receiving a higher level of service for less money...*quod erat demonstratum.*"

Bill Jones, City Manager

the territory proposed for annexation), all City services will be extended to the new area on an equal basis with the services provided within the existing City. The attached Transition Plan gives details of the anticipated costs of those services and the revenues expected from the area. In brief, the revenues are expected to be virtually equal to operating expenses, and the additional, first-year capital costs are expected to be

essentially the same as the fund balances to be transferred from the existing service areas. Property values are shown in paragraph 12 of this petition. (Petition, Brief - Exhibit F)

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Respondent Sidney Pruitt, Jr., addressed this standard on pages 7 – 10 of his responsive brief. Generally, Mr. Pruitt expressed the concern that the City substantially underestimated the cost of providing services to the territory. He asserted that either costs will "increase dramatically or service will suffer." (page 8)

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

In response to the criticism expressed by Mr. Pruitt, the City stated as follows:

Pages 7 through 11 provide statistics to refute the **Transition Plan** developed by the City staff. The City has a great deal of expertise and experience in providing Police, Fire, Parks & Recreation and Public Works to its citizens. The preparation of the respective portions of the plan by the responsible department head was done carefully and with the understanding that what was promised would be delivered. If one is going to argue that a vast portion of the area is undeveloped then one should be willing to accept that little or no direct service would be provided, e.g., the watershed. To put a point on it, the City assumed ownership and operation of the sewer and water system in Service District 1 in late 1997. The initial savings on the monthly bill to the residents of the district was \$22.00. It is my opinion that the residents are receiving a higher level of service for less money...*quod erat demonstratum.* In prior annexation efforts there was criticism that the proposals lacked specifics. The Transition Plan for this annexation petition was written to avoid that concern and provide the public with the information to make a choice.

E. DCRA'S VIEWS.

Certain information relevant to this standard was provided in the discussion of DCRA's views in Sections 1-E, 2-E, and 3-E of this report. In particular, that information relates to land use in the territory, human resources of the territory, services to be provided by the City, and property valuations in the territory. To avoid redundancy, those discussions are not repeated here.

ESTIMATED ANNUAL COSTS RELATING TO ANNEXATION		
Service	First Year	Long-Term
Parks and Recreation	\$63,400	\$27,000
Economic Development	0	0
Fire Protection/EMS	234,153	233,435
Road Maint./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

The above chart summarizes the costs projected by the City for extending services to the territory.¹²

DCRA finds that the City's cost projections are supported by detailed analysis in its transition plan. The projections appear to have been well thought out. Further, the analysis was conducted by individuals with expertise in the various fields for which projections were made. As such, DCRA considers the projections to have been developed in a responsible fashion and further considers the figures to be reasonably

accurate and credible.¹³

The table below summarizes the projections offered by the City regarding the effects that annexation would have on revenues.¹⁴

Here again, the City's projections were developed by individuals with knowledge and

expertise. The numbers were certainly reasonable at the time the petition was prepared. However, developments and new information subsequent to the filing of the petition cause DCRA to substitute its own figures for three of the revenue figures utilized by the City. These substitutions are the result of: (1)

CITY'S ESTIMATED REVENUES RELATING TO ANNEXATION	
Property taxes	\$298,030
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	122,000
Shared Fisheries Tax	7,259
Reduced building inspection fees	(20,100)
Total	\$502,866

¹² The "first year" cost projections outlined above are based on information provided in the transition plan. The "annual cost thereafter" projections are based on section 15 of the petition.

¹³ Cost projections concerning economic development, however, might be viewed by some as being rather unorthodox. The City assumes that there would be no increase in its costs for that service. The Borough currently exercises that power on a nonareawide basis. The City and the Borough jointly fund economic development through the Chamber of Commerce. Each pays \$30,000 to the Chamber of Commerce. Annexation would reduce the Borough's nonareawide population by 59%. It would seem that a legitimate argument could be made that a similar shift in the Borough's share of economic development costs should occur. On the other hand, it seems similarly unorthodox that the City fully funds the cost of

Continued on next page

Continued from previous page

library services that are used by residents throughout the Borough. Any added expense to the City for what some may consider to be a more orthodox treatment of costs relating to economic development would likely be more than offset by a more orthodox treatment of the funding for library services.

¹⁴ The revenue projections are based on Section 14 of the petition.

a reduction in funding of State Revenue Sharing and Safe Communities programs; (2) an increase in the assessed value of real property in the territory; and (3) updated projections for State shared fisheries taxes. The revenue projections accepted by DCRA are as follows:

Overall, the updated figures result in only a minor reduction of the projections offered by the City in its petition (\$5,573 or 1.1%).

When considering the resources of the City, it is important to put into context the expenditures and revenues

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. It was projected in Section 3 of this report 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.

DCRA'S ESTIMATED REVENUES RELATING TO ANNEXATION	
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

that are projected to result from annexation. The anticipated expenditure of an additional \$631,777

By raising the issue of the substantial sales tax contributions by residents of the territory, however,

DCRA does not intend to imply that they would, in reality, be greatly overpaying for the services they receive following annexation. Proceeds from the City's sales tax are utilized to provide a host of services and facilities that benefit the entire community. For example, one-sixth of the sales tax proceeds (up to \$1 million) is dedicated to port and harbors capital construction. A similar amount is dedicated for capital improvements to local roads and parks. The balance is used to support general government services provided by the City.

Regarding sales tax contributions, it is safe to say that no residential area of the *existing* City fully funds the cost of providing services to that area by property taxes and user fees. If sales taxes were excluded from the City's current revenues, its expenditures for Fiscal Year 1999 would have exceeded its projected revenues by 39.2% — a margin greater than the deficit projected for the territory.

The projected deficit for services in the territory (excluding consideration for sales taxes currently paid) during the first year would be approximately \$462,431.¹⁵ The City indicates in its petition that this deficit will be offset by fund balances in service area accounts to be transferred to the City.

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 year by approximately \$150,000. (Personal communication, Borough Finance Director.) If the revenue/expenditure balance remains constant for the remainder of this fiscal year, the fund balances of the six service areas within the territory will be roughly \$870,000 by June 30, 1999.

It is DCRA's view 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.

It is also DCRA's view 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

¹⁵ The deficit figure for the first year includes the \$370,284 difference between the first year expenditures and the long-term revenue projections. Additionally, revenues for the first year were reduced by an additional \$92,147 because the timing of State funding is such that increased levels of State Revenue Sharing and Safe Communities funding will not be fully realized until Fiscal Year 2002, beginning July 1, 2001.

¹⁶ Given these laws, DCRA would urge the City to establish suitable accounting controls to document proper expenditure of the funds.

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.¹⁶

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. (City of Kodiak General Purpose Financial Statements, June 30, 1997, Deloitte & Touche, LLP)

Conclusion. Based on the foregoing, DCRA 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.

SECTION 5 – POPULATION SIZE AND STABILITY

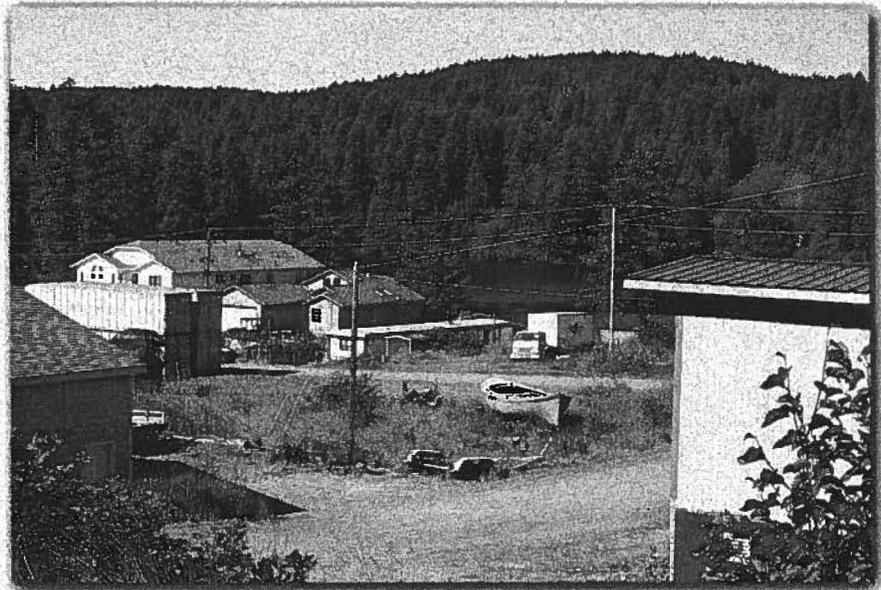
A. THE STANDARD

State law allows an area to be annexed to a city provided, in part, that the LBC determines the population within the proposed *post-annexation* boundaries of the city is large and stable enough to support the extension of city government. In that respect, the law provides as follows:

19 AAC 10.120. POPULATION.

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

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



Island Lake subdivision in the territory proposed for annexation

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City states as follows regarding this standard:

The population within the proposed post-annexation boundaries of the city is sufficiently large and stable to support the extension of city government. The population of the territory proposed for annexation is approximately half as large as the existing City population. A large proportion of the homes are single-family, owner-occupied dwellings on large lots, representing a highly stable population. Such rental units as exist are in the middle to upper price ranges, again representing a stable population. (Petition, Brief - Exhibit F)

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Neither the correspondents nor the respondent offered comments directly relating to this standard.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

Since this standard was not addressed by the respondent or any of the correspondents, there were no comments to which the City could reply.

