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ii

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Table of Contents

Chapter 1 Background 1

1.1 Effects of Annexation..... 2

1.2 Kenai Peninsula Borough..... 4

1.3 City of Homer 6

1.4 Local Boundary Commission..... 15

1.5 Communications with the Commission 16

1.6 Staff to the Commission 17

1.7 Legal Standards Relating to City Annexation 17

1.8 LBC Options Regarding the Petition 19

Chapter 2 Proceedings to Date and Future Proceedings 20

2.1 Petition Filed 20

2.2 Records Request Issue 20

2.3 Notice of Filing of the Petition 22

2.4 Responsive Briefs and Public Comments Filed..... 24

2.5 City’s Reply Brief Filed 26

2.6 Local Informational Meetings 26

2.7 DCED’s Preliminary Report..... 27

2.8 Future Proceedings..... 28

Chapter 3 Synopsis of Views Expressed in the Petition, Responsive Briefs, and Reply Brief Concerning the Annexation Standards 39

3.1 Compatibility of the Territory and Existing City 39

3.2 Overlapping Boundaries..... 55

3.3 Contiguity 56

3.4 Voting Rights 59

3.5 Exclusion of Large Unpopulated Regions..... 60

3.6 Population Size and Stability..... 64

3.7 Resources of the Proposed Expanded City 66

3.8 Transition Plan 77

3.9 Inclusion of All Necessary Areas 97

3.10 Boundaries Limited to Local Community and Next Decade of Growth..... 101

3.11 Comparative Abilities of the City and Borough to Deliver Essential Services..... 106

3.12 Need for City Government in the Territory Proposed for Annexation 122

3.13 Balanced Best Interests 147

3.14 Best Interests of the State 159

Table of Contents continued

Chapter 4 Application of the Annexation

Standards by DCED 161

4.1 Character of the Territory Proposed for Annexation 161

4.2 Proposed New Boundaries of the City of
Homer in Relation to Boundaries of other
Existing Local Governments 201

4.3 Proximity of the Territory to the City of Homer 203

4.4 Effects of Annexation on Civil and Political Rights 204

4.5 Inclusion of Geographic Regions and
Large Unpopulated Areas 213

4.6 Size and Stability of Population 219

4.7 Human and Financial Resources 227

4.8 Plan for Extension of City Services 244

4.9 Inclusion of Areas Necessary to Provide Services on an
Efficient, Cost-Effective Level 253

4.10 City Boundaries Limited to Community 269

4.11 Comparative Ability to Provide Essential
Municipal Services 280

4.12 Need for City Government 314

4-13. Balanced Best Interests of the State, Territory,
and Affected Political Subdivisions 332

4.14 Best Interests of the State 346

**Chapter 5 Recommendations to the Local Boundary
Commission 349**

Recommendation Number One: Amend the boundaries
of the territory proposed for annexation to include
only Millers Landing and the Urban Area 355

Recommendation Number Two: Do not require truncation
of terms of City officials as a condition for annexation
of the 3.3 square mile area (or even the 4.38 square mile
alternative) 363

Recommendation Number Three: Do not require the
City of Homer to implement differential property
taxation as a condition for annexation of the
recommended 3.3 square mile area (or even the
4.38 square mile alternative). 364

Recommendation Number Four: Ensure that the
City of Homer consents to the particular boundary
determination made by the Commission. 366

Final Comment – A Reminder Regarding the Nature of DCED’s
Preliminary Recommendation. 366

Appendices

Appendix A Key Terms and Acronyms..... A-1

Appendix B Additional Information About the Local
Boundary Commission and the Nature of
Local Government Boundary Changes. B-1

Appendix C Make Your Comments to the LBC Count! C-1

Appendix D Estimated Population in 25.64 Square
Miles Petitioned for Annexation D-1

Appendix E Aerial Photos of the Territory Proposed
for Annexation E-1

Appendix F Procedures for the Administration of Section
5 of the Voting Rights Act of 1965,
as Amended F-1

Appendix G Estimated Population in the 3.3 Square
Miles Recommended by DCED for Annexation
to the City of Homer G-1

Chapter 1

Background

On March 20, 2000, the City of Homer petitioned the State of Alaska for annexation of 25.58 square miles. The Petitioner estimated that the population of the area proposed for annexation totaled 2,687. The boundary change is proposed under the legislative review process authorized by Article X, Section 12 of the Constitution of the State of Alaska and AS 29.06.040(b).¹

The Alaska Department of Community and Economic Development (DCED) has a duty under State law to examine proposals for annexation and to provide non-binding recommendations for consideration by the Local Boundary Commission. This report offers the DCED's preliminary analyses, conclusions, and recommendations concerning the City of Homer's petition for annexation.

¹ Article X, Section 12 states:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

AS 29.06.040(b) states:

The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a regular session. The change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

Chapter 1 provides background information about the pending annexation Petition. Included is an outline of the changes that annexation would bring about if the proposal is approved by both the Local Boundary Commission (“LBC” or “Commission”) and the legislature. Additionally, information is provided about the Local Boundary Commission and the legal standards that govern annexation of territory to cities in Alaska.

Appendix A provides a glossary of terms used in this report that have particular meaning in the context of the Homer annexation Petition.

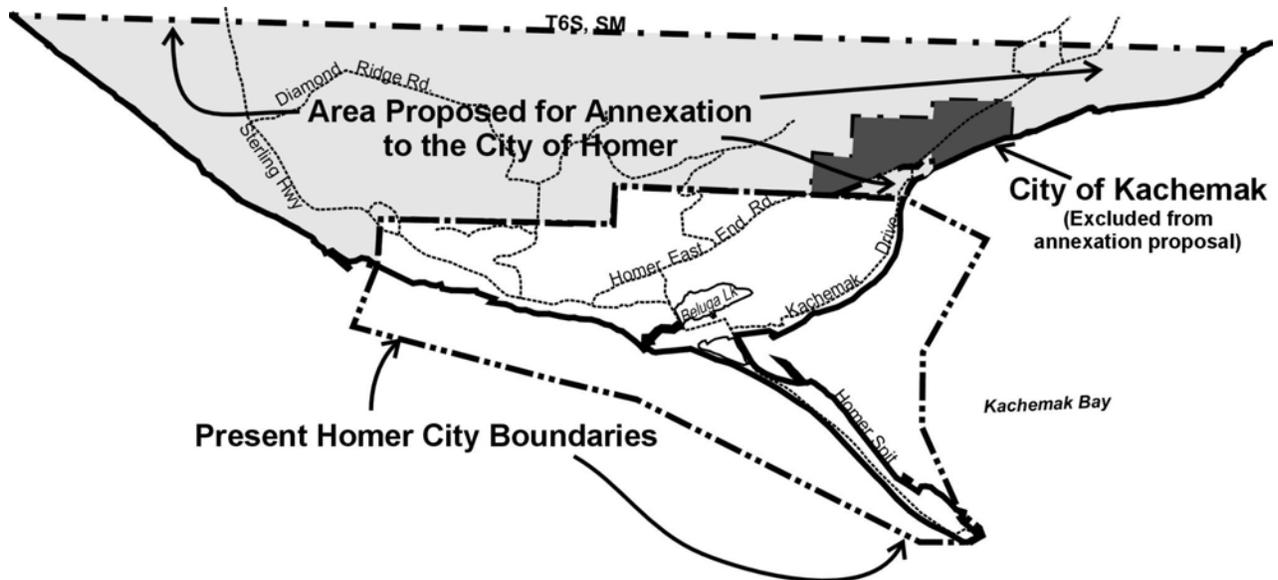
1.1 Effects of Annexation

The following summarizes the effects of the proposed annexation on the structure of local government in Homer **if** the Local Boundary Commission and the legislature approve the annexation proposal.

If implemented, the proposed annexation will more than double the size of the area within the City of Homer’s jurisdiction, from 21 square miles to 46.58 square miles, according to the Petitioner’s estimate. Annexation would expand the combined

2

**Figure 1-A
Territory Proposed for Annexation, Current City of Homer
and City of Kachemak Boundaries**



real and personal property tax base of the City of Homer more than 2 and 1/2 times. The Petitioner estimated that the City's population of 3,946 recorded in the federal 2000 census would increase to 6,633 if the boundary change is implemented as proposed by the Petition.

The Petition estimates that the annual value of sales in the territory that would be subject to City sales tax upon annexation totals \$14,102,848. According to the Petition, levy of the City's sales tax would generate an estimated \$286,288 to the City General Fund, \$103,656 to the City Water & Sewer Fund and \$103,656 to the City Road Fund.²

The Petition states that City services will be extended to the newly-encompassed area as follows:

- water and sewer services as quickly as residents and funding permits;

² The Petition states that a 1½% sales tax levy is dedicated to Water and Sewer and the City's Homer Accelerated Roads Program. (at 7)

- potable water will continue to be available through commercial water haulers;
- the City will continue to handle septic waste from the area;
- enhanced fire and emergency medical services upon annexation;
- Homer police, dispatch services [911, fire, AST, police] and jail services upon annexation;
- animal control support and animal shelter upon annexation;
- continued support assistance and dispatch services for State Trooper post;
- library service upon annexation;
- city parks upon annexation;
- recreational opportunities through City facilities and the City-funded Community Schools program upon annexation;
- improved road maintenance upon annexation;
- land use planning services upon annexation;

- City Clerk services including voter services, and information support services upon annexation;
- grant management upon annexation; and
- general government services upon annexation. (Petition at 10-11)

1.2 Kenai Peninsula Borough

The second class Kenai Peninsula Borough (KPB) was incorporated in 1964. In addition to the first class City of Homer, the Borough encompasses the home rule City of Kenai, the first class City of Soldotna, the first class City of Seldovia, and the home rule City of Seward. Other communities within the KPB include the second class City of Kachemak and several unincorporated communities,

such as Anchor Point, Cooper Landing, Moose Pass, Nanwalek, Nikiski, Nikolaevsk, Ninilchik, Port Graham, and Tyonek.

The Kenai Peninsula Borough provides services to the territory proposed for annexation on an areawide, nonareawide, and service area basis.³ Borough powers exercised on an areawide basis include tax assessment and collection, education, solid waste disposal, planning and zoning, 911 communications, senior citizen funding, and college funding. The Borough has delegated the exercise of planning and zoning authority to certain cities, including the City of Homer. The Borough provides hospitals, fire protection, recreation, road maintenance and construction, and emergency medical and ambulance services on a service area basis.⁴ Nonareawide powers exercised by the KPB include port and harbors, tourism promotion,

³ Areawide services are those services provided throughout the Borough. Nonareawide services are those provided in that portion of the Borough outside cities. Service area services are those services provided in distinct areas within the Borough.

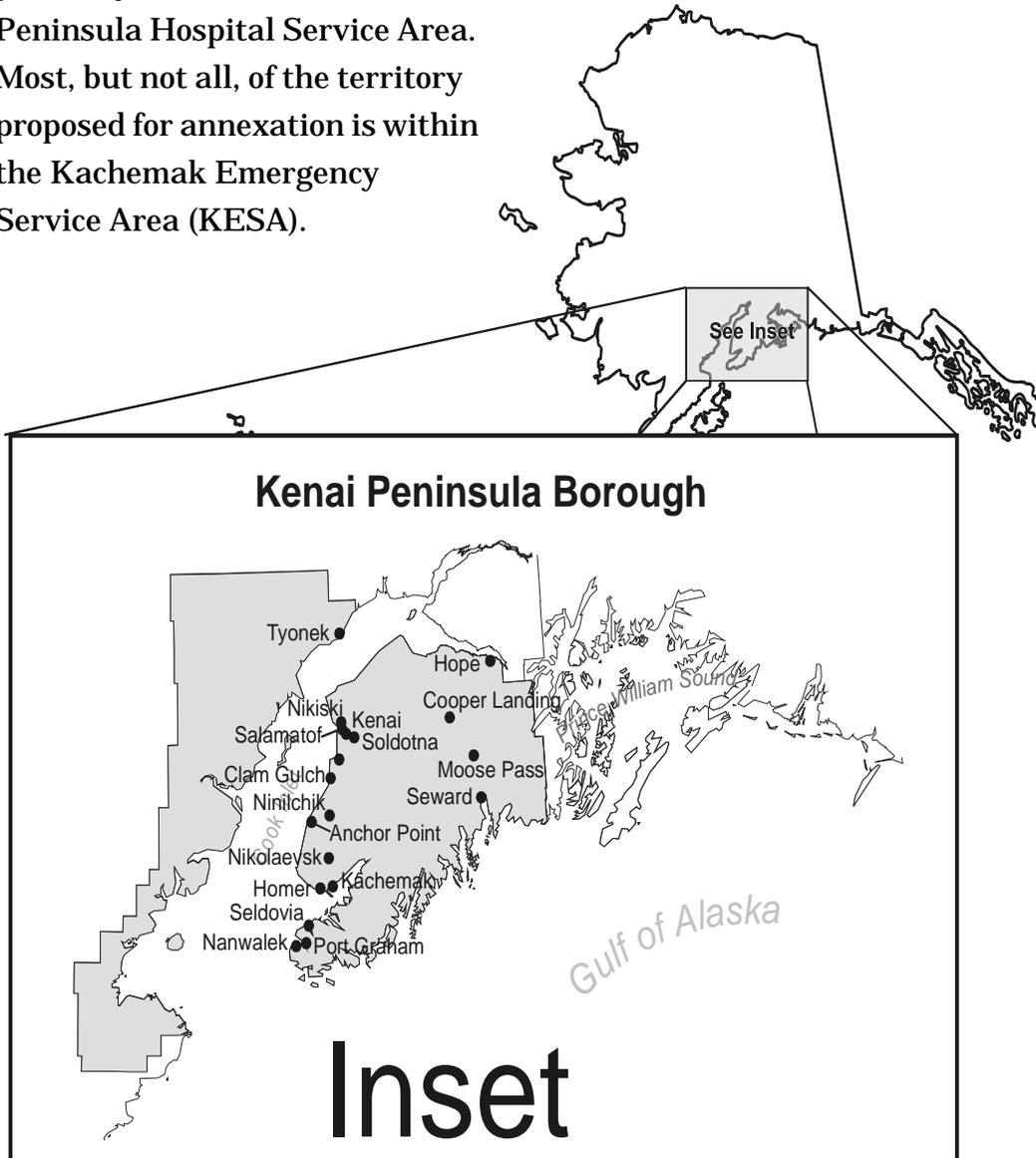
⁴ South Peninsula Hospital is governed by a Service Area Board through the Kenai Peninsula Borough, and an Operating Board, that directly governs the hospital's operations.

special assessment authority for utility line extensions, and economic development.

The territory proposed for annexation to the City of Homer is included in the Kenai Peninsula Borough's Road Maintenance Service Area. Both the City of Homer and the area the City seeks to annex are presently within the South Peninsula Hospital Service Area. Most, but not all, of the territory proposed for annexation is within the Kachemak Emergency Service Area (KESA).

Currently, Borough property taxes within the City of Homer total 8.85 mills. Property taxes in the area are comprised of a 7.0 mill areawide property tax, a 1.75 mill South Peninsula Hospital Service Area tax and a 0.10 mill

**Figure 1-B
Kenai Peninsula
Borough Area Map**





Portion of the City of Homer.

6

Kenai Peninsula College tax.
The KPB levies an areawide 2% sales tax.

The KPB property tax rate in the area proposed for annexation consists of the 7.0 mill areawide tax, the 0.10 Kenai Peninsula College tax and a 1.0 mill road maintenance tax. A 1.75 mill tax for fire and emergency medical services tax is also levied throughout the area proposed for annexation with the exception of the Millers Landing area.

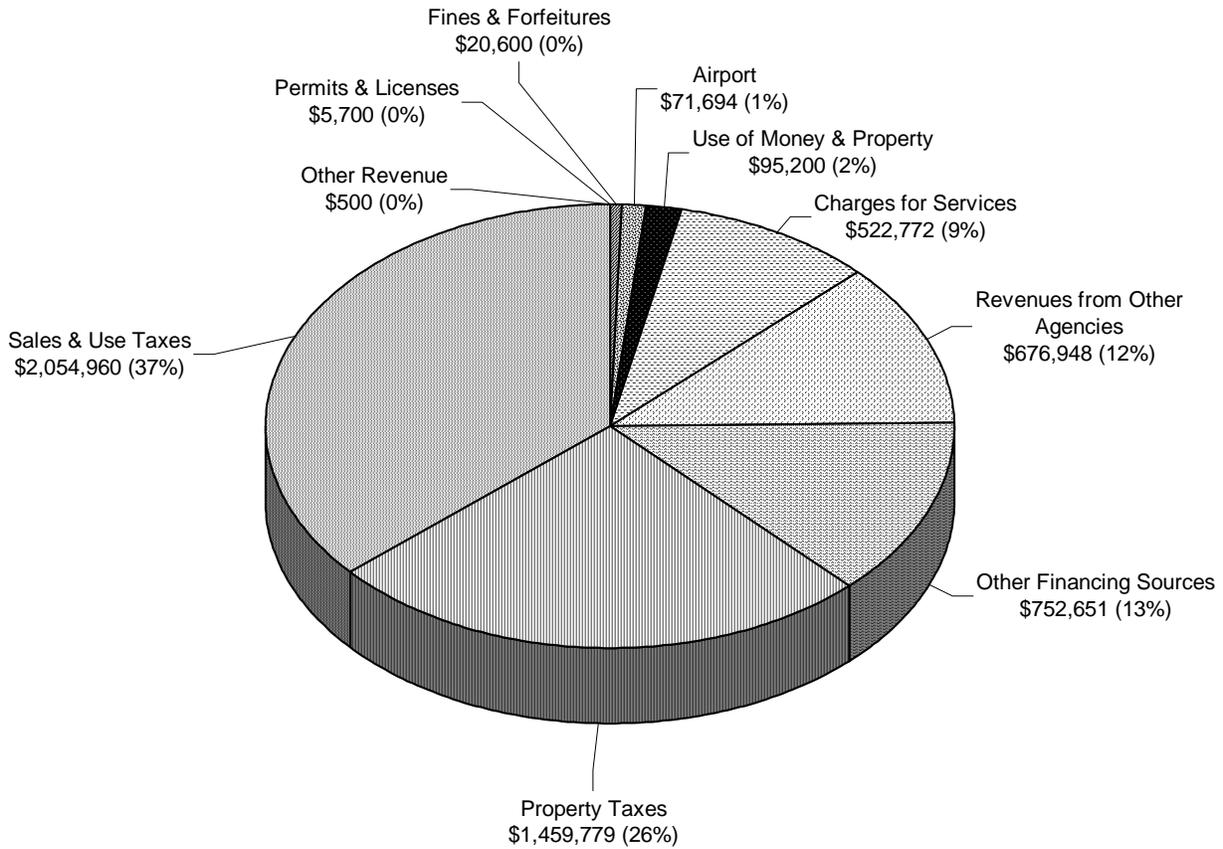
⁵ *City of Homer, Alaska Adopted Budget for Fiscal Year 2001*

1.3 City of Homer

The City of Homer was incorporated in 1964. Its boundaries presently encompass about 21 square miles with a 2000 census population of 3,946. Since incorporation, the City has had only one boundary alteration, a 1984 local action annexation of approximately 10 square miles of uninhabited tidelands and offshore territory.

The City's fiscal year 2001 budget, as initially adopted, authorizes general fund expenditures totaling \$5,753,262.⁵

**Figure 1-C
Where the Money Comes From -
City of Homer General Fund Revenue Projections -
FY 2001 \$5,660,804**



The City levies a 5.5 mill general fund real and personal property tax and a 3.5% sales tax. Sales tax revenues are apportioned as follows: 2% for general services, 0.75% for street reconstruction, and 0.75% for sewer debt retirement and related utilities. (Petition at A-16)

Services provided by the City of Homer include the following:

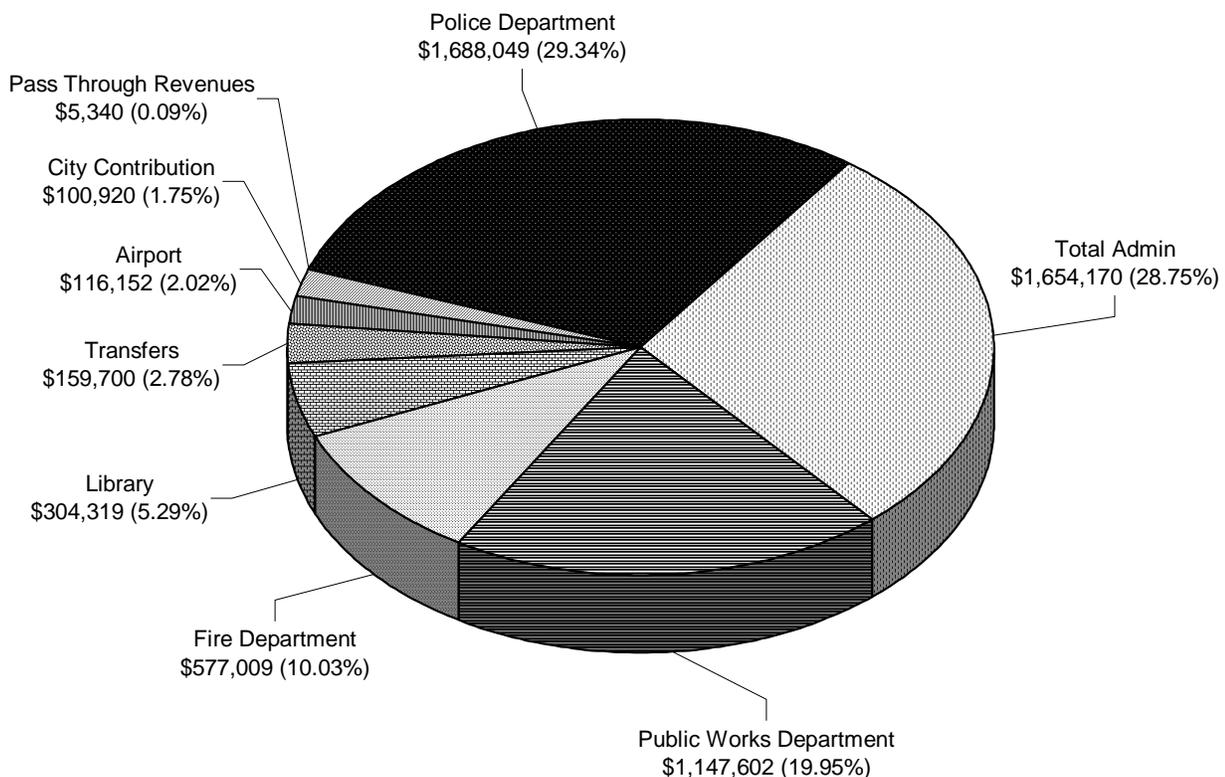
Water. According to the City's budget, water system expenses for the current budget year will total \$1,140,649. (at E-5) The City draws water from the Bridge Creek Reservoir. In addition to the Reservoir, the water system includes pumping stations, treatment plant, storage tanks, transmission and distribution pipelines. The water treatment plant is rated at 2 million

gallons per day, utilizing mostly automated controls. The system is designed to treat surface water, which requires a more complex filtration treatment than that required to treat ground water. Topography within the City requires the water distribution system to be separated into six pressure zones. The distribution system consists of 14 pressure reducing stations, air release valves, 36.4 miles of distribution mains, 1,100 water services, and 263 fire hydrants. The City

maintains the system to provide for reliable fire suppression, and commercial and industrial water usage. The City conducts testing mandated by State and Federal law. The City estimates that individuals purchase 17.5 million gallons of bulk water from the City annually. (City of Homer Adopted Budget for Fiscal Year 2001, at E-8.)

The Petition for annexation states, "The Homer area is located on the lower level of a sloughing clay slope on the north shore of

Figure 1-D
Where the Money Goes - City of Homer
General Fund Expense Projections
FY 2001 - \$5,753,262





City of Homer sewer treatment plant.

Kachemak Bay. The soil conditions are such that well water is incredibly scarce and usually of poor quality.” (at 4)

Sewer. The City’s Sewer Fund expenditures for FY 2001 are projected to total \$851,578, according to the City’s budget. The sewer treatment plant is automated but requires continuous monitoring. The treatment process consists of primary screening and removal of solids. Secondary treatment includes injection of chemicals to produce activated sludge, lagoon discharge, and ultraviolet disinfection. Sludge is removed from the lagoon and dried in beds for disposal as a biosolid. The City’s

sewer system uses, to the extent possible, gravity sewer mains, but force mains and seven lift stations are also required due to the topography of the area. The system includes 41.4 miles of 8” to 24” sewer

main and 607

manholes. The City also provides sewer services to parts of the neighboring City of Kachemak on a contractual basis.

Harbor/Port. The Port and Harbor Department is an enterprise fund activity that manages, maintains, and operates the Homer Small Boat Harbor, commercial Fish Dock, Ice Production Plant, Main (Ferry) Dock, and uplands areas for storage, parking, and land leases.

The City’s 2001 budget states that the port and harbor will have revenues of \$2,310,509 and expenses totalling \$2,367,488 for the current year. The Small Boat Harbor consists of 772 reserved

boat slips,
4,000 linear
feet of tran-
sient boat
moorage, wood
grid and steel
grid for vessel
repairs, barge
ramp, and two
load and
launch ramps.
Expansion of
the small boat
harbor by the
addition of 140

new vessel slips and about 600
linear feet of transient vessel
moorage is currently underway.⁶

The Fish Dock has 383 feet of
vessel moorage face alongside,
and eight electric-hydraulic
cranes. The ice plant is capable of
producing four tons of ice per
hour, can store up to 180 tons,
and delivers ice to vessels at the
dock.



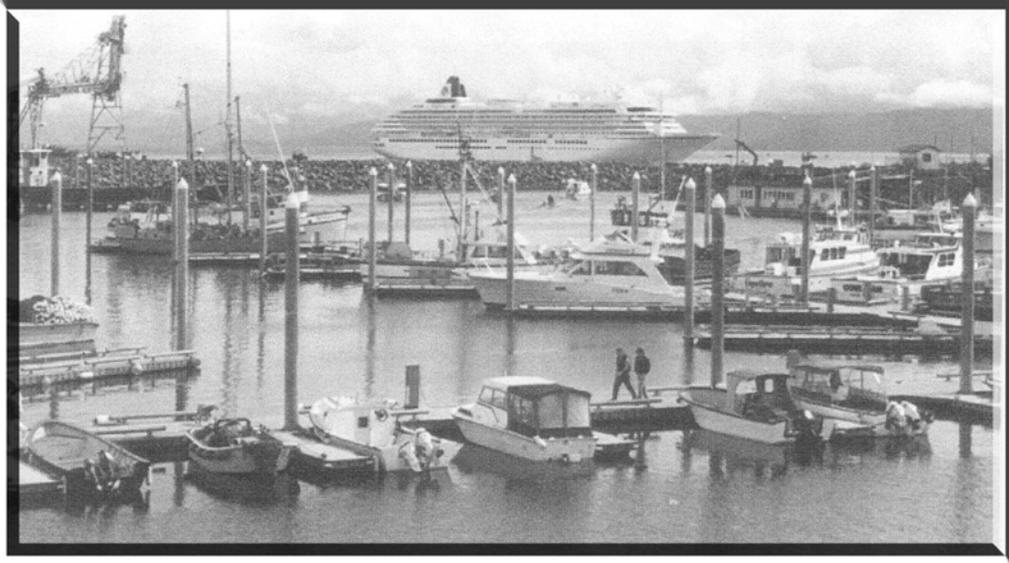
City of Homer deep-water cargo dock.

The Main (Ferry) Dock has
preferential berthing for the U.S.
Coast Guard buoy tender Sedge,
State of Alaska Marine Highway
System ferries, and occasional
tugs and barges.

Because of high maintenance
costs, the main dock is being
replaced with a larger new dock
referred to as the Pioneer Dock,
which is currently under con-
struction.⁷ The northwest end of
the dock, which includes the berth
for the cutter Sedge will be dem-
olished. The Pioneer Dock will
have a u-shaped outer face ex-
tending about 465 feet. The new
dock will have two trestles, 424

⁶ Personal communication,
William Abbot, Harbormaster,
August 3, 2001.

⁷ Although referred to as the
Pioneer dock, the full name of
the new facility is the
Kachemak Bay Multi-Purpose
Ocean Dock.



City of Homer small boat harbor.

feet long and 300 feet long, respectively. Three breasting dolphins will be able to berth a ship about 800 feet long.

The Deep Water Dock berths log ships, chip ships, and log barges on its 324-foot face, with lines of larger ships also secured to the 3 mooring dolphins and 2 mooring buoys that extend the berthing capacity of the dock. Port and Harbor Department staffing for the current fiscal year is equivalent to 14.68 full-time employees.

Currently, barges pump petroleum products through pipelines to Petro Marine Services' shore tanks. Upon completion of the new dock, the

pipelines will be transferred to the new dock. The facility is a regional port and harbor. Most of the users of reserved slips live outside of the Homer area and the majority of transients are from outside the Anchor Point and Homer area, according to the Harbormaster.

The City's harbor officers provide full-time security, patrol port and harbor facilities, and are first responders in case of fire or other emergency situations involving the port and harbor. Harbor officers report new vessel arrivals for moorage billings, inspect facilities for safety and service problems, initiate repair work requests, and monitor the moorage and docks on a regular



City of Homer boat harbor.

delivery of fire suppression and rescue services to the public through provision of training, safety gear, vehicles, equipment, supplies, and other resources essential to the operation of fire service and

basis. All large displacement vessel arrivals and departures are monitored and any associated damage to City facilities is documented. Harbor officers, using department skiffs, tow boats when vessels lose power or circumstances require that vessels be moved between moorage spaces. Vessel inventory is performed nightly of all vessels in the small boat harbor and on City docks and repair grids to enable moorage charges and service charges for purposes of billing.

rescue services. Fire suppression services are provided to a portion of the territory proposed for annexation by the Kachemak Emergency Service Area.

12



City of Homer Volunteer Fire Department ambulance.

Fire. The City's FY 2001 budget authorizes the expenditure of \$436,393 to support

Emergency Medical Services. The City’s FY 2001 budget authorizes the expenditure of \$140,616 to support delivery of emergency medical services through provision of training, safety gear, vehicles, equipment, and supplies. Emergency medical services are provided to a portion of the territory proposed for annexation by the Kachemak Emergency Service Area.

Police. The Homer Police Department consists of administration, patrol, investigations, jail, and dispatch services. The department has a staff of ten certified officers and seven full-time public safety dispatchers. The 2001 budget for the department is \$1,688,049. The police department operates the City jail, consisting of four cells with two bunks in three of the cells and one bunk in the fourth cell. The jail is staffed by two full-time community jail officers and six part-time community jail officers.

Animal Control. The Homer Animal Shelter is administered by the Homer Police Department. The

shelter is staffed and maintained by a private contractor, Coastal Animal Care. The City’s 2001 budget allocates \$48,550 for delivery of animal control service. (Budget at G-52)

Library. The City has authorized expenditure of \$289,404 to deliver library services. The Petition for annexation states that the library building is valued at \$463,600 and that the contents of the library are valued at \$1,375,300. (at 11) The City has a Library Advisory Board. (at 37) The Petition states that the library has “more patrons residing outside the City of Homer than inside.” (at 37)



City of Homer public library.



City of Homer Public Works Department performing snow removal services.

gravel roads. The Homer Accelerated Road Program is funded by a 0.75% City sales tax approved by the voters in November 1987 for street reconstruction and improvements. The City's 2001 budget allocates \$278,972 for road service.

Parks/Recreation.

The Petition states that the City provides parks, recreation, and cemetery facility maintenance. The City's 2001 budget allocates \$307,059 for these services. This provides for grass mowing, planting and maintaining flower gardens, park and trail clean up, campground fee collection, and camping and dump station/restroom maintenance.

Road Maintenance.

Page 25 of the Petition states that the City maintains 21.5 miles of roads. However, the current City budget states that the City provides maintenance of 18.4 miles of streets and roads within the City's jurisdiction. Paved streets reportedly comprise 11.1 miles and the remaining 7.3 miles are

Planning and Zoning.

The City's five-member Planning and Zoning Commission administers and coordinates City-wide planning and zoning functions; implements short and long-range land use plans and develops planning and zoning policies and procedures. The City's planning staff administers the City's Zoning Code (Title 21) and Subdivision Ordinances (Title 22), Off-Street Parking (Title 7) and Property Management (Title 18).

The City's Planning Department staff also coordinate and manage City leases.

The City's FY 2001 budget appropriated \$151,659 for the Planning Department. The Petition for annexation states:

Local citizen controlled land use planning is necessary both in and outside the present city limits for the orderly development of all properties. This will protect property values and enhance both the quality of life and the economic viability of the entire area. All area residents should be involved in this process. The City Planning Department and Planning Commission engage in plat review, planning, zoning, permitting, comprehensive planning, code enforcement and coordinates with the KPB Planning Department and Commission. (at 4)

Airport. The City provides operation and management services to the airport terminal building. The 2001 City budget allocates \$116,112 for airport functions.

1.4 Local Boundary Commission

The Local Boundary Commission is a State commission that will decide whether to grant the Petition as presented, amend the petition, impose conditions, or deny it altogether. The Commission 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)

LBC members serve at the pleasure of the Governor. The Chairman is appointed from the state at-large and one member is appointed from each of Alaska’s four judicial districts. Members serve without compensation.

The Commission was created under Alaska’s Constitution to render objective, independent decisions from a statewide perspective regarding proposals for the creation, alteration, or abolition of city governments and organized boroughs. Of the 130 or so State boards and commissions, the LBC is one of only five with constitutional origins.⁸

⁸ The others are the University of Alaska Board of Regents, the Judicial Council, the Commission on Judicial Conduct, and the Redistricting Board.



Local Boundary Commission during a recent hearing.

Appendix B provides additional background information regarding the Commission and the nature of local government boundary changes in Alaska.

All petitions for establishing or altering the boundaries of local governments in Alaska are subject to approval by the LBC. The Commission is a State board with jurisdiction throughout Alaska. (See Article X, § 12, Alaska Constitution; AS 29.04, AS 29.05, AS 29.06, and AS 44.33.810 - 44.33.828.) In addition to petitions for annexation to municipal governments, the LBC acts on petitions for the following:

- consolidation of cities and boroughs;
- incorporation of cities and boroughs;

- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

Additionally, the LBC has the duty to make studies of local government boundary problems.

1.5 Communications with the Commission

The LBC is a quasi-judicial board. To protect the rights of petitioners and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the Commission regarding pending petitions. The law prohibits such

communication between the LBC and others, apart from the Commission's 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 in place through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

1.6 Staff to the Commission

The Alaska Department of Community and Economic Development (DCED) serves as staff to the LBC. The DCED staff to the Commission are required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the Commission concerning such. The DCED staff serving the Local Boundary Commission may be contacted at:

Local Boundary Commission
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Telephone: 907-269-4559
Fax: 907-269-4539
E-mail:
Dan_Bockhorst@dced.state.ak.us

The Local Boundary Commission and the Alaska Department of Community and Economic Development are independent of one another with regard to policy matters.

1.7 Legal Standards Relating to City Annexation

The pending proposal for annexation is subject to the satisfaction of particular criteria established in law. The constitu-



One of two public informational meetings regarding annexation conducted in Homer by DCED on July 31, 2001.

18 | tional, statutory, and regulatory standards governing annexation to a city within an organized borough require that:

1. The territory must be compatible in character with the annexing city. [3 AAC 110.100]
2. The territory proposed for annexation may not overlap the boundaries of an existing organized borough or city unless the petition also addresses and demonstrates satisfaction of detachment standards. [3 AAC 110.130(e)]
3. The area proposed for annexation must, with limited exceptions, be contiguous to the existing boundaries of the city to which annexation is proposed. [3 AAC 110.130(b)]
4. The proposed annexation to the city may not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
[3 AAC 110.910]
5. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by application of standards in 3 AAC 110.090 – 3 AAC 110.130.
[3 AAC 110.130(d)]
6. The population within the proposed post-annexation boundaries must be sufficiently large and stable to support the extension of city government. [3 AAC 110.120]
7. The proposed post-annexation boundaries must include the resources necessary to provide essential city services on an efficient, cost-effective level. [3 AAC 110.110]
8. A practical transition plan must be provided for the assumption of appropriate powers, assets, and liabilities on the part of the annexing city. [3 AAC 110.900]
9. The proposed post-annexation boundaries must include all areas necessary to provide the full development of essential city services on an efficient, cost effective level. [3 AAC 110.130(a)]
10. The post-annexation city boundaries must be limited to the developed areas and areas subject to impending development. [3 AAC 110.130(c)]
11. 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. [3 AAC 110.090(b)]

- 12. The territory must exhibit a reasonable need for city government. [3 AAC 110.090(a)]
- 13. Legislative review annexations must serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. [3 AAC 110.140]
- 14. Annexations must serve the best interests of the state. [AS 29.06.040]

1.8 LBC Options Regarding the Petition

Applied to the Homer annexation Petition, AS 29.06.040(a) provides that the Local Boundary Commission:

- 1. may amend the Petition;
- 2. may impose conditions for annexation;
- 3. *may* approve the Petition *if* the LBC determines that the annexation proposal, with or without amendments and conditions:
 - a. meets applicable standards under the Constitution of the State of Alaska,

- b. meets standards for annexation under Alaska Statutes 29.06.040(a);
 - c. meets standards for annexation under 3 AAC 110.090 - 3 AAC 110.140 and 3 AAC 110.900 - 3 AAC 110.920.
- 4. *shall* deny the Petition *if* the LBC determines that the annexation proposal, with or without amendments and conditions:
 - a. does not meet applicable standards under the State Constitution;
 - b. does not meet standards for city annexation under AS 29.06.040(a);
 - c. does not meet applicable standards under the Alaska Administrative Code.

Chapter 3 of this report synthesizes the views of the Petitioner and Respondents regarding the application of the standards. Chapter 4 presents DCED's application of the standards to the Homer proposal.

Chapter 2

Proceedings to Date and Future Proceedings

This chapter summarizes the formal activities that have occurred to date with regard to the pending Homer annexation proposal. Information about future proceedings is also provided.

2.1 Petition Filed

As allowed by Article X, Section 12 of Alaska's Constitution, AS 44.33.812(a)(3), and 3 AAC 110.410(a)(4), the City of Homer petitioned the Local Boundary Commission for annexation of what the Petitioner estimates is 25.58 square miles. The Petition was submitted to DCED on March 20, 2000. On March 29, 2000, DCED completed its technical review of the form and content of the Petition. Based on that review, the Petition was formally accepted for filing.

2.2 Records Request Issue

On April 30 and May 3, 2000, Abigail Fuller requested copies of internal memoranda of the City of Homer relating to development of the annexation Petition. She requested the documents on behalf of Citizens Concerned About Annexation (CCAA). On May 12, 2000, City Manager Ron Drathman declined the request, contending that the documents requested were "internal departmental deliberative communications". According to Ms. Fuller:

CCAA and I appealed to the City Council, which upheld the claim of privilege without reviewing any of

the documents in question. We filed an Administrative Appeal in Superior Court. The court remanded to the Council to review the documents, at which point they viewed 26 memos listed by [City Manager] Drathman in an affidavit. They released item “w” which was exhibit 20 with the city’s Reply Brief and some attachments that were already public.

Subsequently I requested (from the City) all previously denied documents that were not listed in the affidavit. In response, 11 memos relating to the 10 percent budget cuts were provided. A follow-up request for other documents I believed existed was ignored. A request for a response resulted in a statement that no response would be forthcoming.

In January Judge Brown ruled the city could claim the privilege. CCAA and I appealed to the Alaska Supreme Court, now pending. Alaska Newspaper Association filed a friend-of-the-court brief on behalf of appellants. City’s brief is due Aug. 24.



Homer City Hall.

Meanwhile, the city decided to require all records requests from myself be sent via our respective attorneys. Their excuse is the memo appeal but there is no legal justification. This system has not worked well – as of July 30th I have not yet received the information from a request I made June 26th.

As noted, the case is pending review by the Alaska Supreme Court.⁹

⁹ Supreme Court Case No. S-10079.

2.3 Notice of Filing of the Petition

The Chairman of the LBC set June 5, 2000 as the deadline for receipt of responsive briefs and comments on the Petition. Notice of filing of the Petition was published by the Petitioner in the *Homer News*, a newspaper of general circulation in the territory, on April 3, April 10, and April 17, 2000.

DCED arranged for publication of the notice of filing of the petition on the State of Alaska's Internet Website, *Online Public Notices*.¹⁰ The notice was also published on the LBC Internet web site maintained by DCED.

As required by 3 AAC 110.450(a)(2), on April 3, 2000, notice of the filing of the Petition was posted at prominent locations readily accessible to the public within the area proposed for annexation. Posting occurred at the following locations:

- Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
- Pudgy's Meat & Groceries, Mile 2.4 East End Road;

- Northern Enterprises Boat Yard, 42122 Kachemak Drive.

Notice of the filing of the Petition was also posted by the Petitioner at the following locations within the existing boundaries of the City of Homer on April 3, 2000:

- Homer City Hall, 491 East Pioneer Avenue;
- State Courthouse, 3670 Lake Street;
- United States Post Office, Sterling Highway;
- Eagle Quality Center, Sterling Highway;
- Lakeside Center Shopping Mall, 3858 Lake Street.

On April 3, 2000, notice of the filing was also posted at the Kachemak City Hall. Although the Kachemak City Hall is outside both the existing and proposed City boundaries, the terri-

¹⁰ <http://notes.state.ak.us/pn/pubnotic.nsf>

**Figure 2-A
List of Respondents**

Respondent	Representative	Brief	Exhibits
1. Alaskans Opposed to Annexation	Erwin and Erwin, LLC	24 pages	33 pages
2. Cabana, Doris	Same	8 pages	8 pages
3. Dodd-Butters, Sallie	Same	6 pages	0 pages
4. Fuller, Abigail	Same	11 pages	21 pages
5. Griswold, Mary	Same	17 pages	0 pages
6. Jerrel, Vi, Ph.D.	Same	5 pages	23 pages
7. Kachemak Area Coalition, Inc., d/b/a Citizens Concerned About Annexation	Hicks Boyd Chandler & Falconer	30 pages	511 pages
8. Kenai Peninsula Borough	Same	2 pages	0 pages
9. Objective Annexation Review	Larry Smith	11 pages	0 pages
10. Roberts, Peter	Same	8 pages	0 pages
11. Seelye, Steve and Margret	Same	3 pages	0 pages
12. Smith, Bill	Same	4 pages	0 pages
13. The Crossman Ridge Neighborhood	Cris Rideout	12 pages	8 pages
14. The Raven Ridge Homeowners Association	Wayne Clark	6 pages	0 pages
Totals 14 respondents		147 pages	604 pages

tory proposed for annexation virtually surrounds the corporate boundaries of the City of Kachemak.

On April 5, 2000, the Petitioner sent a copy of the notice of filing of the Petition to the following parties:

- State Representative Gail Phillips;
- State Senator John Torgerson;
- South Peninsula Hospital Service Area Board;
- City of Kachemak;

- Kenai Peninsula Borough, Mayor’s office;
- Kenai Peninsula Borough Road Service Area;
- Citizens Concerned About Annexation;
- City Residents Annexation Process Study Group; and
- City of Seldovia.

DCED staff sent notice of the filing of the Petition to 39 State officials, including members of the Local Boundary Commission, the heads of principal agencies, and others.

In accordance with 3 AAC 110.460(b), the Petition, including all exhibits, was made available for public review. The City designated the Homer City Hall and Homer Public Library as locations where Petition materials were made available to the public.

2.4 Responsive Briefs and Public Comments Filed

A. Respondents

Fourteen responsive briefs collectively comprising 147 pages of text and 604 pages of exhibits were filed with DCED by the June 5, 2000 deadline.¹¹ The fourteen individuals and organizations that filed responsive briefs are listed in Figure 2-A.

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

B. Comments from Correspondents

A total of 168 timely letters concerning the proposed annexation were received by DCED. The vast majority of the letters expressed opposition to the proposed annexation, three letters expressed support for the proposed change, and others raised issues but did not oppose the entire annexation proposal per se.

The following summarizes the points made by correspondents opposed to annexation.

- Annexation will result in a substantial increase in taxes levied on the annexed area, but little or no improvement in municipal service delivery to the annexed area.
- Property owners should be allowed to vote on any annexation proposal.
- Property owners in the territory have incurred additional costs to develop individual water and septic systems in order to live outside the City.

- The City’s annexation proposal is motivated by the prospect of increased sales and property tax revenues.



Annexation opponents demonstrate at Homer City

- Portions of the territory proposed for annexation territory do not exhibit a reasonable need for city government. Extending City services to neighborhoods where such services are unwanted and unneeded is not justifiable.
- Limited road access would prevent or hinder effective and efficient delivery of emergency fire service, emergency medical service, police, water, and sewer services to portions of the area sought for annexation.
- All or portions of the territory proposed for annexation are not compatible in character with the territory within the boundaries of the City of

Homer. Several correspondents of the area proposed for annexation assert that they located their residences in areas that they considered safely removed from constraints that they associate with urban life and City jurisdiction. They equate annexation to the City of Homer as commensurate with an intolerable diminution of their personal freedom.