E. DCRA'S VIEWS

The City estimates that the territory is inhabited by 3,500 individuals. That seems to be a reasonable estimate of the current population. The Alaska Department of Labor determined that there were 3,462 individuals living in the Kodiak Island Borough outside of cities and census designated places in 1998. The Borough Community Development Director speculated that all but about 150 – 250 of those individuals live in the area proposed for annexation.

The Borough independently prepared its own estimate of the population of the territory in 1998. The Borough projected the territory was inhabited by 3,487 individuals last year. Since January of 1998, there have been approximately forty new homes

constructed and occupied in the territory proposed for annexation. Most of the new construction has occurred in Service District Number One.

The 1998 population of the City was 6,859. Kodiak presently ranks as the fourth most populous city government in Alaska (trailing Fairbanks @ 31,601; Ketchikan @ 8,460, and Kenai @ 7,058). 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.

Section 2 of this report noted that 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.

DCRA 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.

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

SECTION 6 – INCLUSION OF ALL NECESSARY AREAS

A. THE STANDARD

An area may be annexed to a city provided, in part, that the enlarged boundaries include all areas needed to provide city services in an efficient and cost-effective manner.

Specifically, the law provides as follows:

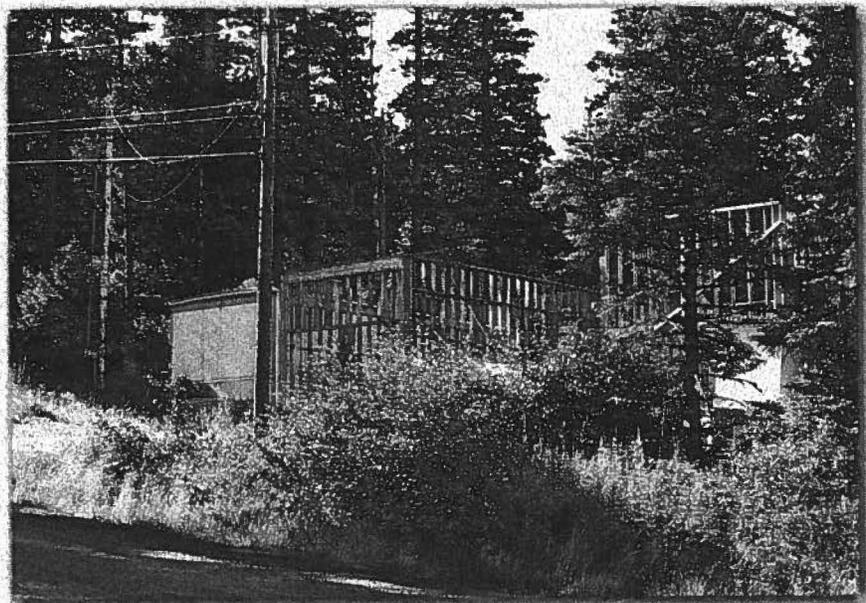
19 AAC 10.130(a). The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

In support of its contention that this standard is satisfied, the City states the following in its petition:

The proposed post-annexation boundaries of the city include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. The territory proposed for annexation includes the City's water reservoirs and their watersheds, land developed for residential, commercial, and industrial use, and ample undeveloped land zoned suitably for expansion of such uses.



Building addition under construction on Marmot Drive in the Island Vista subdivision in the territory proposed for annexation

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

None of the correspondents directly addressed this standard. Neither did the respondent.



Residences on Marmot Drive in Island Vista subdivision

redundancy, those discussions are not repeated here. It is noted, however, that those discussions support the conclusion that the 25.07 square miles encompassed by proposed new City boundaries will allow Kodiak to provide essential city services on an efficient, cost-effective level.

One portion of the territory warrants particular consideration in the context of this standard. That area consists of the portion of Fire Protection Area Number One which lies outside Service District Number One. In April of 1994, the City petitioned the LBC for the annexation of Service District Number One. The City's proposal did not include the balance of Fire Protection Area

Number One.

The Borough and the City were unable to reach agreement in 1994 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.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

Since this standard was not addressed by the respondent or any of the correspondents, there were no comments to which the City could reply.

E. DCRA's VIEWS

Certain information concerning land use characteristics, land ownership patterns, population densities, extraterritorial powers, and transportation patterns were discussed in prior sections of this report. To avoid

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 to annex the entire fire service area. However, the City was unwilling to enlarge its annexation proposal.

According to then-City Clerk Marcella Dalke, the City Council balked at expanding the 1994 annexation proposal 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 the position that it took five years ago. That is, “The Kodiak Island Borough Assembly, discussing the annexation proposal in joint work session with the City Council, asked the City to include all of Fire Protection Area No. 1 in the annexation petition to avoid fragmenting the Fire Protection Area.” (Petition, Exhibit E).

The City has concurred with the Borough in this proceeding, stating:

The remainder of the Fire Protection Area is included both because it includes the second large area of population growth, Service District No. 2, and because a fragmented Fire Protection Area would not have the resources at this time to continue providing the services for which it was created. (Petition, Exhibit A)

DCRA shares the current position taken by the Borough and the City. It would be ideal to avoid dividing the fire protection service area.¹⁷

Conclusion. Based on the foregoing discussion, DCRA concludes that the standard in 19 AAC 10.130(a) is satisfied. There may be other areas, however, that are suitable for inclusion within the corporate boundaries of the City that are outside the scope of its current annexation proposal.

¹⁷ DCRA recognizes, however, that it would be *theoretically possible* to exclude the portion of the fire service area in question from the annexation proposal and arrange for the City to provide fire protection services under the Borough’s jurisdiction in the same manner that the City now provides building inspection and animal control services to the territory. However, such arrangements are less than ideal.

SECTION 7 – CONTIGUITY

A. THE STANDARD

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. Specifically, the law provides as follows:



Residential area in Woodland Acres 8th Addition

19 AAC 10.130(b) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

Maps provided in the City's petition demonstrate that the territory is contiguous to the existing boundaries of the City.

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Neither the correspondents nor the respondent directly addressed this standard.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

Because this standard was not addressed by the correspondents or the respondent, there were no comments to which the City could reply.

E. DCRA'S VIEWS

The territory clearly adjoins the current boundaries of the City. Thus, DCRA concludes that the standard set out in 19 AAC 10.130(b) is satisfied.

SECTION 8 – INCLUSION OF LOCAL COMMUNITY AND TEN YEARS' GROWTH

A. THE STANDARD

An area may be annexed to a city provided, in part, that it is limited to the “existing local community”, plus areas projected for growth and service needs during the next ten years.

Specifically, the law provides as follows:

19 AAC 10.130(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City stated in its brief as follows:

The current situation artificially creates two classes of citizens from among all those who form *an otherwise homogenous community*: those inside the City who have voting rights in City elections, enjoy the benefits of greater police protection and road maintenance, and pay resident rates for water and sewer utilities, and those outside the City who do not vote in City elections, receive less police protection and road maintenance, and pay higher utility rates. Annexation would

bring both groups into parity, affording all residents equal suffrage and services at equivalent costs. (emphasis added) (Petition, Exhibit F)

B. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

The respondent did not address this standard. Neither did the correspondents.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

The City stated in its reply brief that, “The City believes that annexation will remove an artificial boundary and make us a single community in law where we are now a community by proximity.”

“The City believes that annexation will remove an artificial boundary and make us a single community in law where we are now a community by proximity.”

Bill Jones, City Manager

E. DCRA'S VIEWS

In 1978, the LBC implicitly found that much, if not all, of the territory in the current proceeding was part of the same community that was encompassed by the City's corporate boundaries. (Minutes of the Local

Boundary Commission Decisional Meeting, August 16, 1978) Even through the 1979 Legislature rejected the LBC's recommendation for annexation of part of the territory currently under consideration, it too recognized that the territory and the area within the City were one in 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



Residential area along Spruce Cape Road

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)

The links between the two areas have certainly not diminished in the intervening twenty-one years. The territory and the area within the existing boundaries of the City remain a single community bisected by a political boundary. The territory 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).

Conclusion. Clearly, 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.

SECTION 9 – EXCLUSION OF LARGE UNPOPULATED REGIONS

A. THE STANDARD

An area may be annexed to a city provided, in part, that the proposed boundaries do exclude large uninhabited areas, except when justified by other annexation standards. Specifically, the law provides as follows:

19 AAC 10.130(d)

The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 19 AAC 10.090 - 19 AAC 10.130.



Island Lake Creek Trail

industrial use, and ample undeveloped land zoned suitably for expansion of such uses. (Petition, Exhibit F)

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City stated in its petition that all areas proposed for annexation, including uninhabited portions, is justified by the standards. With regard to the standard at issue, the City noted:

The territory proposed for annexation includes the City's water reservoirs and their watersheds, land developed for residential, commercial, and

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Respondent Sidney Pruitt, Jr., stated as follows regarding this standard:

According to 19 AAC 10.130 Boundaries (d.) "The proposed boundaries of the city must not include entire geographical regions of (sic) large unpopulated areas". I believe this area is applicable.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

In reply to Mr. Pruitt's views, the City noted:

The area proposed for annexation is accessed by the continuation of the community's major highway. To annex only Service District 1 would leave a relatively small enclave of residents to continue existing services.

... Although I appreciate Mr. Pruitt's perception I do not agree that lot size and population are the determining factors.

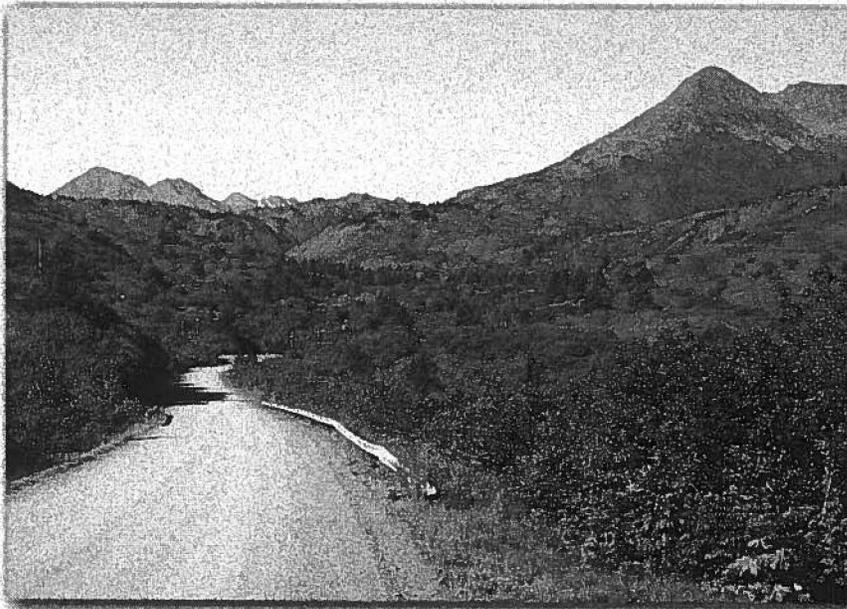
E. DCRA'S VIEWS

The respondent misstates the standard by presenting it as an absolute prohibition on the inclusion of large unpopulated areas. The standard at issue requires that the proposed boundaries exclude entire geographical

regions or large unpopulated areas, except when otherwise 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.



Pillar Creek watershed; view west from Monashka Bay Road

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, DCRA recognizes that the jurisdictional needs of each city in Alaska are unique.

Nonetheless, the statistical comparisons are helpful in applying the terms “entire geographical regions” and “large unpopulated areas.”

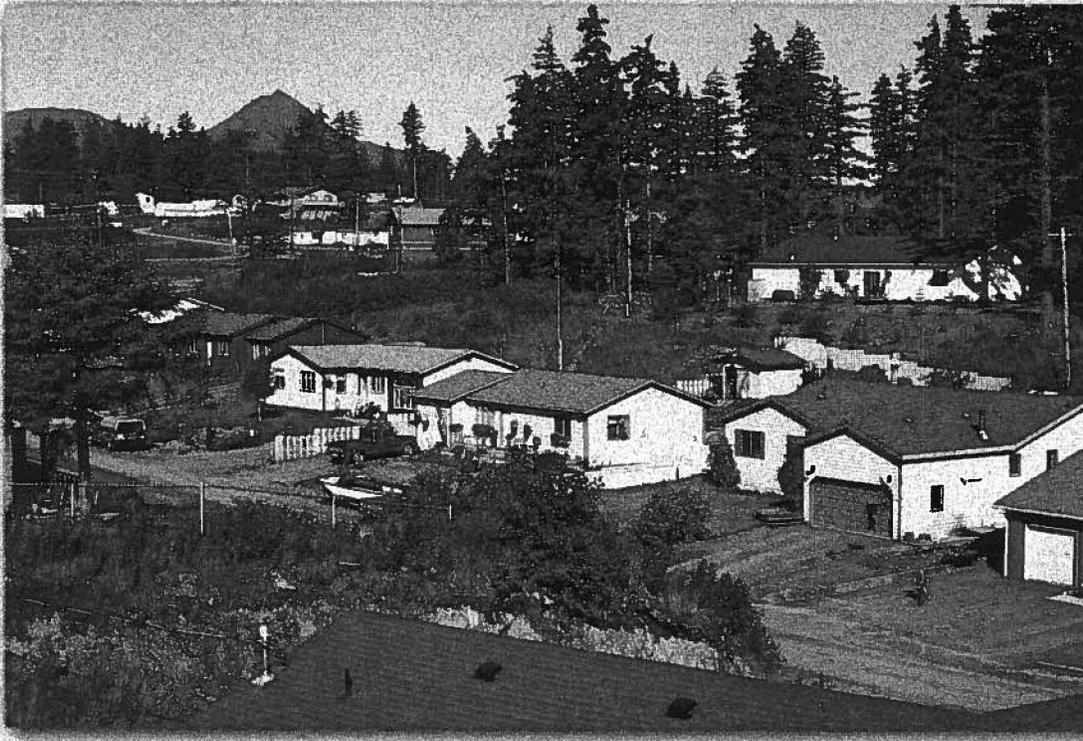
Much of the territory in the current proposal is uninhabited. As noted earlier, only about 2.3 square miles of the 19.5 square miles proposed for annexation are inhabited. However, the remaining 17.2 square miles generally contain areas that are important to the community, need city

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;



Parking area at the end of Monashka Bay Road, with access to beach and recreation area.



Residential area on Sean Circle in Woodland Acres 8th Addition

- 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.

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, DCRA concludes that the standard set out in 19 AAC 10.130(d) is met.

Conclusion.

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

SECTION 10 – BALANCED BEST INTERESTS

A. THE STANDARD

Senate Bill No. 156 which was approved by the 1999 Legislature, in part, provides that the LBC may approve an annexation only if it is in the best interests of the state.¹⁸

Although such a requirement was not previously *expressly* applicable to annexations utilizing the local election method (such as Kodiak's current petition), a similar provision was *expressly* applicable to annexation petitions utilizing the legislative review method. It was commonly understood that the LBC would, nonetheless, consider the best interests of the state in any of its deliberations. Senate Bill No. 156, merely formalizes that understanding.

The LBC's "best interests" standard relating to legislative review annexation is set out in 19 AAC 10.140 which provides as follows.

Territory that meets all of the annexation standards specified in 19 AAC 10.090 - 19 AAC 10.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. . . .

In the LBC's recent decision concerning annexation to the Ketchikan Gateway Borough, the Commission

stated that it viewed the equivalent borough "best interests" standard to relate principally to Article X of Alaska's constitution. (LBC Decisional Statement concerning Ketchikan Gateway Borough Annexation, April 16, 1999). In testimony before the State legislature concerning Senate Bill 156, the Commission Chairman stressed that the phrase "best interests of the state" is viewed by the LBC to relate to the broad public interest.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City implicitly addresses the "best interests" standard by acknowledging that benefits would accrue to residents of the territory from the extension of home rule city government. The City further inherently addresses the best interest standard by providing for the extension of services which will result in the dissolution of six borough service areas.

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Correspondents Lee and Bonnie Russell raised concerns about their mutual interests as it relates to annexation. The Russells stated (quoted as written):

¹⁸ At the time of this report, Senate Bill No. 156 had not yet been transmitted to the Governor for consideration. It is anticipated, however, that the Governor will sign the bill into law. The bill was introduced at the request of the LBC. The legislation had broad bipartisan support in the legislature. It was approved unanimously by the Senate (20 to 0). It was also unanimously approved by all members of the House who voted on the matter (36 "yes", 1 excused, and 3 absent.) Further, the bill was supported by the Alaska Municipal League.

As a Homeowner I am opposed to the annexation of the 19.5 miles as posted to public notice in the city of Kodiak.

Property to be annexed according to the standards under act. 19 AAC 10.140 Legislative review part 6. This would cause a great detriment to my business & livelyhood.

Therefore, I am very opposed to any annexation.

Other correspondents expressed opposition to the annexation on general terms. For example, a letter attributed to four individuals (Kurt & Liza Pedersen, Kim King, and Ella Torgramsen) states, in full (quoted as written):

"There is no threat to subsistence status by this annexation."

Bill Jones, City Manager

We are against the annexation of the 19.5 sq. mls. here in Kodiak We moved to this area because it is in the borough – for our families. Please put us down as being against this. Thank you.

Giovanni Tallino implicitly expressed concern that annexation would not serve his family's best interests because he perceived that it would "automatically revoke our rural status and prevent us from subsistence fishing and hunting." James P. "Jake" Jacobson expressed similar concerns about subsistence rights. Both Messrs. Tallino and Jacobson expressed other concerns over their perceptions of the effects that annexation would have. These included restrictions on discharging firearms, loss of subsidized

home loans, restrictions on keeping livestock, restrictions on hunting, and loss of freedom.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

The City responded to the letter from Mr. Jacobson, but offered no specific reply to the letter from the Russells, the letter from Giovanni Tallino, or the letter from the Pedersens, Ms. King and Ms. Torgramsen (presumably because the concerns expressed in these letters were similar to those expressed by Mr. Jacobson or were simply general comments for which no response was deemed necessary). Specifically, the City stated in reply to Mr. Jacobson:

I respect Mr. Jacobson's objection to being annexed into the City of Kodiak. As to his reasons:

1. There is no threat to subsistence status by this annexation. (See attached letter)
2. The AHFC Rural Loan Program will no longer be available. This was stipulated in the transition plan.
3. Restrictions on keeping livestock are outlined in the transition plan with grandfather provisions.
4. No change in firearms regulation as City is adopting State Statute which already governs the Borough.
5. No identifiable restrictions on hunting (see #4).
6. Only identifiable cost increase to living would be sales tax within the annexed area.

7. City services are tangible and highly beneficial.
8. The City made no representation that annexation would lead to consolidation.

E. DCRA'S VIEWS

The concerns of various correspondents noted in subsection C above are also of potential significance to others in the territory. However, the perceptions expressed about the effects that annexation will have on subsistence rights are incorrect. DCRA has been assured by State and Federal officials that annexation will not "automatically revoke" the subsistence status of the area as has been alleged.