- Because of the rural nature and limited access to services provided by the City, it is preferable to receive services from the Kenai Peninsula Borough. For example, some contended (prior to the creation of the Kachemak

Emergency Service Area) that fire service to the area proposed for annexation could better be delivered by a KPB service area.

- The State Troopers, Kenai Peninsula Borough, and Alaska Department of Transportation provide adequate service to the territory proposed for annexation.

2.5 City's Reply Brief Filed

On September 11, 2000, the City of Homer filed the *Reply Brief of the City of Homer Supporting Its Petition for Annexation to the City of Territory West, North, & East of the Current City Limits* (hereinafter "Reply Brief") in answer to the 14 Responsive Briefs and the other 168 written comments.

2.6 Local Informational Meetings

On April 17 and 18, 2000, May 2, 2000, June 14, 2000, and August 24, 2000, LBC staff attended meetings in Homer with members of various groups concerning the annexation proposal. Those present at the meetings included members of an ad hoc group known as 'Objective Annexation Review' (OAR), members of the ad hoc group 'Citizens Concerned About Annexation' (CCAA), local media (Homer News, Homer Tribune, and KBBI), the Mayor of the City of



Homer City Council in meeting.

Homer, the Homer City Manager, the Homer City Council, and two Kenai Peninsula Borough Assembly members.

On July 31, 2001, LBC staff conducted two public informational meetings in Homer at the Best Western Bidarka Inn.¹² The agenda for both July 31 informational meetings is shown in Figure 2-B.

The 2:00 p.m. informational meeting was attended by 47 people, and 19 people attended the 7:00 p.m. meeting. Part IV of the July 31 informational meetings provided an opportunity for the public to comment or ask questions about developments relating to the Petition that had occurred since September 2000. Most of those offering comments expressed opposition for all, or specific elements of the proposed annex-

¹² The informational meetings began at 2:00 p.m. and 7 p.m., respectively.

Figure 2-B July 31, 2001 Informational Meeting Agenda



Tony Knowles, Governor

Division of Community and Business Development
 550 W. 7th Avenue, Suite 1770, Anchorage, AK 99501-3510
 Telephone: (907) 269-4580 • Fax: (907) 269-4539 • Text Telephone: (907) 465-5437
 Email: questions@doed.state.ak.us • Website: www.doed.state.ak.us/cbd/

- I. General Background
 - A. Principles of municipal boundary change – Alaska and other states
 - B. Local Boundary Commission
 - C. Legislative review procedures
- II. The Question Before the LBC: Should the corporate boundaries of the City of Homer be expanded to include all or some portion of the 25.58 square miles petitioned for annexation; if so, which area(s) and should any conditions be imposed?
 - A. Options
 - i. Approve as proposed
 - ii. Approve with amendments and/or conditions
 - iii. Deny
 - B. Standards to guide the LBC
 - C. Discretion of the LBC
- III. Update on status of Homer annexation proposal
 - A. Plans for DCED Preliminary Report
 - B. Plans for DCED Final Report
 - C. Plans for LBC Hearings
 - D. Plans for LBC Hearings
- IV. Opportunity to comment on significant developments since September 2 relevant to annexation
 - A. Plans for DCED Preliminary Report
 - B. Plans for DCED Final Report
 - C. Plans for LBC Hearings

ation. Additionally, on July 31, LBC staff were available to answer questions from the public from noon to 10:00 p.m.

2.7 DCED's Preliminary Report

In accordance with 3 AAC 110.530, DCED prepared this Preliminary Report examining the pending Petition. The Preliminary Report has been provided to the Petitioner and Respondents as required by law.

Additionally, DCED has made multiple copies of the report available for public review at the Homer Library. The report will also be available for review on the Internet at http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm. An executive summary of the report has been provided to all correspondents.

3 AAC 110.640 provides that at least 28 days must be allowed for comment on the Preliminary Report from the date that the report was mailed to the Petitioner. The deadline for the **receipt by LBC staff** of written comments on the Preliminary Report in this case is 5:00 p.m., November 6, 2001. Comments may be submitted by mail, hand delivery, fax, or e-mail. To be considered, comments must be received by the previously noted deadline at the following location:

LBC Staff
**Department of Community
 and Economic Development**
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

fax: (907) 269-4539
e-mail:
Dan_Bockhorst@dced.state.ak.us

2.8 Future Proceedings

A. DCED's Final Report

After DCED has considered timely written comments on its Preliminary Report, it will issue its Final Report on the matter. The Final Report will be mailed to the Petitioner and Respondents at least three weeks prior to the Commission's hearing on the proposal, as required by law. Multiple copies of the Final Report will also be provided to the Homer Public Library and the City Clerk.

B. Respondents Urged to Coordinate in Advance of Hearing – Petitioner and Respondents Asked to Provide Witness Lists

The Petitioner and Respondents will be allowed to present *formal* sworn testimony during the public hearing to be conducted by the Local Boundary Commission in Homer regarding the annexation proposal. In

addition to the *formal* testimony, there will be an opportunity for *informal* general comment on the proposal by the public.



Public testimony at a recent LBC hearing.

Witnesses called by the Petitioner or Respondents to provide *formal* sworn testimony must have expertise in matters relevant to the pending annexation proposal about which they will testify. The Commission recognizes expertise in either of two forms. First, *formal* witnesses may be specialists in relevant subjects such as municipal finance, municipal law, public safety, public works, public utilities, and municipal planning. Alternatively (or in addition), *formal* witnesses may be long-standing members of the community who are directly familiar with social, cultural, economic, geographic, and other relevant characteristics of the greater Homer area.

It is not typical to have multiple respondents in proceedings before the Local Boundary Commission. As noted earlier, in this case there are fourteen Respondents. While not all Respondents share the same views regarding particular standards, many do. With due deference to the right of each of the fourteen Respondents to act individually during the hearing, Respondents are strongly encouraged to coordinate in advance of the hearing to avoid repetitive statements and testimony. Further, Respondents are encouraged to reach agreement in advance of the hearing regarding the order in which they will appear. Such coordination and agreement will lead to greater

efficiency and effectiveness in the conduct of the hearing and is, therefore, in the interests of all parties and the general public.

As it routinely does in other proceedings involving the Commission, DCED requests that the Petitioner and Respondents submit a list to DCED of witnesses that each of the parties intends to call to provide sworn testimony during the hearing. The list should include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. At the same time, Respondents are asked to provide DCED with details of any agreements reached concerning the order in which presentations by Respondents will occur. The lists and details of any agreement concerning the order of Respondents' presentations should be provided to DCED at least fourteen days prior to the hearing.

In the absence of agreement by Respondents as to the order of their presentations, the Commission Chairman will determine the order by random means. Respon-

dents will then be notified of the order of their presentations at least one week prior to the hearing.

C. Pre-Hearing Inspection of the Territory by the Commission

Before the hearing begins, the Local Boundary Commission will spend several hours touring the territory proposed for annexation by automobile. If circumstances permit, the Commission will also inspect the territory proposed for annexation by helicopter.

Of course, rules barring ex parte communication with the Commission as outlined in Section 1.5 will be in place during the inspection of the territory proposed for annexation. Therefore, neither the Petitioner, Respondents, nor any other member of the public may address the Commission regarding the annexation proposal during the inspection.

D. LBC Public Hearing

The date, time, and location of the Local Boundary Commission's hearing on the Homer annexation proposal have not yet been determined. It is anticipated that the hearing will be held sometime between late November and mid-December of this year. The Commission Chairman anticipates that the hearings will begin on a Thursday and that the proceedings will continue, if necessary, through the following Sunday.

The hearing will likely begin on a Thursday at mid-afternoon following the previously noted inspection of the territory by the Commission. If available, the Commission plans to utilize the Homer High School auditorium for the hearing.

Formal notice of the date, time, and place of the hearing will be published as a display ad no less than two columns by six inches in one or more newspapers of local circulation. The initial publication of the notice will occur at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations throughout



Public testimony at a recent LBC hearing.

the community. Additionally, notice will be mailed to the Petitioner and each of the Respondents. Further, DCED will request that one or more broadcasters serving the Homer area make public service announcements of the hearing.

The hearing will begin with a summary by DCED staff of its conclusions and recommendations concerning the pending proposal.

Following DCED's summary, the law allows the Petitioner to make an opening statement in support of its Petition. The Petitioner's opening statement will be limited to ten minutes.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. The testimony must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

No time limit on testimony by the Petitioner is established in law. However, the LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Following the testimony by the Petitioner, Respondents will be allowed to make opening statements and present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. As is required for the Petitioner, the testimony of witnesses for the Respondents must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

Here again, no time limit on testimony by the Respondents is established in law. However, the LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Because the Petitioner bears the burden of proving that its Petition meets the standards and should be approved, the Petitioner has the opportunity to provide sworn responsive testi-

mony to refute testimony of the Respondents. Rebuttal witnesses of the Petitioner must have expertise in matters relevant to the proposed annexation about which they intend to testify.

The laws governing the Commission's hearing make no provision for cross-examination of witnesses by the Petitioner or Respondents. However, a member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

At the conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested

Figure 2-C Draft Hearing Agenda



Members

*Kevin Waring
Chairperson
At-Large*

*Kathleen
Wasserman
Vice-Chairperson
First Judicial
District*

*(Vacant)
Member
Second Judicial
District*

*Allan Tesche
Member
Third Judicial
District*

*Ardith Lynch
Member
Fourth Judicial
District*



Agenda

Homer Annexation Hearing & Decisional Session

- I. Public hearing on the City of Homer's petition for annexation*
 - A. Summary of DCED's reports & recommendations
 - B. Opening statement by the Petitioner (limited to 10 minutes)
 - C. Sworn testimony of witnesses called by the Petitioner
 - D. Opening statement by the Respondents
 - E. Sworn testimony of witnesses called by the Respondents
 - F. Responsive testimony by the Petitioner
 - G. Period of public comment by the general public (limited to 3 minutes per person)
 - H. Closing statement by the Petitioner (limited to 10 minutes)
 - I. Closing statement by the Respondents (limited to 10 minutes each)
 - J. Reply by the Petitioner (limited to 5 minutes)
- II. Decisional session (optional following the hearing)

* 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.

person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment. Appendix C consists of a one-page guide intended to assist the public in increasing the effectiveness of their comments to the Commission regarding the Homer annex-

ation proposal. Copies of this guide were available at DCED's public informational meetings held on July 31 of this year.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes. Next, the Respondents are allowed to make a closing statement not to exceed 10 minutes for each respondent.

Because the Petitioner bears the burden of demonstrating that its Petition should be granted, the City is allowed to reply to the closing statements of the Respondents. The reply is limited to five minutes.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by DCED and others.

In compliance with Title II of the Americans with Disabilities Act of 1990, DCED will make available reasonable

auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact DCED's staff to the Commission at 269-4560 at least one week prior to the hearing.

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



The LBC in decisional session.

E. LBC Decisional Meeting

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

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

F. Reconsideration

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

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

1. there was a substantial procedural error in the original proceeding;
2. the original vote was based on fraud or misrepresentation; or
3. new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was

mailed to the Petitioner, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the Commission. Ten days are allotted for the filing of such briefs.

G. Federal Voting Rights Act Preclearance

If the Commission approves the Petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the Federal Voting Rights Act.

Federal law (43 U.S.C. 1973) subjects municipal annexations in Alaska to review under the federal Voting Rights Act. The Voting Rights Act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of

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

H. Judicial Appeal

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

I. Legislative Approval or Denial

The Alaska Legislature will review the proposed annexation if the City's petition is granted in whole or in part by the LBC. More specifically, if the petition is approved (with or without amendments and/or conditions), the LBC will file a recommendation for the annexation with the next regular session of the Alaska Legislature under the terms of Article X, § 12 of the Constitution of the State of Alaska. The Legislature will then have forty-five days to consider the recommendation. If the Legislature takes no action within the forty-five day

review period, the recommendation is automatically approved. However, if the State Senate and House of Representatives adopt a joint resolution rejecting the recommendation, the annexation is denied.

If the legislature does not deny the Commission's recommendation, the boundary change will take effect on the date that the City provides the LBC staff with documentation that the annexation has successfully passed the requisite Federal Voting Rights Act review. After such documentation is received by DCED, a certificate of boundaries for the City reflecting the annexation will be issued.

Chapter 3

Synopsis of Views Expressed in the Petition, Responsive Briefs, and Reply Brief Concerning the Annexation Standards

This chapter of the Preliminary Report synthesizes the views of the principal parties in this proceeding concerning the application of the formal annexation standards to the pending proposal. It includes the views expressed by the City of Homer in its Petition. It also includes the views of each of the fourteen Respondents. Lastly, the City’s reply to the views of the Respondents is also addressed.

3.1 Compatibility of the Territory and Existing City

A. The Standard

3 AAC 110.100 provides that an area may be annexed to a city only if the LBC determines that it is compatible in character with the annexing city, stating:

... 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 in the Petition

The City’s Petition includes a two-paragraph statement regarding compatibility between the territory proposed for annexation and the area within the existing boundaries of the City.

(at 38) The Petition asserts that compatibility of the areas is demonstrated by the following factors.

- All of the territory within the proposed post-annexation boundaries of the City is within the Kenai Peninsula Borough;
- Population densities within the City and the area sought for annexation are comparable;
- Residential development, land use regulations, and platting requirements within the City are similar or comparable to those in the area proposed for annexation.

All lands within the existing City and in the territory proposed for annexation are governed by the Kenai Peninsula Borough. That area of the territory proposed for annexation nearest the existing City is already populated to a density comparable to the City, and the farther areas are experiencing increasing population and 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.

Residential development in the City is similar to that outside only usually with smaller parcels. Land use regulations and platting requirements are comparable. There are no characteristics of the territory or its inhabitants that are distinguishable from the City or its residents that should be considered as an impediment to annexation. (Petition at 38)

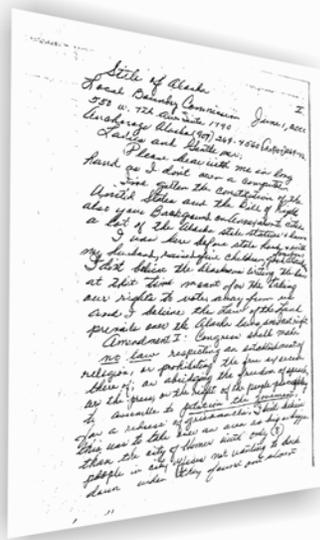
C. Respondents' Views

Doris Cabana. Ms.

Cabana's Brief suggested that the prospect of city taxation renders the area sought for annexation incompatible with the area within the City of Homer.

There are lots of areas open marshy and wet land to pay taxes on which will cost people to sell off to pay taxes and there will be no sale for it if others see that is happening. Many old timers who made this country what it is will lose. (at 6)

Abigail Fuller. Ms. Fuller concedes that the populations of both the area within the existing City of Homer and the area proposed for annexation "are



mostly white and middle class”. However, she expresses the belief that the two areas are distinguished by distinct differences between their populations.

One is urban and one is rural. The urban types rely on city services and expect government to provide not just basics like water and sewer and road maintenance but also libraries, museums, playgrounds, ball fields and all those city things. We rural dwellers are self-sufficient types who provide for ourselves, along with helping our neighbors when needed.

Ms. Fuller’s Brief asserts that she does not require water, sewer, or zoning from the City of Homer.

Mary Griswold. Ms. Griswold’s Brief describes differences between the area within the existing city and area proposed for annexation relating to such indices as:

- population and development densities;
- lifestyle differences;

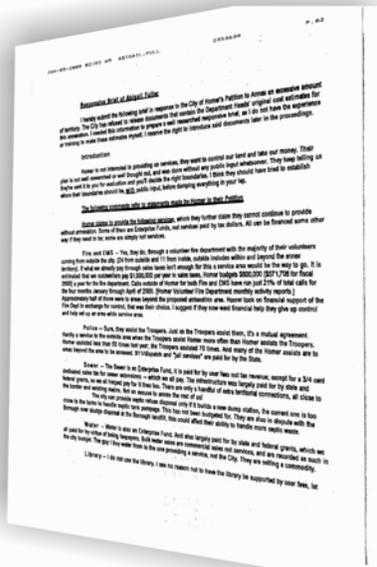
- topographical and associated climatic differences;
- strong and distinct community identities exhibited by certain of the neighborhoods proposed for annexation.

The area proposed for annexation east of Kachemak City is clearly more compatible with the rural area continuing east along East End Road.

The 25 square miles identified for annexation

contains 2,174 parcels compared to 3,363 in the 11 square miles of land within the 21 square miles of Homer’s boundaries. (Homer’s present area of 21 square miles include 10 square miles of tide-lands.) Only 894 parcels are improved in the territory while 1,707 in town parcels are improved. This illustrates a significant difference in population density. The

territory contains twice the land area with about half the development of the city. The taxable value of property within the proposed annexation area is \$126,575,301 compared to \$234,644,954 within the current city boundaries, which confirms the density differences. The city’s anticipated sales tax



revenue from the territory is \$696,163 which is about 15% of the \$3,323,556 in sales tax revenue derived from within the city boundaries. This reflects the significant lack of commercial development within the territory.

Ms. Griswold's Brief concedes that Homer is a regional hub, but suggests that areas within the territory proposed for annexation exhibit distinct community identities.

Although Homer is the commercial hub for the southern Kenai Peninsula, including communities across the bay, the territory proposed for annexation is not of one community with Homer. Fritz Creek and Diamond Ridge area residents have strong attachments to their own identity. All territory proposed for annexation shares a common ZIP code with Homer, but so do communities across Kachemak Bay including Halibut Cove and Red Mountain. Many East End Road residents receive their mail at the Fritz Creek Branch of the U.S. Post Office and identify their return address as such. Elementary school students living east of Spencer Drive at Mile 2 East End Road attend McNeil Canyon School at Mile 12 East End Road. This school is very community oriented, relying heavily on parent participation to make its diverse educational and recreational programs so successful. This parental in-

volvement creates a strong sense of community outside Homer.

Between Homer and the eastern portion of the territory proposed for annexation is Kachemak City, which would become an enclave should annexation succeed. Within its boundaries is a compact urban residential neighborhood with paved streets, municipal wastewater disposal to the Homer system, and contract fire protection through the Homer Volunteer Fire Department.¹³

A subdivision under development will soon add 45 sewer connections to the existing 75 hookups in the Kachemak City system. This community is more compatible with the City of Homer than any area proposed for annexation, yet it has been excluded from the city's expansion plans. Diamond Ridge residents share a sense

of community centered on the historical Crossman Ridge concentration of residential development, which included a school.

A Brief in Response to the City of Homer's Petition to Annex Territory West, North, and East of its Current Boundaries

submitted by
Mary Griswold
P.O. Box 1417
Homer, AK 99603
June 1, 2000

Introduction

The City of Homer is the economic, social, and educational hub for communities on the southern Kenai Peninsula including several across Kachemak Bay such as Halibut Cove and Red Mountain and to a lesser extent Homer, Port Graham, and Soldotna. A vibrant service industry, commercial and sport fishing activity, and one transportation facility at its growing port contribute to its healthy economy. Scheduled and chartered air service make Homer an easily accessible destination. Scheduled and chartered air service improved during the past several years, reducing driving time from Anchorage to less than two hours. The state ferry connects Homer to Soldotna, 14 miles from Homer, as well as to Kodiak, on a weekly schedule and to communities across Kachemak Bay at least twice a year.

Homer boasts an abundance of restaurants, hotels, bars, retail shops, varied medical clinics, grocery stores, building supply companies, churches, recreational facilities, drug stores, auto centers, vehicle repair shops, liquor stores, and landowners to meet the daily needs of its residents, residents of outlying areas, and visitors from near and far.

Kenai Peninsula Borough School District schools including a charter school and a day school are located in Homer as well as the Kachemak Bay Branch of the University of Alaska Anchorage and the Kenai Peninsula Borough's South Peninsula Hospital. These facilities serve people from Homer and outlying areas to the east and across Kachemak Bay.

Griswold Responsive Brief

¹³ Ms. Griswold supplemented this statement by noting that "the responsive brief refers to paved streets in urban Kachemak City. There is one paved road looping north, east, and south for one mile through this suburban community."

Diamond Ridge and Skyline Drive are of a completely different world with much longer winters, greater snowfall, cooler summers, shorter growing seasons. Residents are a breed apart who are tough and self-sufficient to deal with the trials of daily living. When Homer is frequently referred to as the 'Shangri-La of Alaska,' it is doubtful that anyone is including the rugged areas along Diamond Ridge Road and Skyline Drive. (at 8-10)

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation (CCAA). Elements of CCAA's Brief were very similar to statements contained in Ms. Griswold's Brief relating to differences between the area within the existing City of Homer boundaries and within the area proposed for annexation.

CCAA's Brief asserts that the "rural, self-reliant character" of the territory is not compatible with the urban, compact character of the area within the City of Homer. (at 31)

CCAA notes that the territory within the City of Kachemak has been excluded from the area proposed for annexation. CCAA suggests that the area within the City of Kachemak is 'more compatible with the City of Homer

than any area proposed for annexation' and that the City of Kachemak would become an enclave should annexation occur. (at 2)

The area proposed for annexation will never be compatible with the local government from the City of Homer unless annexation is endorsed by voters in the area proposed for annexation, according to the CCAA Brief.

Rather, the Commission will ensure decades of resentment that will make the area difficult to effectively govern. The petition has sparked sustained and public opposition that will continue long after the Commission forces expansion upon an otherwise properly functioning regional governmental system. (at 2)

CCAA's Brief asserts that significant portions of the area within the current jurisdiction of the City of Homer remain undeveloped, and that portions of the area proposed for annexation lack population density commensurate with City government.

The transition from urban to rural takes place well within the current City boundaries. There is ample room for development expansion within the current boundaries. The development density outside the present City boundaries is significantly less than that within downtown

Homer. The contrast in development density is very vivid along East End Road in the vicinity of Bear Creek Drive in Kachemak City. Development east of this neighborhood is remarkably less than to the west of this area. The area proposed for annexation east of Kachemak City is clearly more compatible with the rural area continuing east along East End Road.

CCAA's Brief contends that the area proposed for annexation is excessively large and too lightly developed to justify annexation.

On a per capita basis, taxable property outside city boundaries has a value of \$46,535. Taxable property inside City boundaries is valued at \$56,486, a difference of 21%. This demonstrates a significant difference in the nature and pattern of development outside City limits.

The CCAA Brief asserts that a significant lack of commercial development within the territory proposed for annexation is demonstrated by the City's estimate of \$696,163 in anticipated sales tax revenue from the territory proposed for annexation. CCAA notes that such sales tax revenues would comprise only about

15% of the \$3,323,556 in sales tax revenue derived from taxable transactions within the City's boundaries.

The Respondent contrasts the higher population density within the city "core" with that of the area proposed for annexation.

The population density on land within existing City limits is 377 per square mile. The population density on land within the area proposed for annexation is 108 per square mile.

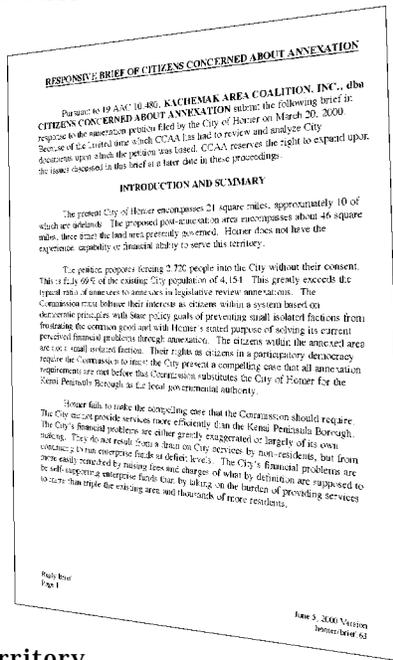
The CCAA Brief also contrasts land use patterns within the city "core" with that of the area proposed for annexation.

The average parcel size of land within the City of Homer is 3.75 acres. The average parcel size of land in the area proposed for annexation is 7.17 acres. There are some large parcels within Homer City limits that distort the average; including Beluga Slough, Beluga Lake, Beluga Wetlands, and the Airport. Most residential lots are 1/2 acre or less within Homer. There are multiple large vacant tracts of land within the area proposed for annexation. (at 3)

CCAA's Brief contends that lifestyle differences exhibited between residents of the area proposed for annexation and residents within the City of Homer render annexation inappropriate.

CCAA's Brief suggest that the topographical differences exhibited between portions of the area proposed for annexation and the area within the City of Homer is a factor contributing to the incompatibility.

Both the City and the territory contain very salable land for residential and commercial purposes. However they attract very different buyers. The City is generally attractive for buyers seeking an urban, convenient location with amenities while the territory attracts buyers looking for a rural, self-sufficient, more private setting afforded by larger lots interspersed with more vacant land. Residents in the territory may be forced to abandon their rural lifestyle and subdivide their large parcels to pay City-level property taxes. Assessments for road and utility improvements will further burden land-rich but cash-poor land-owners. Conversely, if differential property taxes are instituted, the City's property tax revenues projected in the annexation will be significantly reduced.



The territory proposed for annexation appears much more compatible in character with the area inside the current City boundaries on a map than it does on the ground. Grades and other topographical features and the general development pattern in this area suggest that the area is not likely to be a truly integral part of the City and its service delivery systems for a long time. Most residents try to limit their trips

town because of wear and tear on their brakes and tires going down the hill. Ears pop when approaching the bottom. Snow machines, four wheeling, loose dogs, saw mills, gravel stock piles, stacks of firewood, old vehicles, farms, pastures with horses, are more consistent rural features than found in town. The easternmost portion of the territory is continuous with Homer only across the face of a steep bluff, in reality it's residents drive through Kachemak City to get to Homer. Exhibit 37. Topography promotes strip development along East End Road because developable land is re-

stricted to that between bluff and bay. Extending City boundaries will encourage rural sprawl because people and businesses seeking a rural, less regulated setting will buy and develop property beyond the new limits.

Strong neighborhood identities in the area proposed for annexation demonstrate that portions of the area sought for annexation are not compatible with their inclusion in the City’s jurisdiction, according to CCAA’s Brief.

In language virtually identical to that contained in Ms. Griswold’s Brief, CCAA’s Brief questions the motives resulting in the exclusion of the area within the City of Kachemak from the area proposed for annexation, in light of the addition of 45 sewer connections to the existing 75 hookups in the Kachemak City system.

Distinctly contrasting microclimates resulting from the topography of the area diminishes the compatibility of portions of the area proposed for annexation with the City, according to CCAA.

Even the climate in much of the territory proposed for annexation is dramatically different from that of Homer. The Homer Chamber of Commerce sponsored its annual Homer Spring Clean-up Day on April 22 this year. Local citizens walk the roads picking up trash along the

shoulders and in the ditches to clean things up before the grass grows to cover it up. Prizes are offered for groups or individuals collecting the most trash. Spring comes much later to Diamond Ridge and Skyline Drive; these areas are

still covered with snow. Residents in this area cannot participate in this community event in their own neighborhood as most participants do.

“The City is generally attractive for buyers seeking an urban, convenient location with amenities while the territory attracts buyers looking for a rural, self-sufficient, more private setting afforded by larger lots interspersed with more vacant land.” **CCAA Responsive Brief**



Portion of the territory proposed for annexation.

CCAA’s Brief contends that residents of the area proposed for annexation will grow more philosophically and socially incompatible with the City of Homer should annexation occur without a vote demonstrating support for the boundary change by residents of the area proposed for annexation.

To blithely assume those forcibly annexed will meekly go along with the government that has been forced upon them is to seriously underestimate the character of local residents impacted by the Commission’s action. There will be nothing compatible about an expanded Homer should expansion be accomplished by Legislative review.

Those opposing annexation are not a small isolated population. Exhibits 41, 42, 43, 44, 45, 46. Nor are they anti-government. They have the government they want, the Kenai Peninsula Borough. Taking their government away from them will not create compatibility within Homer. Better alternatives are available than a hostile government takeover. Allow the citizens to make their own choice. (at 17-19)

Objective Annexation

Review. OAR’s Brief suggests that the greater Homer area’s population is relatively transient.

Sociological studies provide detail to support the common knowledge that the Homer City population is less stable than that of the territory. A study done for the City concluded that 50% of its citizens had lived here only five years. The City

has by far the most rental housing and there are a great number of storage units available inside and out. (at 10)



Raven Ridge

Homeowners' Association.

The Raven Ridge Homeowners' Brief states that major cultural, geographical, and climatic differences between the city and the territory proposed for annexation render the areas incompatible.

The city has a land base of 10 square miles with a population of 4,154 or 415 people per square mile. The territory has a land base of 25 square miles with a population of 2,687 or 107 people per square mile. Clearly, a population density difference by a factor of 4 suggests there may be cultural and socio-economic differences.

Why Homer developed within its present boundaries is easily understood by standing on the steps of City Hall and looking to the northwest. A geologically active, five hundred-foot high, escarpment stares back at you. This escarpment parallels the city limits for about 5 miles. In that 5-mile distance the escarpment is scaled by only 3 roads. The escarpment, or bluff, is a

major obstacle to the orderly development of a transportation grid beyond the core of the city.

The climate of the hills above Homer is much different than that of the city. According to USDA-Natural Resources Conservation Service (NRCS) records there were 52 inches of snow on the ground on March 30, 2000 at the Bridge Creek snow survey course, elevation 1,300 feet. The snow pack in Homer was 6 inches for that period. The implications for snow removal and road maintenance are obvious. Downtown Homer enjoys a moderate climate on predominately south facing slopes at elevations from sea level to about 500 feet. The hills above Homer, which include the majority of the territory, have a much harsher climate. The slopes include all aspects. The elevation, of most of the populated area, is approximately from 700 to 1,400 feet.

The sparse population density, restricted transportation corridors, geographic obstacles, and harsh climate constitute major issues for consideration regarding expansion of city boundaries. (at 3-4)

Peter Roberts. Mr. Roberts' Brief asserts that the area proposed for annexation is incompatible with the area within the existing boundaries of the City of Homer because of topography, development patterns, and lifestyle differences. He contends that annexation would exacerbate such incompatibility.

On the compatibility of the two areas a number of issues arise; geographically much of the annex area is very different, the climate and associated problems, land use patterns, management and problems are very different - and socially very different. Land areas presented by the city are in fact misleading most of the 21 square miles of the current city is below mean high tide, there is only about 10.1 square miles of dry land but all the annex area is "dry". What is proposed is an increase of three times the size of the city.

Much of the present city is not developed (maybe as much as 2 square miles) or not habitable (about two square miles of Beluga Slough). With a population of 4200+ concentrated in about 6 square miles their population density is approximately 700 people per square mile, Kachemak City with 410+ has about 205 per square mile, and the area being considered has 2700+ people has 108 spread around with a few areas of concentration.

Probably most of this area has less than 75 people in any section. And some sections have as few as 10 or 15 residents.

"Snow machining, four wheeling, loose dogs, saw mills, gravel stock piles, industrial, storage of boats, trailers, old vehicles, stuff, heavy equipment, and more is typical but not in town." **Peter Roberts**
Responsive Brief

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 May 31, 2001

**RESPONSIVE BRIEF
 IN OPPOSITION
 TO HOMER ANNEXATION**

Narrative

INTRODUCTION:

This is a response in OPPOSITION to the City of Homer's 1/13/01 petition to Annex areas surrounding the City. We will show that it is not fair, not good government or in Homer area citizens best interests. This is an issue of Taxes, Regulation, and Services (which we have little choice of ever seeing and have not asked for any more - transportation and water deals with state). What other options has the city investigated to solve their need for revenues - increased property tax, has not been publicly debated. The areas in question are very different in land use and the people who choose to live there.

It would appear that money will be approved off the center of the city to take care of city infrastructure which is burning at the seams, to support the REDUCED CRUISE they claim to have; they have had a surplus for years. And they have continuously under funded services. Is the proposed plan of annexation solely based on subsidizing existing city services - not think so. The city has a very poor business delivering new services within city limits - they have 2.7 D's from the early 90's they can not fund and will not be able to fund in the foreseeable future. They can use "manage their" "entiretime" funds to hold a coin and cover depreciation. They have made agreements in the past to deliver services, that they can not fund, that are out of the city, that are strictly commercial and with the volume of dependents to be held come to mean the city. And now they want to "blame" us the annexes and make us pay. The proposition made in the petition make that look like a win-win, but under close scrutiny that will be a financial loss for the city, very likely less service for current city residents and no improvement for us (than our current government, the Homer Borough Borough provides. We will show that the current and financial assumptions used do NOT work and that the city has no plan of delivery - not even a "transition team". And the city seems to be afraid to expose that figure and assumptions to scrutiny - obviously, they do not work! They do not have the support of city residents (OAR phone vote 4/30/01 many businesses, over 50 CCA contacts) and nearly everyone out in the annex area - this has already caused great discord and the anger that will last for years, splitting the community. The people here really, really do not like the way this was done - and continues to be by force, instead of leading by good example the city fathers that they must use the wage. This is a budget driven action and we should not be expected to make up the man's slack. Homer needs to learn to live within their budget. The procedure used, unjust local hearings, attempting to keep us in the dark with no VOTING plan using a democratic system. And is very poor government. We do not want to be in or participate in the City (government) of Homer - and that is our right.

On health and safety issues the city has made claims of sewage system problems, Pesticide Usage (later it actually a DOT Blue plant handling area, NO SCHEDULING, RECREATION ALLOWED) pollution from annex areas in taking and they have NO plans to back up. There is no public record, data to support these conditions - not from DEC, Cook (in the Keeper of an environmental "watch dog" here), DEC has no record or data on their sewage systems in this area and DEC themselves obtain signatures (imagined) from city residents. This seems to be a fabrication problem. There does appear to be a health problem with

The boundaries chosen do not work on the east side of Kachemak City, it divides the bench and neighbors unrealistically. The maps the city provided are very detailed but somewhat misleading about all the subdivisions surrounding the city and through the area, many are merely paper plats - no roads, no improvements, many not even staked.

Many of the activities mentioned above are already against the law in Homer. Many of activities are purposely located out of the city and in conflict with the political mentality and laws of Homer. A great many of the people in the area live outside the city because they did NOT WANT TO BE IN ANY CITY, for more choices and less bureaucratic control over their lives and property. Also there has been no hue and cry from the area out of the city for control, services and management of our resources - looks like a tax grab to us! They will not be able to bring meaningful service to most of the annex area. (at 2)

The territory in question is not compatible in character with the City of Homer, which is distinctly URBAN in character. The area being considered for annexation is primarily RURAL WITH DIFFERENT LAND USE and people with very different life styles.

Steve and Margret Seelye.

The Seelye Brief suggests that differences in topography and development patterns render the area proposed for annexation incompatible with the area within the existing boundaries of the City of Homer.

When describing the Skyline Drive/Diamond ridge areas, the City petition states: 'This area is well forested with beetle-kill quite evident. Trails and recreational uses are found throughout this area.' Much of the recreational use referred to is snowmachining, hiking, hunting and backcountry skiing. Elevations of 1,000' to over 1200', heavy snowfalls and the large, undeveloped tracts of land found there make it ideal for such activities. The City's plan to purchase two snowmachines and two ATV's with trailers for the police department is evidence of a radical difference in the character of much of the territory they would be serving within the new boundaries. (at 2)

Bill Smith. Mr. Smith's Brief suggests that the appropriate post-annexation eastern boundary of the City should extend to Fritz Creek.

The convenience of the East-West section line boundary only approximates these needs. Reviewing the development along East Road as far as Fritz Creek, there is a clear patchwork of larger parcels being divided into smaller parcels for subdivisions. There is a fairly consistent and significant population density that has developed in proximity to the roads all the way to Fritz Creek at 7 mile. Fritz Creek marks the departure from the lowland bench with view property to a forested area with a climbing roadway. There is an existing Fire station at 3 mile East Road, placing Fritz Creek within the magic 5-mile radius. Any logical boundary would include lands from the bluff line to the bay and not cut through neighborhoods as proposed. There are two logical stopping points for an eastward boundary, Fritz Creek or the east side of Kachemak City. Development will continue along East Road, so a new City boundary stopping at the east of Kachemak City would serve to duplicate the development that has occurred in the boatyard triangle area. Fairness and an honest appraisal of community compared to neighborhood would dictate Fritz Creek as the Eastern boundary. (at 4)

He asserts that the post-annexation northern boundary on the west side should encompass a developed area north of Diamond Ridge because he considers that neighborhood to be similar to the settlement along East Road but lacking “any social center and few non-retail commercial uses.”

There is ready access to the City along State maintained roads which are slated for improvement. This area should carry a larger share of funding community services. Between this settlement and the existing City lie largely undeveloped lands. These areas are important recreation areas and are seeing subdivisions being developed. The development pressure will continue to develop over time. (at 4)

Mr. Smith asserts that annexation of the larger parcels on the eastern end of the northern portion of the area proposed for annexation would not create insurmountable problems, in terms of City service delivery.

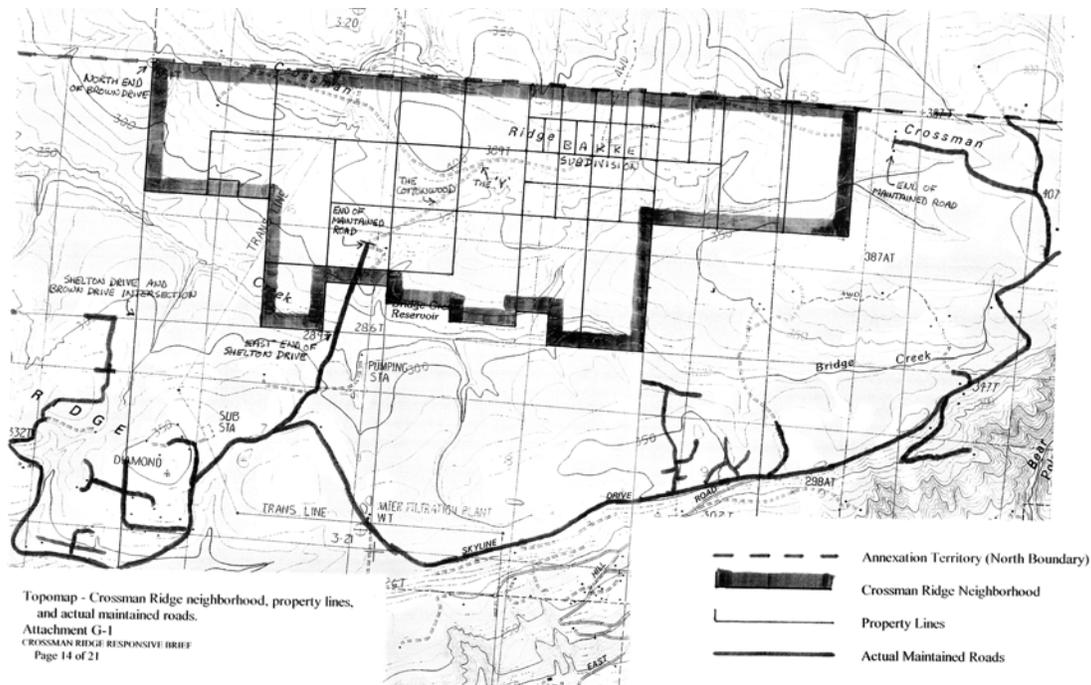
These estate size parcels mean low population density with attendant low impact on City resources. Scheduled State road improvements to Skyline Drive will enhance access to the City. It is clear that these higher elevations experience harsher weather and more road problems than down low, but many

“There are two logical stopping points for an eastward boundary, Fritz Creek or the east side of Kachemak City. Development will continue along East Road, so a new City boundary stopping at the east of Kachemak City . . . Fairness and an honest appraisal of community compared to neighborhood would dictate Fritz Creek as the Eastern boundary.”
Bill Smith Responsive Brief

residents perform the daily commute with relatively few days lost. (at 5)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief suggests that although Crossman Ridge vicinity is not compatible with the area within the existing boundaries of the City of Homer, much of the remainder of the area sought for annexation is “relatively compatible in character” with the territory within the existing jurisdiction of the City.

However, the Crossman Ridge area is not compatible in character with the city of Homer and much of the net annexation territory. The Crossman Ridge population density is less than 2 percent of the city of Homer population density. Unlike the city of Homer and much of the



Crossman Ridge Neighborhood and surrounding area.

52

net annexation territory, the Crossman Ridge neighborhood has had an overall population decline over the last sixty years. The 1941 Crossman Ridge area population is estimated to have been over 45 people. During the late 1930s, there was significant enough of a population to warrant the construction and opening of a territorial schoolhouse. Homer Heights Territorial School construction was completed on Crossman Ridge December of 1939 and opened for classes January of 1940 with 10 pupils in attendance.

In April of 2000, the Crossman Ridge neighborhood population is 15 people, one of which is school age. The Homer Heights school (structure is still standing on Crossman Ridge and in use as a residential dwelling) was closed since 1946 due to lack of significant student popu-

lation. Population growth over the past ten years has been slight and is reasonably anticipated to remain slight over the next ten years. Over eighty percent of the Crossman Ridge acreage that was developed during the 1930s and early 1940s has reverted back to undeveloped wild lands. Crossman Ridge population and land development is reasonably anticipated to always remain considerably less than that of the city of Homer and the net annexation territory.

Unlike the city of Homer and most of the net annexation territory, there is no noticeable indication of existing or reasonably anticipated development of commercial activity or commercial land use within the Crossman Ridge neighborhood.

The average Crossman Ridge neighborhood parcel size is over four times larger than that of the net annexation territory and over sixteen times larger than that of the city of Homer. (at 9-10)

D. Views Expressed in Petitioner’s Reply Brief

The City’s Reply Brief reaffirmed the view expressed in its petition that the territory proposed for annexation is fully compatible in character with the areas within the existing boundaries of the City.

[THE] annexation territory is so compatible in character with Homer as to form virtually one community. People from the annexation territory work in Homer, go to church in Homer, and do business at Homer businesses. The children from the

annexation territory go to the same schools as Homer children, play on Little League and hockey teams together, and share the same cultural experiences as they grow up. Residential subdivisions inside the borders of Homer are indistinguishable from residential subdivisions just across the City boundary. The City and the annexation territory are connected by a web of roads, including numerous subdivision streets that transect the City boundary. In driving from the City into the annexation territory, one cannot visually distinguish the boundary between the City area and the annexation territory. Of course, one must acknowledge an exception to that generality in the case of East End Road, where numerous businesses have been established just outside the City limits, forming a visual line of demarcation. However, even that tends to show the compatibility of the areas — both include large residential areas, as well as commercial and light industry areas. Land use and platting in the annexation territory are highly compatible in character with that of the City, especially in the large rural residential zone of the City that abuts most of the annexation territory. Subdivision development and lot sizes are quite similar in the annexation territory and the City’s rural residential zone.

“Residential subdivisions inside the borders of Homer are indistinguishable from residential subdivisions just across the City boundary. The City and the annexation territory are connected by a web of roads . . . one cannot visually distinguish the boundary between the City area and the annexation territory.” **Petitioner’s Reply Brief**

The Petitioner discounts assertions that there is any inherent incompatibility between residents of the area

proposed for annexation and the people within the City of Homer, suggesting that history demonstrates otherwise.

Although the acrimony that surrounds this annexation proceeding might suggest an inability to get along, that has not been the case in the past. The folks of the City and of the annexation territory have worked together harmoniously on many things. A very significant illustration of the compatibility, indeed interconnectedness, of the annexation territory and the City is the fact that the City has for many years voluntarily included on a number of its advisory boards and commissions nonresidents of the City. These commission members do not necessarily reside in the annexation territory (they might be from more distant reaches), but certainly some of the commission members are or have been residents of the annexation territory. One notable example is Sallie Dodd-Butters who recently resigned her position on the City Parks and Recreation Commission in protest over this annexation proceeding. At least five standing City boards and commissions are authorized by City Code to have one or more nonresidents as members: Li-

brary Advisory Board (one non-resident authorized, HCC 1.48.040); Port and Harbor Advisory Commission (two non-residents authorized, HCC 1.72.010); Parks and Recreation Advisory Commission (three nonresidents authorized, HCC 1.74.010); Advisory Planning Commission (one nonresident authorized, HCC 1.76.010); and the Economic Development Advisory Commission (two non-residents authorized, HCC 1.78.010). This inclusion of non-residents on the City's formal boards and commissions shows not only compatibility, but even a desire by the City to include nonresidents and a desire by the nonresidents to participate in matters affecting the general well-being and common interests of the community that already exists.

The Petitioner maintains that in the context of city governments in Alaska, the area proposed for annexation is relatively densely populated.