James Fall, Regional Program Manager for the Division of Subsistence in the Alaska Department of Fish and Game, indicated that the proposed annexation would not automatically affect the rights of citizens of Kodiak to engage in subsistence hunting and fishing activities on either State or Federal lands. Mr. Fall indicated that when the State considers whether a community is eligible for subsistence rights, it evaluates the 'natural community' rather than the community as it is defined by political boundaries. In the case of Kodiak, the State did not define the community of

Kodiak to be comprised only of the territory within the corporate boundaries of the City, but rather considered the community to be comprised of the entire area connected by roadway. This included the area within the City, the territory proposed for annexation, Womens Bay, and the Coast Guard Station.

Cliff Edenshaw of the U.S. Fish and Wildlife Service indicated that Federal subsistence determinations also include consideration of natural communities. One of the criteria that the Federal system utilizes is population. If a community or aggregate set of



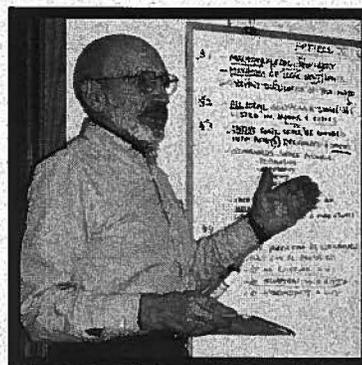
A deer at the upper end of Monashka Bay Road

communities has 2,500 or fewer residents, it is presumed to be rural. If a community or aggregate set of communities has 7,000 or more residents, it is presumed to be non-rural.

¹⁹ Existing Small Community Housing Mortgage Loan Program (SCHMLP) loans would not be affected by annexation. Further, such loans could be assumed if homes financed under the program were sold. In other words, annexation would only affect new SCHMLP loans. Additionally, it should be noted that some urban loan programs are currently available through the Alaska Housing Finance Corporation at lower interest rates than those available through SCHMLP. Lastly it should be noted that Senate Bill 150, currently pending before the legislature, would eliminate the SCHMLP interest rate advantage.

However, the presumption can be overcome with a showing of special circumstances. Mr. Edenshaw indicated that, in fact, Kodiak has previously overcome the presumption. As was the case with State subsistence rights, Federal authorities defined the community of Kodiak to be comprised of the area connected by roadway. DCRA estimates that the area in question is currently inhabited by 12,659 individuals. Notwithstanding the substantial margin by which the community exceeds the 7,000 population threshold, Federal regulators recognized that subsistence plays a vital cultural and economic role in the lives of many in Kodiak. Consequently, Kodiak overcame the presumption of being non-rural following the 1990 census and was granted a rural designation. Determinations of whether communities are rural or non-rural under the federal system are made every 10 years after the federal census results become available.

In addition to questions pertaining to subsistence, DCRA also recognizes that some in the territory may be disappointed over the loss of eligibility for new AHFC Small Community Housing Mortgage Loans that would result from annexation.¹⁹ While that issue might legitimately serve as the basis for some voters to decide whether to support



Victor Fischer

annexation, it is not relevant to the judgments required of the LBC. The Commission has previously noted that concerns over the Small Community Housing Mortgage Loan Program were an issue among some regarding various municipal boundary changes throughout Alaska. (LBC Report to the First Section of the Twenty-First Alaska Legislature, January 28, 1999.)

In terms of the standard at issue, the Commission is more concerned with whether the annexation proposal serves relevant local government principles established in Alaska's constitution.

DCRA believes that two such principles have relevant application here. 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.²⁰ Constructing a barrier to approving an excessive number of government units does not prohibit the creation of them when

²⁰ 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).

²¹ 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

Continued on next page

they are necessary.²¹ *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.²² Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.²³ (emphasis added) *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 (Alaska 1995).

Six service areas presently exist in the territory. Maps of these service areas appear on the next page. DCRA believes that the elimination of the six service areas in the territory will promote greater equity, efficiency, and effectiveness in the delivery of local governmental services.

Conclusion. Certain voters in the territory have expressed concern over the effects that they anticipate annexation will produce. In some cases, those concerns are unfounded (e.g., the perception by some that annexation will automatically eliminate subsistence rights). In certain other cases, annexation's effects are unrelated

to the annexation standards on which the LBC must base its decision (e.g., loss of eligibility for *new* Small Community Housing Mortgage Loans). If the petition is granted, voters in the territory will have the opportunity to weigh the beneficial and detrimental effects that may result from annexation as they decide whether to formally approve annexation.

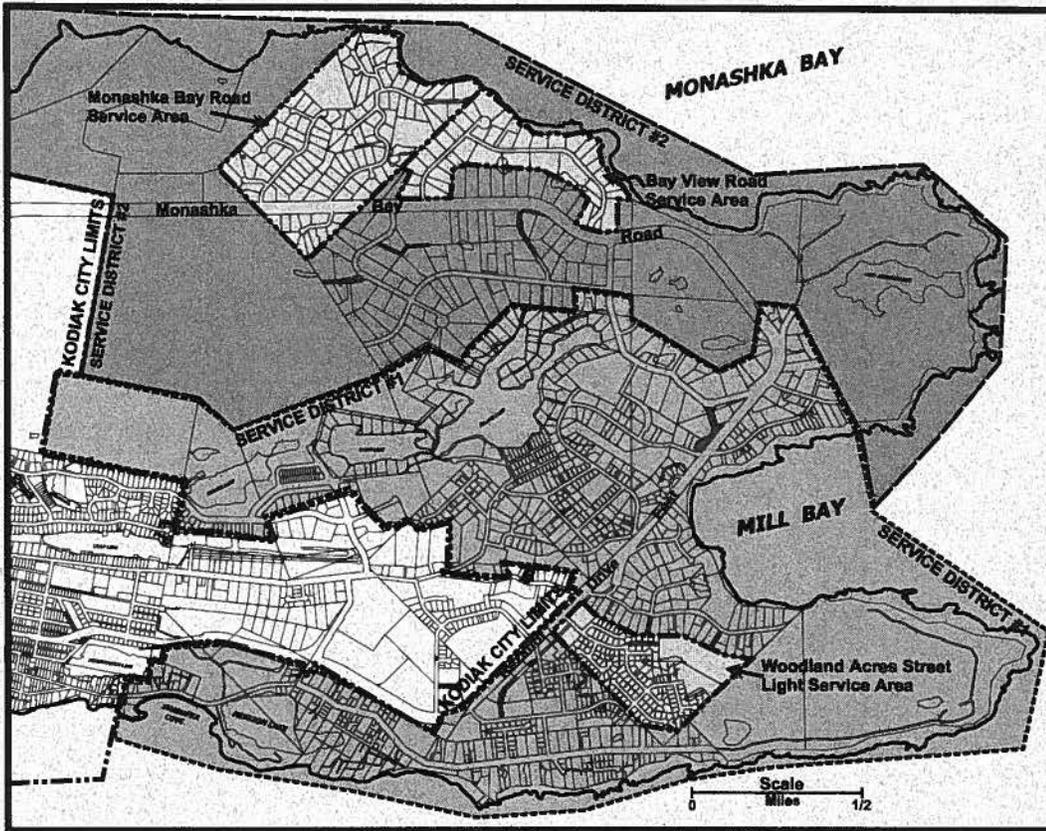
What is particularly relevant to the Commission in terms of the best interests standard at issue is whether annexation will better serve principles

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.

***Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 (Alaska 1995)**

of local government established in Article X of the Constitution of the State of Alaska. DCRA concludes that it will do so in two ways. First, it will extend

home rule local government to 3,500 individuals. Secondly, the constitutional principles will be served by eliminating six borough service areas, thereby promoting more efficient and effective local government. Thus, DCRA concludes that this standard is satisfied.



Service District #1 overlaps Woodland Acres Street Light Service Area. Service Area #2 overlaps Bay View Road Service Area and Monashka Bay Road Service Area. Fire Protection Area #1 overlaps all five of these service areas. A map of the fire service area appears on page 14 of this report.

Continued from previous page

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.

²² Delegate Doogan referred to a city as a “combination of service areas within a borough.” 4 PACC 2652 (January 19, 1956).

²³ “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).

SECTION 11 – TRANSITION PLAN

A. THE STANDARD

19 AAC 10.900 requires that a petition for annexation include:

- a practical plan demonstrating the intent and capability of the annexing city to provide essential city services in the shortest practicable time after the effective date of annexation;
- a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for change will be assumed by the annexing city; and
- a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of

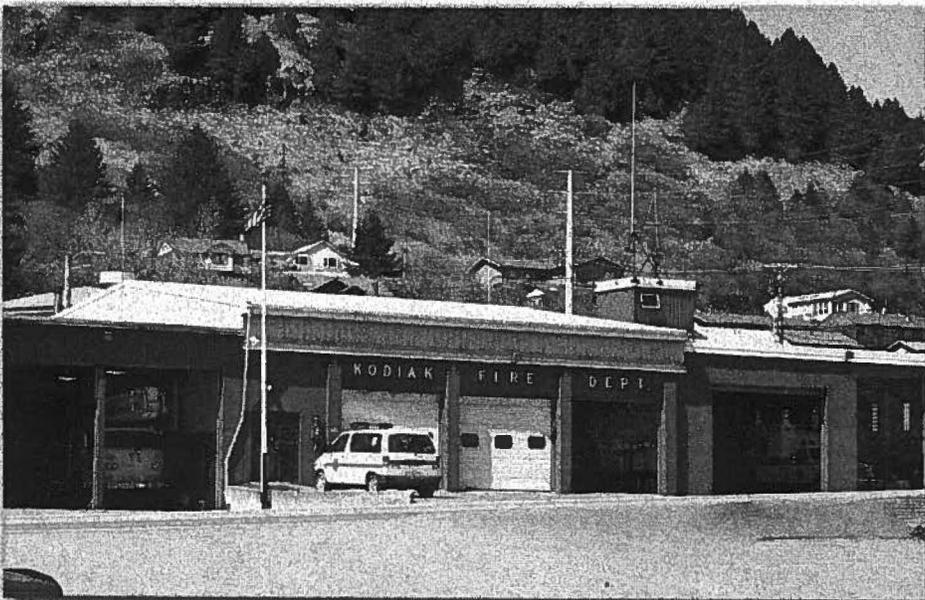
an existing borough, service area or other entity by the annexing city government.