The population density of the annexation territory is approximately 105 persons per square mile. If the annexation territory were incorporated as a separate city, this density would make it more densely populated than approximately 64% of Alaska's incorporated cities, putting it at approximately 52nd out of 146 cities. In comparison, the current population density of the City of Homer is approximately 378 persons per square mile. See Exhibit 70 attached. The ratio of the City of Homer population to the annexation territory is 3.6:1. This is a very reasonable

"... the City has for many years voluntarily included on a number of its advisory boards and commissions nonresidents of the City." **Petitioner's Reply Brief**

ratio when considering the annexation territory is largely rural residential and has virtually none of the high-density urban areas present in the existing Homer City center. After annexation, the estimated City population density of 150 persons per square mile would make Homer the most densely populated city in Alaska with a total area exceeding 40 square miles, more densely populated than Bethel, Kotzebue, Petersburg, Wrangell, Unalaska, Valdez, Skagway, and 16 other cities of at least 40 square miles.



Bridge Creek Reservoir, the City of Homer's fresh water supply.

The City's Reply Brief contends that land use and development patterns demonstrate that the territory proposed for annexation "is, without question, suitable for reasonably anticipated community purposes."

It already has a very significant residential population; thus proving it is suitable for community residential purposes. There are currently commercial businesses, both in the East End Road area and the Baycrest Hill/Sterling Highway areas of the annexation territory, thus proving its suitability for community business purposes. The area already contains the City's fresh water supply (Bridge Creek Reservoir), thus establishing the suitability of the area for community water supply purposes. The area is already interlaced with roads, electricity, and telephone

service. There can be no question that this area, as a whole, is suitable for community purposes. (at 55-57)

3.2 Overlapping Boundaries

A. The Standard

(e) If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat the annexation petition to the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city.

The territory proposed for annexation does not overlap the boundaries of an existing organized borough or city. Alternatively, the brief also addresses that circumstance as required by 3 AAC 110.130(e).

B. Views Expressed in the Petition

The Petition states that no overlapping municipal boundaries would result from annexation.

The City of Homer and the territory to be annexed presently are located within the Kenai Peninsula Borough all will continue to be located within the Borough following annexation. The territory does not overlap the boundaries of another City. (at 41)

C. Respondents' Views

The Crossman Ridge Neighborhood. The Crossman Ridge Brief observes that the proposed boundaries do not overlap the boundaries of an existing borough or other city. (at 11)

3.3 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:

3 AAC 110.130(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 in Petition

The City's Brief states that the territory proposed for annexation is contiguous to its existing corporate boundaries. It also provides the City's rationale for excluding the City of Kachemak from the territory proposed for annexation.

The territory proposed for annexation is contiguous to the City's present corporate boundaries. However, Kachemak City, a Second Class incorporated City, will now become an enclave in the eastern portion of the new City of Homer boundaries. Kachemak City was incorporated two years before the City of Homer and, historically, its residents have enjoyed their independence from their larger neighbor. Kachemak City contracts with the City of Homer for fire and waste water services. It has likewise often used its state capital grant to fund projects in Homer that its residents often use, such as the library, Little League facilities, and the like. The relationship between the two cities is good and workable. To include Kachemak City in the present legislative annexation plan would probably create problems that would doom its success. The City of Homer believes the joining of the two municipalities is probably eventual as it is illogical to duplicate needed municipal services and facilities, but it should only be at Kachemak City's request. By the Boundary Commission and the State Legislature permitting this enclave to exist will not be harmful to either municipality and can be addressed in the near future. (at 40)

C. Respondents' Views

***Mary Griswold.* Ms.**

Griswold asserts that topography and the configuration of the City of Kachemak makes portions of the area proposed for annexation

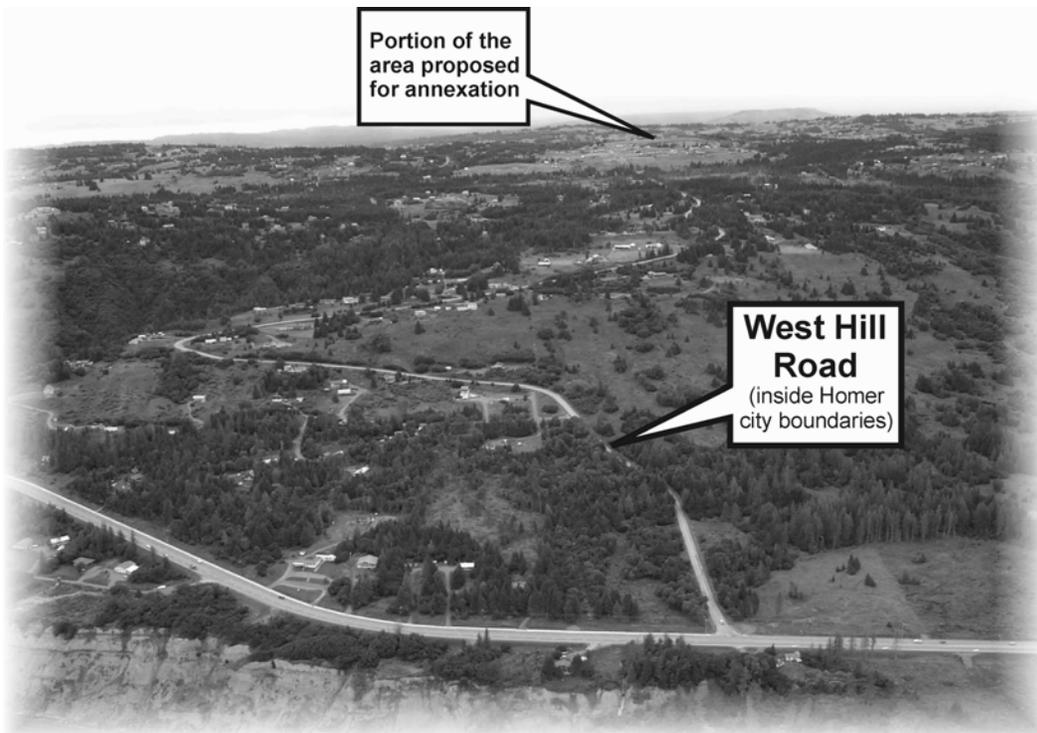
noncontiguous, in practical terms, to the area within the existing boundaries of the City of Homer.

The portion East of Kachemak City connects only across the face of a steep bluff, which prohibits providing services except through Kachemak City. Homer should absorb Kachemak City before trying to annex the areas East of same. All of the rest is also separated from town by bluff, although not as steep and there are a couple of roads that provide access to the top.

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA's Brief questions the Petitioner's rationale for excluding areas - - - characterized as relatively more urban than portions of the area proposed for annexation - - - from the proposed boundary change. The excluded areas were described by CCAA brief as "east of Kent Street".

Yet, these areas are quite similar in character, population density, and lifestyle to the areas within the proposed annexation. No explanation as to why they were excluded has been provided by the City. All the services the City claims to provide to the proposed annexation area are also provided to the areas excluded from this petition. The logical conclusion is



West Hill Road connects the City of Homer and portions of the territory proposed for annexation.

58

that the City recognizes that this is rural territory. Yet rural lifestyles do not begin by magic at the section line chosen by the City for its proposed boundary. In fact, the transition from City to country occurs before current City boundaries are crossed. Also the proposed boundary in this area cuts through the middle of existing subdivisions. **This area is not really contiguous to the current City.** The only connection on the map is, in reality, across the face of a steep bluff that prohibits any provision of service. Access from Homer to this portion of the proposed territory is through Kachemak City. Exhibit 37. (at 25)

The territory is contiguous to the City only on a map. Its topography will severely restrict

orderly development, utility extension, and road construction. (at 31)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief depicts the area proposed for annexation as “cartographically contiguous” to the current City of Homer boundaries, but contends that topography and winter weather conditions render the area practically discontinuous for much of the year.

D. Views Expressed in Petitioner’s Reply Brief

The City’s reply brief states that the question of whether the area proposed for annexation is contiguous with the City of Homer has “not been contested”. (at 58)

3.4 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.” (3 AAC 110.910)

B. Views Expressed in the Petition

The Petition asserts that annexation will not deny any person the enjoyment of any civil or political right because of race, color, creed, sex or national origin.

All elections within the City of Homer, whether or not this annexation is approved, are done on an at-large basis. There exist no voting districts that might pose a potential for gerrymandering or other manipulation to deny any person enjoyment of any civil or political rights.

The present pre-annexation situation 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 and those outside the City who have no vote in City elections - even though City decisions often directly affect their lives. Annexation will bring both groups into parity, affording all residents equal suffrage, voice and vote. (Petition at 40)

C. Views of the Respondents

Steve and Margret Seelye.

The Seelye Brief characterizes involuntary municipal boundary change as a violation of personal rights.

The forced annexation of any territory against the wishes of the majority of those to be annexed as well as the majority of the current residents of the petitioning municipality deprives all of those involved of their right to self determination. (at 3)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief expresses a belief that the city of Homer has no

intention of denying any person of any civil or political rights, because of race, color, creed, sex, or national origin.

D. Views Expressed in Petitioner’s Reply Brief

Since Federal Voting Rights Act concerns were not substantively raised by the Respondents or correspondents, the City’s Reply Brief did not address the matter.

3.5 Exclusion of Large Unpopulated Regions

A. The Standard

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

3 AAC 110.130(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 3 AAC 110.090 - 3 AAC 110.130.

Voting Rights Act of 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress [p*538] assembled, That this Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 3.

(a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of [p*339] tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting

B. Views Expressed in Petition

The Petition indicates that only populated areas are sought for annexation.

All of the area in the post-annexation boundaries are populated. The boundary line is drawn to exclude large portions of the North Fork area to the northwest and the Caribou Hills area to the northeast. (Exhibit I, page 41)

C. Respondents' Views

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA's Brief suggests that the proposed annexation would extend City jurisdiction beyond the City's capability to provide essential services and that significant vacant areas are included in the territory proposed for annexation.

The City of Homer is over-reacting to limited and scattered development outside its boundaries that is not likely to threaten its dynamism or economic health for decades to come. (at 3)

There are multiple large vacant tracts of land within the area proposed for annexation. (at 3)

The asserted conflicts in the Diamond Ridge area supposedly involve logging, subdivi-

sion development and roads (presumably the building of roads). The fact that logging is occurring in this area is actually an excellent example of why extension of City government is inappropriate. CCAA suggests that there is not a single commercial timber harvesting operation within the boundary of any City in Alaska. This type of activity occurs in rural areas on large tracts of land within Borough boundaries. (at 8)

... the bluffs, canyons, creeks, and steep hillsides will severely restrict orderly development, utility extension, and road maintenance and construction. (at 25)

Objective Annexation Review. OAR's Brief states that little of the area proposed for annexation is in the same drainage as the City and that some of the territory sought for annexation is unpopulated. (at 2)

Peter Roberts. Mr. Roberts' Brief contends that sparse population and inaccessibility of portions of the area proposed for annexation render such areas unsuitable for inclusion within the City's jurisdiction.

A large (3-5 square miles) area up near the reservoir is practically a road-less area with seasonal trails would get no service at all, not even emergency service. (at 5)

Steve and Margret Seelye.

The Seelye Brief contends that the Petitioner has not demonstrated that the criteria is satisfied by the proposed annexation.

To simply state 'All of the area in the post-annexation boundaries are populated' does not provide any useful information. The City should be required to show a minimum density of population or be able to substantiate the 'impending development' claim. (at 3)

Bill Smith. Mr. Smith suggested an alternative configuration for the proposed annexation.

In the central area of the northern proposed annexation line lies Crossman Ridge and the city reservoir and watershed. The City now possesses extra-territorial powers to protect the watershed through zoning. The topography of this area and the sparse population indicate little impact on the operation of the City. I suggest the northern line, westward from East Hill Rd to the Sterling Highway, be re-drawn just north of Diamond Ridge Rd. to include the developed areas and those immediately adjacent. The line should follow Diamond Creek to the inlet. (at 5)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief suggests that the proposed bound-

aries of the city do not appear to include entire geographic regions or significantly large unpopulated areas. (at 11)

D. Views Expressed in Petitioner's Reply Brief

The City's Reply Brief asserts that the post-annexation boundaries would compare favorably to other cities in Alaska in terms of the correlation between the size of the City's jurisdiction and the resident population and development within the City.

If the annexation is approved, Homer's new population is estimated to be 6,841, which would rank it as the 5th most populous city in Alaska. Its new land area will be 36.58 square miles and its total area (land and water combined) will be 46.58 square miles. These figures yield a post-annexation population density of 187 persons per square mile if only the

"I suggest the northern line, westward from East Hill Rd to the Sterling Highway, be re-drawn just north of Diamond Ridge Rd. to include the developed areas and those immediately adjacent. The line should follow Diamond Creek to the inlet." **Bill Smith**
Responsive Brief

“Homer’s anticipated post-annexation population density will be greater than the average of Alaska’s ten largest cities.”

Petitioner’s Reply Brief

land area is considered, or 147 persons per square mile if both land and water areas are considered.

These densities are quite comparable to the population densities of Alaska’s ten most populous cities (not including Homer). The average land area of Alaska’s ten most populous cities is 47.9 square miles. The average combined land and water area of the ten cities is 65 square miles. The total population of the ten cities is 81,764, yielding an average population of 8,176. See Exhibit 69. Therefore, the average density of the ten cities is 171 persons per square mile when land only is considered, or 126 persons per square mile when land and water are both considered. Thus, under either method of computation, Homer’s anticipated post-annexation population density will be greater than the average of Alaska’s ten largest cities.

It is entirely to be expected that the population density of the annexation territory varies from place to place within the territory. However, the fact that some spots are uninhabitable because of terrain, or that other areas are less densely populated for other reasons (e.g. Crossman Ridge) does not indicate the presence of large areas of unpopulated land. When compared to similar cities of large population, Homer will be more densely populated than the average, indicating that by Alaska standards excessively large unpopulated areas are not being included.

Another indicator that excessively large areas of unpopulated land are not being included is the level of development within the annexation territory. The per capita assessed value of real and personal property in the current City limits is \$56,487, while the per capita assessed value in the annexation territory is \$47,107. These figures compare very favorably.

They show that the development of the annexation territory is very significant, especially when one takes into account that most of the commercial and business properties are located in the City, while the annexation territory is predominantly residential on larger lots and parcels. (at 58-59)

3.6 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:

3 AAC 110.120. POPULATION.

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission 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.

B. Views Expressed in the Petition

In its Petition, the City's position that this standard is met is supported by the following statement.

The population within the current boundaries of the City is estimated to be: 4,154. The population of the territory proposed for annexation is estimated to be: 2,687. The total population of the City of Homer, should annexation be granted, would be 6,841. 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. (at 40)

C. Respondents' Views

Alaskans Opposed to Annexation. AOA's Brief suggests that the population within the existing City of Homer jurisdiction is relatively unstable, in terms of duration of residency.

Sociological studies provide detail to support the common knowledge that the Homer City population is less stable than that of the territory. A study done for the City concluded that 50% of its citizens had lived here only five years. The City has by far the most rental housing and there are a great number of storage units available inside and out.

Mary Griswold. According to Ms. Griswold, election records demonstrate that the population of the Homer area is transient to a relatively high degree and that much local employment is seasonal.

In March 2000 the Kenai Peninsula Borough mailed and faxed 6,277 ballots for a special by-mail election addressing creation of the proposed South Peninsula Recreation Service Area. These ballots were sent to Homer and Kachemak City residents and residents of the surrounding area somewhat larger than that encompassed by this annexation proposal. 1,378 of these ballots were returned to the borough by the Post Office as undeliverable. Borough clerk Linda Murphy commented in an April 10, 2000 KBBI interview that the southern peninsula has a high transient population.

According to data released by the Alaska Department of Labor and Workforce Development, unemployment on the Kenai Peninsula fluctuated from a high of 16.3% in February, 1999 to a low of 7.5% in August, 1999, compared to a high of 5.7% and low of 3.7% in Anchorage in the same period. A similar fluctuation in the area's workforce employment rate appears in preceding years. The Department of Labor does not breakdown its statistics to a level more detailed than the Kenai Peninsula so statistics are not available specifically for the greater Homer area. Tourism and fishing activities significantly increase employment opportunities in the summer months and create a corresponding rise in population. (at 12)

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation. The CCAA Brief asserts that the

population pattern within the area proposed for annexation is substantially different from that within the City of Homer.

Homer contains a compact urban core of residential and commercial development surrounded by more sparsely settled areas near its boundaries. The outlying areas proposed for annexation contain primarily sparse residential development with a pronounced rural character.

There is a substantially different population density and an average property parcel size twice that of Homer. This population density is similar to many areas within a borough but outside the boundaries of any City. (at 2)

Homer's population is 4,154. The estimated population of the area proposed for annexation is 2,720.¹⁴

The CCAA Brief notes that the area within the current jurisdiction of the City of Homer is significantly smaller than the more than 25 square mile area proposed for annexation.

¹⁴ See DCED's discussion of population and population densities in Chapter 4.

Peter Roberts. Mr. Roberts' Brief contends that the standard is not satisfied because the disparity in population densities exhibited by the City and the area proposed for annexation would disrupt municipal service delivery and such disruption would generate political disharmony.

... for the sole purpose of TAX collection the population works - but for a city that provides for its valued citizens this will be a disaster because they WILL NOT be able to provide services to a spread out and much lower population density (10 - 15% of the city's pop.). Again this is about taxes for the core of Homer. Social and political stability will be down the tubes with an annexation. (at 8)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief suggests that the neighborhood lacks population to support extension of City of Homer jurisdiction to the Crossman Ridge area.

The Crossman Ridge neighborhood, unlike the city of Homer and much of the net annexation territory does not have sufficient population to reasonably

support the extension of city services. Population stability of the Crossman Ridge area has not been determined at this time. (at 10)

D. Views Expressed in Petitioner's Reply Brief

The City's Reply Brief discounts assertions that the population within the proposed post annexation boundaries of the City is excessively sparse or unstable to satisfy the standard.

With an expected population of 6,841, and a 30 year history of steady growth in the City, see Exhibit 71, there cannot be any serious question about whether the population is large and stable enough to support the extension of city government. (at 57)

3.7 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:

3 AAC 110.110. Resources.

The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission 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.

B. Views Expressed in the Petition

The Petition states that the area within the proposed post-annexation boundaries of the City has the human and financial resources needed to provide essential city services on an efficient, cost-effective level.

The human resources necessary to provide essential city services will continue to be the present City of Homer work force. The work force is presently made up of nearly equal numbers of City residents and non-residents. Residency is not presently required for City employment. The City of Homer workforce will be expanded as needed. (at 39)

To support the statement that the standard is met with respect to financial resources, the Petition provides the comparison of then-current revenues and expenditures of the City with projected post-annexation City revenues and expenditures in Figure 3-A.

C. Views of Respondents

Alaskans Opposed to Annexation. The AOA Brief notes that the Petition for Annexation seeks to almost double the size of the City's jurisdiction.

Figure 3-A
Comparison of Then-Current Revenues and Expenditures of the City with Projected Post-Annexation City Revenues and Expenditures.

Within current City boundaries	Taxable Value	Tax Revenue
• real property	\$218,639,912	\$1,186,966
• personal property	16,005,042	88,028
Total	\$234,644,954	\$1,274,994
Within area proposed for annexation		
• real property	\$119,653,700	\$658,095
• personal property	6,921,501	38,068
Total	\$126,575,201	\$696,163
Total Within New Boundary	\$361,220,155	\$1,971,157
Sales tax revenues		
• From present city		\$1,953,752
• From annexation area		493,600
Total Sales Tax Within New Boundary		\$2,447,352
Total Property & Sales Tax Within New Boundary:		\$4,418,509

new hires to provide police protection for 3,000 people is simply no planning at all. There are no plans for capital expenditures for sewer and water in the annexation area in the near future, and no priority has been worked out with planned existing capital projects for the City of Homer. The future has been ignored. (at 4)

AOA contends that the problem of providing essential city services is demonstrated by an

AOA contends that the cost of essential city services to the annexed area will be substantial and suggests that such costs have not been realistically measured.

The Petition for Annexation and supporting material cast substantial doubt on the planning process as well as the ability of the City of Homer to provide essential services, at all, much less effectively and efficiently. The need for basic police and fire protection alone requires expanded personnel and capital expenditures for facilities and equipment that are only addressed in the most general way. The planning for two

examination of the annual revenue and expense projections by the City of Homer and analysis of projected capital expenditures.

1) Income from Annexed Area

AOA contrasts the Petitioner's year 2000 estimate for anticipated revenues from real property and personal property tax income from the area to be annexed with the income projected by the City for a similar area in 1998.

AOA asserts that property tax revenues for the year 2000 would be less than 1998 projections.

1998	\$773,362
2000	\$696,163

The AOA Brief further states that the estimated sales tax revenues for the area proposed for annexation were nearly twice 1998 estimates.

1998	\$7,490,761
2000	\$14,102,848

AOA notes the absence of an explanation or supporting documentation from the City for the projection of a doubling of sales tax projections from the area proposed for annexation between 1998 and 2000. AOA's Brief contends that no local economic activity would explain the higher revised sales tax revenue projections.

Doris Cabana. Ms. Cabana's Brief expressed incredulity about the City's ability to meet the standard. She stated that she did not accept any of the City's figures.

"The need for basic police and fire protection alone requires expanded personnel and capital expenditures for facilities and equipment that are only addressed in the most general way." **Alaskans Opposed to Annexation Responsive Brief**

Abigail Fuller. Ms. Fuller's Brief states that it is doubtful that the area within the proposed post annexation boundaries contains the financial resources needed to satisfy the standard.

Homer has looked only at the assessed values of property, many of which jumped recently due to demand for view. However, the assessed value bears little relation to the owner's ability to pay the tax! Many people have built their own homes, and the new values do not reflect the owners' financial health the same way a newly purchased house might. Much of the population is dependent directly or indirectly on the fishing industry, which has not been all that strong lately. The rich years in fishing are behind us and the industry is still adjusting to new realities. The loss of our only fish processor two years ago did not help - the real estate market is only now picking up from the slump it fell into as families left in search of work. There is a lot of effort to promote Tourism to fill the gap but the wages paid are low and

seasonal, many of the people working at these jobs live out of the City because land is cheaper away from the conveniences and services.

Mary Griswold. Ms.

Griswold's Brief states that the area within the proposed post-annexation boundaries of the City does not include the human and financial resources needed to provide essential city services on an efficient, cost-effective level. She contends that implementation of the annexation would require significant additional staff and expansion of City facilities and infrastructure.

The cost of extending city services to this territory could easily exceed the revenue generated. The expense projections included in the city's petition underestimate reasonable administrative and police costs associated with this annexation. Drafting new zoning regulations and amending Homer's Comprehensive Plan (which is required before creating new zones) will incur substantial legal fees, as will predictable challenges to these regulations. Homer's planning department now supervises approximately 10 square miles of land development with two staff members. The existing workload easily justifies an additional employee. Adding over twice the existing land area, with its complex land use planning and zoning issues while only increasing staff by one position is clearly unrealistic.



Portion of the Diamond Ridge area located within the territory proposed for annexation.

Voter services will require expansion due an increase in registered city voters and voter precincts. Clerical services will expand to prepare more meeting materials, answer and research more questions, respond to more requests for LIDs for road and utility services. This additional workload would require additional personnel.

The petition calls for 2 additional police officers. However to maintain the current service at the national average of 2.4 officers per 1,000 people, the expanded population of 6,841 would require 16.4 officers, 6.4 more than Homer now has. Additional vehicles and other equipment would also be necessary. Homer's physical plant cannot support the added burden of annexation. Maintenance facilities are used at the maximum level now. Additional vehicle repair cannot be done in a timely manner. Office space is cramped with existing staff, there is not room for the additional staff required to

manage the greater workload. The city council chambers may exceed fire marshal limitations to accommodate additional constituent participation. (at 10)

The City of Homer presently provides limited extraterritorial water and sewer service, almost exclusively confined to property owners along the original water and sewer transmission mains. Of approximately 1,200 water connections, less than 50 are extraterritorial and most were provided as a trade for right-of-way. Less than 50 of 900 sewer customers are extraterritorial. 75 Kachemak City sewer connections are billed as one customer.

The city states that 'the extension of water service into the annexed area will require a substantial increase in capital spending,' and states in its transition plan that additional storage will be necessary at the Bridge Creek Reservoir, yet under Capital Expenses, it states that for Water and Sewers, 'no additional capital expenses are anticipated because of annexation.'

FROM: ROY DORIS OSBORN PHONE NO.: 1-907-232-3131 JUN. 01 2000 08:00PM PT

TO: City Clerk, Finance Director, City Planner, City Personnel Officer, City Librarian, Public Works Director, Chief of Police, Fire Chief, Port & Harbor Director.

Memorandum

TO: City Manager, City Manager

DATE: Tuesday, December 21, 1999

RE: Administration - 2000 (Plus in progress) May & KPS economic data attached

To avoid confusion, this information should not be released to the public or Commission until the Staff plan is complete. This is a Staff Work in progress.

1. THE ANNEXATION AREA.

A. The area would include, at least initially, the North-South-East boundary of KPSB tax area 173 & 174 (TYOYD), including Kachemak City.

B. Consideration should also be given for areas east of East End Road as far as Fritz Creek. This is a fairly compact area that includes Diamond Ridge Road and Skyline Drive from the lake in the West to nearly the Ochsman Mountain Road Junction, the golf course on East End Road, and then East to the Bay. Includes Bridge Creek Reservoir and the watershed. See attached map.

2. THE REVENUE PRODUCTION.

A. This area of KPSB assessment value for real property only is at least \$119,000 and would generate \$655,000, at 5.5 mills.

B. Personal Property values are indicated at this point.

C. State tax revenues (City rate is 3.5%) are unknown at this time but the area includes B&B's, a commercial radio station, Personal Police and other Diamond Ridge/Skyline business. Shopping Highway includes Tractor, Wildlife gift shop, Tractor Lodge, Metzer Motel, etc.; East End Business including Down's Bank, Pudge's, IGA, etc.; etc.; PTI vehicle yard, Rural Property Company Storage, Power Gas, etc.

Tax Base No.	Personals	Assessed Value	City Mill Rate	Total
173 - Diamond/Skyline	1445	\$48,293,200	0055	\$279,464.90
174 - Skyline/Skyline	1,024	\$0,083,800	0050	\$79,185.20
		\$119,000,000		\$458,650.10

Vi Jerrel, Ph.D. Dr.
Jerrel's Brief incorporates by reference the Brief submitted by Mr. Erwin on behalf of Alaskans Opposed to Annexation and an 8-page memorandum from Homer City Manager Ron Drathman dated December 21, 1999.

“Of approximately 1,200 water connections, less than 50 are extraterritorial and most were provided as a trade for right-of-way. Less than 50 of 900 sewer customers are extraterritorial.” **Mary Griswold Responsive Brief**

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA’s Brief states that the City does not have the human or financial resources needed to provide essential City services on an efficient cost-effective basis to the area within its proposed boundaries. CCAA questions the City’s methodology for developing estimates of revenues and expenditures and the credibility of the Petitioner.

The City’s effort to meet this requirement consisted of “balancing” tax revenues with the expense of providing service in a manner that shows a profit will be realized by annexation. The City seriously understates operating expenses. To be blunt, the City’s statements should not be accepted or believed. The City has refused to date to make available departmental memo-

randum and electronic mail communication commenting on anticipated expenses associated with a larger City. . . Drafting new zoning regulations and amending Homer’s Comprehensive Plan (which is required before creating new zones) will incur substantial legal fees, as will predictable challenges to these regulations. Homer’s Planning Department now supervises approximately 11 square miles of land development with two staff members. (at 19)

CCAA contends that the City’s Planning Department is already understaffed and would be unable to properly serve the expanded boundaries proposed by the Petition.

Adding over twice the existing land area, with its complex land use planning and zoning issues while only increasing staff by one position is clearly unrealistic. The planning director at a recent public forum on annexation stated that she required two additional employees for the annexation. This was cut in half by the City Manager who refused CCAA’s request for department memos. The validity of the petition’s figures is an open question. The concept that planning and zoning services will be extended to a City double its current size with the addition of a planning technician is foolish.

CCAA expresses doubt about the City's resources to maintain additional road mileage.

The City is planning to increase its road maintenance responsibilities by nearly 300% (64 miles vs. 22 miles). Yet, they project increasing general tax revenues by only 35%. (at 20)

The City budgeted less than the Borough expends. It is unlikely that the Borough will include roads in the territory proposed for annexation on its CIP list when it knows they will eventually be taken over by the City. The City has no plans to upgrade Borough roads, whether they are or are not on the current Borough improvement list. Although territory roads will be eligible to participate in Homer's Accelerated Roads Program, they will compete with Homer roads for limited funding. Many roads in the territory do not meet minimum City gravel street improvement standards so will not qualify for HARP, but they would qualify for Borough upgrade if they were not annexed.

The City's plan to pay for these increased expenses with voter approved General Obligation Bonds is laughable. Does the City really believe it will be able to cram annexation on top of 2,500 people and then have them approve incurring bonded debt? Such an election will turn into an after the fact referendum on annexation. If a successful annexation is dependent on voter approval of incurring debt, why not conduct a local option election at the same time. (at 20)

Homer's physical plant cannot support the added burden of annexation. Maintenance facilities are used at the maximum level now. Additional vehicle repair cannot be done in a timely manner. Public Works employee Pat Johnson said at a public forum that more bays and mechanics would be needed. Councilman Ray Kranich agreed. Office space is cramped with existing staff, there is not room for the additional staff required to manage the greater workload. The City Council recently considered buying the Lakeside Mall for new City offices. They also need a bigger Fire Hall [see CIP plan, Exhibit 48], Police Building, etc. The City Council Chambers may exceed Fire Marshall limitations to accommodate additional constituent participation. (at 21)

Extension of water and sewer service into the territory proposed for annexation will require a substantial increase in capital spending. The City has not been able to acquire necessary funds to extend service to already approved LIDs within the present City boundaries. This strongly suggests that service to the territory will not occur within a reasonable time period. There remains a question whether the Bridge Creek Reservoir contains sufficient water to serve the entire proposed post-annexation City. The City of Homer may need to tap the Fritz Creek drainage to serve the eastern portion of its expanded kingdom, in which case it would be again going beyond its boundaries for its water supply. Water extension into the territory will certainly require a substantial increase in capital spending whether it

be to increase the capacity of the existing reservoir and its storage tanks or to develop additional sources of water should they be required. Exhibit 47.

Moreover, the City's past performance in operating water and sewer operations suggests that its belief that new customers will pay for operational expenses (Transition Plan pp. 26–27) is misplaced. Furthermore, the City frankly admits that its sewer extension plan is to copy its contract scheme with Kachemak City. In other words, the same level of service could be established at least to those areas adjacent to Kachemak City (or to individually established LID's) by contract. Annexation is clearly not required in order to extend sewer services to a new area. Nor is there any evidence that those living in the annexed area have requested sewer extensions. (at 22)

CCAA's Brief asserts that competent management is lacking in the administration of the City of Homer.

The City has undergone tremendous turnover in the City Manager position. Exhibits 56, 57, 58, 59, 60. A city with Homer's consistent high visibility as a desirable place to live should be able to have the pick of the litter when it comes to municipal management. Yet the City has repeatedly chosen to go with local, inexperienced (or non-experienced) municipal managers, rather than professionally trained and educated managers. Exhibit 55. In addition, the City has recently seen the retirement of multiple department heads with years of

"The road maintenance transition plan is one of the weaker areas of the petition. . . . The City is planning to increase its road maintenance responsibilities by nearly 300% (64 miles vs. 22 miles). Yet, they project increasing general tax revenues by only 35%."
CCAA Responsive Brief

experience. Five out of six are new within the last 9 months; the sixth just "resigned". This is an inopportune time to place rookies in charge of a vastly expanded City. The latest development is the summary "resignation" last week of the City's Planning Director. A Planning Department without a Planning Director is now proposing to take over a planning function for an area three times as large as the existing City on a shoe-string budget. (at 23)

Objective Annexation

Review. The OAR Brief suggests that the City's assertions about post annexation City revenues and expenditures may be over-optimistic.

In their enthusiasm, the Petitioners may have overestimated revenue and ability to deliver services or underestimated expenses. In its reply brief, the City should provide every source of relevant information which agrees or which disagrees with its own conclusions. The LBC may then weigh the evidence. (at 10)

Raven Ridge Homeowners' Association.

The Raven Ridge Brief expresses doubt about the City's financial ability to deliver services within the proposed expanded boundaries.

The territory has 2.5 times the area of the city. It has 1/4 the population density of the city. It is capable of generating only 1/2 the tax revenue of the city. Given these demographics it is highly improbable, if not impossible, for the city to provide a meaningful level of essential city services within the post-annexation boundaries.

The city has demonstrated it can not provide essential city services to its current residents. Several sewer and water LIDs have been stalled for years waiting for city funding. (at 4)

Steve and Margret Seelye.

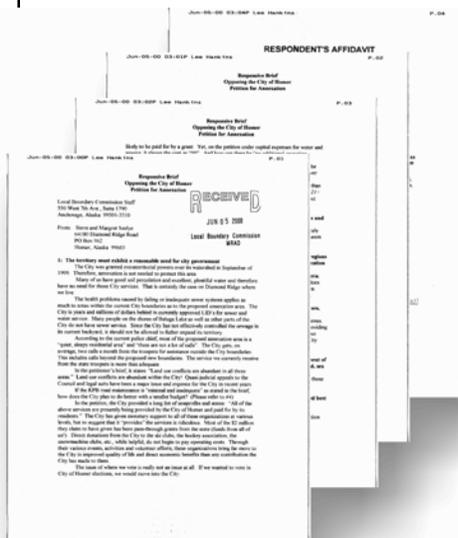
The Seelye Brief claims that the proposed post-annexation boundaries of the City of Homer do not exhibit the resources necessary to provide certain city services on an efficient, cost-effective level since the costs of extending certain services would be excessive.

The distance and terrain separating much of the proposed annexation area from the existing City sewer and water systems ensures that the cost to connect to those systems would be prohibitively high and the resi-

dents will not receive such services anytime in the foreseeable future.

Although the claim is continuously being made that water and sewer services are not paid for out of general tax funds so we in the annexation area will not be paying for services we don't receive, the petition itself repeatedly says otherwise. It states: "The residents of the City of Homer approved in 1999 the use of sales tax revenue, available after meeting sewer treatment plant construction bond obligations, to construct water and sewer improvements within the community." Therefore, we would be paying for sewer and water services that most of us don't need and/or have no hope of actually receiving.

On page 28 of the petition it states, "The extension of water service into the annexed area will require a substantial increase in capital spending." The City Public Works Director has stated that the City's ability to



provide water to a fire sub-station and adequately meet post-annexation water demand will be dependent on increasing storage capacity and the construction of a 1.1 million-dollar treatment plant. Something that is not likely to be paid for by a grant. Yet, on the petition under capital expenses for water and sewers, it shows the cost as '00'. And how can there be 'no additional operating expenses' if the City anticipates building a new treatment plant?

The Seelye Brief suggests that the City has downplayed the costs associated with road maintenance.

The City's petition states that the borough maintains 41.7 miles of roads in the annexation area at a cost of \$80,000. This is simply not true. The real number is over \$234,000. The City proposes to spend between \$80,000 and \$200,000, increasing progressively over a five-year period. That is about \$4,800 a mile by year five; less than the borough spent in 1999 and *less than half what the City currently spends on the 21+ miles of road it maintains*. This indicates we will be paying the higher City taxes but getting far less road service than current residents. (at 2-3)

"To efficiently and effectively provide police service, fire service, emergency medical service, animal control service to the neighborhood would require at least two and one-half miles of new road construction. To provide city sewer . . . would require over 5 miles of sewer line with pump system and road. . . Also there has been no request for or desire of these services by the residents of the Crossman Ridge Neighborhood." **Crossman Ridge Neighborhood Responsive Brief**

The Crossman Ridge Neighborhood. The Crossman Ridge Brief expresses skepticism about whether the City has the financial resources to deliver an attractive level of City services to the Crossman Ridge area.

It is very unlikely that there will be the financial resources available to provide the additional essential city services to the Crossman Ridge neighborhood on an efficient, cost-effective level. To efficiently and effectively provide police service, fire service, emergency medical service, animal control service to the neighborhood would require at least two and one-half miles of new road construction. To provide city sewer to all of the neighborhood residences would require over 5 miles of sewer line with pump system and road.

Due to the low population density and reasonably anticipated low population growth trends, these services are not necessary within the Crossman Ridge neighborhood. These costs have not realistically been addressed in the city of Homer's annexation petition. Also there has been no request for or desire of these services by the residents of the Crossman Ridge Neighborhood. (at 10)

D. Views Expressed in Petitioner's Reply Brief

The City's Reply Brief asserts that the economy within the proposed boundaries of the City includes human and financial resources necessary to provide essential city services on an efficient, cost-effective level.

The residents of Homer have been successfully governing themselves for 36 years. There are clearly sufficient human and financial resources to provide essential city services within the current City boundaries. The proposed boundaries after annexation will result in the geographic area increasing by a factor of 2.22 (from 21 square miles to 46.58 square miles) and the population increasing by a factor of 1.65 (from 4,154 to 6,841). The area is compact enough, and the population is large enough that human resources will be more

than adequate to provide efficient and cost effective essential city services. The few people that the City will need to hire to extend services into the new territory are readily available and obtainable within a reasonable budget.

As described in more detail on page 38 of the City's Petition, the taxable value of real and personal property will rise from the City's current \$236,644,954 to \$361,220,155 in the proposed boundary, resulting in a total property tax revenue of \$1,971,157 from within the proposed boundaries, assuming current tax levy rates. Sales tax revenues are expected to increase by \$493,600 to a total of \$2,447,352. Thus, total property tax and sales tax revenues from the proposed boundary area are projected at \$4,418,509 annually.

Among all the responsive briefs, none has persuasively shown that the City's projections of operating and capital expenses to extend services are unreasonable. Nor has anyone shown that the tax revenue projections are wrong. By City calculations, the tax revenues will exceed the increased expenditures. Therefore, there will be adequate financial resources to provide the essential services. (at 57)

3.8 Transition Plan

A. The Standard

3 AAC 110.900 requires that a petition for annexation to a city 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 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 or other entity by the annexing city government.

B. Views Expressed in the Petition

In its Transition Plan, included in the Petition as Exhibit G, the City of Homer stated that it intends and is capable of extending essential city services into the territory proposed for annexation in the shortest practical time following annexation.

The City's Transition Plan states that it presently provides fire protection to the territory proposed for annexation and states that the service will be substantially improved after annexation.

Over a period of no more than two years, the City will construct a fire sub-station on property that is City owned near the Bridge Creek Reservoir capable of accommodating (1) a Wildland/Urban Interface Fire Truck [similar to an engine/pumper but with higher ground clearance and all-wheel drive], (2) a tanker/tender and (3) an EMS First Response Vehicle.

These vehicles are designed to meet the demands of the territory to be annexed. The cost of these vehicles and the sub-station would be paid for by the \$1.2 million Annexation Bond the City of Homer will issue upon annexation approval or by general tax revenues. The fire department currently is the sole provider of emergency fire, rescue, and emergency medical services (EMS) for the proposed annexation area, with the exception of wildland fires. (at 24-25)

Wildland fire fighting is the primary responsibility of the Division of Forestry (DOF) for those areas outside of Homer City limits. The City of Homer has a Cooperative Agreement with DOF that pays the Homer department to respond to wildland fires outside the existing city limits during the pre-established "fire season" of mid-April through Sept 30. DOF has only wildland fire fighting assets in the Homer area from April through the end of September. No other entities, public or private, provide services to those areas addressed. The nearest fire service area, which is north of the proposed annexation area, is the Anchor Point Fire Service Area. The City of Homer currently does not respond into the Anchor Point Fire Service Area unless requested to do so by the Anchor Point Volunteer Fire Department pursuant to the established Memorandum of Agreement (Mutual Aid Agreement) between the Anchor Point Volunteer Fire Department and the Homer Volunteer Fire Department (City of Homer). The proposed sub-station which will house a wildland/interface engine, tanker/tender, and emergency medical services quick response vehicle will lower the fire protection classification of structures within 5 road miles of the station by at least one point resulting in potentially lower fire insurance rates for those residents.

The fire department will continue to provide essential fire, rescue and emergency medical services to those areas within the proposed annexation area without interruption. These services include EMS first response by volunteer providers

that currently reside in the proposed annexation areas, including both basic and limited advanced life support capabilities (oxygen, intravenous therapy, and rapid defibrillation).

The City's Transition Plan states that the Homer Police Department is more than capable of providing a full compliment of law enforcement services to the area being annexed.

The annexed area will more than double the geographic area being serviced by the police department and will increase the number of citizens being served by over fifty percent. Due to these factors, the Homer Police Department will hire two additional officers and purchase additional equipment to safely and adequately provide services to the area. The cost of the new equipment will be paid for by the Annexation Bond mentioned above. The additional operational costs can easily be paid for with the increased tax revenues that will be generated by the new areas.

City of Homer Police officers have been backing up the Alaska State Troopers on calls in the area for many years and responding to all trooper requests. Homer Police dispatchers have been dispatching the troopers on calls to the areas and have been providing 911 related dispatch. Homer Police officers are already empowered by state statute to exercise full police power within the area. No additional authority needs to be obtained. (at 25)

Animal Control Services are presently being provided to the area, according to the Petitioner, and will be enhanced upon annexation.

A new animal control vehicle will be purchased and a new shelter will be constructed within the next two years. The vehicle will be paid for by the Annexation Bond and the shelter will be constructed with existing funds. (at 25)

The Petitioner claims that library services, parks and recreation services, and port and harbor services are presently being provided to residents of the area proposed for annexation on the same basis as they are to City of Homer residents.

The Petitioner maintains that City of Homer can 'easily' provide voter services to the area proposed for annexation.

The Petition contends that planning services are presently in place to accommodate the residents of the area proposed for annexation but that additional staff will be retained to meet increased demand resulting from annexation.

One additional Planner will be hired upon approval of the annexation. Because of the City of Homer's extraterritorial zoning powers concerning the Bridge Creek Reservoir, planning is already underway for that area. It is anticipated that the first year will be spent cataloging the existing land uses and obtaining recommendations from the citizens of the area for future land use regulations. Within two years of annexation long and short-range land use plans for the area should be complete.

In the Bridge Creek, Diamond Ridge, and Skyline Drive areas Land use regulations will be developed as needed, recognizing the more rural flavor of the annexation area. Regulations

"Wildland fire fighting is the primary responsibility of the Division of Forestry (DOF) for those areas outside of Homer City limits. The City of Homer has a Cooperative Agreement with DOF that pays the Homer department to respond to wildland fires outside the existing city limits during the pre-established "fire season" of mid-April through Sept 30. DOF has only wildland fire fighting assets in the Homer area from April through the end of September. No other entities, public or private, provide services to those areas addressed."

Petitioner's Transition Plan

“City of Homer Police officers have been backing up the Alaska State Troopers on calls in the area for many years and responding to all trooper requests. Homer Police dispatchers have been dispatching the troopers on calls to the areas and have been providing 911 related dispatch.”

Petitioner’s Transition Plan

may include lot size, subdivision standards, septic system requirements, drainage controls, property management, and construction standards to protect all watersheds. This area is primarily developed with residential properties with large tracts of vacant properties. Here residential uses should be the primary use with limited commercial or business uses allowed. Larger lot sizes would be appropriate and septic systems should be ADEC approved. Subdivision standards for this area should be established which are stricter than the current KPB standards, which allow paper plats, but not as strict as the current City of Homer standards which would not be feasible or practical for much of these properties. Resident input is vital.

The Transition Plan indicates that upon annexation, the City intends to assume responsibility for maintaining the roads in the area proposed for annex-

ation currently maintained by the Kenai Peninsula Borough and expects that the State would continue to maintain roads currently maintained by the Department of Transportation and Public Facilities.

The City currently maintains a total of 21.5 miles of gravel and paved roads. Per the KPB FY-99 Road Expenditure Report, there are approximately 41.7 miles of gravel road within South Peninsula District, Units 5, 6, and 7. These units include all of the proposed annexation area and some additional roads which are outside the area. The City and Borough are working on defining the specific roads to be excluded.

The intention of the City is to immediately extend winter and summer road maintenance into the proposed annexation area to replace KPB road maintenance. Initially, this service would be continued at the same level of service as is now presently provided by the KPB utilizing the same private contractors that currently complete winter snow removal and summer road maintenance. Within two years the city will, utilizing private contractors and City personnel and equipment, provide a considerably higher level of service than is now being offered.

The capability of the City to provide the improved services within the two-year period is clear as a cursory review of the ‘finances of annexation’ reveal. The capital expenses are included in the Annexation Bond concept or can be paid by in-

creased tax revenues. Likewise, the operational expenses are easily paid with increased tax revenue generated through annexation. The City of Homer's Public Works Department currently has experienced employees and reliable road maintenance equipment that are utilized to complete road maintenance within the City limits. The City has the administrative staff and material/equipment support capabilities to extend road maintenance into the adjacent area in a timely and cost effective manner.