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City's transition plan was included as Exhibit D of its petition.

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

Correspondent Robert Himes, Bayside Fire Department's Acting Chief since October 1997, wrote on a personal basis regarding this standard. Mr. Himes expressed concern that as "the Department Head for the department most significantly impacted by this Annexation," he had not been consulted by the City regarding the transition plan. He also expressed concern that the City's transition plan would convert his position to that of a firefighter, resulting in "a significant reduction in both rank and pay." Lastly, Mr. Himes expressed concern that the City's transition plan fails to mention the Community Training Center established at the Bay Side Fire Department. The Training Center provides administrative and logistical support, in cooperation with



Kodiak Fire Station

the American Heart Association, to all the CPR instructors on Kodiak Island. Presently, there are 42 CPR instructors.

Certain other comments concerning the transition plan were noted previously in this report, particularly in Sections 1 and 4. For the sake of brevity, those discussions will not be repeated in this section.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

In response to the concerns expressed by Mr. Himes, the City stated as follows:

The City of Kodiak City Manager met with the Service District Board prior to the development of the plan. More than 500 copies of the plan were distributed. One of the points of distribution was the Bayside Fire Department. It was not the intent of the City of Kodiak to adjust its staffing to accommodate a Deputy Fire Chief. The individual could complete for any vacant position for which qualified, but the appointment on a non-competitive basis would be for the only position created by annexation. The Training Center continues to be a training center since no changes were identified in the Transition Plan. There is not now, nor was there ever any intent to offend Chief Himes.

E. DCRA'S VIEWS

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



City of Kodiak ambulance

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." (Petition, Exhibit I).

DCRA concludes that the City's transition plan fulfills the requirements of 19 AAC 10.900.

SECTION 12 – VOTING RIGHTS

A. THE STANDARD

Any change that affects voting rights, practices, or procedures in Alaska is subject to review under the Federal Voting Rights Act. This includes any annexation to a city or borough. The Voting Rights Act is intended to prohibit the “*denial or abridgement of the right of any citizen of the United States to vote on account of race or color*” or because a citizen is a “*member of a language minority group.*” (42 U.S.C. 1973)

Additionally, State law provides with respect to annexation that, “*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*” (19 AAC 10.910)

B. VIEWS EXPRESSED BY KODIAK IN ITS PETITION

The City stated that the largest minority group in the Borough is comprised of Asian and Pacific Islanders (estimated at 17%), followed by Alaska Natives (estimated at 15%). Other minorities comprise about 1.2% of the population.

The City noted that the area within its present boundaries includes most of the Asian and Pacific Islanders in the Borough. The City projected that annexation would reduce the proportion of Asian and Pacific Islanders to approximately 13.5%.

The City stressed that all elected officials of the City are elected at large. None of the seven members of the Borough Assembly is a member of an ethnic, racial, or cultural minority. One of the six City Council members is Filipino.

The City indicates that English is the primary, and in most cases, exclusive language of Kodiak’s Native population. The City also noted that, “Those Asian and Pacific Islanders who live in the territory proposed for annexation may have any degree of facility with the English language just as their counterparts within the current City boundaries do, from utter incomprehension to native-born fluency.”

C. VIEWS EXPRESSED BY CORRESPONDENTS AND THE RESPONDENT

None of the correspondents directly addressed this standard. Neither did the respondent.

D. VIEWS EXPRESSED BY KODIAK IN ITS REPLY BRIEF

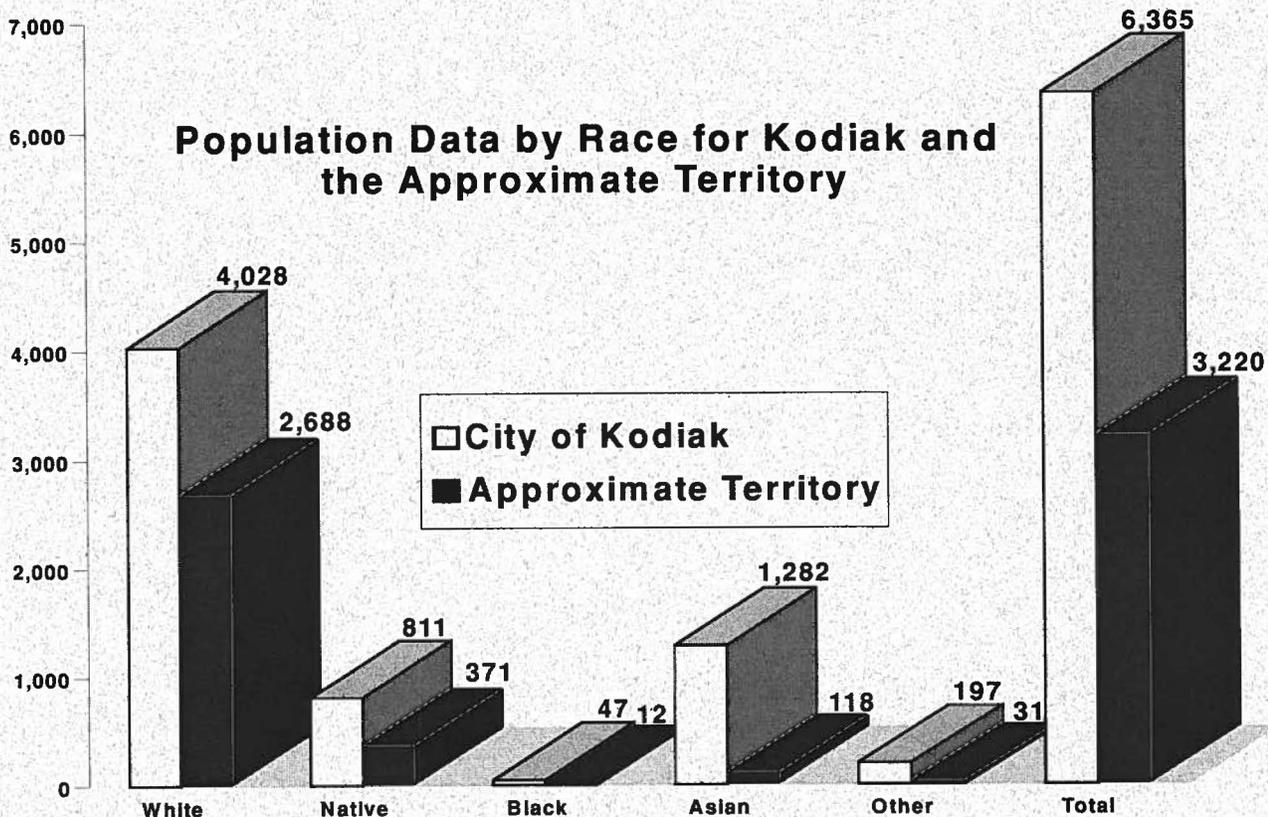
Since this standard was not addressed by the respondent or any of the correspondents, there were no comments to which the City could reply.

E. DCRA'S VIEWS

Data concerning the racial composition of the residents exclusively within the territory proposed for annexation are not available. However, the following compares the 1990 racial composition of the City with that portion of the Borough lying outside all cities and census designated places. Residents of the territory proposed for annexation comprise about 95% of the residents of the area for which statistics are provided.

Minorities comprised 36.7% of the population of the City in 1990. The area roughly approximating the territory had a minority population of 16.5% in 1990. Based on the 1990 Census data, annexation would increase the minority population of the City in absolute terms, but would decrease the minority population in percentage terms. The reduction in percentage terms would be fairly small – 6.7% percentage points (from 36.7% to 30.0%).

Reduction, per se, in the voting strength of minorities is not prohibited by the federal Voting Rights Act. Changes for the purpose of denying or abridging voting rights because of race or color are, however, prohibited.



Source: 1990 U.S. Census

There is no evidence to suggest that implementation of the City's annexation proposal will result in any violation of the federal Voting Rights Act. As indicated in the analysis of the preceding sections, the boundaries proposed by the City reasonably encompass the natural community of Kodiak. Further, the annexation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives.

Based on the foregoing, DCRA finds no evidence that Kodiak's annexation proposal will result in the denial or abridgment of the right of any citizen to vote on account of race, color or membership of a language minority group. DCRA finds further that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

RECOMMENDATION TO THE LOCAL BOUNDARY COMMISSION

Based on the analysis presented in Sections 1 – 12 of this report, DCRA has concluded that all of the city annexation standards established in law are satisfied by the City's annexation proposal. Accordingly, DCRA hereby recommends that the LBC approve Kodiak's March 19, 1999 annexation petition without amendments or conditions.

APPENDIX A - LOCAL BOUNDARY COMMISSION AND DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

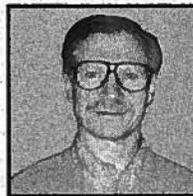
Petitions for annexation to cities in Alaska are subject to review by the Local Boundary Commission (LBC). The LBC is a State board with jurisdiction throughout Alaska. (Article X, Section 12, Ak. Const., AS 29.05, AS 29.06, and AS 44.47.565 - 44.47.583.)¹ In addition to petitions for annexation to cities, the LBC acts on petitions for the following:

- annexation to boroughs;
- incorporation of cities and boroughs;
- consolidation of cities and boroughs;
- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

The LBC consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “. . . on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of

interest and points of view in the membership.” (AS 39.05.060) Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska’s four judicial districts. Members serve without compensation.