As stated, the KPB utilizes private contractors to complete the summer road maintenance and winter snow removal/sanding. Contractors move snow and grade roads only as requested by KPB road maintenance department under the quoted hourly equipment rate. Generally, a six-inch snowfall will trigger a snow removal response. During the summer, the roads are graded on an as needed basis. The level of service proposed by the City of Homer includes ditch pulling/cleaning and road prism grading (early summer); grading of the roads just prior to freeze-up; snow removal triggered by 4-6 inches of accumulation; sanding of intersections and high traffic volume areas; culvert thawing as required; street/traffic signage maintenance; and grading of road surfaces in the spring.

The Transition Plan states that memorandums of understanding, including necessary fund transfers and contractual

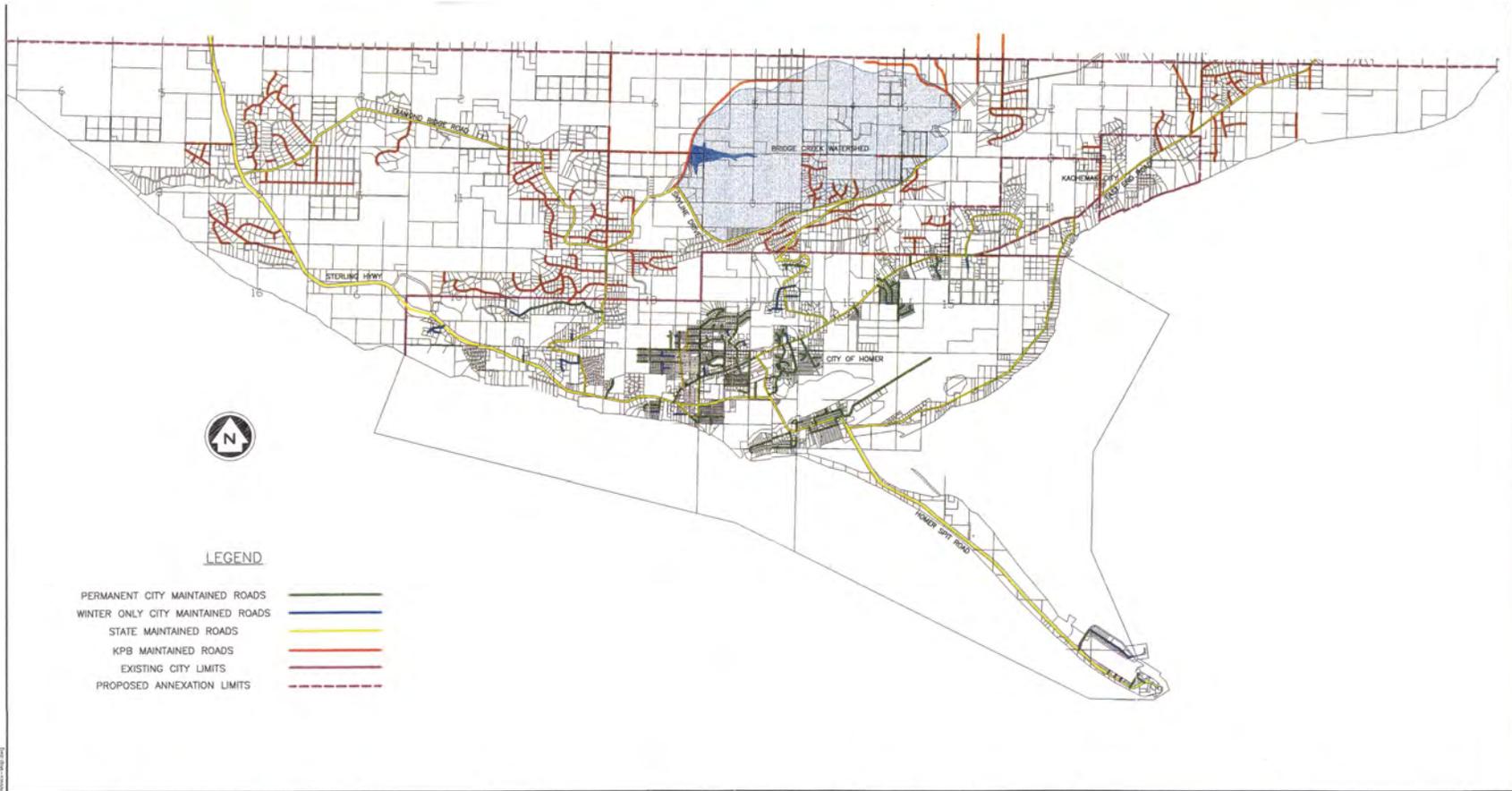
assignments, as necessary, will be developed between the Kenai Peninsula Borough and the City of Homer for the transition phase. (at 27)

The Petition indicates that the City will meet the additional demand for road maintenance as a consequence of annexation by initially contracting for service delivery and expanding direct delivery of the service by the City over a five-year period.

Specific review should be given to the manner in which the Public Works function of road maintenance will be assumed and delivered: The City of Homer Public Works Department will, over a five-year or less period, transition to provide the level of service described above delivered solely by City personnel. During the first three years, the City would increase each year the budget allocation for private contractor utilization. By year four the City would spend \$140,000-163,000 for area road maintenance using a combination of City forces and private contractors. By year five the City would complete all road maintenance utilizing City forces.

In addition, the roads would be eligible to be paved under the Homer Accelerated Roads Program. Under this program, the City can assist in designing, bidding, and paving streets that already meet minimum City gravel street improvement standards and share with prop-

Figure 3-B Road Maintenance Responsibilities



<p>2500 0 2500 5000 7500 GRAPHIC SCALE</p>	<p>2500 0 2500 5000 7500 SCALE</p>	<p>CITY OF HOMER, ALASKA PUBLIC WORKS DEPARTMENT 3575 HEATH STREET HOMER ALASKA 99603 PHONE: (907) 235-3170 FAX: (907) 235-3145</p>		<p>DATE: - SCALE: - DESIGNED BY: - DRAWN BY: - CHECKED BY: - APPROVED BY: -</p>	<p>FEBRUARY 2000 ROAD MAINTENANCE CLASSIFICATION MAP CITY OF HOMER AND SURROUNDING AREA</p> <p>Drawing Status: - Date: FEB 2000</p>	<p>PROJECT NO. - SHEET 1 OF 1</p>																								
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erty owners the costs associated with improving the road. The City will help residents develop road and drainage improvement projects where roads do not currently meet City gravel road standards.

Figure 3-C shows the increase in funding (for an average year) over the five-year period:

Year 1 – The first year would consist of the continued utilization of private contractors at the current KPB level of funding to provide winter maintenance and the use of City equipment to augment private contractor equipment to provide for snow removal, summer ditch pulling, road surface grading, and drainage improvements. The City would use the first year to initiate the acquisition of additional equipment and other re-

sources necessary to complete routine winter and summer road maintenance activities. A list of equipment and resources the City would need to provide the anticipated level of service by the fifth year follows:

- Establish draft level of service standards with input from residents
- Expand equipment storage facilities at the Heath Street PW complex
- Establish a sand storage site at the existing water treatment plant
- Acquire 2 additional graders, 2 additional sanding trucks (possibly with snow blower attachments or plows), an excavator, a loader and a D-6 w/ trailer

Figure 3-C

Year	Proposed Annual Area Road Maintenance Budget	Proposed Private Contractor Budget	Proposed City Forces Budget	Proposed Equipment Purchase
Currently	\$80,000	\$80,000	-0-	-0-
First Year	\$100,000	\$100,000	-0-	\$585,000*
Second Year	\$125,000	\$125,000	-0-	
Third year	\$149,000	\$105,000	\$22,000	
Fourth Year	\$159,000	\$62,500	\$106,500	
Fifth Year	\$199,000	-0-	\$199,000	

Note: In its Reply Brief, the City revised these figures and committed to spend \$199,000 annually for maintenance of roads in the territory proposed for annexation.

- Hire 2 additional full-time equipment operators and other part-time mechanic/operators

- Develop final detailed road maintenance standards

Year 2 – The second year would continue the transition by continued utilization of private contractors at the increased funding level.

Year 3 – The third year would continue the transition by continued utilization of private contractors at the increased funding level. The City would hire a part-time equipment operator and use new City equipment to augment the private contractor effort.

Year 4 – The fourth year would start the full transition to use of City forces. A new sand storage site would be in operation at the existing water treatment plant, a second additional snow plowing vehicle would be acquired, a second additional equipment operator would be hired, and expanded storage would be in place at the Heath Street PW complex.

Year 5 – The fifth year would complete the transition and all road maintenance would be accomplished using City employees and equipment. A third equipment operator would be hired and the remaining required equipment would be purchased.

Water Services. The Transition Plan states that certain lots located on the main line between the City's extraterritorial water plant and the City

limits are presently provided with water service from the transmission main. The City's Transition Plan describes the City's efforts to increase its storage capacity to allow provision of water service to additional water utility consumers in the area proposed for annexation.

The existing water treatment plant that currently serves the City of Homer (and that will serve the annexed area) has the capacity to produce 1,100,000 gallons per day. In 1999, the average water production was 526,000 gallons per day and the peak day water production was 1,007,000 gallons per day (this includes bulk water sales). Based on peak day production, the percent of capacity used is 91.5%. The major factor contributing to the need to produce peak water at the current level is the lack of storage on the distribution system. With additional storage, the treatment plant could operate at closer to the average demand (with the storage capacity meeting peak demand). The City has made application to ADEC for funding the planning and design of this additional storage capacity (1,000,000 gallons).

There are approximately 1,200 metered connections on the distribution system (with approximately another 200 equivalent connections attributed to bulk water sales) for a current total of 1,400. The projected number of connections available at 100% capacity is 1,530 (with no additional storage provided).

With additional storage provided, the projected number of connections at 100% capacity would be approximately 2,250. This fits comfortably within the annexation plan.

The Transition Plan refers to a local improvement district program to facilitate utility extension by the City.

The residents of the City of Homer approved in 1999 the use of sales tax revenue, available after meeting sewer treatment plant construction bond obligations, to construct water and sewer improvements within the community. The policy for using these funds is currently being established by the City Council. These funds could be utilized to extend water into areas within the City that currently do not have water and sewer service. The City now has a local improvement district program that supports the extension of water and sewer improvements into unserved areas (with provisions for sharing costs between the benefited property owners and the City). These funds and programs would be available to residents in the annexed area upon extension of the City limits.

Extension of City water service to newly annexed areas would require the following steps, according to the Transition Plan. (at 28)

- Establish policy for using available sales tax revenue for water improvements.

- Develop a 20-year master plan showing where water transmission, distribution, and reservoir improvements should be located based on ultimate development and establish a phasing plan with associated costs.
- Identify innovative methods of providing for economical water service to low density outlying residential areas.
- Begin phased design and construction of water transmission main extensions and storage reservoirs that provide residents in the annexed area access to City water. Since any new water customers would pay a monthly metered water bill (and assuming that the charge covers the cost of operating and maintaining the water storage, distribution, and treatment system), the City's operating budget would not be greatly affected by an expansion of water service into the annexed area. There is increased efficiency in providing water service to a larger group of people. The real impact to the budget would be on capital improvement outlay for water main extensions and storage facilities into areas without service. This would require obtaining grants, selling bonds, obtaining low interest loans, establishing new revenue sources, or a combination thereof. There is an annual cost associated with each of these alternatives which could have a negative impact on the City's budget (i.e.: interest

payments, costs associated with meeting grant conditions, fee collection costs, etc.). On the other hand, providing public water service to an area can dramatically increase property values and the property taxes generated from the property. The extension of water service into the annexed area will require a substantial increase in capital spending.

The Petitioner notes that properties in the area proposed for annexation are generally not served by a public sewer system but asserts that the City has selectively extended sewer service, on a case by case basis, to lots located immediately adjacent to the existing City limits. The City claims that its sewer treatment plant has significant unutilized capacity. (at 29)

The existing wastewater treatment plant that currently serves the City of Homer (and that will ultimately serve the annexed area) has the capacity to treat approximately 1,200,000 gallons of wastewater per day. In 1999, the average wastewater flow was 404,000 gallons per day. The present use as a percent of capacity is 34%. There are approximately 1,084 sewer connections on the system; and the projected ultimate number of connections (at 100% capacity) is 3,220. This is more than adequate to serve the annexed area for the foreseeable future.

The residents of the City of Homer approved in 1999 the use of sales tax revenue, available after meeting sewer treatment plant construction bond obligations, to construct water and sewer improvements within the community. The policy for using these funds is currently being established by the City Council. These funds could be utilized to extend sewer service into areas within the City that currently do not have sewer service. The City now has a local improvement district program that supports the extension of sewer improvements into unserved areas (with provisions for sharing costs between the benefited property owners and the City). These funds and programs would be available to residents in the annexed area upon extension of the City limits.

The City of Homer presently provides sewer services to Kachemak City, by contract, through a system of 'gray water' lines and septic pumping services. This method of expansion can be used throughout the annexation area. The City of Homer has the capacity and facilities to handle all septic waste disposal. This method of providing sewer services is considerably less expensive than traditional methods.

To expand sewer service to the annexed area, sewer trunk lines should be extended out from the existing collection system into the annexed areas to provide for the collection of wastewater and transmission to the sewer treatment plant. Installation of these improvements would allow for the extension of smaller

diameter sewer mains from these new trunk sewers into the areas not currently served by public sewer service.

The Transition Plan states that the following steps will be taken to prepare for and extend sewer service into the expanded boundaries of the City after annexation.

- Establish policy for using available sales tax revenue for sewer improvements.
- Develop an area-wide 20-year master plan showing where sewer trunk line improvements should be located based on ultimate development and establish a phasing plan with associated costs.
- Identify innovative methods of providing for economical sewer service to low density outlying residential areas.

- Begin phased design and construction of sewer trunk lines that provide annexed area residents access to City sewer.

Since any new sewer customers would pay a monthly sewer charge (and assuming that the charge covers the cost of operating and maintaining the sewer collection and treatment system), the City's operating budget would not be greatly affected by an expansion of sewer service into the annexed area. There is increased efficiency in providing sewer service to a larger group of people. The real impact to the budget would be on capital improvement outlay for sewer trunk line extensions into areas without service. Providing public sewer service to an area can dramatically increase property values and the property taxes generated from the property. The extension of sewer service into the annexed area will require a substantial increase in capital spending. (at 30)

The Petition indicates that

the City will assume all relevant and appropriate powers, duties, rights, and functions presently exercised



Homer wastewater treatment facility.

within the territory proposed for annexation in the following manner.

Financial Timeline:

1. Petition goes to Boundary Commission March, 2000.
2. Boundary Commission conducts public process and investigation resulting in a recommendation to the Legislature.
3. If recommended by the Boundary Commission, the Petition goes to the Legislature in January 2001, within the first 10 days of the session. The proposed change becomes effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a majority of each house.
4. January 2001 full and true assessment rolls certified.
5. Beginning of March 2001 for enactment if approved.
6. March 2001 KPB commences budget planning.
7. June 2001 tax bills mailed out.
8. Sales tax on quarterly basis – change tax rate for annexed areas for 3rd quarter [July 1] for convenience of area businesses.
9. Property taxes due August 15th and November 15th.

The Petitioner states that the Transition Plan was prepared in consultation with the Kenai Peninsula Borough and the Borough Road Service area and claims that there are no assets and liabilities which will be assumed by the City of Homer because of annexation. (at 32-33)

C. Respondents' Views

Alaskans Opposed to Annexation. AOA's Brief contends that the transition plan set forth in the Petition for Annexation has a timetable for taxation of the new property owners but no timetable for the establishment of 'essential city services' in the annexed area. AOA's Brief also states that the City uses unsupported assumptions for revenue and expenses and expresses doubt about the ability of the City of Homer to provide any essential services in the area proposed for annexation 'for many years to come.' (at 1)

The Petition for Annexation and supporting material cast substantial doubt on the planning process as well as the ability of the City of Homer to provide essential services, at all, much less effectively and efficiently. The need for basic police and fire protection alone requires expanded personnel

“The City of Homer presently provides sewer services to Kachemak City, by contract, through a system of ‘gray water’ lines and septic pumping services. This method of expansion can be used throughout the annexation area. The City of Homer has the capacity and facilities to handle all septic waste disposal. This method of providing sewer services is considerably less expensive than traditional methods.”

Petitioner’s Transition Plan

and capital expenditures for facilities and equipment that are only addressed in the most general way. The planning for two new hires to provide police protection for 3,000 people is simply no planning at all. There are no plans for capital expenditures for sewer and water in the annexation area in the near future, and no priority has been worked out with planned existing capital projects for the City of Homer. The future has been ignored. (at 4)

Abigail Fuller. Ms.

Fuller’s Brief challenges the assertions by the Petitioner regarding planning for extension of utility services to the area proposed for annexation.

I attended the most recent Water and Sewer Standards Committee meeting, they have no long-range plan for extending water or sewer mains, not even within the present city. (at 5)

Mary Griswold. Ms.

Griswold’s Brief expressed doubts about the accuracy and adequacy of the City’s Transition Plan.

According to its transition plan, the city intends to develop a 20-year master plan showing where water transmission, distribution, and reservoir improvements should be located and establish a phasing plan with associated costs. There are currently 8 approved and one pending sewer Local Improvement Districts and 6 approved and one pending water LIDs affecting over 200 properties waiting for funds to cover the City’s share. Some of these people have been waiting since 1994. No LID projects have been constructed in the past nine years. Public Works Director Carey Meyer said it would cost over \$7 million to extend water and sewer to these existing approved LIDs. State funding has dried up. The city may consider low interest loans or municipal bonds to cover this expense. It does not appear likely that the city will be extending water service into the territory in the foreseeable future, let alone within a reasonable timeframe. (at 10)

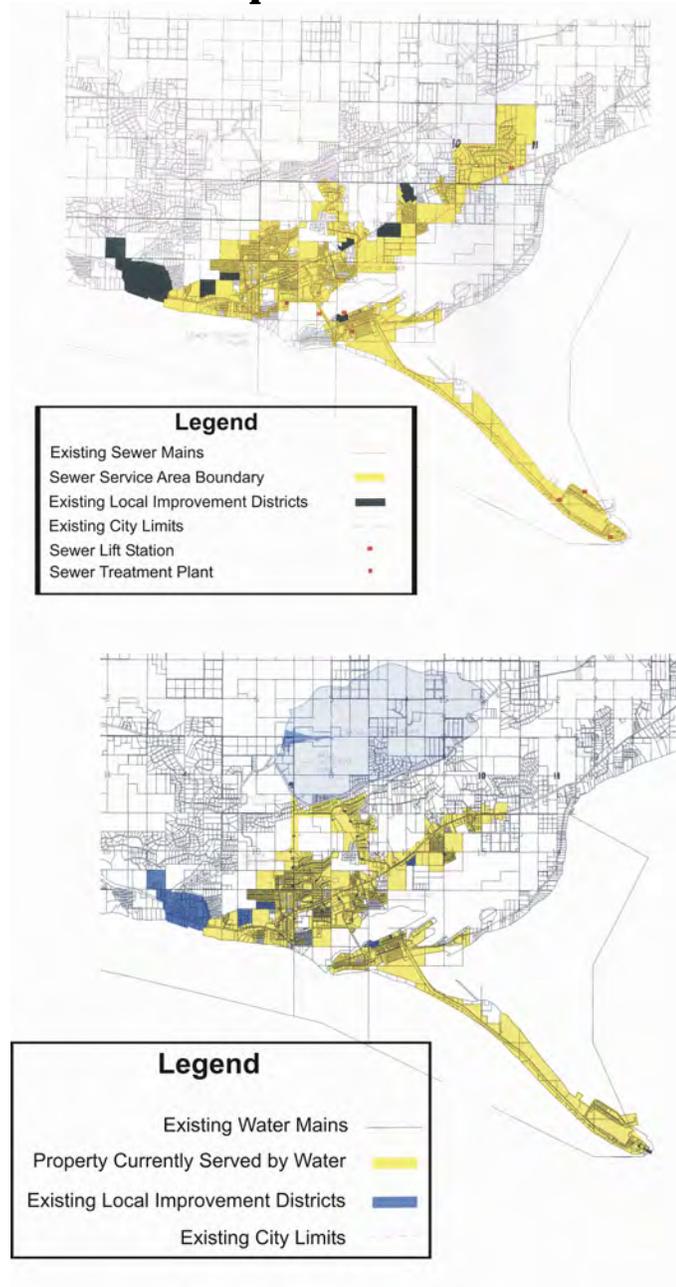
Public Works staff admits that the road maintenance transition plan and budget are very fluid, with many important considerations left to figure out.

Many roads do not meet city standard, but are scheduled to receive maintenance. An increase in taxes is likely to trigger higher expectations for road maintenance. How to develop a uniform policy for road maintenance in the enlarged and diversified city is a bedeviling task. The city has no plans to upgrade borough roads, whether they are or are not on the current borough improvement list. Although territory roads will be eligible to participate in Homer's Accelerated Roads Program, they will compete with Homer roads for limited funding. Many roads in the territory do not meet minimum city gravel street improvement standards so will not qualify for HARP, but they would qualify for borough upgrade if they were not annexed.

The complexity of revising the comprehensive plan, zoning ordinances, grandfather rights for existing non-conforming uses, and subdivision requirements to accommodate the very different territory being added to the city is likely to confound the understaffed planning department.

Sewer and water have not been extended to approved LIDs within the current city limits because the city cannot acquire its share of the funding. The fact that the extension of water and sewer service into the territory proposed for annexation will require a substantial increase in capital spending coupled with the fact the city has not been able to acquire necessary funds to extend service to already approved LIDs within the present

Figure 3-D - Sewer and Water Exhibits from Alaskans Opposed to Annexation Responsive Brief



city boundaries, strongly suggests that service to the territory will not occur within a reasonable time period. (at 14-15)

***Kachemak
Area Coalition,
Inc., d.b.a.
Citizens Con-
cerned About
Annexation.***

The CCAA Brief states that the proposed transition plan is lacking in detail and that the City does not appear to have fully addressed transition issues with the Kenai Peninsula Borough.

The plan is seriously deficient in its 'plan' for extension of water and sewer main lines to the area proposed for annexation. It also does not meet the minimum time standards set by regulation. (at 3)

The CCAA Brief states that the road maintenance transition plan is one of the weaker areas of the petition.

The City is planning to increase its road maintenance responsibilities by nearly 300% (64 miles vs. 22 miles). Yet, they project increasing general tax revenues by only 35%. The City intends to replace private contractors with public employees. (Transition Plan p. 30). This is counter-intuitive to the modern trend in municipal government to privatize road maintenance functions. It is questionable whether this is a more efficient manner in which to provide ser-

"Many roads do not meet city standards, but are scheduled to receive maintenance. An increase in taxes is likely to trigger higher expectations for road maintenance. How to develop a uniform policy for road maintenance in the enlarged and diversified city is a bedeviling task." **Mary Griswold**
Responsive Brief

vices. Furthermore, the City proposes higher service without demonstrating that higher service is actually desired. Moreover, this five-year transition plan is contrary to the regulations. (at 20)

The water and sewer transition plan is a 'complete fantasy,' according to CCAA's Brief.

The waiting list for water and sewer extensions within City boundaries approaches a decade. This, despite the fact that sales tax revenue, (including contributions from non-residents), has been "dedicated" for such services. There are absolutely no statements in any City planning document suggesting extension of a main as mentioned in the transition plan. The transition plan does not estimate the expense or explain the funding of this proposal. In fact, the transition plan essentially admits that no water and sewer master plan exists today.

According to its transition plan, the City intends to "develop" a 20-year master plan showing where water transmission, dis-

"The waiting list for water and sewer extensions within City boundaries approaches a decade. This, despite the fact that sales tax revenue, (including contributions from non-residents), has been 'dedicated' for such services."

CCAA Responsive Brief

tribution, and reservoir improvements should be located and establish a phasing plan with associated costs. There are currently 8 approved and one pending sewer Local Improvement Districts and 6 approved and one pending water LIDs affecting over 200 properties waiting for funds to cover the City's share. Some of these people have been waiting since 1991. No LID projects have been constructed in the past nine years. Exhibit 51. Public Works Director Carey Meyer said it would cost over \$7 million to extend water and sewer to these existing approved LIDs. State funding has dried up. The City may consider low interest loans or municipal bonds to cover this expense. It does not appear likely that the City will be extending water service into the territory in the foreseeable future, let alone within a reasonable timeframe. [Exhibit 15, Sewer & Water Spreadsheet]. (at 20-21)

Kenai Peninsula Borough. The Borough's Brief seeks a clear, binding statement regarding the date of the transition

of responsibility for road maintenance services from the Borough to the City.

Homer's five-year transition plan (pp. 26-49) for roads should not involve the borough. If it is acceptable to all parties, borough contracts may be assigned to the city. However, memoranda of agreement between the city and the borough must make three things clear. Homer will accept responsibility for ALL roads that have been certified for maintenance by the borough; 2) the date on which Homer becomes responsible for road maintenance must be definitely stated; and 3) the borough will have no involvement in Homer's "transitional plan" for road maintenance.

Objective Annexation

Review. OAR's Brief suggests that the City's Transition Plan is unrealistic.

Judging from discussions by the City Council, the informal forums, and input from the Borough, there is a "Transition Plan" in name only. Many significant revisions to the Homer City Code are being discussed as a way of allowing transitional measures. There seems to be no authority, for instance, to differentiate service, tax, or maintenance standards without revision of the City's Comprehensive Plan - a major task with uncertain results. A Councilman has announced plans to introduce a measure to create a transition planning group. The KPB apparently is not in agreement with the City about

“Judging from discussions by the City Council, the informal forums, and input from the Borough, there is a ‘Transition Plan’ in name only. Many significant revisions to the Homer City Code are being discussed as a way of allowing transitional measures.”

**Objective Annexation
Review Responsive Brief**

94

transition roadwork, and the City Code seems to forbid maintenance of roads built to the lesser Borough standard. The Transition Plan as written is thoughtful, in a fanciful and optimistic way, but is not based on the kind of long, hard, cooperative effort that can produce realistic planning. Such planning could be guided by, in part, a governance issues working group, including both expert local knowledge and expertise in the context of the best interests of the State. (at 9)

Raven Ridge

Homeowners’ Association.

The Raven Ridge Brief expresses skepticism about the City’s Transition Plan.

This distortion of facts about the nature of the annexation area in the City’s petition causes us to question the validity of the City’s projected expenses and transition plan.

Peter Roberts. Mr. Roberts’ Brief asserts that the figures and financial assumptions used by the Petitioner are misleading and that the City has no bona fide plan of service delivery and lacks a transition team. (at 1)

It is becoming obvious that there was very little planning or provision (to date) made for this momentous change and WORK LOAD the city will have to take on - a transition commission (or team) was not even considered, (it was first mentioned on 5/16), let alone set up yet. They obviously have NOT done their homework on this, especially where providing services are concerned, they intend, they say, to work it out as they go. They seem incapable of being able to handle the very necessary planning involved! It appears there are few documents, memos to support this far-reaching proposal or a lot of changes have been made to costs and projections to make this scheme work. This is nothing more than a grab for power and new taxes.

No reason for annexation can be justified here. Taxing in itself is not a legitimate reason - but seems to be the only need the city can come up with. (at 3)

In a meeting here with KPB mayor assistant Ed Oberts on 5/23 we talked about roads and the transition the city proposes, he did not think it will go well. Their plan needs a lot more work. But more importantly

stated that the Borough plans to double road service allocating twice the funds. (at 5)

The Transition Plan is just plain not adequate. The time line is too lengthy - 5 YEARS on roads. Seems like a revenue enhancing dodge to me. Item by item they seem to be working it out as they go. During the city "Forums on Services" this May, they kept saying 'we don't know' or we 'have no plan for that'. They can not seem to promise anything with surety. City services are the issue here and the ability of the city to deliver is very questionable. (at 8)

Steve and Margret Seelye.

The Seelye Brief expresses doubt about the City's transition plan.

Many of the issues that fall into this category have been addressed in other areas. We would like to comment on the part that says 'Identify innovative methods of providing economical water service to low density outlying residential areas.' That tells us two things. There are some very sparsely populated areas included in this plan and the City does not know how it can provide service to them. (at 3)

Bill Smith. Mr. Smith's Brief states that the basics of the transition plan are adequate to serve the newly annexed areas and suggests that comparisons with the 1998 annexation proposal are pointless.

That [1998] plan was developed with no regard for typical budget constraints of business or government. The layering of large amounts of resources for fire and police protection was done to produce a package that was thought to be attractive to the areas being considered for annexation. Who could believe, for example, that the 8 police officers with attendant support in that request were really needed to replace the State Trooper who currently spends 1/4 of his time in the annexation area?

As I have listened to the debate over annexation, I hear two themes. The City is currently supplying essential services in a variety of forms, and the areas proposed for annexation are happy with what they have. (at 3)

At page 4, Mr. Smith suggested that the transition of services to the area occur as follows:

>NO expansion of Fire/EMS service beyond what is now provided.

>Full City support for the creation of a greater Kachemak Fire/EMS service area.

>Continue to provide maintenance on Borough maintained roads at current levels with private contractors.

>Create a new road standard to accept these roads for city maintenance and equalize treatment of road maintenance in the existing city and the annex areas.

“As I have listened to the debate over annexation, I hear two themes. The City is currently supplying essential services in a variety of forms, and the areas proposed for annexation are happy with what they have.” **Bill Smith**
Responsive Brief

>Creation of city road service areas to provide taxation levels appropriate to the service provided and provide for a mechanism for enhancement of roads and road service at service area expense.

>No enlargement of City planning department beyond present city needs. Planning and zoning in annex areas will be done over an extended period to fit the desires of those areas. (The City is currently advertising for an additional person for the planning department.)

>The addition of only one Police officer to replace the partial attention of a State Trooper.

>No expansion of water or sewer facilities into the annex areas that requires use of general property taxes.

>Use of the dedicated water/sewer sales tax to develop watering point and sewage dump stations for all city residents. Thus lowering the cost of these services for residents and improving economies of scale.

The Crossman Ridge Neighborhood. The Crossman Ridge Brief contends that the City’s Transition Plan does not

adequately address the needs of that neighborhood.

The city of Homer’s petition does include a plan that may be practical in general, when applied to some of the annexation territory. However, the plan does not seem to make allowances for extending and providing municipal services to areas and neighborhood such as Crossman Ridge within a reasonable and shortest practical time.

D. Views Expressed in Petitioner’s Reply Brief

In its Reply Brief, the City commits to providing a road maintenance budget of \$199,000 immediately upon assumption of road maintenance responsibilities.

This is slightly different from what was originally presented in road maintenance portion of the transition plan, but consistent with the expenditure portion of the formal petition. This should clarify any question as to whether the City can ‘afford to’ maintain these roads. The recently adopted KPB budget anticipates using contractors, as does the City of Homer. As shown in the expenditure section of the formal annexation petition, the City’s proposed annual road maintenance budget

“ . . . the City’s proposed annual road maintenance budget is stated to be \$199,000. The KPB has never spent \$199,000/year maintaining the roads in the annexation area, so the City’s budgeted amount should be sufficient for all necessary maintenance.” **Petitioner’s Reply Brief**

is stated to be \$199,000. The KPB has never spent \$199,000/year maintaining the roads in the annexation area, so the City’s budgeted amount should be sufficient for all necessary maintenance. (at 15)

The Petitioner does not anticipate significant difficulties regarding transfer of road maintenance from the KPB to the City, according to the Reply Brief.

The City’s intent is to take over maintenance of the roads that the Borough currently maintains. The City plans to agree with the Borough on a definite date on which the City will become responsible for maintenance. The City does not envision the KPB being involved in a transition plan. (at 41)

3.9 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:

3 AAC 110.130(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 in the Petition

The Petition notes that the territory proposed for annexation includes the City's water reservoir and watershed; land developed for residential, commercial, and industrial use; and ample undeveloped land suitable for expansion of such uses. The proposed post annexation boundaries of the City would include all land and water "necessary to provide for a thriving, livable and cost efficient municipality." (at 40)

C. Respondents' Views

Abigail Fuller. Ms.

Fuller's Brief suggests that the proposed annexation could result in a cessation of fire and EMS service to outlying areas that are now served.

Homer does provide Fire/EMS now - all the way out to the Russian villages at the head of the Bay, and up to the North Fork Rd, and all of Olson Mt Rd. If they need more money to help pay for the 21% of calls that are to the areas outside City limits a service area that covers the whole area now served would make more sense than annexation. If annexation goes through, what happens to those people still outside City limits, will Fire/EMS services be cut off?

Mary Griswold. Ms.

Griswold's Brief expresses doubt about whether the proposed post-annexation boundaries of the city encompass all land and water necessary to provide the full development of essential city services, particularly water, on an efficient, cost-effective level.

There remains a question whether the Bridge Creek Reservoir contains sufficient water to serve the entire post-annexation city. The City of Homer may need to tap the Fritz Creek drainage to serve the eastern portion of its growing community, in which case it would be again going beyond its boundaries for its water supply. Water extension into the territory will certainly require a substantial increase in capital spending whether it be to increase the capacity of the existing reservoir and its storage tanks or to develop additional sources of water should they be required. (at 12)

"If they [the City] need more money to help pay for the 21% of calls that are to the areas outside City limits a service area that covers the whole area now served would make more sense than annexation." **Abigail Fuller Responsive Brief**

“Kachemak City would become an enclave should annexation succeed. This community is more compatible with the City of Homer than any area proposed for annexation, yet it has been excluded from the City’s expansion plans.” **CCAA Responsive Brief**

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA’s Brief contends that not only would the proposed boundary change exclude an area with interests viewed as compatible with the City of Homer, it would render Kachemak an enclave within the City of Homer.

Kachemak City would become an enclave should annexation succeed. This community is more compatible with the City of Homer than any area proposed for annexation, yet it has been excluded from the City’s expansion plans. (at 2)

Homer seeks to play leapfrog with Kachemak City. How or why Kachemak City is different from the surrounding areas outside City boundaries is not explained. This presents a situation analogous to the recently denied annexation petition of the Ketchikan Gateway Borough in which annexation was

denied because the Borough proposed excluding two existing communities. (at 25)

Objective Annexation

Review. OAR’s Brief expresses no opinion about what boundary configuration is appropriate for the City of Homer, citing a lack of information and public discussion of the issue.

We do not believe that the process we have gone through to consider the proposal is sufficient for judgment. The need for careful consideration with a full flow of basic information is obvious. Without that, any process is exposed to chaos. (at 10)

Peter Roberts. Mr. Roberts stated that the proposed post annexation boundaries ‘do not work’ on the east side of the City of Kachemak because the bench and neighbors would be divided in an unrealistic manner. (at 2)

“The existing boundaries of Homer have room for expansion (which city ordinances discourage) and those areas should be adequate for foreseeable future growth. Less than half the parcels are developed in the city presently.” **Pete Roberts Responsive Brief**

The existing boundaries of Homer have room for expansion (which city ordinances discourage) and those areas should be adequate for foreseeable future growth. Less than half the parcels are developed in the city presently. In any case most of the annex area is not physically compatible with the city or with urban growth. This is more about TAX REVENUES for the city than about consolidating like areas. The city already has EXTRA TERRITORIAL POWERS to protect their reservoir, that is not a significant issue here. No other resource or area is necessary for the city's welfare or future. (at 7-8)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief concedes that portions of the territory proposed for annexation currently receive significant services and benefits from the City of Homer, and suggests that annexation of such portions of the territory may be justified under the standard. (at 3) However, the Brief indicates that the Crossman Ridge area is not suitable for inclusion in the area proposed for annexation.

The city of Homer's Petition for Annexation (Exhibit I, Petitioner's Brief Section 8) claims that 'urban development is occurring in all areas proposed to be annexed'. An extensive ground search of the Crossman Ridge area, interviews with local residents, and in-depth study of high-resolution aerial photomaps, turned up no

signs or indications of urban or suburban development within or near the Crossman ridge area. (at 7)

D. Views Expressed in Petitioner's Reply Brief

The City's Reply Brief contends that there are no areas outside the proposed boundaries that are crucial to the full development of essential city services on an efficient, cost-effective basis.

One of the most crucial areas for inclusion is the Bridge Creek watershed, which is necessary for the provision of treated water to the residents of Homer. It is included within the proposed boundaries.

From another perspective, inclusion of all of the proposed annexation territory is necessary to allow the City to continue to provide city services on an efficient, cost-effective level. As noted previously, numerous city services are used by nonresidents who are not property tax payers. In order for the City to continue to provide such services efficiently and cost-effectively, the properties in the annexation territory should be included in the city and its tax base. (at 58)

3.10 Boundaries Limited to Local Community and Next Decade of 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:

3 AAC 110.130(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.

3 AAC 110.130(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 in Petition

The City makes multiple references throughout its Brief expressing the view that the territory is part of the greater Homer community.

The City of Homer is certainly not over-reaching. The proposed post-annexation boundaries of the City represent a very conservative estimate of predictable growth, development, and public safety needs. Urban development is occurring in all areas proposed to be annexed. The post-annexation boundaries do not extend the length of East End Road nor do they extend into the Anchor Point area. (Exhibit I page 40)

C. Respondents’ Views

Sallie Dodd-Butters. Ms. Dodd-Butters’ Brief suggests that portions of the area proposed for annexation are too remote from the existing boundaries of the City of Homer to satisfy the standard.

Another example are the poor residents who pay Homer’s mill rate for water they don’t receive, as well as the doubled cost of bulk water delivery and storage. If you’re paying for something shouldn’t there be a receipt of goods or services? We live 7 miles out of town . . . what will we receive? (at 3)

Abigail Fuller. Ms.

Fuller’s Brief contends that the Petition does not satisfy the standard and that portions of the area within the existing boundaries of the City remain undeveloped.

The proposed territory includes several communities - Diamond Ridge, Skyline, part of Crossman Ridge, and part of Fritz Creek. All of these areas shop in Homer but all have their own identity, distinct from the Homer community.

There is no documentation of septic failures along the bench. There may be a few, but this is the State’s responsibility, not Homer’s. Homer is not equipped or prepared to deal with any such problems within the next ten years even if there was a severe problem. I live on the lower edge of the lower bench, with cold saturated clay soils. I am downstream of many septic systems, yet I use water from a small creek on my property to water my garden, and no one has gotten ill from my vegetables. Homer has plenty of vacant land within the current City limits for the next ten years worth of growth, if they would adjust their own zoning laws to accommodate it. There is no need to reach outward. Homer has 1,662 unimproved parcels within current city limits. At an average of about 60 building permits per year they have plenty of room left, 33 years worth.

“There is no need to reach outward. Homer has 1,662 unimproved parcels within current city limits. At an average of about 60 building permits per year they have plenty of room left, 33 years worth.” **Abigail Fuller Responsive Brief**

Mary Griswold. Ms.

Griswold’s Brief implies that the proposed annexation would extend the City’s jurisdiction beyond its capability to provide essential services.

The City of Homer is over-reacting to limited and scattered development outside its boundaries that is not likely to threaten its dynamism or economic health for at least the next 10 years. Acquiring this large territory that exhibits little need for city services and has little hope of receiving them if it did desire them puts an extremely unfair tax burden on these new residents. Homer, the area under consideration for annexation, and the adjacent outlying areas would all be much better served if the city would pursue other alternatives

to more equitably share the costs of necessary services extended. (at 3)

The city is to be commended for its efforts to plan 25 to 30 years into the future; however, according to the Alaska Administrative Code, the proposed boundaries for annexation are supposed to include only the area of predictable growth, development, and public safety needs during the next 10 years. With only slightly more than half of the parcels within the existing municipal boundaries developed and with only about a third of the parcels provided with water service, there is adequate room for expansion within the current boundaries for the next 10 years.

According to the Local Boundary Commission, the average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. If annexation occurs, Homer’s area would more than double from 21 square miles (10 square miles of which is tidal and subtidal land) to 46.58. The city is clearly overreaching. (at 12)

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA’s Brief states that the proposed post-annexation boundaries of the City include an area far in excess of the community’s predictable growth, development, and public safety needs during the next decade.

“With only slightly more than half of the parcels within the existing municipal boundaries developed and with only about a third of the parcels provided with water service, there is adequate room for expansion within the current boundaries for the next 10 years.” **Mary Griswold**
Responsive Brief

Homer has inflated the idea of what is a city beyond the bursting point. They have stretched out and up into remote sparsely populated countryside in an attempt to make urbanites of those who truly do not fit that definition. At the same time, Homer has excluded areas such as Kachemak City that are actually more like Homer than the areas proposed for annexation.

The City is to be commended for its efforts to plan 25 to 30 years into the future; however, according to the Alaska Administrative Code, the proposed boundaries for annexation are supposed to include only the area of predictable growth, development, and public safety needs during the next 10 years.

According to the Local Boundary Commission, the average size of the jurisdictional area of the 145 cities in Alaska is 27.1 square miles. If annexation occurs, Homer’s area would more than double from 21 square miles (10 square miles of which is tidal and subtidal land) to 46.58. The City is clearly overreaching.

With only slightly more than half of the parcels within the existing municipal boundaries developed, and with only about a third of the parcels provided with water service, there is adequate room for expansion within the current boundaries for the next 10 years. (at 26)

Raven Ridge Homeowners' Association.

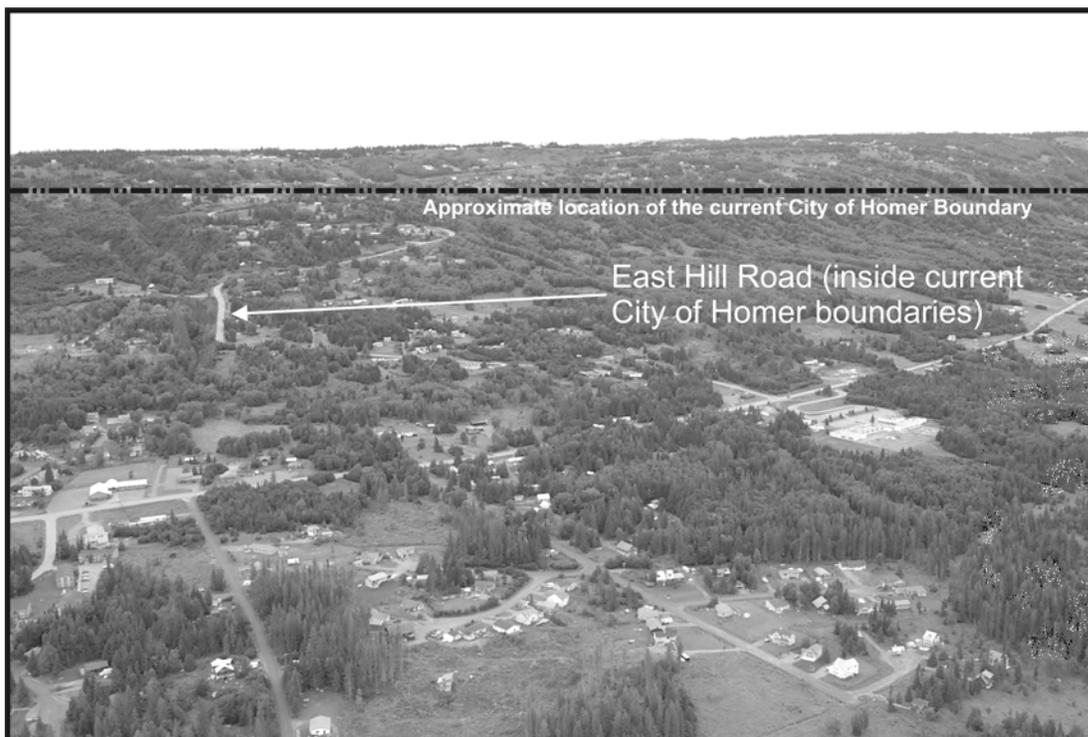
The Raven Ridge Brief claims that the criteria are not met because there is much undeveloped land within the current boundaries of the City.

Only about half of the parcels within the city have been developed. Many are without sewer and water service. Several of the undeveloped parcels are relatively large and could be developed into many residential

lots. The city did not provide sufficient information such as number. (at 4)

Peter Roberts. Mr. Roberts' Brief suggests that most of the area within the City remains undeveloped, rendering expanding the City's boundaries unnecessary.

The existing boundaries of Homer have room for expansion (which city ordinances discourage) and those areas should be adequate for foreseeable future growth. Less than half the parcels are developed in the city presently. In any case most of the annex area is not physically compatible with the city or with urban growth. (at 7)



August 2001 photograph of the East Hill Road area in Homer.

“ . . .the population of the annexation territory is estimated (1990 Census) at 2,687, which would make it Alaska’s 17th largest city if it incorporated independently.” **Petitioner’s Reply Brief**

Steve and Margret Seelye.

The Seelye Brief suggests that expanding the City’s boundaries to include inaccessible areas is inappropriate.

Much of the area north of Skyline Drive and Diamond Ridge Road are sparsely developed, including many large tracts that don’t even have road access. It would seem that the City considers that any development at all is enough to meet these criteria.