Kevin Waring, a resident of



Anchorage, has served on the Commission since July 15, 1996. He was appointed as Chairperson of the LBC on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the Department of Community and Regional Affairs’ original division directors (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. Commissioner Waring is now manager of physical planning for the Municipality of Anchorage’s Community Planning and Development Department. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

¹ Effective July 1, 1999, AS 44.47.567-44.47.583 is renumbered as AS 44.33.810 - 44.33.828 under the provisions of Chapter 58, SLA 1999.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman works as the Southeast Alaska Projects Director for Ecotrust. Her present term on the Commission expires January 31, 2001.



Nancy E. Cannington serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Cannington now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Cannington was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Cannington's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS Title 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



William Walters serves from the Fourth Judicial District and lives in the greater Fairbanks area. He was appointed to the LBC on September 14, 1995. Mr. Walters works for the Alaska Department of Labor as a hearing officer in Fairbanks. He is a graduate of the University of Texas School of Law. He worked for the Tanana Chiefs Conference on the development of tribal courts from 1992 to 1998. He is a former member of the Fairbanks North Star Borough Planning Commission. Mr. Walters' current term on the LBC expires January 31, 2000.

COMMUNICATIONS WITH THE LBC

The LBC is a quasi-judicial board. To preserve the rights of petitioners, respondents, and others to due process and equal protection, 19 AAC 10.500 prohibits private (ex parte) contact with the LBC on all matters pending before it. The law prohibits communication between the LBC and any party in a proceeding, other than its staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains effective through the last date available for the Commission to reconsider a decision under 19 AAC 10.580. Written communications to the Commission must be submitted through its staff.

STAFF TO THE COMMISSION

The Alaska Department of Community & Regional Affairs (DCRA) serves as staff to the LBC. The LBC's staff is required by law to evaluate

petitions filed with the LBC and to issue reports and recommendations to the LBC concerning such.

The LBC and DCRA are independent of one another concerning policy matters. Therefore, DCRA's recommendations in this or any other matter are not binding upon the LBC.

Under the terms of Chapter 58, SLA 1999, DCRA will be consolidated with other State agencies effective July 1, 1999. DCRA's Municipal and Regional Assistance Division, which includes the Local Boundary Commission staff support component, will be consolidated with the Department of Commerce and Economic Development (DCED). The consolidated agency will be renamed the Department of Community and Economic Development. Debby Sedwick, current Commissioner of the DCED has been named Commissioner of the consolidated agency.



The Local Boundary Commission at a recent hearing

APPENDIX B - PROCEEDINGS TO DATE AND FUTURE PROCEEDINGS

This Appendix summarizes the formal activities that have occurred to date with regard to the pending petition for annexation of territory the City of Kodiak. Information about future proceedings concerning this matter is also provided.

ANNEXATION PETITION ACCEPTED FOR FILING

The petition of the City of Kodiak for annexation of an estimated 19.5 square miles was received by DCRA on March 23, 1999. On March 26, 1998, DCRA determined that the form and content of the petition were technically complete and sufficient. The petition was then formally accepted for filing.

NOTICE OF FILING OF THE PETITION

Public notice of the filing of the petition was given in accordance with the requirements of law. The deadline for filing responsive briefs and comments in support of or in opposition to the annexation proposal was set by the Chairperson of the LBC for May 19, 1999, at 5:00 p.m.

Notice of the filing of the petition was published by DCRA in the *Alaska Administrative Journal* on April 19 and May 17, 1999. Additionally, the notice of filing was published by the Petitioner in the *Kodiak Daily Mirror* on March 31, April 7, and April 14, 1999.

Notice of the filing of the annexation petition was posted by the Petitioner in the following locations on or before March 31, 1999, in the area proposed for annexation:

- North Star Elementary School;
- Mill Bay Coffee;
- Bayside Volunteer Fire Department.

Notice of the filing was also posted by the Petitioner in the following locations on or before March 31, 1999, within the existing boundaries of the City of Kodiak:

- Kodiak Area Native Association Office and Clinic Building;
- A. Holmes Johnson Public Library;
- City Hall, legislative bulletin board;
- U.S. Post Office, public notices clipboard.

On March 30, 1999, the Petitioner delivered a copy of the Notice of Filing to the following parties, as required by law:

- Manager of the Kodiak Island Borough; Tom Manninen (by hand);
- Bayside Volunteer Department; Robert Himes, Acting Fire Chief (by hand);
- Bay View Road Service Area; Dawn Black, Corresponding Secretary (by mail);
- Fire Protection Area No. 1 Board; Eileen Probasco, Chair (by hand);
- Monashka Bay Road Service Area Board; Jeff Hamer, Chair (by mail);
- Service District No. 1 Board; Ed Mahoney, Chair (by mail);
- Service District No. 2 Board; Rebecca Bean-Mullan, Chair (by mail);
- Woodland Acres Street Light Service District Board; Bob Hatcher, Chair (by mail);

- City of Ouzinkie; Zack Chichenoff, Mayor (by mail);
- City of Port Lions; Robert Wagner, Mayor (by mail);
- Robin Killeen (by mail).

On March 31, 1999, the City delivered a copy of the Petition to the following parties, as required by law:

- Manager of the Kodiak Island Borough; Tom Manninen (by hand);
- City of Ouzinkie; Zack Chichenoff, Mayor (by mail);
- City of Port Lions; Robert Wagner, Mayor (by mail).

On March 30, 1999, a full set of petition documents was made available for public review at both the Offices of the Kodiak City Clerk and the A. Holmes Johnson Public Library.

On April 6, 1999, DCRA provided notice of the filing to 39 agencies and individuals.

COMMENTS AND RESPONSIVE BRIEF FILED

As noted previously, comments and responsive briefs were to be received by DCRA staff by May 19, 1999, at 5:00 p.m. One responsive brief was filed by Sidney Pruitt on May 19, 1999. In addition, timely written comments were received from the following 7 individuals and groups of individuals:

- John A. Parker, a 2-page letter dated March 31, 1999 supporting annexation;
- Giovanni Tallino, a 1-page e-mail dated April 8, 1999 expressing opposition to annexation;
- Marian Johnson, a 1-page letter dated April 9, 1999 indicating support for annexation;
- Bonnie and Lee Russell, a 1-page letter dated May 19, 1999 opposing annexation;
- Robert Himes, a 1-page letter dated May 17, 1999 expressing concerns over the transition plan;
- James P. "Jake" Jacobson, a 1-page e-mail dated May 19, 1999 in opposition to annexation; and
- Kurt & Liza Pedersen, Kim King, and Ella Torgramsen, a 1-page letter dated May 19, 1999 opposing annexation.

FUTURE PROCEEDINGS

Review of Draft Report

19 AAC 10.530 requires that copies of this draft report be provided to the Petitioner and Respondent for review and comment. Copies will also be provided to other interested parties for review and comment. 19 AAC 10.640 requires that at least 28 days be allowed for comment on the draft report from the date the report was mailed to the Petitioner and Respondent.

The deadline for the **receipt** of comments on DCRA's preliminary report concerning the pending Kodiak annexation proposal is July 23, 1999. Comments must be received by the deadline at the following address:

LBC Staff

Department of Community & Regional Affairs
333 W. 4th Avenue, Suite 220
Anchorage, AK 99501-2341
Facsimile: (907) 269-4539
or (907) 269-4520.

Final Report

After the written comments on the draft report have been reviewed, a final report will be issued.

Occasionally, preliminary reports to the LBC become final with little or no modification. In those cases, a letter announcing the adoption of the preliminary report is issued to meet the legal requirement for a final report.

LBC Public Hearing

The LBC will conduct a hearing on the annexation proposal in Kodiak. The date of the hearing is *tentatively* set for Saturday, August 28, 1999. At least thirty days notice of the hearing will be given.

Agenda. The draft hearing agenda is shown below. The Commission may amend the order of the hearing proceedings and change allotted times, if such will promote efficiency without detracting from LBC's ability to make an informed decision. The LBC Chairperson will regulate the time and content of testimony to exclude irrelevant or repetitious testimony. A member of the Commission may question persons appearing for public comment or as a sworn witness. The Commission may also call additional witnesses.

A brief or document may not be filed at the time of the public hearing unless the Commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the Petitioner and for consideration in DCRA's report and recommendation.

In compliance with Title II of the Americans with Disabilities Act of 1990, reasonable auxiliary aids, services, and/or special

modifications to individuals with disabilities will be provided to those who need such accommodations to participate at the hearing concerning this matter. Persons needing such accommodations must contact LBC staff at 269-4500, or TDD 800 930-4555 prior to the hearing to make necessary arrangements.

If anyone attending the hearing does not have a fluent understanding of English, the LBC will allow time for translation. Unless other arrangements are made prior the hearing, the individual requiring assistance must arrange for a translator. Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.