The Crossman Ridge Neighborhood. The Crossman Ridge Brief observes that certain City services, such as water service, sewer service, and road services are currently unavailable and are anticipated to remain unavailable to the Crossman Ridge neighborhood for the next ten years. Therefore, the brief suggests, it would be inappropriate to include Crossman Ridge in the area proposed for annexation. (at 7)

By including the Crossman Ridge neighborhood, the proposed boundaries are extended

beyond the area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the next 10 years following annexation.

Information supporting this statement is included in the above listed standards 1), 2), 3), 4), and throughout this document [Brief].

D. Views Expressed in Petitioner’s Reply Brief.

The Petitioner’s Reply Brief contends that the criteria is satisfied since, on its own right, the area proposed for annexation would constitute one of the more populous cities in Alaska.

. . .the population of the annexation territory is estimated (1990 Census) at 2,687, which would make it Alaska’s 17th largest city if it incorporated independently. One could readily make the case that the area could easily have been annexed 10 years ago, so it is certainly reasonable to conclude now that both (a) the annexation territory is already a part of the local community, and (b) over the next ten years there will continue to be growth, development, and public safety needs that should be addressed by inclusion of the area within City boundaries. Although it is disputed by many, the City continues to believe that no excess territory is included in the proposed boundaries. (at 58)

3.11 Comparative Abilities of the City and Borough to Deliver Essential Services

A. The Standard

3 AAC 110.090(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 3 AAC 110.090(b) is defined in 3 AAC 110.990(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...

B. Views Expressed in the Petition

The City’s Brief claims that the City can provide essential city services to the territory more efficiently and effectively than another existing local govern-

The term “essential city services” is defined 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...”
 3 AAC 110.990(8)

ment. According to the Petition, the City already provides a range of services to the area proposed for annexation including fire and emergency medical services; law enforcement; water; sewer; library; recreation; animal control; port and harbor facilities; and voter’s services.

The fire department currently is the sole provider of emergency fire, rescue, and emergency medical services (EMS) for the proposed annexation area, with the exception of wildland fires. Wildland fire fighting is the primary responsibility of the Division of Forestry (DOF) for those areas outside of Homer City limits. The City of Homer has a Cooperative Agreement with DOF that pays the Homer department to respond to wildland fires outside

The Petitioner expresses confidence that the Homer Police Department is prepared to provide a full complement of law enforcement services to the area proposed for annexation . . .

the existing city limits during the pre-established “fire season” of mid-April through Sept 30. DOF has only wildland fire fighting assets in the Homer area from April through the end of September. No other entities, public or private, provide services to those areas addressed.

The Petition describes additions to fire department equipment and facilities it intends to secure after annexation.

The proposed sub-station which will house a wildland/interface engine, tanker/tender, and emergency medical services quick response vehicle will lower the fire protection classification of structures within 5 road miles of the station by at least one point resulting in potentially lower fire insurance rates for those residents.

The fire department will continue to provide essential fire, rescue and emergency medical services to those areas within the proposed annexation area without interruption. These services include EMS first response by volunteer providers that currently reside in the proposed annexation areas, including both basic and limited ad-

vanced life support capabilities (oxygen, intravenous therapy, and rapid defibrillation).

The Petitioner expresses confidence that the Homer Police Department is prepared to provide a full complement of law enforcement services to the area proposed for annexation, but indicates that additional police department staff and equipment will be provided after annexation. (at 25)

The annexed area will more than double the geographic area being serviced by the police department and will increase the number of citizens being served by over fifty percent. Due to these factors, the Homer Police Department will hire two additional officers and purchase additional equipment to safely and adequately provide services to the area. The cost of the new equipment will be paid for by the Annexation Bond mentioned above. The additional operational costs can easily be paid for with the increased tax revenues that will be generated by the new areas.

City of Homer Police officers have been backing up the Alaska State Troopers on calls in the area for many years and responding to all trooper requests. Homer Police dispatchers have been dispatching the troopers on calls to the areas and have been providing 911 related dispatch. Homer Police officers are already empowered

by state statute to exercise full police power within the area. No additional authority needs to be obtained.

The City's Brief states that animal control services are presently being provided to the area proposed for annexation but pledges that additional equipment and facilities will be provided to serve the extended jurisdiction of the City.

A new animal control vehicle will be purchased and a new shelter will be constructed within the next two years. The vehicle will be paid for by the Annexation Bond and the shelter will be constructed with existing funds.

The City's Brief claims that the City already has administrative, finance, and planning staff to accommodate the residents of the area proposed for annexation and that the City will retain the services of an additional planner upon approval of the annexation.

Because of the City of Homer's extraterritorial zoning powers concerning the Bridge Creek Reservoir, planning is already underway for that area. It is anticipated that the first year will be spent cataloging the existing land uses and obtaining recommendations from the citizens of the area for future land use regulations. Within two years of annexation, long and short-range land use plans for the area should be complete.

The roads in the area being considered for annexation are maintained by the State of Alaska and the Kenai Peninsula Borough. Upon annexation the City would assume responsibility for maintaining the roads currently maintained by the Borough; and the State would continue to maintain their roads.¹⁵ The City currently maintains a total of 21.5 miles of gravel and paved roads. Per the KPB FY-99 Road Expenditure Report, there are approximately 41.7 miles of gravel road within South Peninsula District, Units 5, 6, and 7. These units include all of the proposed annexation area and some additional roads which are outside the area. The City and Borough are working on defining the specific roads to be excluded.

The intention of the City is to immediately extend winter and summer **road maintenance** into the proposed annexation area to replace KPB road maintenance. Initially, this service would be continued at the same level of service as is now presently provided by the KPB utilizing the same private contractors that currently complete winter snow removal and summer road maintenance. Within two years the city will, utilizing private contractors and City personnel and equipment, provide a considerably higher level of service than is now being offered. (at 37-38)

¹⁵ A map showing current road maintenance responsibilities was attached to the petition as Appendix A.

C. Respondents' Views

Alaskans Opposed to Annexation. The AOA Brief states that the Kenai Peninsula Borough will be asked to establish a local road improvement district to address road construction and maintenance problems in a portion of the area proposed for annexation.

That new road district will clearly provide more benefits to the proposed annexed area than the City of Homer now anticipates for the next five years.

Since the Borough does not propose to change the services presently available, there would appear to be no advantage to the people presently living outside the City of Homer to be brought within the City limits.

Further, there is no evidence that the present Borough road maintenance can be extended or the contractors would continue road maintenance at the same rate, particularly where the City has a different standard of construction and maintenance than the Borough. (at 16-17)

The AOA rejects the City's assertions regarding delivery of sewer and water services to portions of the area sought for annexation.

A review of the sewers provided by the City of Homer (See, Exhibit B) clearly demonstrates that there are no sewers in the proposed annexed area except in Kachemak City (Sections 10 and 11) and none are proposed. (at 17)

AOA suggested that the Petition exaggerated the revenues that would accrue to the City and downplayed City expenditures that would result from annexation.

Doris Cabana. Ms. Cabana's Brief contends that the Kenai Peninsula Borough provides essential services to the area proposed for annexation more efficiently than the City of Homer could. (at 3)

Sally Dodd-Butters. Ms. Dodd-Butters' Brief expressed satisfaction with the road maintenance services by the KP.B.

I like my borough road services in general. There are some rural problems which one can accept in the more rustic settings of one's own choosing, than they might in an urban area. I can assure you that if we are dragged kicking and screaming into a paper-front urban tax base our needs are going to be quite different! We have 11 years of Borough tax equity built up on our residence, that I consider a 'living tax contract'. This past summer I walked our road with our Borough road supervisor who pointed out sev-

eral basic problems, and assured me that Kent Street would finally receive the upgrade it needed 'although we won't start it today'. I assume there is even a work order already in the Borough records. Since it is not up to Homer Road Standards yet, if annexed, we will be abandoned to do the upgrade ourselves. We are one of the two families on the road in the low-income range and another are senior citizens. (at 4)

Abigail Fuller. Ms.

Fuller's Brief contends that delivery of essential services by the KPB would be more efficient than delivery of services by the City.

We get much better service from the Borough than we would from the City, and the Borough is planning to increase their funding for road maintenance. They are planning to increase the Road Service Area by .5 mill while decreasing the regular mill rate by .5 mill. No new taxes for us taxpayers but more money for roads. Homer promises better road maintenance, a promise they are unlikely to be able to keep, but it will cost us 5.5 mills! (at 4)

The real truth here is the City is NOT capable of providing any of the services more efficiently and effectively than other levels of government or individuals themselves. They don't have the money and they don't have a plan.

The most efficient way to provide Fire/EMS would be an area-wide service area. Homer doesn't want to do this because

they don't want to give up control. The proposed Fire Service Area is a reasonable compromise. Homer claims they can continue what they are now providing if they annex, although they have not said if they could continue to provide Fire and EMS service for the areas beyond the territory to be annexed. Meanwhile, they are having trouble finding and retaining volunteers, and are in need of a new Fire Station, casting doubt on their ability to continue to provide the service without a service area. A service area would also more effectively pay for Homer's efforts to be equipped and trained for fighting wildlands fires, really not a city responsibility. A service area could also move to having more employees if volunteers get too scarce. Homer cannot afford to do that even with annexation.

To support her assertions, Ms. Fuller's Brief includes statements excerpted from the Homer Volunteer Fire Department's monthly activity reports.

The fire station repairs were completed. The extent and cost of the repairs demonstrated the importance of good design and adequate maintenance of City facilities. The repairs addressed the integrity of the existing building, but it did not include any remodeling or expansion to meet the current or future needs. [December 1998]

The Fire Department Strategic Planning Group completed its work and sent a report to the City Council recommending a number of actions which are

Ms. Fuller's Brief . . . indicates that she believes that it would be a potential disaster if the City ceased responding to emergencies beyond the City's corporate limits.

awaiting Council action. The Group identified the need for additional funding and identified the formation of a "doughnut" Service Area surrounding Homer to provide for the equitable funding of services. [December 1998]

Ms. Fuller's Brief indicates that she believes that it would be a potential disaster if the City ceased responding to emergencies beyond the City's corporate limits.

The total number of EMS calls and fire responses were the highest since 1987, with fewer available volunteers with which to respond, it is hoped that through renewed recruiting efforts, and the use of varied volunteer incentives, and the retention of experienced members that the volunteer ranks will grow to meet the increasing response workload. The Fire department is currently recruiting an upcoming EMT 1 course beginning in January. [December 1999]

Ms. Fuller's brief dismisses the existence of a serious need for City of Homer police service in the area proposed for annexation, yet asserts that significant additional Police Department staff would be required to efficiently serve the area proposed for annexation.

Road service delivery by the KPB is superior to road service that would be provided to the area proposed for annexation by the City, according to Ms. Fuller.

There is no way Homer can provide road services more efficiently than the Borough is doing! They plan to start with \$80,000 dollars and increase that to \$199,000 as they switch to providing the service in house from the current contractors. Government cannot provide service cheaper than private enterprise can, at least not without outside subsidy. The Borough spent \$148,604 on routine maintenance last year, using contractors. The total spent was \$234,338. [Exhibit 10] Doing the same work in house would cost more, Homer's wages are high and they have generous benefits. Also they do not have the equipment needed to clear snow at the upper elevations. It took a large front end loader to clear the eight feet of snow from the road into our subdivision at the top of Weal Hill the winter before last. If they buy more equipment they do not have room to work on it. This was discussed at one of their recent forums, and they

were talking about using some space out on the Spit, hardly a convenient location to work on equipment needed in town. Also Homer has not considered the impact on the area economy if the contractors that now rely on road work to make it through the slow season go out of business. Homer promises we will qualify for their road improvement program, HARP. That won't work well in rural areas, take our road, for example. Currently the way HARP works is the property owners gets a weighted vote based on property value, then the fees are \$30/foot of frontage. We have 6 or 8 lots along the road [depending on which road the corner lots front on], and one large one at the end of the dead-end road. The large one is valued more than the rest combined and would have enough weighted vote to implement an improvement district whether the rest of us wanted it or not! THEN, they have no frontage!! The rest of US would be paying for a road we did not want! Plus at \$30/foot many property owners will not be able to afford the improvement, as roads are longer and properties bigger outside of town. And that's not taking into account how many HARP projects the City could afford to take care of when their share is funded by a 3/4-cent sales tax.

Ms. Fuller suggests that City of Homer zoning services are inefficient and unproductive.

Homer has not done a very good job with it's own zoning, one of the reasons people sometimes choose to build outside of town. They have done an especially poor job of providing for com-

"The library has been in need of more space for years, and Homer has been unable to provide it. Annexation isn't going to change that situation. Perhaps a service area could provide the funds the library needs, or privatize it." **Abigail Fuller Responsive Brief**

mercial development. They end up creating controversies that linger for years; they really would be better off ditching zoning entirely. Their comprehensive plan is a pipe dream. Both would need to be totally redone, or just plain junked, if they annex. Homer refers to a land swap at the top of Baycrest Hill as an example of the need for zoning. The land swap was done by the Borough to resolve a land-use dispute in Anchor Point concerning a proposed gravel pit. The Borough swapped parcels so the potential pit owner could set up a gravel sorting yard instead. The new parcel is located alongside the Homer Baling Facility (landfill) and adjacent to the State DOT Maintenance Shed [Exhibit 11]. Sounds like a good place for an industrial zone - but the complaint is from nearby residents (of which there are very few) who think the area should be kept residential. Zoning does not end this type of conflict. It creates more, due to someone always is unhappy with the chosen zone or allowed

variances. If the residents are squawking now wait until they are zoned industrial! Homer could not have helped the original problem either, it involved Anchor Point.

Mary Griswold. Ms. Griswold's Brief expresses satisfaction with essential services the area proposed for annexation receives from the Kenai Peninsula Borough, and questions whether delivery of certain essential services to the area proposed for annexation by the City is reasonable or desirable.

The different areas proposed for annexation do have one important characteristic in common in that they do not rely on the City of Homer to provide most of their essential services. The Kenai Peninsula Borough and the State adequately and more cost-effectively maintain their roads, the KPB provides adequate land planning services, and the state troopers provide adequate police protection. The Homer Volunteer Fire Department provides fire and emergency medical services to these areas and beyond for which a service area is in the process of being created to most equitably share these costs. Some people in these areas desire better water and waste water disposal systems, but it is very unlikely that the City of Homer could provide them in the foreseeable future due to funding restraints and the very expensive infrastructure expansion required. Other services provided by Homer are better funded through fees assessed on those

who choose to use them. Port and harbor services are provided through an enterprise fund designed to be self-supporting, including the administrative costs attached to them. (at 3)

The city is not capable of providing essential city services more efficiently and more effectively to the territory proposed for annexation than another existing city or organized borough.

Expansion of the City's jurisdiction as proposed could be counterproductive to fire and EMS service delivery in the portions of the greater Homer area, according to Ms. Griswold.

Although it is understood that the Local Boundary Commission has a strong preference for annexation over formation of new service areas, the proposed fire and EMS service area for the greater Kachemak community would cover the larger area already served by the Homer Volunteer Fire Department, which is necessary to more equitably share the cost of the service among all those benefiting. Extending fire protection only to the territory proposed for annexation does a severe disservice to those people living farther away. Providing service without requiring payment from those people living outside the proposed post-annexation boundaries is not fair to those living in the city or annexation area.

Ms. Griswold's Brief contends that road maintenance service in the area proposed for annexation is adequately provided by the State of Alaska and the Kenai Peninsula Borough.



City shop in Homer.

Annexation would leave remainder areas on Ohlson Mountain Road, Skyline Drive and East End Road to be patrolled by state troopers. The borough Road Service Area Board improves its roads through its Capital Improvement Program, 70% of which is funded through annual state grants. Each year the board prioritizes road projects in three regions: north, central, and south. As funding becomes available, the board tries to share it equitably among these regions. Assuming no changes are made to the priority list, Mission Avenue, Bidarki, and Sprucewood Drive are three roads in the proposed annexation territory prioritized for improvement during the 2001 construction season. Roads in the territory will lose their priority status for improvement if the city assumes maintenance for borough roads.

There is question whether the \$199,000 budgeted by the city will equal borough dollars earmarked for comparable maintenance because figures for actual borough maintenance vary from \$148,000 to \$234,000.

With a significant undeveloped area within the current jurisdiction of the City of Homer, the addition of large, undeveloped areas would present problems for the City's planning department, according to Ms. Griswold's Brief.

According to the borough GIS department, 1,701 of 3,363 parcels in the city have improvements on them, which means that 1,662 parcels - almost half of the parcels within the city - are undeveloped. The city will have its hands full overseeing land use planning, zoning, and development within its present boundaries.

Ms. Griswold contends that animal control is not provided to the area proposed for annexation by the KPB because residents of the area do not need or want that service.

Borough residents defeated borough animal control powers in the October 6, 1998 election. The borough assembly defeated animal control ordinances 98-29, 98-76, and 99-49. The city should not extend this service beyond its boundaries. The city should examine its fee schedule for impound and care to better cover the expenses associated with its animal control services.

Ms. Griswold’s Brief dismisses the City’s assertions regarding the relevance of City recreational services, community schools, voter services, and funding of nonprofit organizations to the merits of the proposed annexation.

Recreational services such as neighborhood parks are not requested or suggested by the existing city government for the territory. Homer’s parks and campsites attract many visitors other than those from the annexation area. These are part of the infrastructure that makes Homer a tourist attraction to support its economy. The parks are not overcrowded; city residents are not deprived of their enjoyment of these facilities. In fact, non-city residents make a significant contribution to city residents’ recreational opportunities by participating on soft-ball and soccer teams. The city should evaluate its fee schedule for use of the ballparks and campgrounds to better cover associated expenses.

Community Schools programs are partially funded by the Kenai Peninsula Borough School District. Property own-

“... Mission Avenue, Bidarki, and Sprucewood Drive are three roads in the proposed annexation territory prioritized for improvement during the 2001 construction season. Roads in the territory will lose their priority status for improvement if the city assumes maintenance for borough roads.” **Mary Griswold Responsive Brief**

ers in the proposed annexation territory pay property taxes to the school district, thereby helping to pay for this service. Currently program revenue accrues to the school district. The city should consider appropriating some of the revenue to cover its expenses. (at 6-7)

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA maintains that the City of Homer is not more capable than the City of Kachemak or the Kenai Peninsula Borough of providing essential services to the area proposed for annexation.

Homer does not appear to have reached any understanding with the KPB regarding taking over services from the Borough. The City Clerk ‘could not locate any written documentation information sent from the Bor-

ough to the City of Homer specifically regarding the annexation issue’.

In the Denali Borough annexation effort, the Commission compared whether the annexing government or the existing government ‘more adequately’ provides mandatory powers of planning, platting land use, and solid waste disposal. When it found the existing Borough “more adequately” provided these services than the proposed annexing government, the annexation petition was denied. Therefore, the LBC must compare whether Homer or the KPB better provides services to the area proposed for annexation. (at 13)

Raven Ridge

Homeowners’ Association. The Raven Ridge Brief claims that the City is incapable of providing essential city services more efficiently and more effectively to the territory proposed for annexation than the Kenai Peninsula Borough and suggests that the City adjust the rate of user fees charged for certain services to improve the City’s revenue stream.

The residents of Raven Ridge Subdivision are satisfied with our present level of essential services provided by the Kenai Peninsula Borough. Our road maintenance is good. If we are dissatisfied with the condition of our roads we use RRHA subdivision designated funds to

make improvements. We find it highly unlikely that city maintenance will be as efficient as the proposed annexation territory will expand the city’s road maintenance area thus adding considerably to the city’s budget and overload the current maintenance equipment and personnel. RRHA has no need for city sewer and water services as all of our improved lots have no soil limitations for septic systems. As a measure of the city’s effectiveness, it can not provide its own residents with these services even where there are severe soil limitations for septic systems.

Police protection provided to the territory by AST is effective and efficient and at no direct cost to the territory and minimal cost to the city. The city’s capital expense increase for the police department of \$114,600 plus salary, benefits, and training of two additional officers to provide service to the territory can hardly be interpreted as effective or efficient.

“The residents of Raven Ridge Subdivision are satisfied with our present level of essential services provided by the Kenai Peninsula Borough. Our road maintenance is good. If we are dissatisfied with the condition of our roads we use RRHA subdivision designated funds to make improvements.”

Raven Ridge Homeowners Association Responsive Brief



The Petitioner states that the City of Homer currently provides animal control services and voters' services to the proposed annexation territory. To our knowledge, City animal control officers have not entered the subdivision during the past 17 years. RRHA residents vote at a church, which is probably at little or no expense to the city. Volunteers residing in the territory are making a tangible contribution on behalf of all territory residents to the HVFD. If additional funding is required a Fire Service Area to encompass the entire area served by HVFD is the most efficient and effective solution. If funding library services, recreational services, and port and harbor services is a problem then the city should adjust its user fee schedule. We favor a similar approach for other non-profit organizations. There are many users outside of the city and territory that should be sharing the burden. (at 2-3)

Peter Roberts. Mr. Roberts maintains that annexation would result in a net financial loss for the city, very likely less service

for current city residents, and no improvement over the services that the Kenai Peninsula Borough provides. (at 1)

Fire and emergency services are costly and we acknowledge the need to raise funds to pay for it, it is the only area wide service the city provides. The solution here is Borough Fire/Emergency Service Area tax base to defray those costs. We already have Borough Government, we have trooper (very little service needed, mostly traffic accident related) coverage and Borough Road service which is adequate. Petition projections offer nothing more than switch in services, probable lessening of service and more taxes to support downtown Homer. (at 2)

Fire and emergency service has been wonderfully provided by the Homer Volunteer Fire Department for 35 years+ in part because more than 65% of those fine folks live out of town (and would be gone if Homer stopped serving the out lying areas . . .). They cover a huge area at least four or five times the annex area - with four more communities. A borough Fire and Emergency Service Area including all the area served would be a far better idea and is being worked on. That could generate enough money to more than

compensate for the costs involved - and would enhance the Fire dept. capabilities area wide and get the citizens support which this annexation does not. (at 4)

Mr. Roberts asserts that the City's projections of costs for delivery of road service are distorted, and that responsibility for delivery of road service in the area proposed for annexation should properly remain with the KPB. (at 5)

The borough already does the roads and the city has been providing the fire/EMS through old understandings - they could use some financial help for fire/EMS Service on the roads is either going to be reduced or they grossly underestimated the road costs and annexation will be a net loss. Again, they can not handle what they are responsible for (take care of all the roads in the city); there are many roads that get little to no maintenance and plowing in the city already. Some borough roads are not as good. And they refer to our roads as 'non-conforming'. Their statements really do not inspire any confidence at all! Many of us feel they will try to abandon many of the borough roads once they have control. Once again they have no firm plan in place for new roads - nearly twice as many miles as they do now. 'We will work it out as we go . . . ' (city road forum, 5/16).

"Fire and emergency service has been wonderfully provided by the Homer Volunteer Fire Department for 35 years+ in part because more than 65% of those fine folks live out of town . . ." **Peter Roberts**
Responsive Brief

Mr. Roberts asserts that the fire and emergency medical services should be provided to the area proposed for annexation by a KPB service area.

Service provided by the City of Homer amounts to one issue - FIRE/EMERGENCY that the city provides to the annex area. That is an old issue from 30+ years ago because the Volunteer fire department is made up at least half the volunteers have always lived outside the city and would be gone if the city "stopped the trucks"! This may be the most important and complex issue in this annexation petition. It would best be handled by a SERVICE AREA that covers all territory that the Homer Vol. Fire Department covers (an area 4-5 times larger than the annex area) and taxes everyone for the ONE service that is needed. The other service Homer claims to provide & does not compute . . . and our sales tax contribution more than pays for all them totally. (at 7)



Crossman Ridge Road at Cottonwood.

Steve and Margret Seelye.

The Seelye Brief suggests that police services are better provided to the area proposed for annexation by the Alaska State Troopers than the City and that planning services can be provided to the territory proposed for annexation more efficiently and more effectively by the Kenai Peninsula Borough.

It is not fiscally responsible to add to the cost of the City police department when the state-funded troopers are providing adequate service. The troopers already have the all terrain vehicles needed to serve remote areas with limited accessibility.

As for planning, contrary to what the City Manager has written in the petition, paper plats have not been allowed in the borough for many years. The City has already obtained extraterritorial power over its watershed. The City Manager

and Council have demonstrated that they don't believe "Resident input is vital" by the devious exclusionary way they developed and submitted the annexation petition. And the petition does not address how they are going to expand the space in an already crowded Planning

Department to accommodate the added material that will have to be stored and accessed. The Borough already provides a fully staffed planning department for those of us outside of the City as well as support services for the City of Homer staff. (at 2)

Bill Smith. Mr. Smith suggests that the annexation proposal meets the standard because previous attempts to deliver fire and emergency medical services to the area proposed for annexation through the KPB have failed, rendering annexation to the City the appropriate mechanism to satisfy service delivery needs in the greater Homer area.

The City of Homer has twice in the last decade proposed a Fire/EMS Service Area. Each time it was dropped in the face of fierce opposition. Annexation

remains the only viable option for fair funding of this essential service. The proposed Kachemak Bay FSA may well fail at the polls, even with the promotion by suddenly responsible citizens. As the community must continue to provide this service area wide, we must attempt more equitable funding by incorporating a larger share of the community. There is no perfect sharing of tax responsibility, but this is better by far than what we have to date. (at 5)

The Crossman Ridge Neighborhood. The Crossman Ridge Neighborhood's Brief maintains that access difficulties in the Crossman Ridge area would render delivery of services to that area by the City of Homer less efficient than delivery of services to the area by the KPB.

Because of the rural nature and limited road access, the Crossman Ridge neighborhood does have limited access to most of the services provided by the city of Homer and is better served by the Kenai Peninsula Borough. Crossman Ridge residents have no desire for and little need of many of the city of Homer services such as police, fire, emergency medical, roads, water, sewer, animal control, etc., to be extended to Crossman Ridge. These services cannot be efficiently or effectively provided to the neighborhood now or in the reasonably anticipated future. Because of low population density and road less nature, providing these unwanted services to the Crossman Ridge

neighborhood would put an unnecessary, excessive, and unjustifiable expense on the city of Homer.

D. Views Expressed in Petitioner's Reply Brief

The Petitioner's Reply Brief defends the City's position that neither the Kenai Peninsula Borough nor the City of Kachemak is capable of providing essential city services to the area proposed for annexation more efficiently and more effectively than the City of Homer.

Fire and emergency service is at the top of the list of essential services for the annexation territory. Neither the Kenai Peninsula Borough nor Kachemak City currently provides fire or emergency services in the vicinity of Homer. In fact, Kachemak City contracts with the City of Homer to provide such services in Kachemak City. In order for the Borough to provide such service, the voters would have to approve a local fire and emergency service area. This is very inefficient compared to the City's ability to immediately step in with its existing fire and EMS service. The local service area, if approved by the voters, would first have to organize and form a local service area board, which, in conjunction with the KPB Assembly, would have to create a budget; make appropriations; levy and collect a tax; acquire equipment and facilities; recruit employees and vol-

unteers; and train the volunteers before it could begin service. Homer could begin providing service immediately and without the formation of a new layer of bureaucracy to administer the service. Furthermore, a new service area cannot legally be formed if the service can be provided by annexation to the City, AS 29.35.450(b). This legally precludes the inclusion of the annexation territory in a new fire and emergency service area.

The City notes that only the City of Homer has an existing water treatment plant, a sewage treatment plant and mains. Accordingly, the City asserts, it is demonstrated that the City can more efficiently and effectively deliver water and sewer services to the area proposed for annexation than either the KPB or the City of Kachemak.

Kachemak City cannot do it more efficiently — it already has an intergovernmental agreement with Homer for Homer to provide sewer service to the residents of Kachemak City. The Borough does not and cannot provide water and sewer service in the vicinity of Homer. While it will take time and money for Homer to extend wa-



A “maintained” road in the Crossman Ridge Subdivision.

ter and sewer service fully into the annexation territory, no existing government can provide this service sooner or cheaper than the City of Homer.

Land use regulation can also be more efficiently and effectively provided by Homer than by the Borough or Kachemak City. Homer has an active Planning and Zoning Department that has been at work since 1982. Zoning outside of cities is a newly available local option at the Borough level, and its efficiency and effectiveness are untested. For years the City has been far more active in zoning and land use planning than the Borough is or will be for many years to come.

Similarly, parks and recreation can be most efficiently and effectively provided by the City of Homer. Kachemak City is quite small and limited in its revenues and services. It cannot be more effective or efficient than Homer. Nor is the Kenai Peninsula Borough, with its headquarters in Soldotna, able

to be more efficient and effective than Homer, which has its seat of government, public works department, and parks and recreation commission all based locally.

The City's Reply Brief notes that the Homer Public Library already serves many residents of the area proposed for annexation. (at 54)

By 1999 non-city residents represented 51% of library cardholders (4,293 KPB resident cardholders, 3,810 City of Homer resident cardholders) and generated 55% of library circulation. The City is already effectively and efficiently providing this service for the southern part of the peninsula.

The City notes that the fact that no other municipality in the immediate vicinity has a police department demonstrates that police service cannot be provided more efficiently and effectively by another existing city or borough.

The Borough has not assumed law enforcement (police department) powers, and Kachemak does not have a police department, either. The Alaska State Troopers do provide some law enforcement, but their staff of two to four troopers is spread thinly over a very large area. Homer can provide the annexation territory nearly 24-hour per day coverage by adding two officers, but the State, even if it would add two more troopers, can not approach that level of coverage. Thus, Homer can pro-

vide this essential service more efficiently and effectively than any other government. (at 55)

3.12 Need for City Government in the Territory Proposed for Annexation

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. Specifically, 3 AAC 110.090(a) states as follows:

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 in the Petition

The City’s Brief contends that:

- there are social and economic problems in the territory sought for annexation;
- services currently provided to the area are inadequate;
- certain key services are provided to the area by the City and that the City is not adequately remunerated for costs associated with delivery of such services;
- continuation of the status quo will result in further deterioration of basic service delivery to the territory.

The Brief also suggests that the area sought for annexation consists of three neighborhoods.

1. **Baycrest/Sterling Highway** area west of the existing boundaries of the City is portrayed “as predominately residential with limited commercial development.”
2. **Diamond Ridge/Skyline** area north of the existing city boundaries is described as “predominately residential on

larger sized parcels of land.” The Bridge Creek Reservoir is in the Diamond Ridge/Skyline area.

3. **East End Road/Kachemak Drive** is east of the existing City boundaries and depicted as predominately residential with limited commercial and industrial development.

The Brief alludes to “social and economic problems” stemming from land use conflicts in portions of the area sought for annexation. The Brief claims that commercial uses are crowding traditional residential uses in the **Baycrest/Sterling** areas and contends that residents of that area “have not been comfortable with the decisions the Soldotna based Kenai Peninsula Borough has been making concerning this area.”

Land use conflicts in the Diamond Ridge/Skyline area are described as relating to “subdivision development, logging, and roads issues.” **East End Road/Kachemak Drive** issues allegedly “deal with development that doesn’t solely rely on unsightly strip development.”

The City of Homer's Brief also contends that "social or political" problems result from the current boundaries of the City because the existing boundaries preclude enfranchisement of area residents who should be able to fully participate in City of Homer elections. "Although the residents of the area are directly impacted by the actions of the City of Homer government, they have no vote and only minimal voice in these decisions."

1) Inadequacy of Existing Services.

The Petitioner's Brief suggests that the law enforcement and road maintenance services presently provided to the area sought for annexation are inadequate because:

- Alaska State Troopers do not provide twenty-four hour per day coverage and a lone trooper is

often required to patrol an expansive area; and

- road maintenance provided by the Kenai Peninsula Borough is minimal, inadequate and underfunded.

2) Alleged Inequity.

The Petitioner maintains that provision of municipal services to the area by the City without commensurate remuneration is inequitable. The Brief notes that fire protection is provided by the Homer Volunteer Fire Department at the City of Homer's expense and that "none of it will be paid for by property taxes from the areas outside the



Commercial campground in the Baycrest/Sterling portion of the territory proposed for annexation.



Commercial development in Millers Landing.

city.” The Brief states that the City expended “nearly \$600,000 for fire and EMS services” during 2000.

... Northern Enterprises Boat Yard businesses, Kenai Building Supply, etc., count on the city’s police, fire, and EMS services responding to their needs, but they do not collect city sales taxes. [This does not include the millions of dollars the city has invested in equipment and facilities.] There is no other entity to provide these services to the area.

The Petitioner contends that continuation of the status quo will result in further deterioration of basic services to the territory proposed for annexation.

If annexation is not approved the territory will see an erosion in those services which are currently provided by the City of Homer. The City is simply no longer able to provide extra-territorial services absent a sub-

stantial infusion of sales tax and property tax revenues. (Petition, Exhibit I, pages 36 – 37).

C. Respondents’ Views

Alaskans Opposed to Annexation (AOA). The AOA Responsive Brief challenges the City’s assertions that it could enhance the adequacy of service delivery, asserting that such claims are misleading. The AOA Brief expresses doubts about the City’s ability to deliver improved fire/EMT, police, library and public works services.

1) Fire/EMT.

The AOA Brief contrasts the expenditures anticipated by the City to extend fire protection services to the area in 1998 with the lower estimate in the petition. It notes that in 1998 the City projected that delivery of fire

service to the area proposed for annexation would require two new fire stations, two brush trucks, and two medical first response trucks. (at 12)

The AOA Brief suggests that the Petitioner fails to demonstrate that it would or could reasonably provide fire service to the area proposed for annexation without a commensurate increase in costs.

... if the City of Homer is not going to provide fire service for the annexed area then there is little benefit to the area being annexed. It is submitted that the City must explain how it can more than double the area of the City of Homer without increasing the cost of fire and EMT services, or at the very least explain why, in 1998 these services were acknowledged to be needed if the area in question was annexed, and now in 2000 such services are not needed. (at 13)

“... if the City of Homer is not going to provide fire service for the annexed area then there is little benefit to the area being annexed. It is submitted that the City must explain how it can more than double the area of the City of Homer without increasing the cost of fire and EMT services . . .”
Alaskans Opposed to Annexation Responsive Brief

2) Police.

The AOA Brief asserts that the annexation petition does not realistically anticipate equipment and personnel costs required for efficient delivery of police services to the area sought for annexation.

The year 2000 Petition for Annexation simply ignores these realities by saying that they will provide all the necessary

police services by contracting with the State of Alaska for two State Troopers to somehow work with the Homer Police force within the City of Homer. There is no explanation as to how this can be done or how two people can take the place of eight or nine. Additionally, State Troopers traditionally operate outside the City limits not within the City.

The year 2000 Petition for Annexation makes it

clear that the proposed annexed area will only get limited police service because there simply will not be personnel to police the new area which requires 24 hours a day and seven days a week services. (at 15)

3) Library.

The AOA Brief uses 1998 city projections to cast doubt upon the City’s ability to improve existing library services after annexation.

In 1998 the Homer City Library estimated the surrounding area would grow faster than the City, thus causing an increase in the need for library personnel and a larger library. The new Petition for Annexation proposal simply ignores the population increase and the plan is to do nothing additional to provide library services. (at 16)

4) Streets and Roads.

The AOA contends that annexation would not result in improvements to road maintenance service provided by the KPB.

There is presently pending, for a portion of the proposed annexation area, a petition to the Kenai Peninsula Borough for a local road improvement district to take care of road construction and maintenance problems. That new road district will clearly provide more benefits to the proposed annexed area than the City of Homer now anticipates for the next five years.

Further, there is no evidence that the present Borough road maintenance can be extended or the contractors would continue road maintenance at the same rate, particularly where

the City has a different standard of construction and maintenance than the Borough. (at 16-17)

5) Sewer.

The Brief challenges assertions by the Petitioner regarding extension of City service to the area proposed for annexation.

. . .there are no sewers in the proposed annexed area except in Kachemak City (Sections 10 and 11) and none are proposed. There is simply no city sewer service proposed to benefit those outside the present City of Homer and the City of Kachemak. Yet, the proposed annexation area residents will be taxed for these services. (at 17-18)

6) Water.

The AOA Brief also expresses doubt about the timely extension of City water service to the area proposed for annexation.

A review of the water mains presently provided by the City of Homer similarly reveals that little of the proposed annexed area will be served by the Homer Water Supply. (See, Exhibit C) In the area surrounding the present water treatment plant and the subdivision nearby, there is city water available. However, there is no plan to extend the water mains or the service to the great majority of the new area. Thus there will be little or no benefit to these areas from City water for the foreseeable future. How-

ever, the residents in the area of annexation will be taxed for these services. (at 18)

Doris Cabana. Ms.

Cabana's June 2, 2000 Responsive Brief suggests that residents of the area proposed for annexation do not desire annexation or require additional city services. She contends that certain residents of the territory sought for annexation cannot afford the burden of city taxation.

All the City needs to do is what citizens do, live within their budget and cut services. We are not asking for this extra tax burden. They know they can't help us but we can get them more. I'm sick of listening to that bunch in city hall, of all they do for us. It should be what we do for them. We put in our own water and sewer, bought larger property for the pleasure of not being in your neighbor's next door window. What will happen to people (like homesteaders) with large parcels when they (the city) starts throwing their laws at us for permits and zoning? The Borough has a KPB local option law on the books so that neighbors can zone if they want and that don't cost homesteaders and others to have to sell of their land to pay the taxes that inflicted on us [sic]. Most of the firefighters and EMTs like all kinds of volunteers are from the annex area. They, the City get many grants to do all this work that according to the city doesn't pay their costs. If the city wants us to stay away and go to Soldotna and Anchorage

to shop so be it. They get plenty of sales tax from all of us. They get money from the federal government and those taxes belong to all of us. (at 4)

Sally Dodd-Butters. Ms.

Dodd-Butters' Brief challenges the City's assertion that fire services are provided to the area proposed for annexation by the City without remuneration.

The Fire Dept. has 24 non-resident volunteers to 11 from within the city. That's a 2- to-1 ratio rather than the 50/50 that's been tossed around. It would seem rather obvious that if push comes to shove these heroic public servants would be forced to choose their own homes and families, though no one has publicly voiced this dilemma. (at 1)

"What will happen to people (like homesteaders) with large parcels when they (the city) starts throwing their laws at us for permits and zoning? The Borough has a KPB local option law on the books so that neighbors can zone if they want and that don't cost homesteaders and others to have to sell of their land to pay the taxes that inflicted on us." **Doris Cabana Responsive Brief**

Ms. Dodd-Butters' Brief expresses doubt that annexation to the City is the proper approach to resolve problems with delivery of fire and E.M.S. services.

...the ONLY true mutual need issue in the AP became sadly evident yesterday when a neighbor's home was destroyed by fire at 6 miles East End Road. They were home, 911 was called but it was just too far from the station. Perhaps if there had been an East End Road substation between the fire and a large majority of the volunteers, this family of 7 would still have a home. At 11:45 PM, while still putting water on hot spots, these weary warriors and their equipment were called to a fire 7 miles out of town in the opposite direction! Luckily Anchor Point was able to respond as well. (at 2)

Ms. Dodd-Butters also asserts that there is little need for city police services in the area proposed for annexation.

Twenty-two HPD responses outside Homer (including beyond the proposed annexation area) out of a total of over 4,000 in 1999, 47 out of 5,462 in '98, and 25 out of 5,885 in '97 suggest an effective State Trooper program for the outlying areas. Each agency reciprocates equally when additional help is needed. (at 4)

The Fire Dept. has 24 non-resident volunteers to 11 from within the city. That's a 2- to-1 ratio rather than the 50/50 that's been tossed around."
Sallie Dodd-Butters
Responsive Brief

With respect to the need for city sewer and water services, Ms. Dodd-Butters wrote:

The two bulk water haulers pay about \$4.20 per 1,000 gal. and \$3.26 towards the city infrastructure upkeep. That's approximately twice what people in town with city hookups pay. The city refuses to admit that they are receiving money without having any overhead to deduct from their profit from the sale of a commodity, NOT a service. They have no expenses for meters, meter readers, billing costs, paper products, travel etc.; but that's where the \$3.26 per 1,000 goes. Homer has set a terrible precedence by committing to long term contracts within Kachemak City before all the residents of Homer are hooked up to City services.

She contends that services are not adequately provided by the City and that annexation will result in levy of taxes upon the annexed area with no commensurate improvement in services by the City.

“Twenty-two HPD responses outside Homer (including beyond the proposed annexation area) out of a total of over 4,000 in 1999, 47 out of 5,462 in '98, and 25 out of 5,885 in '97 suggest an effective State Trooper program for the outlying areas.” **Sallie Dodd-Butters Responsive Brief**

Another situation that goes hand in hand with extra territorial services is the bulk waste disposal. I tracked this information after hearing the complaints of a Spit business owner with a septic tank. City port-a-potties, septic systems and out-houses are charged more for pumping because THAT waste must travel up to private waste pits in Happy Valley. Kachemak City on the other hand has a contract with the City of Homer for their 75 homes (and just added another 56 to that number) to have their 1,000 gal. septic tanks pumped biannually and dumped directly into Homer's downtown sewer system at the tourist dump station next to Public Works. I also recently heard that this disposal site is too close to the settling pond for proper decomposition time. This is an example of Homer residents paying for services not rendered. (at 3)

Abigail Fuller. Ms.

Fuller's June 5, 2000 Responsive Brief denies that there is a need or desire for City government in the territory proposed for annexation:

We neither need nor want city government. We provide for our needs ourselves as much as possible, and are happy with what the Borough provides for what little is left.

Fire and EMS are desirable; we have not needed them yet. When we had a fire in our house six years ago we caught it early and put it out with a fire extinguisher. We keep several around the house, along with smoke detectors.

An alternative would be to charge fees for extra-territorial fires, or hold fundraisers for that matter. Police services are now provided through the State Troopers. We've been very satisfied with the level of service we get; there just is not much crime out here. If there were more cops they would need to find something to keep them busy and would end up harassing us instead of providing a service.

Ms. Fuller's Brief states that the area proposed for annexation does not require zoning services from the City since that service is adequately provided by the KPB.

The Borough offers Local Option Zoning; available to those neighborhoods that feel a need. None have even asked for it. In

the Homer area folks who like controls have the choice of buying property in subdivisions with covenants, most of them have them to one degree or another. The City's zoning is the cause of lack of development; they have made things too difficult. Ask Alaska Propane, they wanted to build on Ocean Drive but ended up in Kachemak City. Homer zoning is also not designed for rural living, they would need to rewrite the ordinances and come up with new zones. Also, we would consider any zoning applied to us a taking of property and would expect compensation, they have not budgeted for that or for court costs if we end up fighting over it.

Ms. Fuller also disputes the existence of a legitimate need in the territory proposed for annexation for water and sewer service from the City of Homer and questions the City's ability to deliver the services to the area proposed for annexation.

We have our own water and septic systems, and the latter does not drain into Beluga Lake; which is an airport for float planes - swimming, boating etc. are not allowed. We are 5 miles East of the lake, well past the drainage area (90% of which is within current city limits). We buy water from a private business, not the city. Where he buys it from is not our business - if it is the city that does not make the city a provider of the service. The bulk water sales are a commercial sale from the city's end, not a service. Even if we wanted to

"Crime is nearly nonexistent in rural areas; probably car accidents account for more calls than anything else. Those are almost exclusively along East End Rd or Sterling Highway so it is not difficult to patrol those areas." **Abigail Fuller**
Responsive Brief

hookup to city water and sewer it would be more than ten years before lines were run out here.
(at 5)

She also denies the need for recreation services from the City.

Why would we need the government to provide something so abundant in our own backyards? A recent attempt to establish a Recreational Service Area was soundly defeated at the polls, which indicates that there is no desire for this service. Recreation is something people choose whether or not to use, it is not a basic necessity and should not be provided nor funded by the government. Government funding of facilities like ballparks means taking money from all taxpayers for the benefit of only a portion. These things should be paid for by the users. (at 5)

"Homer zoning is also not designed for rural living, they would need to rewrite the ordinances and come up with new zones. Also, we would consider any zoning applied to us a taking of property and would expect compensation, they have not budgeted for that or for court costs if we end up fighting over it."

Abigail Fuller
Responsive Brief

132

Mary Griswold. Ms.

Griswold suggests that other alternatives are available for delivery of essential services to the area proposed for annexation are preferable to delivery of such services by the City of Homer.

There is not reasonable need for city government in the annexation territory. It cannot be said that persons living in the area proposed for annexation have no alternative to obtain fire, police, or road maintenance services other than annexation to the City of Homer. The Homer Volunteer Fire Department (HVFD) already provides fire protection and emergency medical services to the City of Homer, Kachemak City by contract, the area proposed for an-

nexation, and the area beyond this territory. Forty volunteers, more than half of whom live outside the city boundaries, perform as firemen and emergency service providers. While 80% of all Fire Department activity (fire and EMS) occurs within the city limits, most of the costs incurred by the Fire Department are in pre-incident or preparedness costs. These costs for personnel and basic training must be more equitably shared by all the people who benefit from Fire Department services.