Members

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Carrington
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

William Walters
Member
Fourth Judicial District



Agenda

Kodiak Annexation Hearing

- I. Call to order
- II. Roll call & determination of quorum
- III. Approval of agenda
- IV. Comments by members of the Local Boundary Commission
- V. Comments by members of the public concerning matters not on the agenda
- VI. Public hearing on the Kodiak Annexation Petition*
 - A. Summary of DCRA's report & recommendations
 - B. Opening statement by the Petitioner (limited to 10 minutes)
 - C. Opening statement by the Respondent (limited to 10 minutes)
 - D. Sworn testimony of witnesses called by the Petitioner
 - E. Sworn testimony of witnesses called by the Respondent
 - F. Sworn responsive testimony of witnesses called by the Petitioner
 - G. Period of public comment by interested persons (limited to 3 - 5 minutes per person)
 - H. Closing statement by the Petitioner (limited to 10 minutes)
 - I. Closing statement by the Respondent (limited to 10 minutes)
 - J. Reply by the Petitioner (limited to 5 minutes)
 - K. Closing statement by DCRA
- VII. Decisional session concerning the Kodiak Annexation Petition (optional at this time)
- VIII. Comments from Commissioners and staff
- IX. Adjourn

* The LBC Chairperson will preside at the hearing, and may regulate the time and content of testimony to exclude irrelevant or repetitious testimony. The LBC may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the LBC's ability to make an informed decision.

LBC Decisional Meeting

Depending on the circumstances, the LBC may render its decision immediately upon conclusion of the hearing. If the LBC does not render a decision immediately after the hearing, it is likely to do so shortly thereafter.

During the decisional meeting, no new evidence, testimony or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

After a verbal decision is rendered, the LBC will adopt a written statement explaining all major considerations leading to its decision concerning the City of Kodiak annexation petition. A copy of the statement will be provided to the petitioner, respondent, and to all others who request a copy. A decision of the LBC becomes final once the written statement of decision is mailed to the petitioner and others who request a copy at the time of the decision.

Reconsideration

Any party may ask the LBC to reconsider its decision in this matter. The provisions of 19 AAC 10.580 provide details concerning requests for reconsideration.

A request for reconsideration of the LBC's decision may be filed within 20 days after the decision becomes final. The LBC may also order reconsideration of all or part of its decision on its own motion.

Requests for reconsideration must describe, in detail, the facts and analyses that support the request for reconsideration. If the Commission takes no action on a request for reconsideration within 30 days after its decision becomes final, the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner and respondents opposing reconsideration may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

Local Action Election

If the LBC approves the annexation petition, the City of Kodiak must conduct an election among the voters in the territory proposed for annexation. The election must be administered by the City of Kodiak at its own cost, and in the manner prescribed by its municipal election code, except that the Commission may specify the wording of the ballot measure and broaden the election notice requirements. To take effect, the annexation must be approved by a majority vote among those voting on the proposition.

Effective Date of Annexation

If the LBC and voters approve annexation, the boundary change will take effect on the date that the City provides the LBC staff with a certificate of the election results and with documentation that the annexation has successfully passed the requisite Federal Voting Rights Act review. A certificate of boundaries will be issued for the City to reflect the annexation.

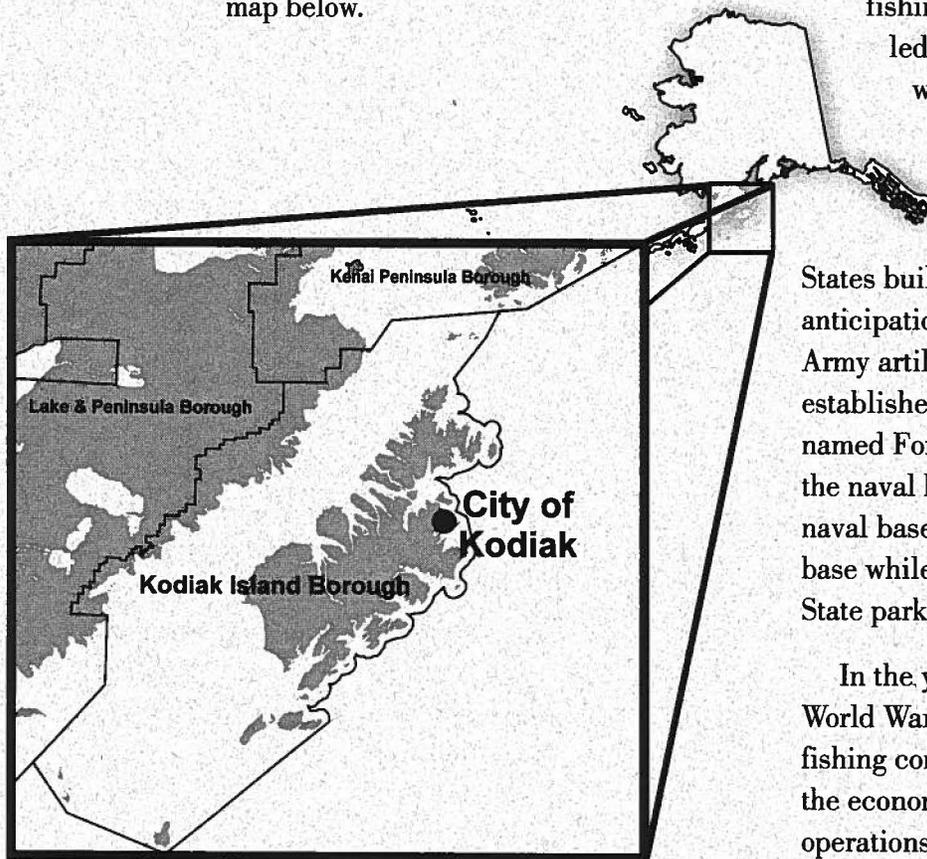
Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within 30 days after the last day on which reconsideration may be ordered by the Commission. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

APPENDIX C – BACKGROUND

LOCATION

Kodiak is located approximately 250 air miles southwest of Anchorage near the northeastern tip of Kodiak Island in the Gulf of Alaska as shown in the map below.



HISTORY

Kodiak Island has been inhabited for thousands of years. The first recorded non-Native contact was in 1763. The community of Kodiak was established in 1792 by Alexander Baranov, Manager of what was then the Shelikof Company (later Russian American Company). Kodiak was designated as

the first capital of Russian Alaska. In 1804, the capital was moved to Sitka.

Commercial whalers from the United States were active around Kodiak as early as 1835. Commercial fishing for salmon in the area led to the construction of what was then the world's largest fish cannery in 1890 at nearby Karluk Bay.

In 1939, the United States built a naval base at Kodiak in anticipation of World War II. An Army artillery regiment was established at Miller Point (later named Fort Abercrombie) to protect the naval base. Today, the former naval base serves as a Coast Guard base while Fort Abercrombie is a State park.

In the years following the Second World War, commercial salmon fishing continued to be a mainstay of the economy. Commercial crabbing operations also prospered.

The 1964 earthquake and subsequent tidal wave devastated much of downtown Kodiak. The fishing fleet, processing plant, canneries, and 158 homes were destroyed. The earthquake and tidal wave caused more than \$30 million in damage in Kodiak. The infrastructure was rebuilt, and by 1968 Kodiak had become the largest fishing port in the United States in terms of

dollar value. The Magnusson Act of 1976 extended the U.S. jurisdiction of marine resources to 200 miles offshore. That reduced competition from the foreign fleet and allowed Kodiak to develop a groundfish processing industry.

Windisch-Cole, Department of Labor). Of course, the commercial fishing segment in Kodiak is also substantial. Kodiak is the nation's second largest port in terms of seafood volume and the third in terms of value. 668 area residents hold commercial fishing permits. (Alaska Department of Community and Regional Affairs community profiles, http://www.comregaf.state.ak.us/CF_BLOCK.htm).

ECONOMY

State and Federal economic data are not typically reported on a community level. For Kodiak, such data are reported for the entire Borough. Data published by the Alaska Department of Labor indicate that total per capita personal income in the Kodiak Island Borough during 1997 was \$20,149. The comparable figure for the entire state was \$24,969. As shown in the adjacent table, the Borough ranked 18th among the 16 organized boroughs and 11 census areas in Alaska. (Alaska Economic Trends, Alaska Dept. of Labor, June 1999)

In 1996, annual average monthly employment in the Borough was reported by the Alaska Department of Labor to be 6,308. However, that figure excluded individuals not covered by unemployment insurance (e.g. uniformed personnel, self-employed, commercial fishers). (1996 Employment & Earnings Summary Report, Alaska Department of Labor, September 1997). The excluded segment in Kodiak is particularly large. 836 uniformed personnel were assigned to the Kodiak Coast Guard Base in July of last year, making it the largest such installation in the U.S. (Brigitta

PER CAPITA INCOME

	1997	1996	1995
United States	\$25,288	\$24,164	\$23,059
State of Alaska	24,969	24,310	23,971
Bristol Bay Borough	33,769	33,321	35,590
Ketchikan Gateway Borough	30,396	29,899	30,048
Anchorage Municipality	29,765	28,690	27,845
Haines Borough	29,190	29,346	28,526
Juneau Borough	28,811	28,479	28,114
Valdez-Cordova C.A.	26,743	25,864	25,177
Denali Borough	25,467	24,198	22,464
Sitka Borough	24,995	24,866	23,865
North Slope Borough	23,725	24,331	24,654
Yakutat Borough	23,620	21,983	22,854
Aleutians West C.A.	23,522	28,268	28,220
Wrangell-Petersburg C.A.	23,503	22,952	23,301
Dillingham C.A.	23,292	22,219	22,049
Kenai Peninsula Borough	23,143	22,826	22,824
Aleutians East Borough	21,851	21,479	21,412
Skagway/Hoonah/Angoon	21,729	20,902	20,646
Fairbanks North Star Bor.	21,417	20,643	20,660
Kodiak Island Borough	20,149	19,472	19,630
Southeast Fairbanks C.A.	19,870	19,069	18,444
Northwest Arctic Borough	19,083	18,063	17,643
Nome Census Area	18,383	17,557	17,274
Lake & Peninsula Borough	17,889	17,081	16,518
Yukon-Koyukuk C.A.	17,826	17,706	18,094
P.O.W.-Outer Ketchikan C.A.	16,953	16,245	17,153
Matanuska-Susitna Borough	16,769	16,794	16,855
Bethel Census Area	15,752	15,138	15,249
Wade Hampton C.A.	11,169	10,538	9,884

C.A. = Census Area

Source: U.S. Department of Commerce, Bureau of Economic Analysis

TRANSPORTATION

Kodiak is accessible by air and sea. The State-owned and operated airport at Kodiak provides a 7,500-foot paved runway. Two major airlines serve Kodiak with daily flights.