Road maintenance is adequately provided by the borough within existing funding restraints and would most likely deteriorate if it were taken over by the City of Homer because the city has allocated only \$199,000 to do what the borough is currently spending approximately \$234,000. This borough figure reflects actual maintenance performed in FY-99 and does not include roads certified for maintenance by the borough on which no maintenance was performed in FY-99. (at 4)

The Kenai Peninsula Borough provides adequate land use and planning supervision in the territory. The borough maintains a staffed annex in Homer, toll-free telephone service to Soldotna, e-mail to all borough departments, and a web site with planning information, parcel look-up, subdivision maps, and other pertinent information. The borough planning department is assisted by the local volunteer Kachemak Bay Advisory Planning Commission to evaluate local land use issues. The commission includes an ex officio member of the Homer Advisory Planning Commission and

meets twice a month to be more responsive to issues as opposed to the only once-per-month meeting schedule of the Homer Advisory Planning Commission. The borough assembly recently amended its local option zoning with Ordinance 2000-02 to improve local citizen controlled zoning to help protect property values and enhance the quality of life and economic viability of the area.

Ms. Griswold’s Brief asserts that there is little need for the area proposed for annexation to receive police services from the City of Homer.

Existing state trooper protection is adequate and comparable to the other detachments in the state. Sargent Jim Hipsman and two blue shirts patrol the greater Kachemak area. One, but usually two, Federal Fish and Wildlife officers also work out of the Homer facility. According to Lieutenant Tom Bowman in Soldotna, state funding is most likely to maintain trooper service at the present level into the future. Twenty-two Homer Police Department responses outside Homer (including to areas beyond that proposed for annexation) out of a total of 4,049 in 1999, 47 out of 5,462 in 1998, and 25 out of 5,885 in 1997 suggest an effective trooper program to this area. Reciprocal assistance from the troopers to the Homer Police Department and other agencies, at 70 responses in 1999, more than offsets this provision of city service to the outlying area. (at 5)

Ms. Griswold suggests that claims that businesses outside the City have a competitive advantage over businesses operating within the City of Homer’s taxing jurisdiction are exaggerated.

The city states that Homer businesses are hurt economically by a perceived competitive advantage enjoyed by out-of-town businesses who are subject to reduced sales and property tax assessments. The sales/property tax differential effect is greatly overstated. The city tax cap of \$27.50 makes the sales tax a non-issue. More important factors than a sales tax advantage drive business success rate: location, visibility, convenience, and desirability of services. In-town businesses are much more convenient and visible than out-of-town facili-

“Road maintenance is adequately provided by the borough within existing funding restraints and would most likely deteriorate if it were taken over by the City of Homer because the city has allocated only \$199,000 to do what the borough is currently spending approximately \$234,000.”
Mary Griswold Responsive Brief



Business along the Sterling Highway within the territory proposed for annexation.

ties, attracting passers-by as well as established clientele. The small grocery store located east of Homer provides convenience for shoppers living out East End Road, but hardly threatens the large Eagle Quality Center in town which attracts local and visiting shoppers with its strategic location, wide selection, and lower prices. At least two vehicle repair facilities opened in Homer many years after a similar business set up in the territory proposed for annexation. These and several other vehicle repair businesses in and outside the city are all financially successful. A large building supply company in the territory went out of business early this year, apparently unable to compete with a similar business within the city boundaries, in spite of more favorable tax assessments. Boat yards operate at each end of Kachemak Drive, one in and the other out of the city limits. Businesses choose to locate within or without the city limits based on the nature of their service and their need to attract customers. (at 5)

Ms. Griswold's Brief claims that the City already has the legal ability to address water supply issues on an extraterritorial basis. She rejects the City's assertions that annexation is needed to address water service needs in the area proposed for annexation.

The City of Homer has extraterritorial powers to protect its water supply at the Bridge Creek reservoir, so annexation of this area is not necessary for health reasons. Kenai Peninsula Borough Ordinance 99-47 recognizes that "municipalities frequently go outside their limits for their water supply" and grants the City of Homer the "power necessary to protect its water supply and watershed." Failing leach fields and septic systems inside and outside the city's boundaries require regulation and law enforcement, not annexation. (at 5)

Vi Jerrel, Ph.D. Dr.

Jerrel’s June 5, 2000 Brief states,

We do not exhibit a reasonable need for city government. The petition is without credibility. (at 4)

Her Brief contends that the City of Homer cannot provide adequate services within its current boundaries.

More than 50% of the people in the City now don’t have services ... (at 4)

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation (CCAA). CCAA’s Brief claims that there is little need for additional government in the area proposed for annexation, since services required by the area are already provided at a reasonable level by the Kenai Peninsula Borough and the State of Alaska.

Planning and zoning, education, health, and road maintenance services are already provided by the Kenai Peninsula Borough. Police protection is provided by the State of Alaska. The Homer Volunteer Fire Department provides fire and emergency medical services to the proposed annexation area and beyond for which a service area is in the process of being created to most equitably share these costs. The City of Homer will not provide water and sewer services due to funding restraints and the very expen-

sive infrastructure expansion required. Other “services” provided by Homer are better funded through fees assessed on those who choose to use them.

The CCAA Brief predicts that, should annexation occur without voter support, acrimony generated by the annexation would disrupt delivery of City services.

The area proposed for annexation will never be compatible with the City of Homer should boundaries be adjusted without consent of the people to be governed by those boundaries. Rather, the Commission will ensure decades of resentment that will make the area difficult to effectively govern. The petition has sparked sustained and public opposition that will continue long after the Commission forces expansion upon an otherwise properly functioning regional governmental system. (at 2)

The CCAA Brief contends that there is no need for extension of the City’s jurisdiction to deliver better planning services to the area proposed for annexation.

Zoning is Not Needed. The Kenai Peninsula Borough provides adequate land use and planning supervision in the territory. The Borough maintains a staffed annex in Homer, toll-free telephone service to Soldotna, e-mail to all Borough departments, and a web site with planning information, parcel look-up, subdivision maps, and other pertinent information.

The Borough Planning Department is assisted by the local volunteer Kachemak Bay Advisory Planning Commission to evaluate local land use issues. The commission includes an ex officio member of the Homer Advisory Planning Commission and meets twice a month to be more responsive to issues as opposed to the only once-per-month meeting schedule of the Homer Advisory Planning Commission. The Borough assembly may amend its local option zoning ordinance to improve local citizen controlled zoning to help protect property values and enhance the quality of life and economic viability of the area. [Ordinance 2000-02]. Exhibit 24. Homer claims land use conflicts are “abundant” in all three areas proposed for annexation, but does not explain what it means by “conflict” or “abundant”, and provides no specific examples. Homer’s statement that residents have been “uncomfortable” with KPB decisions suggests that the City would have decided differently. This is complete speculation. There is no indication that these disputes would have magically gone away had the planning function been provided by the City instead of the Borough. Moreover, if people truly desire to transfer the planning function from the Borough to the City they would vote in favor of annexation if allowed the opportunity to do so or form a local option planning area.

Municipal animal control delivered by the City of Homer is not needed in the area proposed for annexation, according to the CCAA Brief.

“Zoning is Not Needed. The Kenai Peninsula Borough provides adequate land use and planning supervision in the territory. The Borough maintains a staffed annex in Homer, toll-free telephone service to Soldotna, e-mail to all Borough departments, and a web site with planning information, parcel look-up, subdivision maps, and other pertinent information.”
CCAA Responsive Brief

Borough residents defeated Borough animal control powers in the October 6, 1998 election. The Borough assembly defeated animal control ordinances 98-29, 98-76, and 99-49. The City should not extend this service beyond its boundaries. The City should examine its fee schedule for impound and care to better cover the expenses associated with its animal control services. The City’s claim of providing services beyond boundaries is misleading. The only service provided is acceptance of animals at the shelter. This is much different than the services provided in town. The statistics as to who is bringing stray dogs into the shelter ignore the commonly known fact that City residents with pesky pets choose to abandon them in the country surrounding the City. Moreover, this service is provided to all outlying areas, not just those proposed for annexation. If the City were to

provide the same level of service to triple the territory now covered costs would increase beyond those projected by the City. (at 9)

The City’s delivery of enterprise fund services does not justify annexation, according to the CCAA Brief.

The City maintains water, sewer, and port & harbor services as enterprise funds, designed to be fully supported by user fees. City voters approved a 0.75% sales tax to support future water and sewer projects indefinitely. Property tax revenues do not cover these services; therefore they do not justify annexation. The City presently provides sewer and water services outside its boundaries in its utility function. Payment is through fees. Construction costs are through agreement and Borough improvement district. This is all governed by local ordinance and is not required. Homer City Code Title 14. Nor is it frequently requested.

Recreational services from the City of Homer are not needed in the area proposed for annexation, according to the CCAA Brief.

Recreational services such as neighborhood parks are not requested or suggested by the existing City government for the territory. Homer’s parks and campsites attract many visitors other than those from the annexation area. These are part of the infrastructure that makes

Homer a tourist attraction to support its economy. The parks are not overcrowded; City residents are not deprived of their enjoyment of these facilities.

Voter Services from the City of Homer are not needed in the area proposed for annexation, according to the CCAA Brief.

Voter services provided by the City to extraterritorial residents are only incidental. Diamond Ridge precinct residents vote at the Christian Community Church, Fritz Creek residents vote at Kachemak Community Center, and Kachemak Bay residents vote by mail. This should not be considered an essential service requiring annexation, and is paid for by the State.

CCAA’s Brief does not accept the Petitioner’s claims the City of Homer’s funding for area nonprofit organizations justifies annexation.

Funding of Non-Profit Organizations is Not Needed. The City’s funding of area nonprofit organizations is discretionary and under re-evaluation at council and administrative levels. The City Manager’s Year 2000 Budget Message in the Adopted Budget for Fiscal Year 2000 states under major policy issues, ‘And finally, the City’s financial support of non-profits must be addressed.’ An important purpose of nonprofit tax-exempt organizations is to lessen the burden of government. The government should not increase the burden to tax-

payers by funding nonprofit organizations. Area nonprofits should be funded by those individuals who support their missions or benefit from their services.

CCAA's Brief contends that City of Homer police service is not needed in the territory proposed for annexation.

Existing State Trooper protection is adequate and comparable to the other detachments in the State. Sergeant Jim Hipsman and two blue shirts patrol the greater Kachemak area. One, but usually two, Federal Fish and Wildlife officers also work out of the Homer facility. According to Lieutenant Tom Bowman in Soldotna, although 72 positions have been cut in the last 15 years, State funding is most likely to maintain trooper service at the present level into the future. Indeed the manning of the Homer station is on a par with that of other Kenai Peninsula posts.

CCAA concedes that the area proposed for annexation requires fire protection, but argues that fire service can be better provided through a Kenai Peninsula Borough service area.

The department began as a non-municipal all volunteer department. It was taken over by the City, but only with an express agreement that service would continue beyond City boundaries. Fire protection services are provided by volunteers and funded by the City. It is

Port services are not needed in the proposed annexed area, which does not have any potential port site. It is impossible to draw a line around the area that makes use of the Port. It is heavily used by the fishing industry and boat owners live everywhere. Russian villages at the head of the bay, Anchorage, Seattle and all the way to the East Coast. If this "service" justifies annexation Homer would have to annex the world." CCAA Responsive Brief

true that the Borough property taxes do not provide for this funding. It is not true to imply, as Homer does, that City property taxes are the sole source of funding of fire protection. Funding is also provided by sales tax revenue and by contract receipts from Kachemak City.

The Homer Volunteer Fire Department (HVFD) already provides fire protection and emergency medical services to the City of Homer, Kachemak City by contract, to the area proposed for annexation, and to the area beyond this territory. [See map Exhibit 27.] Services are provided all the way out to the head of the Kachemak Bay to

the Russian villages, up to North Fork Road and includes all of Olson Mountain Road.

This is why a service area that includes all of the area served rather than annexing part of the area served makes sense. Homer's petition does not mention whether this service will be cut off if annexation is granted. Creation of a fire service district is needed regardless of the outcome of the annexation petition.

24 out of 35 fire and EMS volunteers live outside City boundaries. Of these, more than half live outside the annexation area! Yet 80% of all Fire Department activity (fire and EMS) occurs within the City limits. Most of the costs incurred by the Fire Department are in pre-incident or preparedness costs. These costs for personnel and basic training must be more equitably shared by all the people who benefit from Fire Department services. The HVFD Strategic Planning Group was authorized by the Homer City Council in September 1997 to make recommendations concerning the HVFD. The Strategic Planning Group concluded that the HVFD's central location and skilled staff

make it the only organization qualified to deliver fire suppression and EMS to area residents.

The area proposed for annexation does not require road maintenance from the City of Homer, according to the CCAA Brief.

Road maintenance is adequately provided by the Borough within existing funding restraints and would most likely deteriorate if it were taken over by the City of Homer because the City has allocated only \$199,000 to do what the Borough is currently spending approximately \$234,000 to accomplish. This Borough figure reflects actual maintenance performed in FY-99 and does not include roads certified for maintenance by the Borough on which no maintenance was performed in FY-99.

CCAA argues that there is no indication the City could provide road maintenance services more efficiently than the KPB or that there is any proof that current road maintenance services delivered to the area proposed for annexation are inadequate. (at 12)

According to residents, that [claim by the City] is simply not true. Moreover, the City is not proposing to maintain any roads outside City boundaries that do not meet its "standards". Like any endeavor, more money could be spent on roads, however, there is no evidence annexation area resi-

"The department began as a non-municipal all volunteer department. It was taken over by the City, but only with an express agreement that service would continue beyond City boundaries." **CCAA Responsive Brief**

dents are dissatisfied with the road maintenance services they now receive and happily pay for. The Borough road service system of providing local road maintenance through private contractors is a well-recognized manner of road maintenance. It is more efficient to accomplish this using contractors than public employees. It is operating at an efficient level and providing adequate service. If more service is desired it is easier to fund this using Borough-wide revenues than City revenues.

Objective Annexation

Review. OAR's Brief suggests that only parts of the area proposed for annexation, such as the area between the existing boundaries of the City of Homer and the City of Kachemak and certain subdivisions, exhibit a reasonable need for city government.

The main out-of-town economic engine is in Kachemak City and in the enclave between high water and Homer known locally as "no man's land." This area could profit from an extension of water and sewer provided in a manner businesses can afford. There is a solid basis for annexation negotiations and agreement between these property owners and either of the cities.

Talks are also in order between residents of some contiguous subdivisions which are also adjacent to the services. Much of the existing City will not be reached by water and sewer for decades and City residents must maintain their own below-standard roads. It will be much

longer before 3/4 or more of the territory could be served. (at 10)

Raven Ridge

Homeowners' Association.

The Raven Ridge Brief denies that there is a reasonable need for city government in the territory proposed for annexation.

The proposed annexation territory has adequate law enforcement protection provided by Alaska State Troopers (AST). There is a reciprocal agreement between the Homer Police Department (HPD) and AST. AST assists to HPD are at a ratio of approximately 3:1. In 1999 HPD only responded to 22 calls outside of the city.

The territory has adequate structural fire and EMS protection provided by HVFD. Alaska Division of Forestry provides wild lands fire protection to the territory during the fire season. The City budget does include \$600,000 for HVFD; however,

"The territory has adequate structural fire and EMS protection provided by HVFD. Alaska Division of Forestry provides wild lands fire protection to the territory during the fire season. The City budget does include \$600,000 for HVFD" **Raven Ridge Homeowners' Association Responsive Brief**

many volunteers residing in the territory have historically provided an equal share of the personnel required allowing HVFD to function. If the city is unable or unwilling to support HVFD at its current level we suggest the formation of a fire service area for the territory and outlying areas. This is a much better alternative than annexation. Cost of EMS is defrayed by charging both city residents and non-residents for services. (at 2)

The Raven Ridge Brief challenges certain statements by the Petitioner regarding the quality of road maintenance services provided by the Kenai Peninsula Borough.

The petitioner states that “the Kenai Peninsula Borough provides road maintenance on Borough roads. This maintenance is minimal and inadequate.” This is the Petitioner’s perspective. RRHA has found KPB road maintenance in our subdivision to be adequate or better. Roads adjacent to our subdivision, which are within the city, become impassable during breakup and after heavy snowfalls receive delayed clearing.

The Petitioner cites land use conflicts in the territory. While it is true that territory residents sometimes disagree with land use decisions made by the Borough, the City of Homer has a long and colorful history of controversial land use/zoning decisions that have lead to costly litigation battles. (at 2)

Peter Roberts. Mr. Roberts noted that the annexation proposal was not the result of interest by residents of the area proposed for annexation. “You must remember that 2,700 people have not been asking/demanding services from the city . . .the city is whining about what they freely offered. Remember we have been contributing sales taxes all the way along.” (at 3)

Our local economy has been flat down here for years and the only way to increase returns is to TAKE IT from someone else, in this case from neighbors. Even with lower unemployment there has also been a decrease in jobs. Many people out in the annex area are self-sufficient, on fixed incomes, and would experience hard-ship with increased taxes and property evaluations that are SURE to come. Fishing is declining, we lost our only big cannery and there is NO plan to rebuild.

Tourism peaked years ago and has been flat since. We annexeers use relatively few city services and add more with the rest of Homer’s business area (pop -1100) to the local economy than the city itself. Again we contribute.

By and large the we are more than good neighbors, more than 50% of volunteers in the city live outside, there is a great spirit of lending a helping hand and of community here which is becoming a casualty. Police records show no compelling need to change from the troop-

ers with less than 50 calls/visits (mostly traffic accidents) a year in the annex area. The library and fire/EMS service would cost roughly the same whether or not those services were available to non-residents as 80% of fire activity occurs in Homer and Kachemak City (6/98 Strategic Fire Report) and the library mostly costs to be open, not to loan a book. Fire and emergency service has been wonderfully provided by the Homer Volunteer Fire Department for 35 years+ in part because more than 65% of those fine folks live out of town (and would be gone if Homer stopped serving the out lying areas . . .). They cover a huge area at least four or five times the annex area - with four more communities. A borough Fire and Emergency Service Area including all the area served would be a far better idea and is being worked on. That could generate enough money to **more than compensate** for the costs involved - and would enhance the fire dept. capabilities area wide and get the citizens support which this annexation does **not**. (emphasis original) (at 4)

Mr. Roberts' Brief claims that roads and fire/emergency services are the only two services that the City can deliver within the next ten years in over 98% of the area. (at 5)

"By and large the we are more than good neighbors, more than 50% of volunteers in the city live outside, there is a great spirit of lending a helping hand and of community here which is becoming a casualty. Police records show no compelling need to change from the troopers with less than 50 calls/visits (mostly traffic accidents) a year in the annex area." **Pete Roberts Responsive Brief**

Steve and Margret Seelye.

The Seelye Brief contends that annexation is not needed to protect the City's watershed because the City was granted extraterritorial powers over the watershed in September of 1999.

Many of us have good soil percolation and excellent, plentiful water and therefore have no need for those City services. That is certainly the case on Diamond Ridge where we live.

The health problems caused by failing or inadequate sewer systems applies as much to areas within the current City boundaries as to the proposed annexation area. The City is years and millions of dollars behind in currently approved LID's for sewer and water service. Many people on the shores of Beluga Lake as well as other parts of the City do not have sewer service. Since the City has not ef-



Millers Landing.

fectively controlled the sewage in its current backyard, it should not be allowed to further expand its territory.

The Seelye Brief challenges statements by the Petitioner regarding the quality of road maintenance services delivered by the KPB.

If the KPB road maintenance is 'minimal and inadequate' as stated in the brief, how does the City plan to try do better with a smaller budget?

In the petition, the City provided a long list of nonprofits and states: 'All of the above services are presently being provided by the City of Homer and paid for by its residents.' The City has given monetary support to all of these organizations at various levels, but to suggest that it "provides" the services is ridiculous. Most of the \$2 million they claim to have given has been pass-through grants from the state (funds from all of us!). Direct donations from the City to the ski clubs, the hockey association, the snowmachine clubs, etc., while

helpful, do not begin to pay operating costs. Through their various events, activities and volunteer efforts these organizations bring far more to the City in improved quality of life and direct economic benefits than any contribution the City has made to them. (at 1)

The Seelye Brief claims that they do not consider the opportunity to vote in City elections as constituting an incentive to embrace annexation. "If we wanted to vote in City of Homer elections, we would move into the City." (at 1)

The Seelye Brief expresses doubts as to whether city planning services can be provided more efficiently and more effectively by the City of Homer vis-à-vis the Kenai Peninsula Borough.

As for planning, contrary to what the City Manager has written in the petition, paper plats have not been allowed in the borough for many years. The City has already obtained extraterritorial power over its watershed. . . And the petition does not address how they are going to expand the space in an already crowded Planning Department to accommodate the added material that will have to be stored and accessed. The Borough already provides a fully staffed planning department for those of us outside of the City as well as support services for the City of Homer staff. (at 2)



Homestead Trail in the Diamond Ridge area.

The Seelye Brief contends that the elevation of the territory proposed for annexation renders it incompatible in character with the territory presently within the City.

When describing the Skyline Drive/Diamond ridge areas, the City petition states: 'This area is well forested with beetle-kill quite evident. Trails and recreational uses are found throughout this area.' Much of the recreational use referred to is snowmachining, hiking, hunting, and backcountry skiing. Elevations of 1,000' to over 1,200', heavy snowfalls, and the large, undeveloped tracts of land found there make it ideal for such activities. The City's plan to purchase two snowmachines and two ATV's with trailers for the police department is evidence of a radical difference in the character of much of the territory they would be serving within the new boundaries.

The proposed post-annexation boundaries must include the resources necessary to provide essential city services on an efficient, cost-effective level.

The distance and terrain separating much of the proposed annexation area from the existing City sewer and water systems ensures that the cost to connect to those systems would

be prohibitively high and the residents will not receive such services anytime in the foreseeable future.

Bill Smith. Mr. Smith's June 5, 2000 brief suggested that the proposed annexation is consistent with properly addressing community water, sewer and fire/EMS service requirements.

The effect of on site septic systems on the environment within the City is the subject of much debate. The standard of DEC approval is used almost exclusively to secure home financing. The budget eviscerated DEC does not perform inspections and relies on third party certification. The results may or may not satisfy environmental concerns and are not a good indicator of surface water quality. Although I know of sites in and out of the City that spread downhill septic contamination, concerns over widespread contamination are not widely shared. As a member of the committee formed by the Homer City Council to address

water & sewer system expansion, I can testify that the City secured funding through a 3/4% dedicated sales tax and has begun active planning to build the pending water & sewer LIDS, address the elimination of health hazards, and ensure a ready supply of potable water. Regardless of which drainage area may be impacted, water supplies must be protected. The sole contribution of the KP Borough to solving these problems is to rely upon DEC standards for approving plats. As has been concluded by the KBAPC, these standards are clearly inadequate next to bodies of water, and allow septic systems too close to the bluff line. The City of Homer is clearly the best available body to develop appropriate standards and mitigate existing hazards. (at 3)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief concedes that all of the territory proposed for annexation enjoys some benefit of Homer city government, but asserts that only portions of the territory proposed for annexation has a reasonable need for city government.

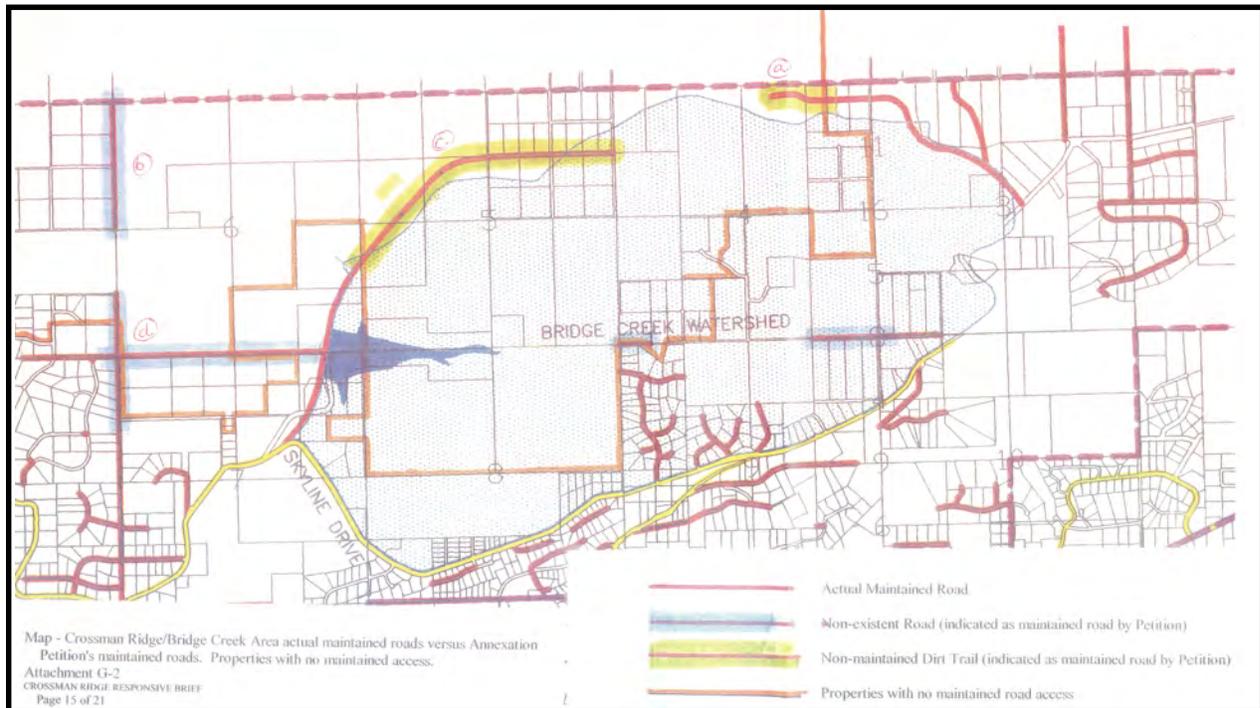
A significant portion of the city services cannot be effectively or efficiently provided to the Crossman Ridge neighborhood due to lack of roads. These include emergency fire service, emergency medical service, emergency police service, water service, sewer service, road services, etc. These services are not available or are more than adequately provided for by the

borough and state. The Crossman Ridge neighborhood residents have not requested, nor have a need, nor want, for these services to be expanded to or provided for the Crossman Ridge residents. Some areas and neighborhoods such as Ohlson Mtn, east end of Skyline, Fritz Creek, and McNeil Canyon that are not included in the annexation territory have more reliance and use of city services than the Crossman Ridge area residents. Though many of the city services are not directly available to the Crossman Ridge neighborhood, the residents appreciate the value some of these services have for Homer area community. These include fire and emergency services, emergency dispatch services, road service, etc. Some services that are available and used by the neighborhood area residents include library service, parks and recreation service, etc. One neighborhood resident's work is partially dependent upon the existence of the city's port and harbor facility. The city of Homer is more than compensated for Crossman Ridge's use of city services by sales tax, volunteer time, and monetary contributions, etc. All of these services are available for all of the public regardless of what city, borough, state or other part of the world they might be from.

D. Views Expressed in Petitioner's Reply Brief

The City of Homer's September 11, 2000 Reply Brief states:

Figure 3-D Road Maintenance Map Provided in Crossman Ridge Responsive Brief



146

Residents of the annexation territory already use services provided by the City of Homer, including fire and EMS response; police protection (back-up to state troopers, area wide dispatch, jail); library; parks; animal shelter; port and harbor; and voter services. The City also receives requests, and sometimes provides, water or sewer service in the area through limited line extensions. Water is also sold to commercial water haulers who resell it to customers in the annexation territory.

The growing population of the area is expected to increase the demand for these and other city services. Both residential and

commercial growth suggests a greater need for land use planning. Conflicts over land use in the annexation territory have already begun, especially in the Baycrest Hill/Sterling Highway area.

The City's potable water supply source (Bridge Creek watershed and reservoir) is located entirely within the annexation territory. The City will begin to regulate development in that area extra-territorially if the annexation is not approved. Current and anticipated growth in that area must be regulated to protect water quality in the watershed. Inclusion of the area within city boundaries, thus giving residents a direct voice in City government, would be preferred over extraterritorial regulation. The presence of

2,687 people (the equivalent of Alaska’s 17th largest city) residing on the outskirts of Homer puts a lot of pressure on the normal city services provided by the City. (at 52)

3.13 Balanced Best Interests

Annexation must serve the balanced best interests of the state, the territory proposed for annexation, and affected political subdivisions as required by 3 AAC 110.140.

A. The Standard

3 AAC 110.140 sets out the “best interests” standard relating to legislative review annexation proposals as follows.

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

(1) territory is an enclave surrounded by the annexing city;

(2) health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in

the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

(3) extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;

(4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city; and

(6) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

B. Views Expressed in the Petition

The City opines that failure to secure annexation of the territory to the City would be detrimental to the best interests of the City, the area proposed for annexation, and the State of Alaska.

An equitable balancing of interests clearly favor annexation of the proposed territory by the City of Homer. Without annexation, two rapidly expanding areas will suffer. Without planning, development will be detrimental to both areas. Public services are needed and the City of Homer will be deprived of revenues it depends upon to provide expanded essential services in the greater Homer area.

The Petitioner notes that the State has a strong interest in assuring that local governments have the necessary tax base to provide services which only the State or local government can provide.

If this tax base is lost to local government, the only other source of services and revenue is the State. It is unquestioned that State revenues are dwindling. It serves neither the interests of the State nor the City to have an expanding sales tax and property tax base located contiguous to the City's boundaries, not contribute to the tax revenues utilized by the City to

provide essential regional services. The State's interest in having this annexation succeed are therefore the same as the City's.

In the past, the obvious inequity caused by burdening City taxpayers for essential regional services has been frequently noted. The answer provided by the defenders of the status quo has been that non-residents have paid their fair share for these services through City's sales taxes. It has been asserted that since non-City residents must do their shopping within the City, they are paying their share for these services through City sales taxes. This, of course, ignores the 5.5 mill property tax paid by City business and non-business residents. It also ignores the development that has occurred and is pending immediately outside the present City limits - this seriously undermines the status quo, as inequitable as it is, and justifies approval of the City's annexation request. (at 42)

Health and safety concerns virtually require this annexation succeed or the City of Homer will be involved in expensive and prolonged controversy with the Kenai Peninsula Borough over waste water disposal. Neither Municipality wants or needs this.

The Homer area is located on the lower level of a sloughing clay slope on the north shore of Kachemak Bay. The soil conditions are such that well water is incredibly scarce and usually of poor quality. Likewise, any area on the Homer shelf that has soils that perk are unusual. Because of this, virtu-



City of Homer water treatment facility.

ally every septic system and leach field are doomed to fail before they are installed. Because the soils do not perk, the leach fields become 'holding tanks' of human waste.

The City of Homer is subject to the same laws of physics that effect the rest of the Kenai Peninsula Borough - meaning that 'waste' goes down hill. The failure rate of septic systems is so great that swimming in Beluga Lake is a health hazard because of the high fecal count in the water. A freshwater lake located within a city's limits should be a jewel for recreation and fishing, not an open sewer.

It has become increasingly dangerous to develop downhill water systems because of contamination. As population increases, hazardous pollution will increase. The solution is central water treatment, both fresh water and waste. Unless the Borough would attempt to duplicate the facilities of the City of Homer, it would seem

only logical to annex the proposed area and expand the City's systems.

Parochial self-interest on the part of annexation opponents should not determine State policy, according to the Petitioner.

The annexation of the proposed territory by the City of

Homer is in the best interests of the State of Alaska, the residents of the territory and the residents of the City, by any test. Given the opportunity, every taxpayer will allocate his or her taxes to improve the street, park, water, fire, police, sewer, public works, or facilities serv- ing his or her property. However, these decisions are not for each individual taxpayer to make. These are legislative decisions that cost revenues in excess of what any individual taxpayer can pay. It is for the Alaska Legislature to determine the wisdom of this annexation proposal. It is for future City Councils to determine priorities and allocate limited resources. And these future Councils should be elected by residents of the City including residents of annexed areas. This is the State interest.

C. Views of the Respondents

Mary Griswold. Ms.

Griswold's Brief states that the health and safety issues raised by the City are overblown and that annexation will "definitely not" satisfy the balanced best interests standard.

The health of city residents may be threatened by failing septic systems both inside and outside the city boundaries; however regulation and enforcement by the city and the State Department of Environmental Conservation are more effective controls than annexation, especially when the city cannot provide sewer and water service to the territory in the foreseeable future.

The city claims that health and safety concerns virtually require this annexation because "virtually every septic system and leach field are doomed to fail before they are installed." This claim requires substantiation. The city then asserts that swimming in Beluga Lake is a health hazard and that Beluga Lake should be a "jewel for recreation and fishing, not an open sewer." Beluga Lake is peat bog and swamp impounded by the roadway. Beluga Lake is an airport managed by the Alaska Department of Transportation. The department allows recreational use of half of the lake in the winter to accommodate snow machines and ice racers. In the summer, commercial floatplane services and private planes ring the lake making it

extremely dangerous for kayaks, swimmers, or other recreational users. The rest is better left to ducks and muskrats than to be considered for development as a municipal swimming beach even if it were not against the law to do so.

Extension of city services into the territory is not necessary to provide adequate services to city residents and furthermore it is not impossible to extend the services unless the territory is within the boundaries of the city. The existing approved sewer and water LIDs are all adjacent to areas presently served. The LIDs are only waiting for funding to cover the city's share of construction. Furthermore, water and sewer can and have been extended extraterritorially in order to provide services to city residents. There is no reason this could not continue should it prove desirable. There is no need to extend road maintenance, police protection, or recreational facilities into the territory in order to better serve city residents. It has already been shown that fire protection is extended beyond the city and even beyond the territory without requiring the territory to be within the city boundaries.

Ms. Griswold concedes that the City provides some services to the area proposed for annexation but suggests that user fees be implemented instead of annexation.

Residents of the territory may receive directly or indirectly the benefit of city government without sufficient tax contributions;

however, there are practical and equitable alternative methods available to offset the cost of providing these services. Fees for fire suppression; user fees for recreational opportunities at city ballparks and the library; charges for use of water in the boat harbor; and differential fines for resident and nonresident animal impound are a few measures to evaluate. Charging market-value rent for city buildings such as space at the police station used by state troopers, the building on the Spit used by Pier One Theatre, and space used at the soon-to-be acquired Intermediate School by the Kenai Peninsula College and the local Boys & Girls Club should be considered. Creating a fire service area encompassing the territory and other outlying areas presently served is clearly a more practical and equitable method to offset the costs of fire suppression and emergency medical services presently provided by the Homer Volunteer Fire Department. City council members and the borough mayor have expressed interest in supporting creation of this fire service district. Annexation may enable the city to plan and control reasonably anticipated growth and development in the territory that otherwise may adversely impact the city; however it will come at great expense without a guarantee of success.

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation.

CCAA holds that annexation by legislative review is not in the balanced best interests of the

“The city then asserts that swimming in Beluga Lake is a health hazard and that Beluga Lake should be a ‘jewel for recreation and fishing, not an open sewer.’ Beluga Lake is peat bog and swamp impounded by the roadway. Beluga Lake is an airport managed by the Alaska Department of Transportation.”
Mary Griswold Responsive Brief

State of Alaska and the area proposed for annexation.

Annexation should not be abused by local governments to extend their jurisdiction beyond their capability to provide essential services. The City of Homer is over-reacting to limited and scattered development outside its boundaries that is not likely to threaten its dynamism or economic health for decades to come. Acquiring this large territory that exhibits little need for City services and has little hope of receiving them if it did desire them puts an extremely unfair tax burden on these new residents. The State of Alaska, Homer, the area under consideration for annexation, and the adjacent outlying areas would all be much better served if the City’s petition was denied. (at 3)



Portion of East End Road in northeast section of the territory proposed for annexation.

152

CCAA maintains that the impetus for the proposed annexation is the City of Homer's financial interests rather than a true need to expand the City's jurisdiction.

The Commission frequently reminds those appearing before it that politics is to play no part in the establishment of governmental boundaries. Yet that is precisely what has driven Homer to attempt to enlarge itself to this extent; political perceptions of elected officials, not a realistic examination of the ability of this small City to triple its service area and increase its population by 69%. It was politics that drove Homer to commence this action without providing for any local hearings prior to filing its petition. This procedure is just plain wrong in a democratic system. Whether it may be legal is beside the point. Slavery was in the law too, but that did not make it right. It was politics

that drove Homer to deny access to its own internal analysis of its ability to provide services. When the Commission rightfully denies this petition local political leaders can say they tried and then do what has been patently obvious for years.

Raise fees to create truly self-sufficient enterprise funds and support delivery of fire protection services to all persons in the existing response area through formation of a service area. (at 26)

CCAA's Brief claims that extension of City services into the territory is not necessary to provide adequate services to City residents and that it is *not* impossible to extend the services unless the territory is within the boundaries of the City.

The existing approved sewer and water LIDs are all adjacent to areas presently served. The LIDs are only waiting for funding to cover the City's share of construction. Furthermore, water and sewer jurisdiction and service can and have been extended extraterritorially in order to provide services to City residents. In fact, this process is codified in the City's ordi-

nances. There is no reason this could not continue should it prove desirable. There is no need to extend road maintenance, police protection, or recreational facilities into the territory in order to better serve City residents. It has already been shown that fire protection is extended beyond the City and even beyond the territory without requiring the territory to be within the City boundaries.

CCAA asserts that residents of the territory do not receive the benefit of city government without commensurate tax contributions because equitable compensation is received by the City for most services and practical and equitable alternative methods are available to offset the cost of providing fire service.

Police Protection is provided by the Alaska State Troopers not the Homer City Police Department. The Homer Police Department responds to less than 50 calls per year, most of which are routine in nature outside City limits. Many of the “outside” responses are to areas beyond the territory to be annexed. The jail function is a State function funded by State contract. In fact, the City made money on running the jail in FY 1999.

The fact that the City owns (or plans to own) the facilities in which other organizations provide services (Homer Intermediate School/Pier One Theater) does not mean the City provides

the services. That is like saying that the Medical Center landlord is a doctor. (at 28)

CCAA argues that the Petitioner’s statement that its services are not paid for by residents is inaccurate.

Much of the basic infrastructure was State funded or federal funded. Residents in the proposed annexation area are State and federal residents. Thus, they provided funding equally with City residents for these facilities. Homer also ignores the sales tax contributions of non-residents, more than 50% of sales tax revenue comes from outsiders. Exhibit 64. Operational costs of the federally and state funded infrastructure for water, sewer and ports are supposed to be paid for by actual users regardless of whether the user is a City resident. That they are not is the result of financial mismanagement and conscious political decisions of the City. Homer’s failure to operate enterprise activities in a financially prudent manner is not a valid reason to compel annexation. (at 28)

Residents of the territory may receive directly or indirectly the benefit of City government, however they make significant and sufficient tax contributions with one exception – fire protection. However, there are practical and equitable alternative methods available to offset the cost of providing these services. Fees for fire suppression; user fees for recreational opportunities at City ballparks and the library; charges for use of water in the boat harbor [harbor fees include water]; and differ-

ential fines for resident and nonresident animal impound are a few measures to evaluate. Charging market-value rent for City buildings such as space at the police station used by State Troopers and space used at the soon to be acquired Intermediate School by the Kenai Peninsula College and the local Boys & Girls Club should be considered. Creating a fire service area encompassing the territory and other outlying areas presently served is clearly a more practical and equitable method to offset the costs of fire suppression and emergency.

Objective Annexation

Review. OAR concedes that the City of Homer may theoretically be the best provider of new services in some parts of the territory, but suggests that the standard is not met because there is no obvious connection with providing more adequate service within the City.

We have not concluded that territory residents get more than they pay for. If they do, the obvious option of increasing sales taxes and reducing property taxes in the City should be considered. There has been no analysis of market shift vis-à-vis mill rate compared to other factors that determine the habits of travel-shoppers who choose merchants located in Kenai/Sol-

dotna, Anchorage or Seattle. Growth in the territory has historically been considered an asset to the City. Residents pay sales taxes and harbor fees, operate businesses within the City, help operate non-profits, and their neighborhoods are not an obligation to the City in terms of water, sewer and road maintenance budgets. The City certainly should look with care at fire and emergency services. If the City's share is disproportionate, one standing proposal is for the City to get out of the business by selling its share of the assets to an all-encompassing service area. (at 10-11)

Raven Ridge

Homeowners' Association.

The Raven Ridge Brief contends that the City misrepresents certain health and safety issues in the context of the annexation proposal.

Petitioners should be commended for their concern for health and safety issues. Their



Portion of the City of Homer's urban center.

presentation, however, is inaccurate and misleading. Beluga Lake was never a “jewel” and will never be one. It is a body of water impounded over an area of tidal sediments and organic soils. It goes anaerobic after freeze-up in the Fall. Lighting off methane gas pockets trapped in the ice does provide some recreational opportunities. It is unlikely that any respectable game fish could or would want to survive in the Lake. Boating and swimming are not permitted because it is part of the airport. As for the Petitioners assertion that ‘The failure rate of septic systems is so great that swimming in Beluga Lake is a health hazard because of the high fecal count in the water’ appears to be unsubstantiated. Most of Beluga Lake’s watershed is within the city. If failed septic systems or outhouses are responsible for an ‘open sewer’ it is because the city has been unable to provide sewer service to its current residents. (at 5)

The Petitioner is correct about soil limitations for septic systems on the lower Homer bench. It should be noted, however, that in the territory these soils are located in a 2 square mile area east of Kachemak City in Sec. 1, T6S, R13W, and Sections 5-6, T6S, R12W. The proper installation and maintenance of engineered septic systems can overcome soil limitations. The remaining 23 square miles of the territory generally have suitable soils for septic systems near building sites. (at 5)

“Beluga Lake was never a ‘jewel’ and will never be one. It is a body of water impounded over an area of tidal sediments and organic soils. It goes anaerobic after freeze-up in the Fall. Lighting off methane gas pockets trapped in the ice does provide some recreational opportunities.” **Raven Ridge Homeowners Association Responsive Brief**

Peter Roberts. Mr. Roberts characterizes the annexation proposal as “a bad idea, not good government or in Homer area citizens’ best interests.” (at 1)

There needs to be a balance of interests made in this and this is a blurry area to be fair with. We have the City of Homer (government) with its need for more tax moneys and lust for control, we have the Citizens of the area in question who really want no part of the city, we have city residents, apparently 65 - 70% who do not like the idea and especially the way the City proceeded here, and the State of Alaska wanting to simplify and consolidate local government to balance in this issue. What ever happened to “A government of the people, by the people and for the people” in this “Annexation by Decree” proposed here? If the annexation is approved over the will of those effected there will be political chaos and discord down here for years, a negatively motivated electorate is

not a pretty thing to contemplate (annexees would be 40% of the electorate). The best balance would be no annexation and our problems worked out locally. (at 2)

Steve and Margret Seelye.

The Seelye Brief contends that the proposed annexation would fail to serve the balanced best interests of the state, the territory sought for annexation, and all political subdivisions affected by the annexation.

The Seelye Brief states that “We have seen no evidence in the petition to show that the proposed annexation meets this criteria.” (at 3)

Bill Smith. Mr. Smith’s Brief equates annexation with enhanced local control over development in the area.

By gaining the framework of city planning and zoning, the areas annexation will gain local control of these land uses. The City of Homer has proven to be a good host to business, recreation, and conservation interests. The City has many areas inside its current boundaries reserved for conservation, extensive recreation facilities and business zoning. These elements are the subject of continuous development and improvement. Without local control and land use planning, the area proposed for annexation will continue to be subject to strip development and incompatible uses which can adversely affect property values.



Portion of the territory proposed for annexation along Diamond Ridge Road.

There is nowhere to turn for these services but the City of Homer. (at 3)

The Crossman Ridge Neighborhood. The Crossman Ridge Brief contends that balanced best interest of the state, the territory, and the affected political subdivisions would not be advanced.

We believe annexation as proposed by the City of Homer’s Petition for annexation will not serve the balanced best interest of the state, the territory proposed for annexation, and affected political subdivisions. We believe that by including areas and neighborhoods such as Crossman Ridge will create a significant increase in disparity and inequality between areas and neighborhoods within the city, the annexation territory, and adjacent areas and neighborhoods outside the annexation territory. (at 11)

D. Views Expressed in Petitioner’s Reply Brief

The City’s Reply Brief reaffirms its position that annexation will serve the balanced best interests of the state, the territory proposed for annexation, and affected political subdivisions.

One of the factors that may be considered under 3 AAC 110.140 is that the residents or property owners within the an-

nexation territory receive, directly or indirectly, the benefit of city government without commensurate tax contributions. The benefits of Homer’s city government are received by and rendered to annexation territory residents, both inside and outside the territory to be annexed. As discussed previously in this brief, those benefits include, but are not limited to, fire and EMS service; jail and police dispatch services; voter services; port and harbor services; economic development benefits; parks; city roads; and the public library.

Property owners in the annexation territory do not make a commensurate contribution for these services. They pay no City property taxes, unlike their neighbors in the City. Sales tax and user fee increases cannot practically make up for this deficiency. Increasing City sales taxes will only intensify the present tendency of businesses to locate outside City boundaries to avoid City taxes. User fees cannot practicably be increased to levels sufficient to pay the actual costs of fire and EMS service, for example, nor is it consistent with the mission of the public library or public parks to charge significant user fees commensurate with the cost of providing these services.

The Petitioner asserts that a financially stronger post-annexation City of Homer would be in the collective best interest of the State, the territory proposed for annexation, and the City.

Maintaining the financial health of Alaska's cities, Homer in particular, is an important interest of all concerned—the City, the Borough, the State, and the residents of the annexation territory. A desire to halt the migration of sales tax producing businesses outside the city boundaries has factored into several recent annexation cases. See DCED, Preliminary Report to Local Boundary Commission Concerning Annexation of 1.2 Square Miles to the City of Ketchikan, pp. 73-76 (October 1999). The same tendency of businesses to locate just beyond City boundaries, thus impairing the financial health of Homer, favors annexation in this case.

Annexation is the most appropriate means to ensure that the City of Homer maintains both legal jurisdiction and financial ability necessary to continue to fund the broad array of essential services that benefit the residents of both the City and the outlying areas. Doing so is in the interests of the residents and property owners of the City as well as those in the annexation territory. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. This will degrade the quantity and quality of essential services available to a substantial number of residents of the annexation territory and place greater burdens on the Borough and the State.

According to the Petitioner, enfranchisement of residents of the territory proposed for annexation to vote in City elections and hold elective City office would benefit both those enfranchised by annexation and the City.

Much that the City government does affects the large number of community residents who reside outside the City limits. While the City has already put a number of these community residents on formal City boards and commissions, those living outside the City limits have never been allowed to vote in City elections. Furthermore, they have expressed frustration at being denied direct input in Homer City Council decisions. For example, the suit Citizens Concerned About Annexation v. City of Homer, 3HO-0032 CI, Superior Court in Homer, dealt for the most part with claims by residents of the annexation territory that they did not have adequate notice and opportunity for input into the Homer City Council's decision to file this annexation petition. They clearly want to have more input in City actions that might have significant impact on them. There is no more direct or effective way to give them the right to give such input than to include them in the City's boundaries and give them the right to vote.

There are many reasons why this annexation is in the balanced best interests of the annexation territory, the City, the Borough, and the State. Cities are the State's constitutionally preferred means of providing essential government services

“There is no more direct or effective way to give them [residents in the territory proposed for annexation] the right to give such input than to include them in the City’s boundaries and give them the right to vote.” **Petitioner’s Reply Brief**

on local level. Cities have the flexibility to adjust to varying demands within their boundaries. City government officials are highly accountable to their constituents, both formally (City Council meetings and the voting booth) and informally (encounters at the park, the post office, and the grocery store). It is contrary to the best interests of the City, the State, the Borough, and the annexation territory to have such a large unorganized population perched on the outskirts of the City, where it is dependent on the City for many essential service benefits and constitutes a drain on the City’s resources without contributing politically and financially to the City’s well-being. (at 59-61)

3.14 Best Interests of the State

A. The Standard

AS 29.06.040(a) provides, in part, that the Commission may approve any proposed municipal boundary change if the Commission determines “ . . . that the

proposed change, as amended or conditioned, if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state”.

B. Views Expressed in the Petition

The Petition for annexation asserts that the State has a strong interest in assuring that local governments have the necessary tax base to provide services which only the State and local government can provide.

If this tax base is lost to local government, the only other source of services and revenue is the State. It is unquestioned that State revenues are dwindling.

The State’s interest in having this annexation succeed are the same as the City’s. (at 42)

C. Respondents' Views

A statement contained in Mr. Pete Roberts' Responsive Brief reflects a view paraphrased by several of the other Respondents.

What ever happened to "A government of the people, by the people and for the people" in this "Annexation by Decree" proposed here? If the annexation is approved over the will of those effected there will be political chaos and discord down here for years, a negatively motivated electorate is not a pretty thing to contemplate (annexees would be 40% of the electorate). The best balance would be no annexation and our problems worked out locally. (at 2)

D. Views Expressed in Petitioner's Reply Brief

Another factor favoring this annexation is the strong indication that additional service areas are likely to be formed to provide services in the area if annexation does not occur.

This will result in a proliferation of local government units contrary to the state constitutional policy of limiting the number of local government units. Alaska Constitution, article X, section 1. Furthermore, the proliferation of several specialized local government units with limited powers tends to degrade the equity, efficiency, and cost-effectiveness in the delivery of local government services, especially when established on the borders of an existing City for the purpose of hemming it in.

The State interest favors cities over local service areas. Local government powers are vested in boroughs and cities, Alaska Constitution, article X, section 2. No government powers are vested in service areas. Furthermore, a new service area may not be legally formed when the service can be provided by annexation to a city, AS 29.35.450(b). The Alaska court has confirmed the statutory and constitutional preference for cities over the establishment of new service areas. See Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995). Clearly it is in the state interest to approve annexation in preference to forming new local service areas. (at 60)

Chapter 4

Application of the Annexation Standards by DCED

This chapter of the Preliminary Report presents DCED’s application of the formal annexation standards to the City of Homer’s proposal. It begins with the examination of the standard relating to the character of the territory proposed for annexation. Next the report examines those standards that are relatively objective. The chapter concludes with DCED’s examination of the more subjective and complex standards.

4.1 Character of the Territory Proposed for Annexation

A. Standard Established in Law

Territory may be annexed to a city only if it is compatible in character with the area presently inside the corporate boundaries of the city to which annexation is proposed. Specifically, the law provides as follows:

3 AAC 110.100 CHARACTER. The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion,¹⁶ 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.

¹⁶ In plain language, the phrase “the commission will, in its discretion, consider” means that the “Commission may consider.” (See *Drafting Manual for Administrative Regulations*, page 61, 14th Edition, September 2000, Alaska Department of Law.)



Portion of the western territory proposed for annexation (bluff in foreground, Sterling Highway, Ranger Station at Mile 168.5, and residential development).

162

3 AAC 110.100 lists six factors (counting land use and subdivision platting as two distinct factors) that the Local Boundary Commission may choose to consider in its application of the compatible character standard. However, the Commission is also free to consider other relevant factors in its application of the standard.

B. Application of the Comparable Character Standard to the City of Homer Petition

1) Introduction

The provision in law limiting annexation of territory to that

which is “compatible in character to the annexing city” does not require the respective areas to be identical or even similar in character. For example, in 1999, the Local Boundary Commission approved the annexation of 19.5 square miles to the City of Kodiak. Approximately one-eighth of the territory approved for annexation (2.4 square miles) was urban and densely populated (as was the area within the existing boundaries of the City of Kodiak). About one-quarter of the territory (5.4 square miles) was rural and sparsely populated. The remaining 11.7 square miles were uninhabited and otherwise undeveloped.

The uninhabited 11.7 square mile area was comprised of large tracts of publicly-owned land. Although the area within the corporate boundaries of the City of Kodiak was densely populated, heavily developed, extensively subdivided, and largely privately owned, the Commission determined that all of the areas proposed for annexation were, nonetheless, compatible. The 11.7 square mile area noted earlier served as the watershed for the area within the boundaries of the City of Kodiak and was, therefore, an important component of the community. (See *Decisional Statement in the Matter of the March 19, 1999 Petition of the City of Kodiak for Annexation of Approximately 19.5 Square Miles*, page 10, LBC September 3, 1999.)

The characteristics of the territory proposed for annexation to the City of Homer are examined here in the context of the standard at issue. Moreover, the territory is reviewed in supplemental terms to provide a more comprehensive description of the territory proposed for annexation beyond the factors enumerated 3 AAC 110.100.

Unless otherwise indicated, information used in this section of the report is derived from the Kenai Peninsula Borough's Geographic Information Systems (GIS).¹⁷

The City of Homer estimates that the territory proposed for annexation encompasses approximately 25.58 square miles. However, GIS data indicate that the territory comprises a slightly larger area – 16,408 acres or 25.64 square miles. The difference between that figure and the City's figure (36.8 acres) is insignificant for purposes of this review.¹⁸ While DCED considers the City's estimate of the size of the territory to be accurate, the marginally larger figure is used in DCED's analysis because it conforms to other data extracted from the Borough's GIS used in this report.

¹⁷ GIS parcel data posted on the Internet as of March 28, 2001.

¹⁸ The figure derived from the GIS data is only twenty-three one-hundredths of one percent larger than the City's estimate.

The territory proposed for annexation is made up of two separate areas. The larger of the two encompasses an estimated 25.38 square miles (99.0% of the territory proposed for annexation). The smaller area encompasses 0.26 square miles. Figure 4-A shows the two areas proposed for annexation. The existing corporate boundaries of the City of Homer and the corporate limits of the City of Kachemak are also depicted, as are major roadways in the area.

The northern border of the larger of the two areas proposed for annexation extends a distance of approximately 15.75 miles along Township 6 South of the Seward Meridian. It transects

the tip of the Kenai Peninsula that forms the northern shore of Kachemak Bay. The northern perimeter of the territory proposed for annexation crosses the Sterling Highway approximately at mile 165.7 in the western portion of the territory. To the east, the northern border crosses Skyline Drive approximately 0.2 miles south of its intersection with Ohlson Mountain Road. Farther yet to the east, the northern perimeter crosses East End Road approximately at mile 6.7 (near the southern fence of Shoreline Golf).

The western border of the larger of the two areas proposed for annexation meanders along the shoreline of Kachemak Bay

164

**Figure 4-A
Territory Proposed for Annexation, Homer City Limits,
and Kachemak City Limits**



for approximately 5.75 miles. The southern perimeter “stair steps” along the existing corporate limits of both the City of Homer and the adjoining City of Kachemak. The perimeter then meanders along Kachemak Bay on the east for approximately 3.5 miles where it intersects with the northern perimeter at Township 6 South.

The smaller of the two areas proposed for annexation consists of a 0.26 square mile area known as Millers Landing. Millers Landing is defined by the corpo-



Diamond Ridge area within the territory proposed for annexation.

rate limits of the City of Kachemak and the City of Homer as well as the shoreline of Kachemak Bay.

The northern and western perimeter of Millers Landing follows the centerline of East End Road from approximately mile 2.7 to approximately mile 4.0 (that line is also the southern

boundary of the City of Kachemak). The southern perimeter of Millers Landing follows the existing northern boundary of the City of Homer. The eastern perimeter of Millers Landing meanders along the shore of Kachemak Bay for approximately 0.5 miles and then continues



Eastern portion of Millers Landing in foreground, East End road, and City of Kachemak in background.



Commercial development along Sterling Highway (August 2001).

along the existing boundary of the City of Kachemak to its intersection with the centerline of East End Road.

2) The Facts in this Case

a) Land Use

There are 2,219 parcels of various sizes in the territory proposed for annexation. Those parcels comprise approximately 15,684 acres. Public rights-of-way encompass an additional 724 acres within the territory proposed for annexation. As noted earlier, the total size of the territory encompasses an estimated 16,408 acres, or 25.64 square miles.

The Kenai Peninsula Bor-

ough classifies most of the land in the territory as vacant. Specifically, 1,240 of the 2,219 parcels (55.9%) are vacant. Those parcels comprise 10,908 of the 16,408 acres (66.5%).

However, there is also considerable residential development in the territory. In particular, there are 870 housing units consisting of 635 single family homes, eighteen duplexes (containing thirty-six housing units), one three-family unit, seventy-one cabins, eighty-one cottages, and forty-four mobile homes.

Forty commercial properties have been developed within the territory proposed for annexation. Based on information

provided by the Kenai Peninsula Borough (which collects a 2% sales tax in the area proposed for annexation), the City of Homer estimates that commercial operations in the territory have taxable sales of more than \$14 million annually.

Commercial development in the territory is concentrated at Millers Landing. Specifically, twenty-seven of the forty commercial sites (67.5%) are located at Millers Landing.

Commercial development at Millers Landing includes a full-service boat yard, market, restaurants, taverns, vehicle repair facilities, boat building, electrical contractors, storage units, and heating contractors. Kenai Supply, which operated a major building supply outlet at Millers Landing, closed its operations there and elsewhere in Alaska when it was announced in March of 2000

that the firm's assets would be liquidated following the retirement of the owners.

Significant commercial development within the territory proposed for annexation also exists along the Sterling Highway. Development in that area includes a service station, small convenience store, recreational vehicle campground, fast-food restaurant, rental cabins, and a motel.

A commercial radio station and a funeral parlor operate along Diamond Ridge Road. AT&T Alascom also operates a large marine radio communications facility along Diamond Ridge Road.



AT&T Alascom radio facility along Diamond Ridge Road.

A limited number of home-based businesses also operate within the territory proposed for annexation. These include a large kennel and several bed and breakfast operations.



Kenai Peninsula Borough's solid waste baling facility located within the territory proposed for annexation.

The territory proposed for annexation also includes a limited number of institutional (governmental) sites. Specifically, fourteen such sites exist. These include a solid waste baling facility operated by the Kenai Peninsula Borough at mile 169.3 of the Sterling Highway. Adjoining the solid waste baling facility is a highway maintenance station operated by the State of Alaska. The Alaska State Parks Southern District Ranger Station is also located along the Sterling Highway.

These include Hickerson Memorial Cemetery on Diamond Ridge Road. The City of Homer also owns property north of Skyline Drive along the Bridge Creek Reservoir where it operates a pumping station to provide water for the community.

168

The City of Homer owns a number of the institutional sites within the territory proposed for annexation.



Bridge Creek Reservoir - pumping station in background.

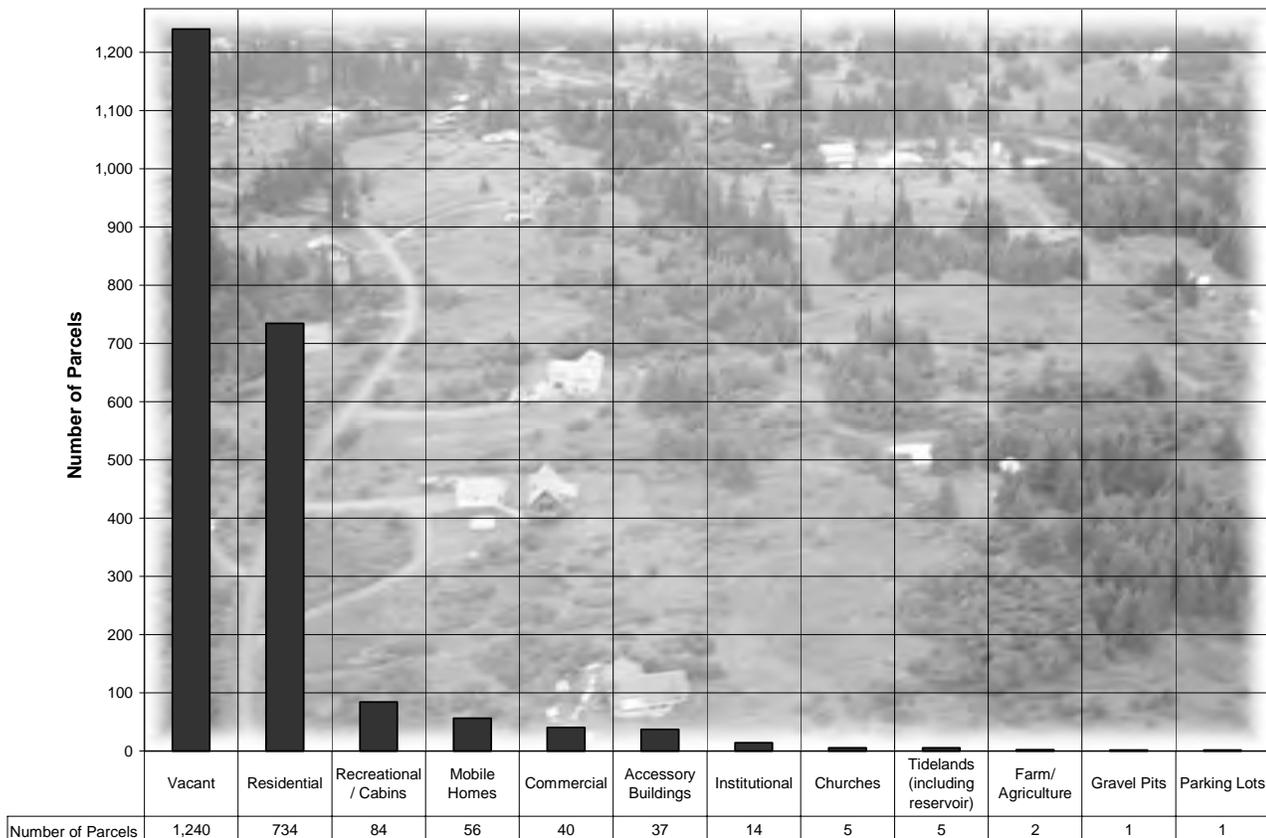
The Bridge Creek Watershed is the City’s sole source of water. The City also owns property nearby along Skyline Drive where it operates its water treatment plant.

Figure 4-B summarizes land use in the territory based on the number of parcels (excluding public rights-of-way). Figure 4-C, which appears on the following page, summarizes land use in the territory proposed for annexation based on acreage.

As noted earlier, much of the territory proposed for annexation is vacant land. The State, Borough, and Native corporations own a substantial amount of the vacant land (37.0% based on acreage). Figure 4-D lists the vacant land holdings of those organizations within the territory proposed for annexation.

A map showing the land use characteristics of the territory proposed for annexation and the area within the existing bound-

**Figure 4-B
Land Use Characteristics in the Territory Proposed for Annexation (Based on Number of Parcels)**

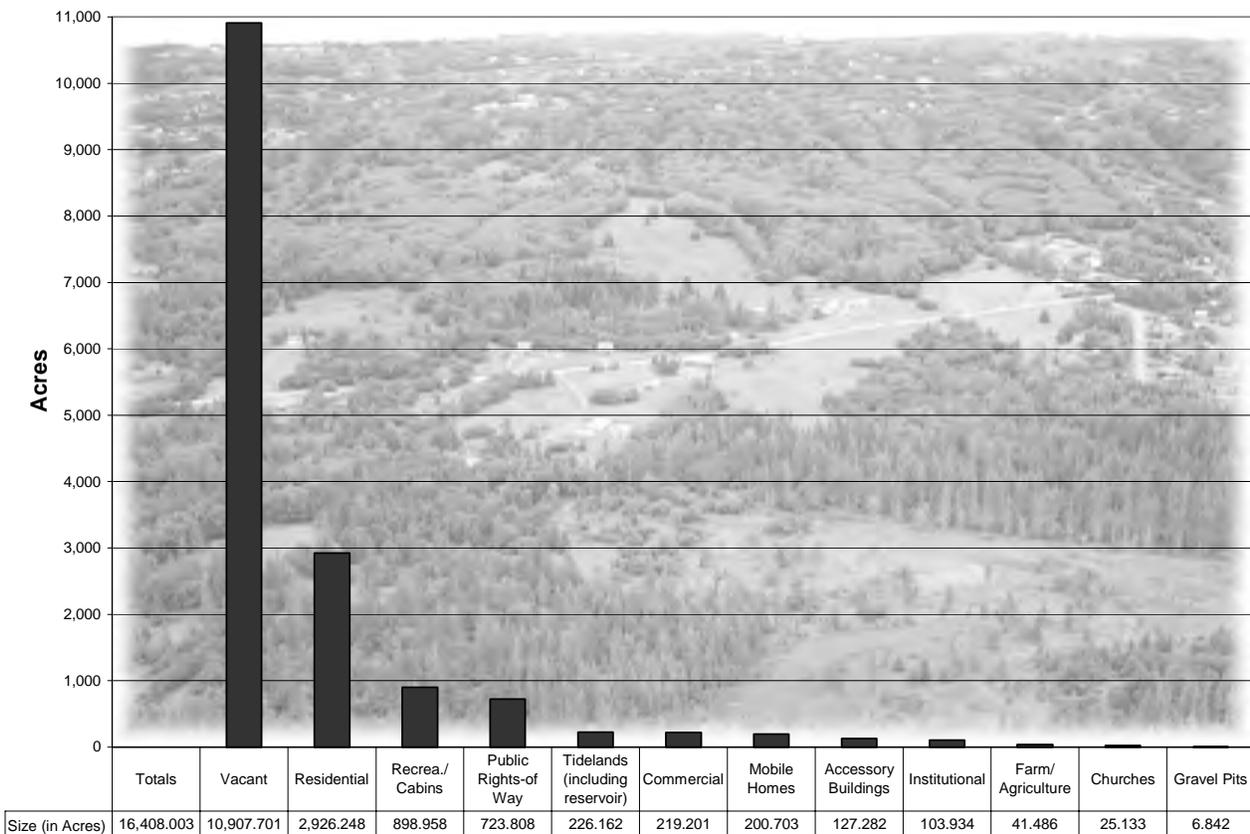


aries of the City of Homer and surrounding areas is provided as Figure 4-E on page 174.

Like the territory proposed for annexation, the area within the corporate boundaries of the City of Homer exhibits diverse land use characteristics. Land use inside the existing corporate boundaries of the City of Homer is typical of a larger sized (by Alaska standards) coastal community.

A review of Figure 4-E generally shows limited distinctions between the territory proposed for annexation and the City of Homer regarding land use. A greater proportion of the land within the City of Homer is used for institutional functions (government offices, schools, airport, etc.) than is the case within the territory proposed for annexation. The same is true with respect to commercial land use.

**Figure 4-C
Land Use Characteristics in the Territory Proposed for Annexation (Based on Acreage)**



**Figure 4-D
Vacant Land Holdings within the Territory Proposed for Annexation**

Owner	Number of Parcels	Size
State of Alaska (DNR)	69	1,994.828 acres
Kenai Peninsula Borough	19	804.013 acres
University of Alaska	8	716.932 acres
Native Corporations	9	507.931 acres
Totals	105	4,023.704 acres

Those circumstances are typical of city governments throughout Alaska that seek to expand their boundaries.

The area within the existing corporate boundaries of the City of Homer also includes a substantial amount of vacant land, although relatively less than the territory proposed for annexation.

Based on the preceding analysis, DCED finds that although there are distinctions between the two areas with respect to land use, those distinctions do not render the territory proposed for annexation incompatible with

the territory inside the corporate boundaries of the City of Homer.

b) Subdivision Platting

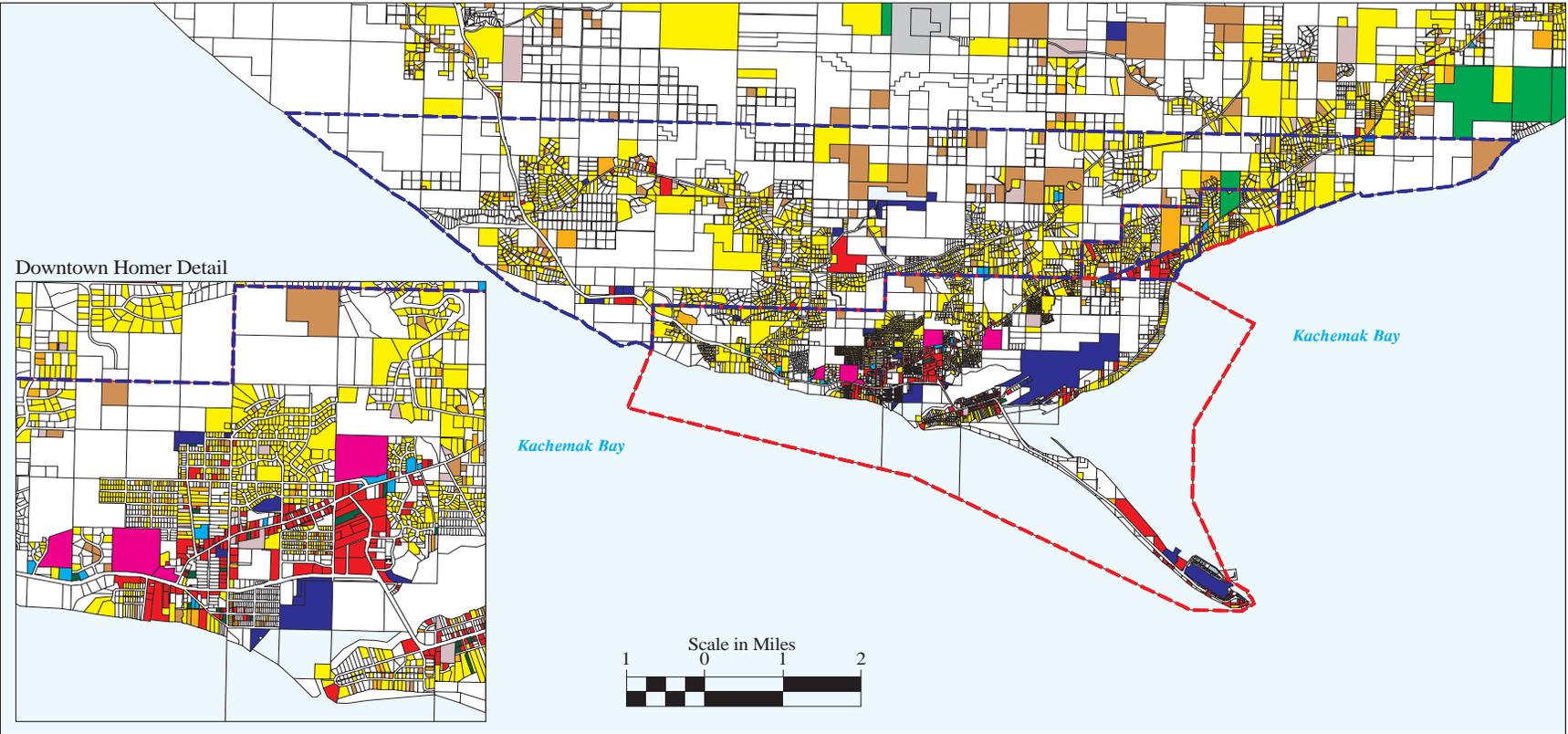
The territory proposed for annexation is divided into parcels ranging in size from a 386-acre tract of State-owned land to parcels encompassing one-quarter-acre or less. As noted earlier, the territory encompasses 2,219 parcels.



Land use in the territory proposed for annexation (north of the dotted line) and the City of Homer (south of the dotted line). Also shown are portions of Diamond Ridge Road, Skyline Drive, West Hill Road, and East Hill Road.

Many of the parcels are relatively small. Specifically, 970 of the 2,219 parcels (43.7%) are two acres or

less. A number of others are moderately larger. In particular, 834 of the parcels (37.6%) are more than two acres but not



Legend			
	Vacant		Commercial
	Residential		Mobile Homes
	Recreational/Cabins		Gravel Pits
	Tidelands		Institutional
	Farm/Agriculture		Industrial
	Churches		School
	Parking Lots		City Limits
			Proposed Annexation Area

**FIGURE 4-E
LAND USE CHARACTERISTICS
OF THE TERRITORY PROPOSED
FOR ANNEXATION AND
ADJOINING AREAS**

Proposed City of Homer Annexation

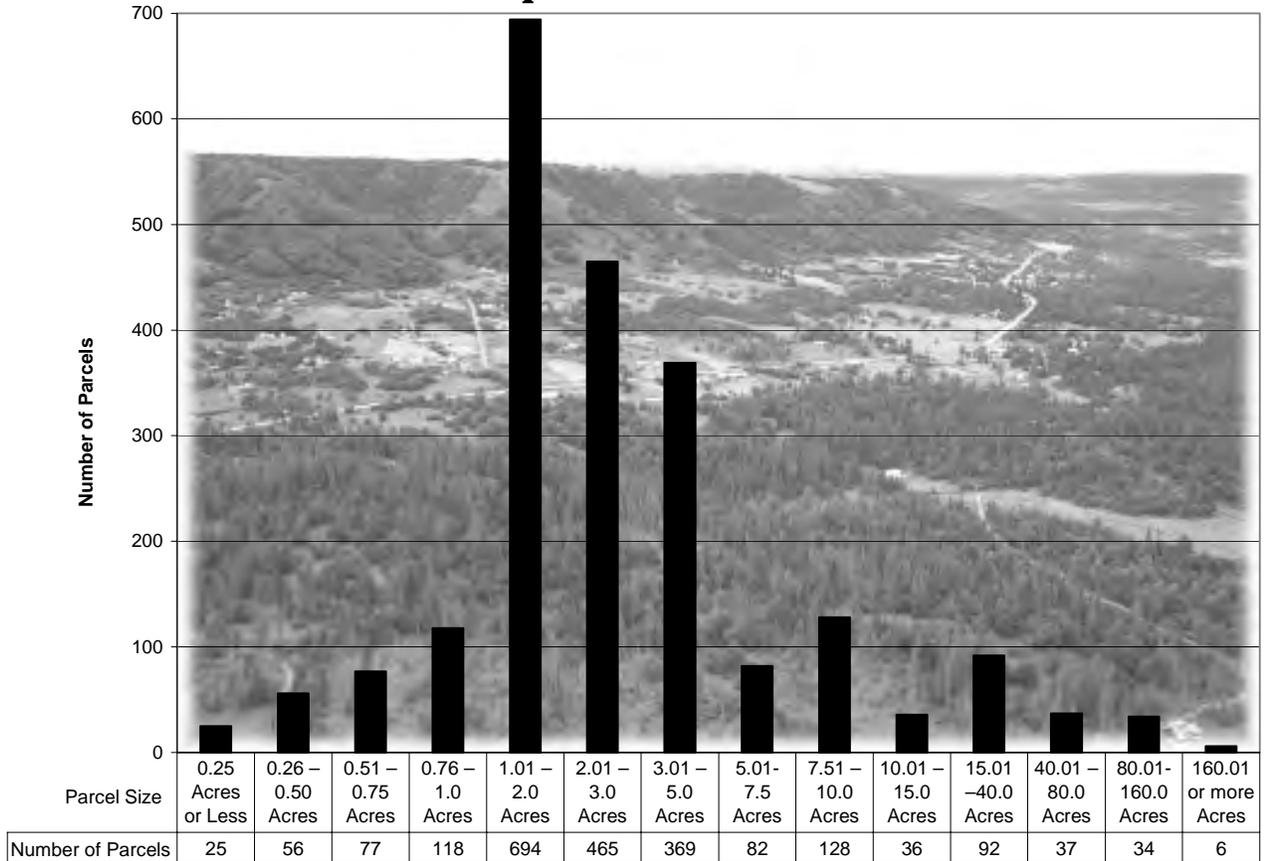
more than five acres. The remaining 415 parcels (18.7%) are each more than 5 acres. Figure 4-F provides a more detailed listing of the number and size of parcels in the territory proposed for annexation.

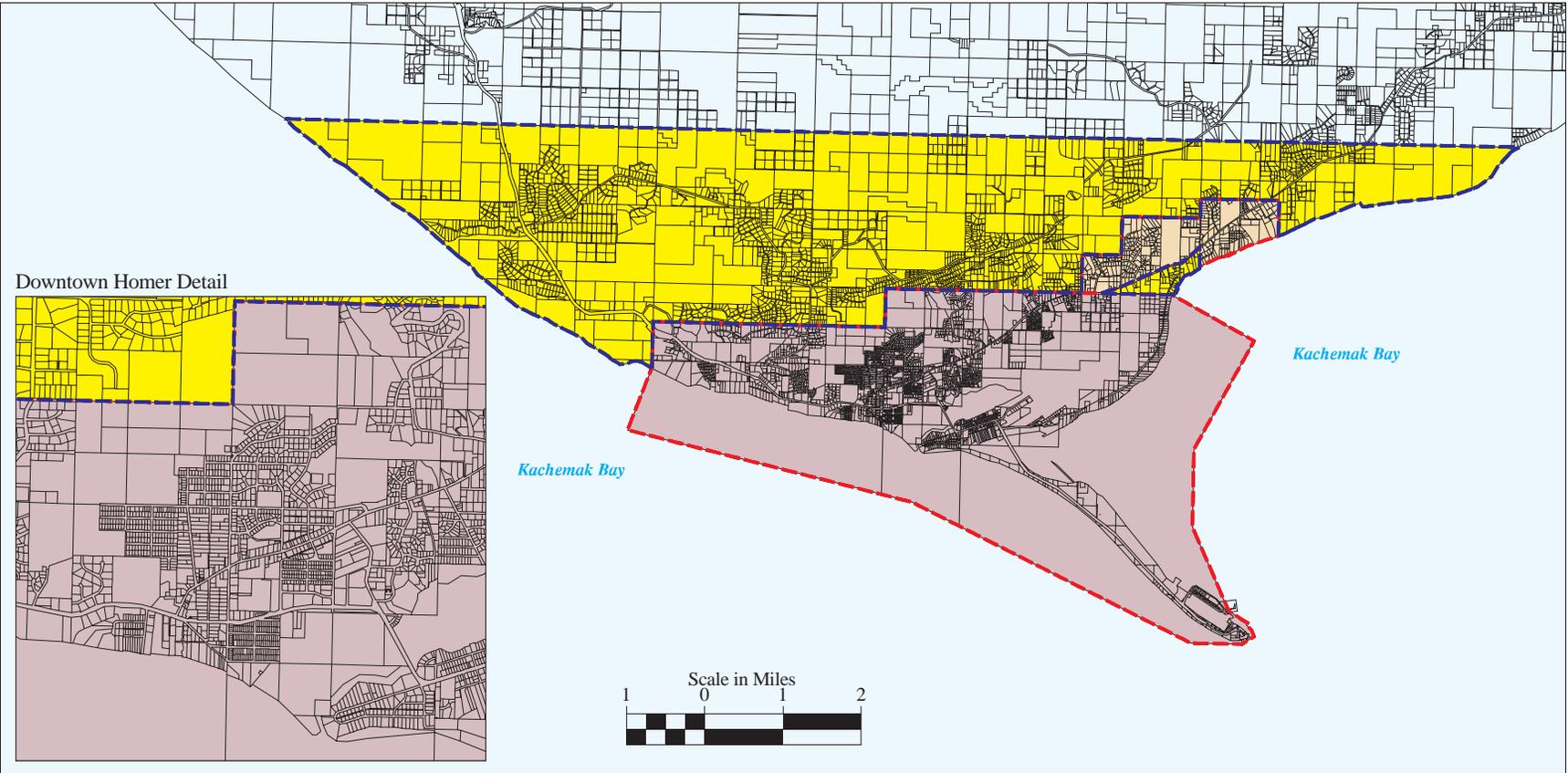
A map showing the subdivision characteristics of the territory proposed for annexation and the area within the existing

boundaries of the City of Homer and surrounding areas is provided on the following page as Figure 4-G.

Subdivision characteristics are influenced, of course, by a variety of factors including land ownership, access, and natural geography. The State of Alaska (DNR) and the Kenai Peninsula Borough own the five largest

**Figure 4-F
Subdivision Platting Characteristics in the Territory
Proposed for Annexation**





Legend	
	City of Kachemak
	City of Homer
	Area Proposed For Annexation
	City Limits
	Proposed Annexation Area

**FIGURE 4-G
SUBDIVISION
CHARACTERISTICS OF THE
TERRITORY PROPOSED FOR
ANNEXATION AND ADJOINING AREAS**

Proposed City of Homer Annexation

tracts in the territory proposed for annexation. Additionally, the University of Alaska owns ten tracts totaling 865 acres.

Subdivisions commonly exist within the territory proposed for annexation on both sides of major roadways (Sterling Highway, Diamond Ridge Road, Skyline Drive, West Hill Road, East Hill Road, East End Road, and Kachemak Drive).

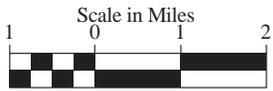
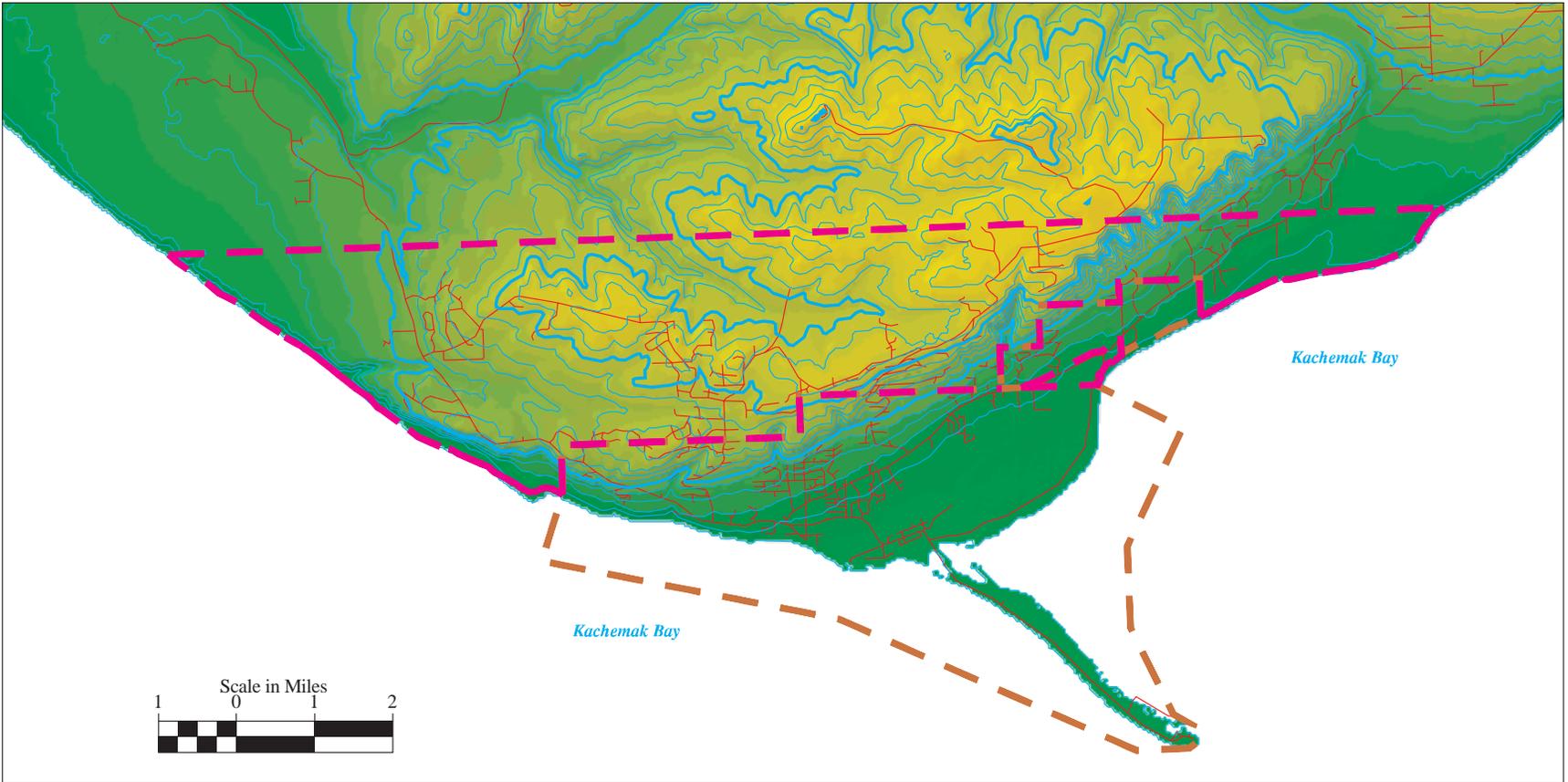
Generally, the southern portion of the territory proposed for annexation from the Sterling Highway east to the City of

Kachemak and Millers Landing is more heavily subdivided and has the smallest lots. Conversely, the northern portion of the territory proposed for annexation and the area west of the Sterling Highway generally tends to be comprised of larger lots.

The City of Homer also exhibits diverse subdivision characteristics. There are large undivided parcels of land within the City of Homer, although proportionately less than the



Development within the City of Homer.



- | Legend | |
|---|-----------------------------------|
|  | 100' Contours |
|  | 500' Contours |
|  | Roads |
|  | Existing City Boundaries |
|  | Territory Proposed for Annexation |

**FIGURE 4-H
CONTOUR MAP
OF THE CITY OF HOMER
AND TERRITORY
PROPOSED FOR ANNEXATION**

Proposed City of Homer Annexation

territory proposed for annexation. There are, of course, a number of smaller lots within the City of Homer.

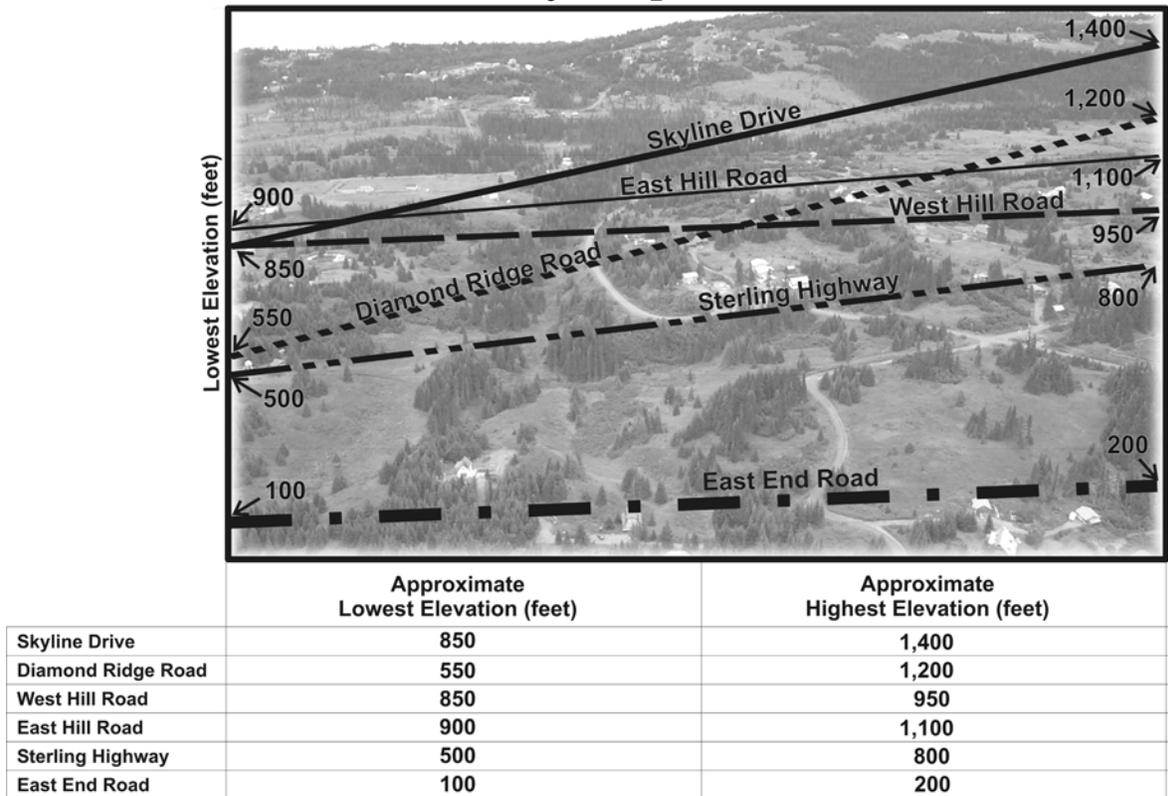
Based on the preceding examination, DCED finds that the subdivision characteristics of the two areas in question do not render the territory proposed for annexation incompatible with the area inside the City of Homer.

c) Natural Geography

Elevations within the territory proposed for annexation range from sea level to approxi-

mately 1,400 feet. In comparison, elevations within the existing boundaries of the City of Homer range from sea level to approximately 1,100 feet. The downtown area of Homer generally ranges from 100 feet to 500 feet in elevation. Figure 4-H on the previous page is a contour map showing elevations within the City of Homer and the territory proposed for annexation.

**Figure 4-I
Approximate Range of Elevations Along Major Roadways
within Territory Proposed for Annexation**





Bridge Creek Reservoir.

Figure 4-I on the previous page lists the approximate range of elevations along those portions of major roadways within the territory proposed for annexation.

The territory proposed for annexation encompasses all or portions of two prominent ridges—Diamond Ridge and Crossman Ridge, each of which extend approximately 5 miles. The south side of Diamond Ridge drains into Diamond Creek, which empties into Kachemak Bay. The north side of Diamond Ridge drains into Bridge Creek. The south side of Crossman Ridge also drains into Bridge Creek.

The Bridge Creek Reservoir is the sole source of water for the City of Homer. The Bridge Creek watershed encompasses approximately 3.56 square miles in the northcentral portion of the territory proposed for annexation.

The territory lying between the northern boundary of the City of Kachemak and Skyline Drive is particularly steep. Over a span of about one-half mile, the terrain rises approximately 900 feet, forming several canyons.



Top left-portion of the City of Homer; lower right-Bridge Creek Reservoir

The northeastern corner of the territory proposed for annexation consists of wetlands around Stone Steps Lake.