*Kodiak ferry dock within the current boundaries of the City.
(Picture provided from DCRA community database online)*

In addition to the State-operated airport, the City provides a 2,475' asphalt airstrip. The City also provides floatplane facilities at Trident Basin and Lilly Lake.

The State ferry service links Kodiak with both Homer and Seward. Travel times by ferry to Homer and Seward are, respectively 9.5 hours and 13 hours.

The City operates two boat harbors that provide moorage for 800 commercial and transient vessels. Boat launch ramps are also provided. A new \$20 million breakwater on Near Island provides another 60 acres of mooring space at St. Herman Harbor.

CLIMATE

Kodiak's climate is dominated by a strong marine influence. Kodiak experiences moderate precipitation, frequent cloud cover, and fog. Storms are common from December through February. Annual precipitation is 60 inches. January temperatures average 14 to 46 degrees Fahrenheit; July temperatures vary from 39 to 76 degrees Fahrenheit.

HISTORY OF THE ESTABLISHMENT AND EXPANSION OF THE KODIAK CITY GOVERNMENT

Citizens of Kodiak incorporated a city government in 1940. DCRA records indicate that the City has undergone thirty-two boundary changes since it was incorporated. Many of the boundary changes have been piecemeal annexations of small numbers of parcels.

Attempts to implement a more comprehensive annexation strategy have been tried in the past; however, they have been unsuccessful. In the early 1970's, a petition was initiated by *the Borough* to expand the City's boundaries to the north and southeast of the City's corporate limits. The northern territory included portions of the "Monashka Bay, Alaska Subdivision and platted areas bordering Island Lake and Mill Bay." The area to the southeast included platted areas along Spruce Cape Road. The LBC approved the petition and submitted a

recommendation for the annexation to the legislature in 1972. However, the annexation failed when the legislature rejected the LBC's recommendation.

Five years later, the Commission returned to Kodiak. The City had petitioned for the annexation of twenty-five lots contiguous to the City's boundaries. However, following a December 12, 1977 hearing, the LBC determined that the City's boundaries should be expanded beyond those twenty-five lots. Following additional notice, the LBC held a second hearing on April 26, 1978 in Kodiak. This hearing focused on annexation of "the Spruce Cape area, the Mill Bay area, the Monashka Bay area, and the United States Coast Guard Station to the City." Following the hearing, the LBC approved the annexation of the Spruce Cape area and the Mill Bay area. The LBC forwarded a recommendation for annexation to the 1979 legislature.

About this same time, the City sought to enjoin the Borough from operating Service District No. 1. The City contended that Service District No. 1 was unconstitutional under Article X, § 5, because the City was capable of providing services to that area. The Superior Court denied the City's Motion for Summary Judgment and dismissed its Complaint. Memorandum of Decision, City of Kodiak vs. Kodiak Island Borough, et al., Case No. 3KO-78-120 Civ., Superior Court Judge J. Justin Ripley, April 19, 1979. The City never appealed the matter.

The 1979 legislature rejected the LBC's recommendation, it appears, because of a perception "that an adequate municipal services draft annexation plan was not earlier available for public review." (Legislative Resolve No. 5, First Session of the Eleventh Alaska State Legislature) While the legislature rejected the

proposal, it made several findings supporting the need for annexation. These included the following:

- . . . 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 an services provided in the City of Kodiak . .
- growth and development are occurring in the area
- population growth and development have in some areas created a situation which endangers the public health, and require that certain services be provided;

The 1979 Legislature asked DCRA to study various options to provide "services throughout the road system extending North and Northeast of the City of Kodiak" and to submit a report to the Legislature by January 20, 1980. The legislature particularly cited step annexation, annexation, and unification as options to be considered.

DCRA held a hearing on the issue in Kodiak on January 12, 1980. The majority of the thirteen local officials and residents who testified expressed support of providing services through service areas. One still supported annexation as the best short-term alternative, with unification as the best long-term option.

DCRA advised the Legislature that a proposition for unification of the local governments on Kodiak Island was scheduled for the October 1980 ballot. At the time, DCRA offered the rosy prediction that, "If this proposition is approved, jurisdictional problems in providing services to Kodiak Island residents would be resolved."

² The Borough Act of 1961 failed to conform to the constitution in two respects. First, it “divided” Alaska into a single unorganized borough that was to consist of the remnant of the state outside of organized boroughs. In so creating the unorganized borough, the 1961 law failed to closely adhere to the constitutional mandate that each borough embrace an area and population with common interests to the maximum degree possible. (See Report of the Local Boundary Commission to the First Session of the Twenty-First Alaska State Legislature, pages 62- 64, January 28, 1999). The law further failed to adhere to the common interests clause when it required the exclusion from organized boroughs of “all areas such as military reservations, glaciers, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government.”

³ Disincentives to form organized boroughs in Alaska have actually increased since the

Continued on next page

DCRA ended its report on the matter to the Legislature by stating:

The Department concludes that no further action is required by the Legislature, the Local Boundary Commission or this Department, at this time, in the matter of provision of municipal services to residents living within the Kodiak “urban” area. (Report to the Second Session of the Eleventh Legislature Relating to Review of Services Provide to the Residents in the Kodiak Island Borough, January 18, 1980).

HISTORY OF THE ESTABLISHMENT AND EXPANSION OF THE KODIAK ISLAND BOROUGH GOVERNMENT

Several fundamental issues associated with the City’s annexation proposal involve the Borough. Accordingly, readers may enjoy a summary of the history of the Borough’s incorporation and boundary changes.

Prior to statehood, residents of Kodiak formed an independent school district under a 1935 Territorial law. Independent school districts throughout Alaska were rendered extra-constitutional when Alaska became a state in 1959. That is, the new state constitution did not recognize independent school districts but instead provided for only two types of local governments – cities and boroughs.

The constitution provided that independent school districts and other extra-constitutional forms of local government were to be integrated into constitutionally recognized local governments under laws to be enacted

by the legislature. (Article XV, § 3). The constitution also required that the entire state was to be divided into boroughs, organized or unorganized, with each borough embracing an area and population with common interests to the maximum degree possible (Article X, § 3). Further, the legislature was given the constitutional duty to establish standards and procedures for borough formation. The “Borough Act of 1961” ostensibly fulfilled all three duties (Ch 146, SLA 1961).²

The Borough Act of 1961 required that independent school districts and other types of local governments not recognized by the constitution were to be integrated with cities and organized boroughs by July 1, 1963. The 1961 law provided for borough formation by local initiative only, despite the fact that there was little incentive to form organized boroughs.³ Not surprisingly, only one organized borough had formed by the time the legislature convened in 1963. That was the tiny Bristol Bay Borough which contained no extra-constitutional districts.

The 1963 legislature realized that the voluntary incorporation provisions of the 1961 law were ineffective. Consequently, it adopted the Mandatory Borough Act of 1963 (Ch. 2, SLA 1963) that required eight regions of the state to form boroughs. Those eight regions included most, but not all, of the extra-constitutional districts in Alaska.⁴ The eight regions were Kodiak, Ketchikan, Sitka, Juneau, Kenai Peninsula, Anchorage, Matanuska-Susitna Valleys,

and Fairbanks. The law provided that if any of the eight regions failed to form boroughs 'voluntarily,' boroughs would be formed on January 1, 1964, with boundaries defined in the 1963 law.

The boundaries set out for Kodiak in the Mandatory Borough Act of 1963 consisted of those for the "Kodiak Election District #11", excluding "Kodiak Naval Station (base proper)". A petition to form the Kodiak Island Borough was received by the State on May 1, 1963. The territory proposed for incorporation was limited to the Kodiak urban area consisting largely of the Kodiak Independent School District. The LBC held a hearing on the proposal and concluded that the boundaries in the petition failed to conform to the requirements of law. Consequently, the LBC amended the proposal to conform to what was then Election District No.

11, "except a strip of land containing only a few scattered individuals on the Alaska Peninsula" and the Kodiak Naval Station (base proper). Voters approved the incorporation of the Kodiak Island Borough by a vote of 293 (53.9%) in favor of incorporation and 251 (46.1%) against incorporation.

In 1982, the Borough annexed the Naval Base that had been excluded from its jurisdiction initially. In 1989, the Borough expanded its boundaries across Shelikof Strait to encompass an estimated 2,130 square miles of land on the Alaska Peninsula that drain into the Pacific Ocean. There have been no further boundary changes to the Borough.

Continued from previous page

Borough Act of 1961. (See previously referenced LBC report to the 1999 legislature, pages 57 – 62).

⁴ The Haines-Skagway area was originally included in the bill because Haines operated an independent school district. The bill was amended to exclude that area, presumably to win passage of the bill.

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- Local Boundary Commission Staff Report, July 15 - 21, 1994
- 1994 Petition for Annexation of Service District Number One and Spruce Cape to the City of Kodiak, April 22, 1994, City of Kodiak