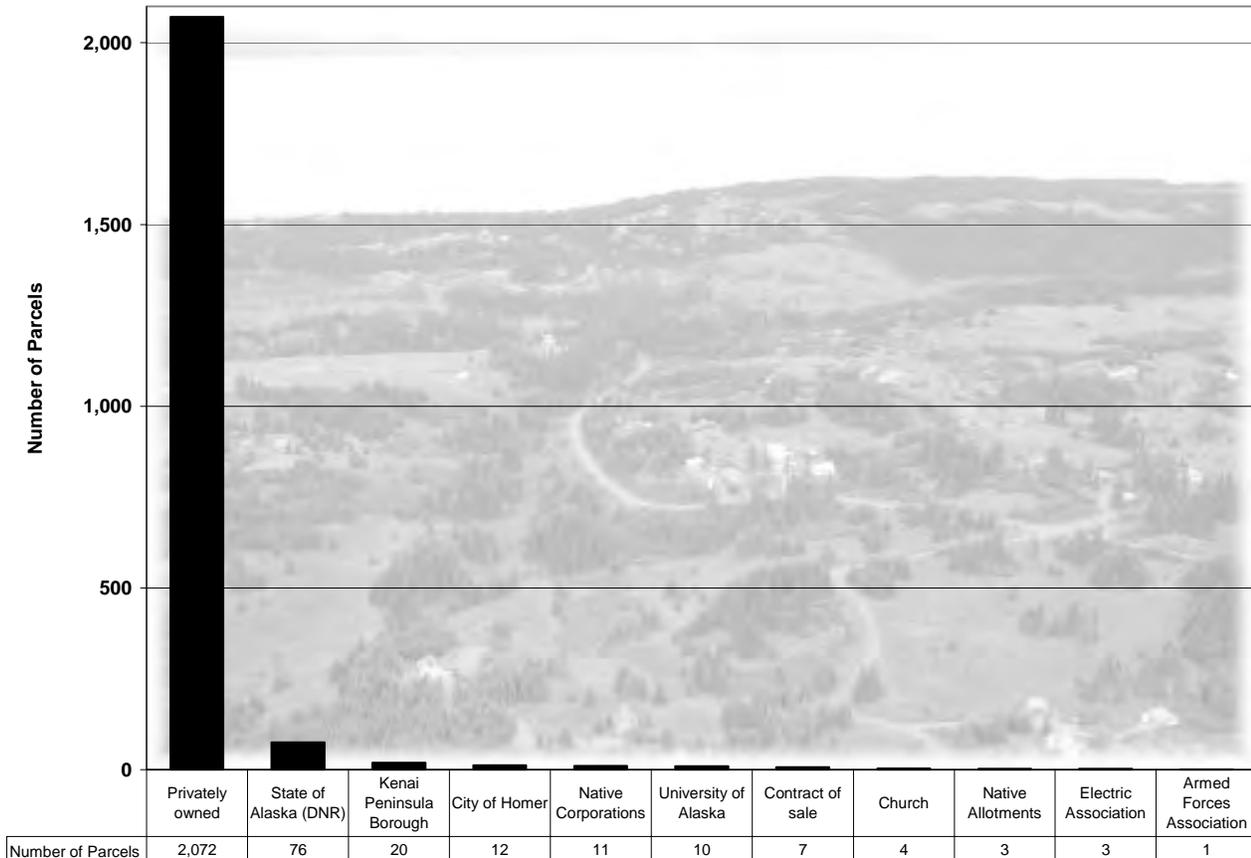
Although the territory proposed for annexation exhibits diverse geographic features, DCED finds no aspect of natural geography within the territory proposed for annexation to be incompatible with the area inside the City of Homer.

d) Salability of land for residential, commercial, or industrial purposes

The salability of land – the extent to which it is capable or fit to be sold – depends largely upon natural geography and ownership.

The land in the territory proposed for annexation is predominately privately owned.

**Figure 4-J
Land Ownership Characteristics in the Territory Proposed for Annexation Based on Number of Parcels**



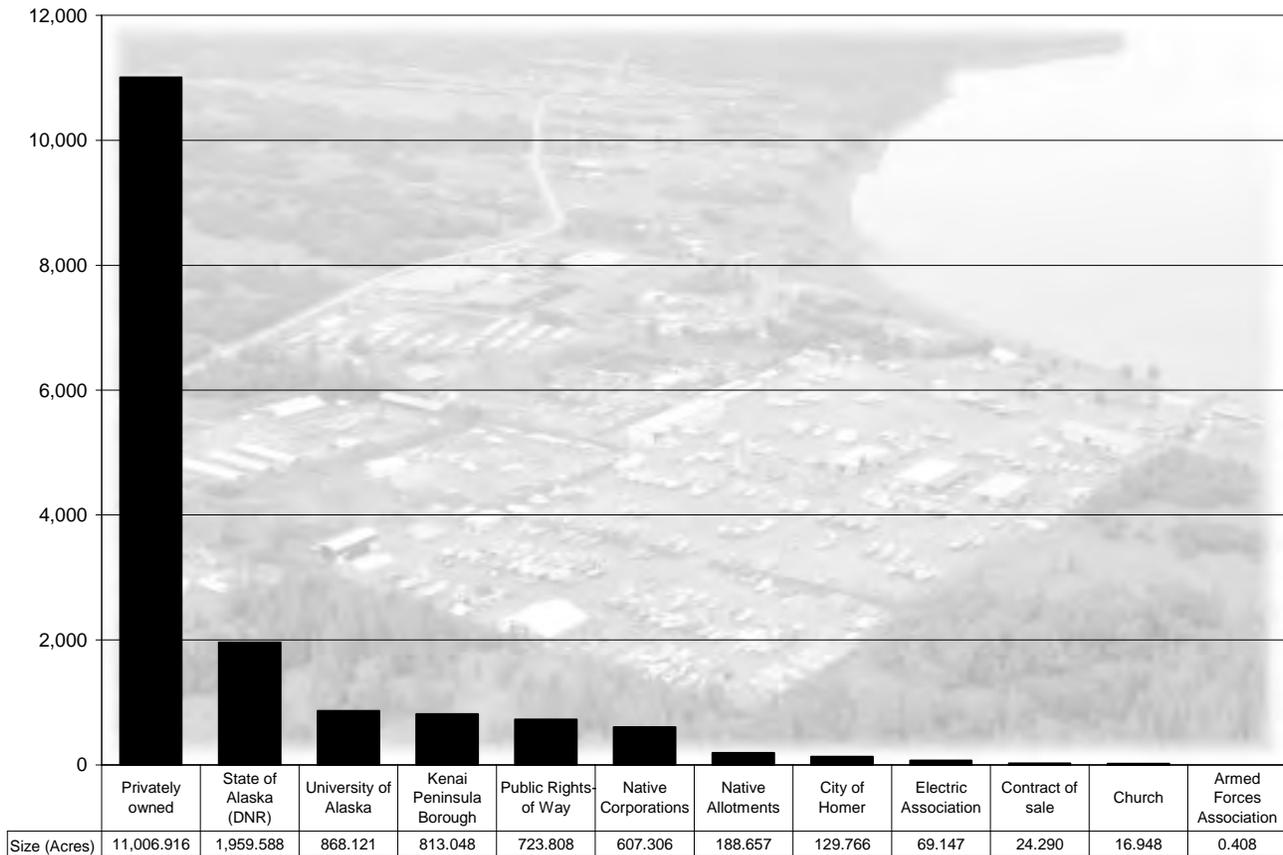
2,072 of the 2,219 parcels (93.4%) and approximately 11,007 of the 15,684 acres (70.2%) in the territory are privately owned (figures exclude public rights-of-way). Figure 4-J summarizes land ownership characteristics in the territory proposed for annexation based on the number of parcels. Figure 4-K recaps land owner-

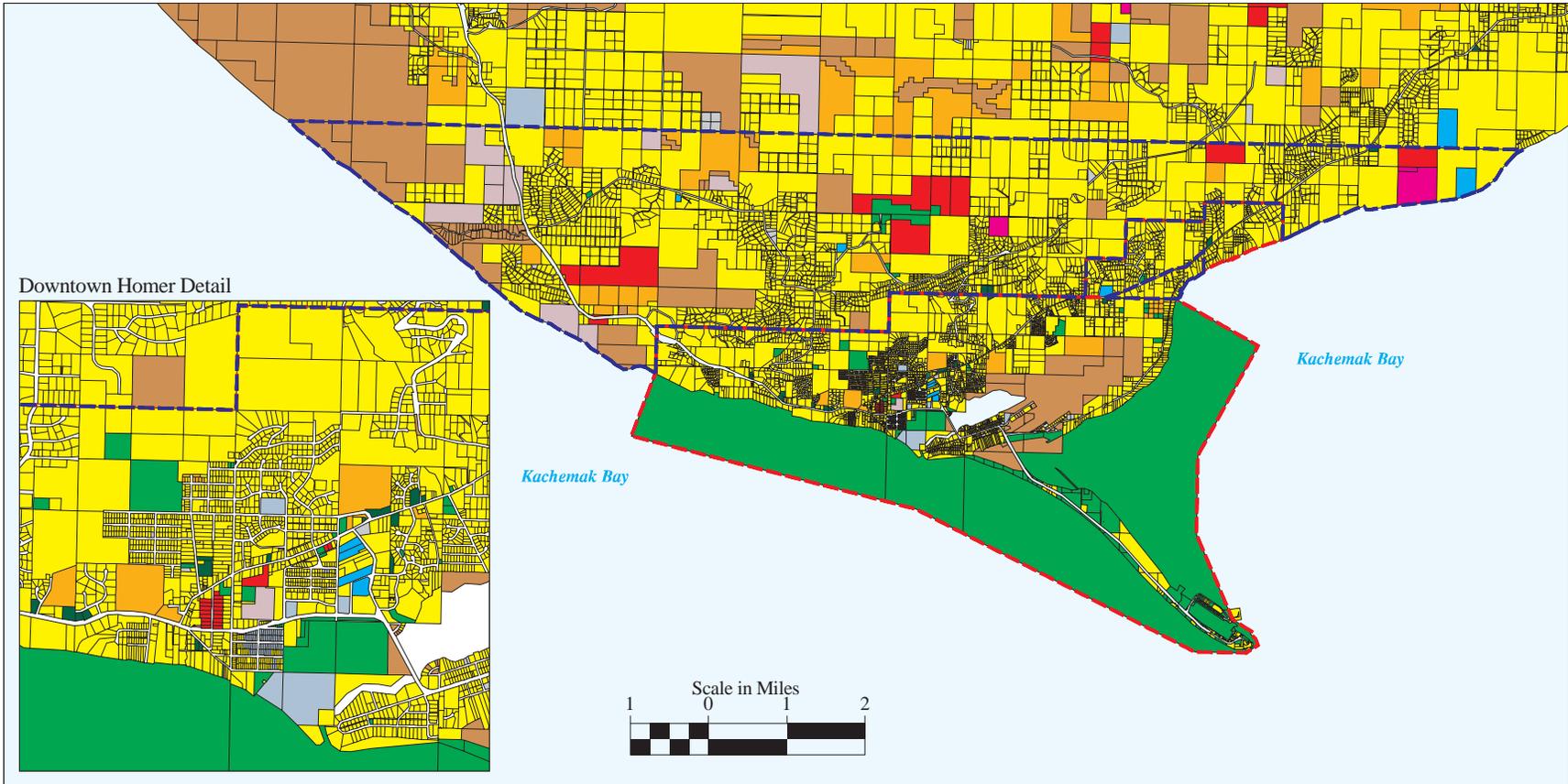
ship characteristics based on acreage.

A map showing the land ownership characteristics of the territory proposed for annexation and the area within the existing boundaries of the City of Homer and surrounding areas is provided as Figure 4-L.

**Figure 4-K
Land Ownership Characteristics in the Territory Proposed for Annexation Based on Acreage**

180





Legend			
 Private	 Native Corporation	 Contract of Sale	 City Limits
 State of Alaska	 Native Allotment	 Church	 Proposed Annexation Area
 University of Alaska	 City of Homer	 Federal	
 Kenai Peninsula Borough	 Homer Electric		

FIGURE 4-L
LAND OWNERSHIP
CHARACTERISTICS OF THE
TERRITORY PROPOSED FOR
ANNEXATION AND ADJOINING AREAS

Proposed City of Homer Annexation

Figure 4-M
Property for Sale in the City of Homer and the Territory Proposed for Annexation

Area	Single Family Homes				Land			
	# of Listings	List Price - \$			# of Listings	List Price - \$ (acreage)		
		Low	Median	High		Low	Median	High
Homer East Hill	8	174,900	285,000	425,000	7	40,000 (0.94)	130,000 (2.67)	167,000 (8.14)
Homer	19	29,500	115,000	625,000	56	5,500 (0.28)	47,450 (1.09)	765,000 (8.18)
Homer West Hill, Baycrest	9	40,000	181,000	295,000	20	12,000 (1.14)	34,000 (3.19)	380,000 (22.10)
Homer Skyline Area	10	95,000	190,000	450,000	64	9,900 (6.61)	18,250 (2.92)	152,800 (68.36)
Diamond Ridge	13	54,950	187,000	374,000	27	16,000 (2.51)	32,000 (3.65)	94,000 (4.74)

Listed above are single-family homes and land for sale through the Multiple Listing Service (MLS, Inc.) in 5 areas within and around the City of Homer. Other property classifications (condos, residential leases, mobile homes, multi-family homes, and commercial) are not included in this table. Other single-family homes and land may be available for sale by owners or through exclusive listings with real estate agents and are not listed in this table. Source: <<http://www.alaskarealestate.com>> as of August 2, 2001. A map of the five areas listed above is available for review at <<http://bayrealtyalaska.com/images/map.gif>>

182

Five real estate firms are located in the Homer area. One of those, Homer Real Estate Associates, characterizes the local property market as follows:¹⁹

The real estate market in Homer is very dynamic, new properties are coming on the market

year round and pricing has been very stable, although increasing, yearly.

Figure 4-M summarizes certain real estate listings in the greater Homer area for single family homes and land.

¹⁹ See <<http://www.homerrealestate.com>>

Based on the preceding review, DCED finds no aspect of the salability of land in the territory proposed for annexation to suggest that the territory is incompatible with the area inside the City of Homer.

e) Population density

The City of Homer estimates in its Petition that 2,687 individuals inhabit the territory proposed for annexation. The City of Homer’s Planning Department developed that estimate using 1990 U.S. Census data and information provided by the Kenai Peninsula Borough. However, that estimate is somewhat high compared to estimates derived from 2000 Census data.

Staff at the Census and Geographic Information Network of the Alaska Department of Labor and Workforce Development (CGIN) identified forty census blocks and one “census designated place” (CDP)

wholly within the territory proposed for annexation. Those areas encompassed 1,800 persons at the time of the 2000 Census. Seven additional census blocks were located partially within the area proposed for annexation. 1,020 residents inhabited those seven census blocks at the time of the last census.

Block-level analyses of the settlement patterns in the seven blocks overlapping the territory proposed for annexation indicate that an estimated 404 of the 1,020 persons were within the territory proposed for annexation. Appendix D shows how the estimate was made.



Residential neighborhood in the area proposed for annexation.

The census figures, therefore, reflect an estimated population of 2,204 in the area proposed for annexation. For purposes of its analysis, DCED will utilize 2,204 as the population of the territory proposed for annexation. That figure is 18.0% less than the estimate used by the City of Homer.

Based on DCED's estimate of the total population, the overall population density in the territory proposed for annexation is 86.0 persons per square mile (2,204 persons / 25.64 square miles).

However, as noted earlier, much of the territory is undeveloped. Specifically, 18.53 of the 25.64 square miles proposed for annexation (72.2%) are comprised of vacant properties, public rights-of-way, and what the Borough classifies as tidelands. That leaves 7.11 square miles of development in the territory proposed for annexation.

Millers Landing has a population density of 284.6 persons per square mile (74 persons / 0.26 square miles). In addition to Millers Landing, the southernmost portion of the



Foreground: Development at the east end of Millers Landing.



Property currently under development in the territory proposed for annexation (August 2001).

territory proposed for annexation comprising an estimated 3.04 square miles lying east of the Sterling Highway and west of the City of Kachemak is also generally densely populated. That area is inhabited by an estimated 801 people (263.5 people per square mile).

In comparison, 3,946 people inhabited the City of Homer at the time of the 2000 Census. The existing boundaries of the City of Homer encompass approximately twenty-one square miles. Thus, the population density of the City of Homer at the time of the 2000 Census was approximately 188 persons per square mile.

Excluding water within the corporate boundaries of the City of Homer (which comprises about ten square miles), the population density of the land within the City is approximately 359 persons per square mile. However, as is the case with the territory proposed for annexation, variations in the density of population on the land within the City of Homer exist.

In conclusion, population densities throughout the territory proposed for annexation differ significantly. The same is true of the area within the existing boundaries of the City of Homer. These circumstances are typical of areas within and adjoining city governments throughout in Alaska.



Residential development in the territory proposed for annexation.

Based on the foregoing discussion, DCED finds no aspect of the population density of the territory proposed for annexation renders it incompatible in character with the area inside the existing corporate boundaries of the City of Homer.

f) Cause of recent population changes

Specific figures for population growth in the territory proposed for annexation are not available. However, the Kenai Peninsula Borough indicates generally that the southern portion of the Peninsula is experiencing rapid population growth

and other development. Specifically, the Borough identified the following trends as part of its ongoing effort to produce the “Southern Peninsula Plan”:²⁰

- the Southern Peninsula area is growing;
- the population is growing at a fast rate;
- the labor force is growing;
- development is occurring both outside and inside of cities.

GIS data also indicate that the territory proposed for annexation has been undergoing steady and substantial development. Since 1995,

²⁰ The purpose of the plan is to recommend classifications of Borough lands in the Kachemak Bay and Anchor Point areas. Information about the plan, including trends reported here, is available for review on the Internet at <<http://www.borough.kenai.ak.us/planningdept/AdvisoryComm/southpenplan/Trends,%20Goals,%20Visions.htm>>

Figure 4-N
Improvements to Real Property in the Territory Proposed for Annexation
(1995 – 2000)

Type	2000	1999	1998	1997	1996	1995
Single Family Residences	4	24	46	23	28	43
Duplexes			1			
Cabins	1	1	6	2	5	3
Cottages	2	1	6	3	2	7
Churches					1	
Laundromats					1	
Service Garages						1
Industrial Facilities						1

improvements valued at \$25,250,700 have been constructed in the territory. These include 168 homes. A listing of improvements made within the territory in each year since 1995 is presented in Figure 4-N.

DCED finds the recent population change within the territory proposed for annexation to be consistent with the entire southern Kenai Peninsula.

g) Suitability of the territory for reasonably anticipated community purposes

In a narrow context, the phase “reasonably anticipated community purposes” relates to existing and prospective roads, airports, utilities, public safety facilities, health facilities, educational facilities, parks and recreation, cemeteries, ports and harbors, and other governmental functions. Figure 4-O provides a

Figure 4-0

Property in the Territory Proposed for Annexation used for Community Purposes

Owner	Number of Parcels	Total Size of Parcels	Improvement Type
University of Alaska	1	11.2 acres	Park Ranger Office
State of Alaska (DOT)	1	8.3 acres	Highway Maintenance Station
City of Homer	10	66.8 acres	Water Treatment Facility
City of Homer	1	60 acres	Water Reservoir
Kenai Peninsula Borough	1	9 acres	Landfill and baler
Homer Electric Association	1	3.9 acres	Accessory Building
Alaska Electric Generation	1	8.6 acres	
Public Rights-of-Way		723.8 acres	Developed and undeveloped roads
Bridge Creek Watershed		2,217.3 acres*	Watershed
City of Homer		3.3 acres	Cemetery
* The Kenai Peninsula Borough Planning Department estimates the size of the Bridge Creek Watershed to be 2,277.3 acres. The figure reported above excludes the water reservoir area owned by the City of Homer reported elsewhere in the table.			

188

summary of such existing uses in the territory proposed for annexation.

In a broader context, the phrase “reasonably anticipated community purposes” could include properties that are

suitable for private purposes in addition to those listed above (e.g., residential, recreational, commercial, and industrial). In that case, virtually all the territory is suitable for community purposes.

Based on its analysis, DCED finds that the extent to which the territory is suitable for reasonably anticipated community purposes – even in a narrow context – allows the territory proposed for annexation to be characterized as compatible with the area inside the adjoining City of Homer.

h) General Demographic Characteristics

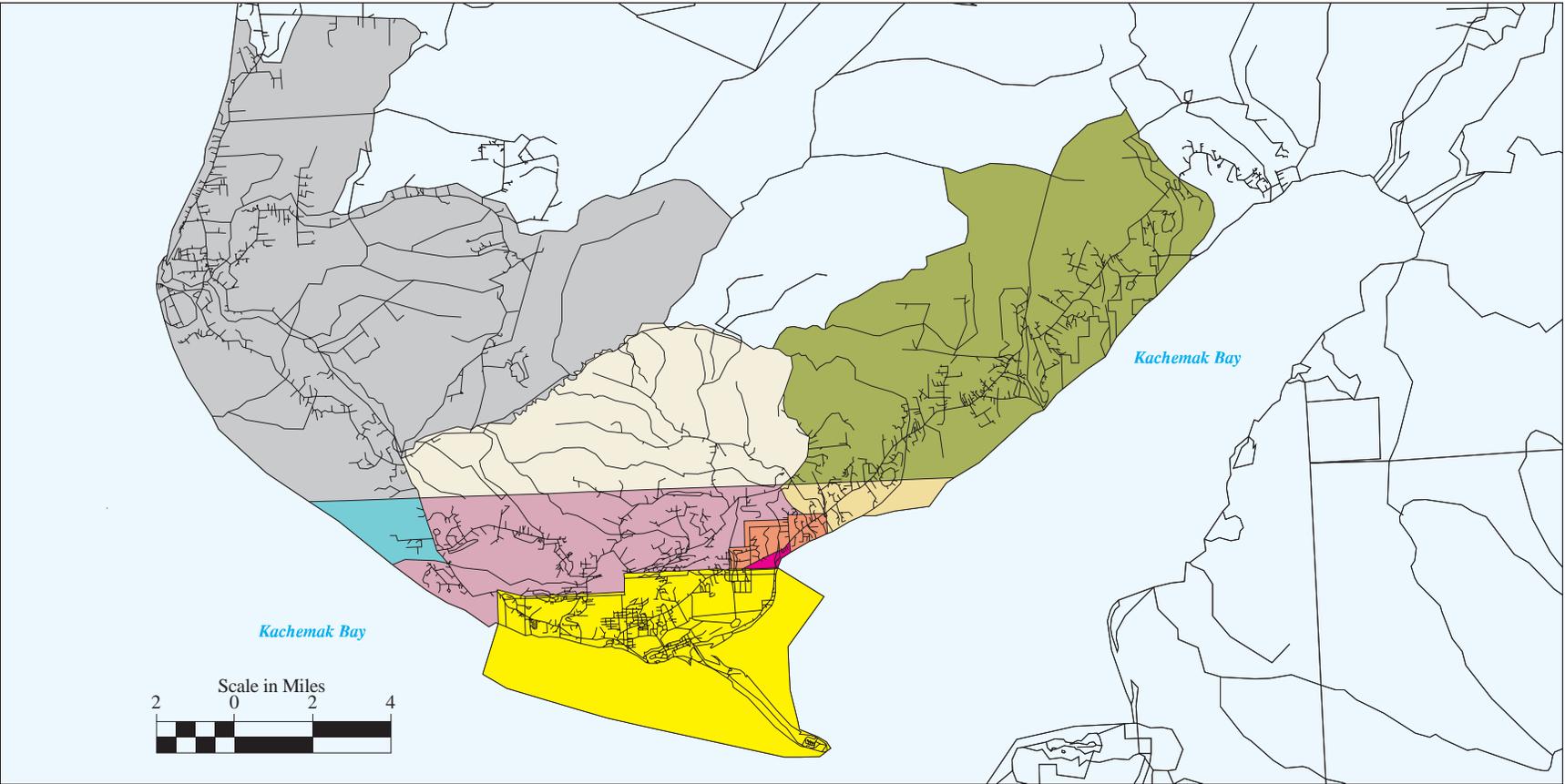
The territory proposed for annexation encompasses one entire “census designated place” (CDP) and portions of three others. Figure 4-P provides information about the size of those areas within and adjoining the territory proposed for annexation. A map showing the areas

Figure 4-P

Locales Within and Adjoining the Territory Proposed for Annexation

Locale	Size of Entire Locale	Portion of Locale Within Territory Proposed for Annexation
Anchor Point CDP	90.89 square miles	3.01 square miles (3.3%)
Diamond Ridge CDP	47.04 square miles	19.34 square miles (41.1%)
Fritz Creek CDP	54.41 square miles	3.03 square miles (5.6%)
Miller Landing CDP*	0.26 square miles	0.26 square miles (100.0%)
City of Kachemak	1.83 square miles	0.00 square miles (0.0%)
City of Homer	21.00 square miles	0.00 square miles (0.0%)

* Although the CDP is called “Miller Landing” (no “s”) the area is listed in the *Dictionary of Alaska Place Names* and referred to locally as Millers Landing; it is also sometimes referred to locally as “no man’s land” because it is essentially an enclave between the City of Kachemak and the City of Homer.



- Legend**
- | | | |
|--|--|--|
| Anchor Point CDP Out | Diamond Ridge CDP In | Homer City |
| Anchor Point CDP In | Fritz Creek CDP Out | City of Kachemak |
| Diamond Ridge CDP Out | Fritz Creek CDP In | Miller Landing |

FIGURE 4-Q
CENSUS DESIGNATED PLACES
WHOLLY OR PARTIALLY WITHIN THE
TERRITORY PROPOSED FOR
ANNEXATION AND ADJOINING AREAS

Proposed City of Homer Annexation

Figure 4-R

General Demographic Characteristics of the Territory Proposed for Annexation and Surrounding Area

Trait	Anchor Point CDP	Diamond Ridge CDP	Miller Landing CDP	Fritz Creek CDP	City of Kachemak	City of Homer	Kenai Peninsula Borough	State of Alaska
Total Population	1,845	1,802	74	1,603	431	3,946	49,691	626,932
Male	53.6%	50.4%	43.2%	50.9%	53.1%	49.4%	52.0%	51.7%
Female	46.4%	49.6%	56.8%	49.1%	46.9%	50.6%	48.0%	48.3%
White	95.2%	94.8%	94.6	95.9%	92.8%	93.5%	89.8%	74.0%
Black	0.6%	0.8%	0.0%	0.6%	0.9%	0.5%	0.8%	4.3%
Native	6.4%	4.9%	0.0%	5.1%	10.0%	6.2%	10.2%	19.0%
Asian	1.2%	1.7%	5.4%	0.6%	2.1%	1.6%	1.6%	5.2%
Pacific Islander	0.1%	0.3%	0.0%	0.0%	0.0%	0.3%	0.4%	0.9%
Other	0.8%	1.3%	0.0%	1.1%	0.5%	1.2%	1.4%	2.4%
Median Age	39.0 years	38.4 years	35.3 years	38.1 years	43.1 years	38.8 years	36.3 years	32.4 years
Average Household Size	2.59 persons	2.60 persons	2.39 persons	2.43 persons	2.52 persons	2.40 persons	2.62 persons	2.74 persons
Owner-occupied households	85.1%	81.1%	58.1%	78.2%	82.8%	61.7%	73.7%	62.5%
Renter occupied households	14.9%	18.9%	41.9%	21.8%	17.2%	38.3%	26.3%	37.5%

The characteristics for the Anchor Point CDP, Diamond Ridge CDP, and Fritz Creek CDP are for the entire CDP, not just the area within the territory proposed for annexation.

Race data are from category titled "race alone or in combination with one or more other races"; the Census Bureau notes that "... the six percentages may add to more than 100 percent because individuals may report more than one race."

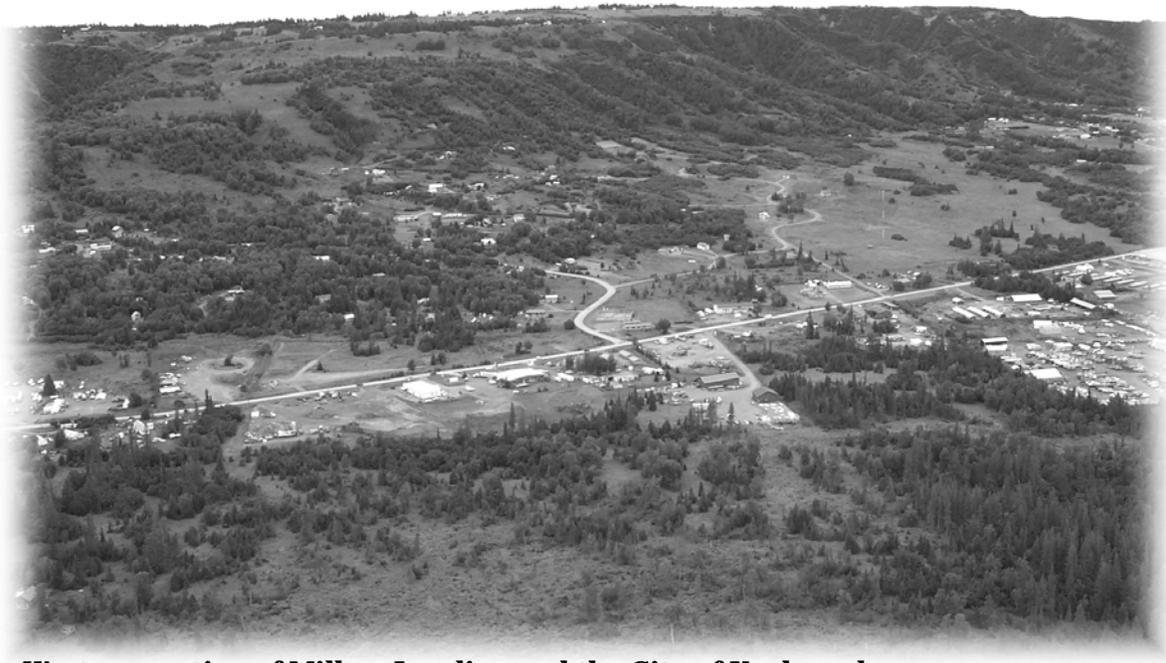
Source: U.S. Census Bureau, Census 2000

in relation to the existing and proposed boundaries of the City of Homer is provided in Figure 4-Q.

General demographic data from the 2000 Census for the areas are provided in Figure 4-R. For comparison purposes, demographic data for the Kenai Peninsula Borough and the State of Alaska are also provided.

There are two notable variations in the demographic data for the areas reported in Figure 4-R. The first relates to owner-occupied versus renter-occupied

housing. 61.7% of the housing in the City of Homer was owner-occupied at the time of the census. That figure is slightly less than the statewide average of 62.5%. An even smaller percentage of the housing in Millers Landing was owner-occupied (58.1%). The percentage of owner-occupied housing in the Anchor Point, Diamond Ridge, and Fritz Creek CDPs was greater. Respectively, those figures were 85.1%, 81.1%, and 78.2%.



Western portion of Millers Landing and the City of Kachemak.

The second notable variation relates to the number of males and females. Females outnumber males at Millers Landing (56.8% vs. 43.2%) and in the City of Homer (50.6% vs. 49.4%), whereas

the opposite is the case in the Anchor Point, Diamond Ridge, and Fritz Creek CDPs. Otherwise, the demographic data suggests little variation in the areas in and around the City of Homer. No aspect of the demographic characteristics of the areas in question render them incompatible with the territory inside the current boundaries of the City of Homer.

i) Property Values

The City of Homer states in its Petition that the taxable value of *personal* property in the territory proposed for annexation was \$6,921,501. Further, the City indicates that *real* property in the territory proposed for annexation was \$119,653,700 at the time the Petition was filed.



Housing under construction in the territory proposed for annexation (August 2001).

Data from the GIS indicate that the current taxable value of real property in the territory proposed for annexation amounts to \$132,765,100.²¹ The increase in the taxable value of real property since the Petition was prepared amounts to \$13,111,400, or 11.0%.

On a per capita basis, the taxable value of real property in the territory proposed for annexation amounts to \$60,238 (\$132,765,100 / 2,204). In com-

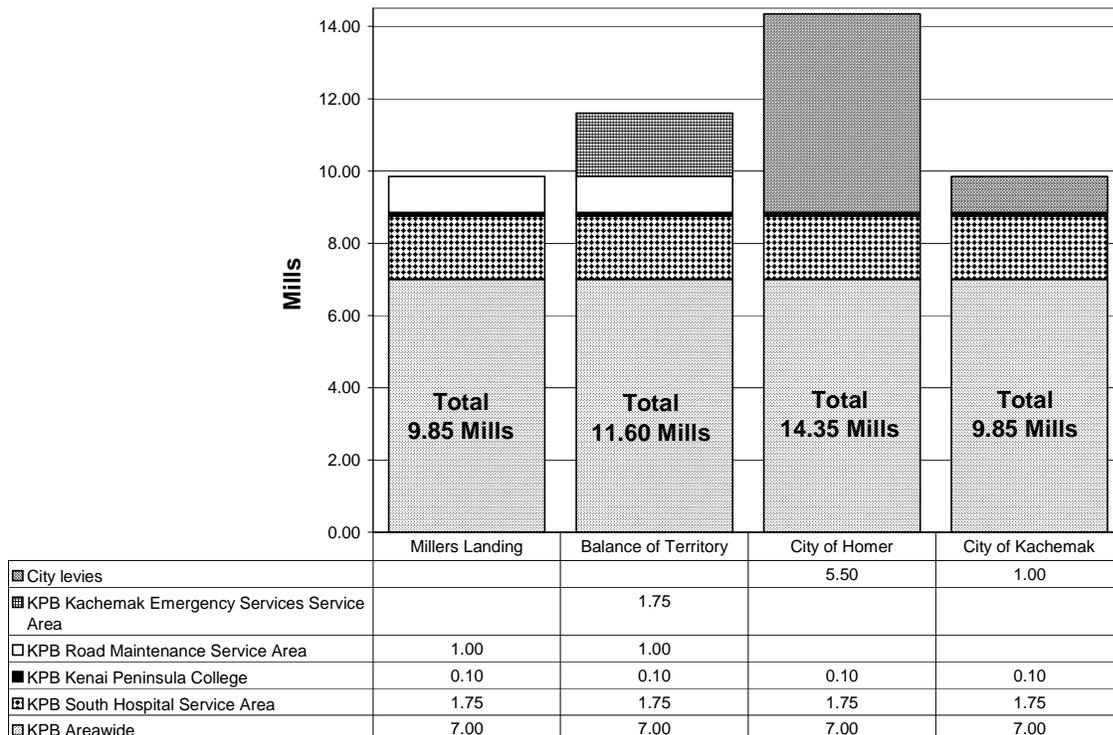
²¹ The GIS indicates that land in the territory is valued at \$69,786,500 and that improvements are valued at \$91,237,900. Those figures total \$161,024,400. However, \$28,259,300 of the property is exempt from property taxes.

parison, the current taxable value of real property within the existing corporate boundaries of the City of Homer amounts to \$58,527 (\$230,947,412 / 3,946). The per capita assessed value of real property in the territory proposed for annexation is \$1,711 (2.9%) greater than it is within the corporate boundaries of the City of Homer.

j) Property and Sales Taxes

The Petition indicates that property in the territory proposed for annexation is taxed by the Borough at 10.6 mills (\$1,060 for a home assessed at \$100,000). However, property taxes levied by the Kenai Peninsula Borough in the territory have changed somewhat since the Petition was filed.

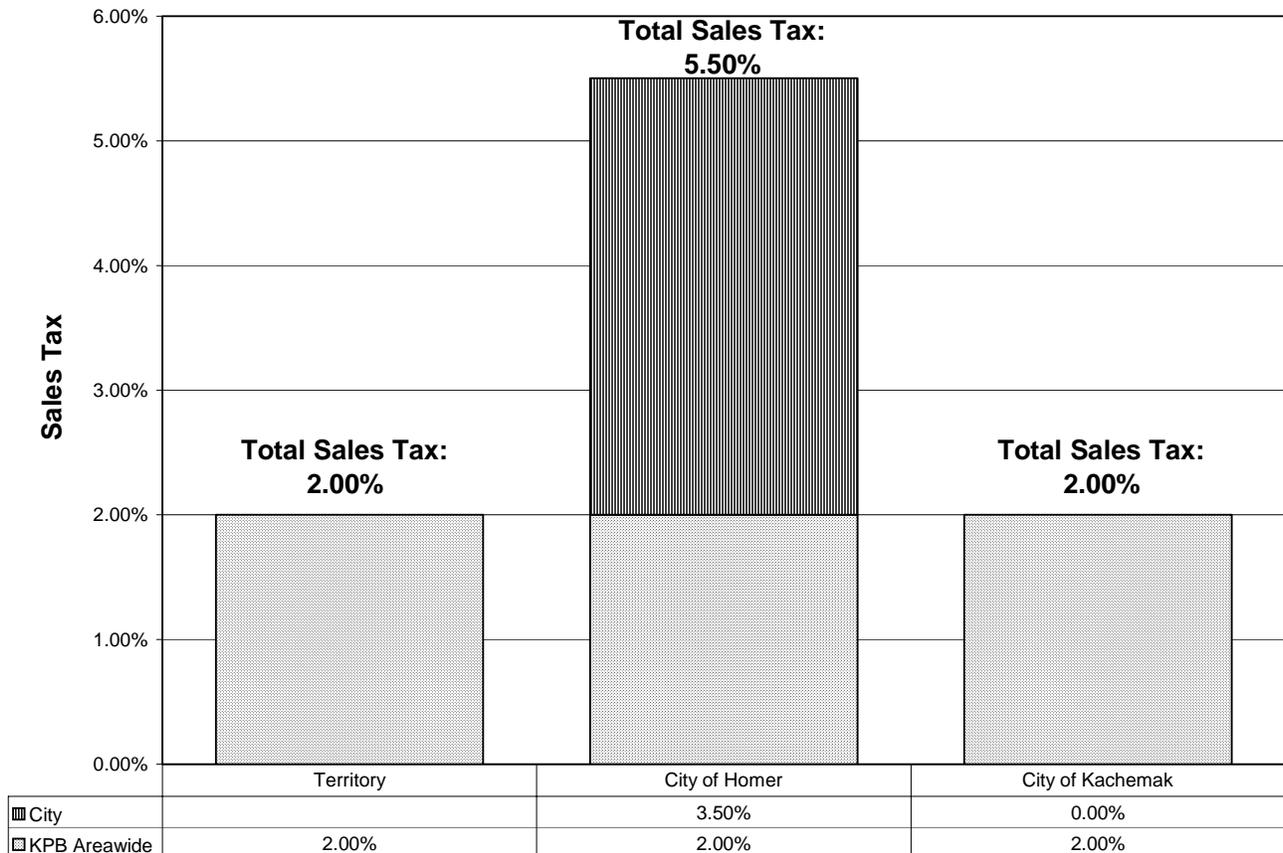
**Figure 4-S
Local Government Property Tax Levies in the Territory
Proposed for Annexation, City of Homer, and the
City of Kachemak**



The levy for areawide Borough services has decreased from 8.0 mills to 7.0 mills (12.5%). The levy for the South Peninsula Hospital Service Area has decreased from 2.0 mills to 1.75 mills (12.5%). The levy for the Kenai Peninsula Borough Road Service Area has increased from 0.5 mills to 1.0 mills (100%). The levy for the Kenai Peninsula College is unchanged at 0.1 mills.

The tax levy for the newly created Kachemak Emergency Service Area is 1.75 mills. That service area did not exist at the time that the Petition was filed. The new service area includes all of the territory proposed for annexation except Millers Landing.

**Figure 4-T
Local Government Sales Tax Levies in the Territory
Proposed for Annexation, City of Homer, and the
City of Kachemak**





City of Homer and portion of territory proposed for annexation.

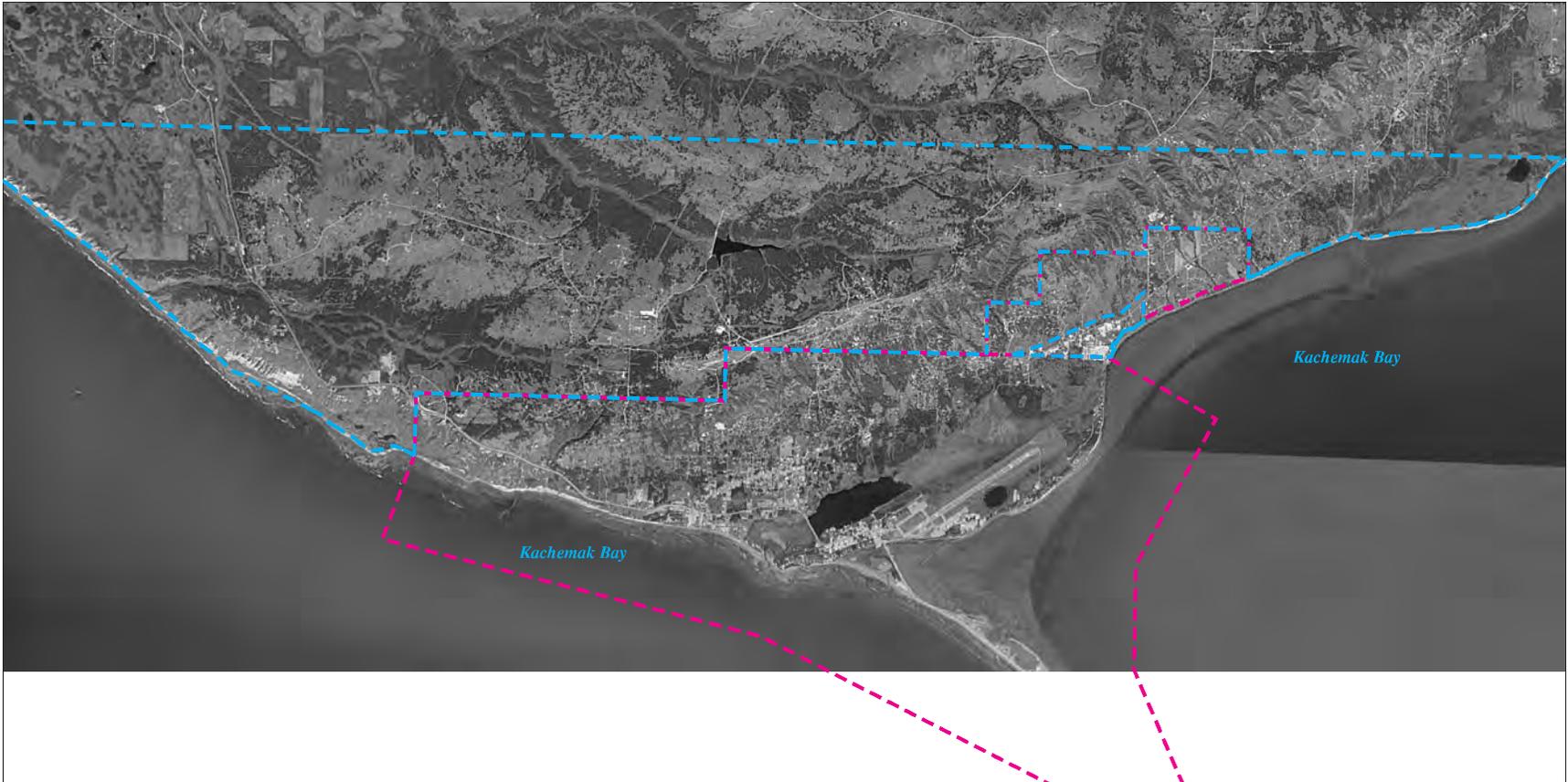
196

Figure 4-S lists the property tax rates currently in effect in the territory proposed for annexation. Property tax rates in the City of Homer and the City of Kachemak are also listed. Sales tax rates in effect in the City of Homer, City of Kachemak, and the territory proposed for annexation are provided in Figure 4-T.

The property tax differentials between the territory proposed for annexation and the City of Homer amount to 4.5 mills for Millers Landing and 2.75 mills for the remainder of the territory.

3) Conclusion

The diversity of the territory proposed for annexation is clearly evident in the recent high altitude aerial photo presented on the following page as Figure 4-U. More detailed aerial photos



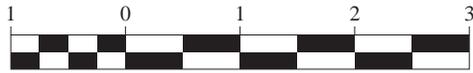
Legend	
	City Limits
	Proposed Annexation Area
Scale in Miles	
	

FIGURE 4-U
1999 AERIAL VIEW
OF THE TERRITORY PROPOSED
FOR ANNEXATION AND
ADJOINING AREAS

Proposed City of Homer Annexation

of the territory proposed for annexation are provided in Appendix E. Vacant property comprises nearly 56% of the parcels in the area in question. Generally, properties adjoining the existing northern boundaries of the City of Homer and properties adjacent to the major roadways (Sterling Highway, Diamond Ridge Road, Skyline Drive, West Hill Drive, East Hill Drive, East End Road, and Kachemak Drive) are divided into smaller parcels and are developed to a greater extent. The predominant land use in the territory is residential development. There are 870

housing units in the area in question. Significant commercial development also exists in the territory proposed for annexation. Commercial enterprises, concentrated at Millers Landing and the Sterling Highway corridor, are estimated by the City of Homer to generate more than \$14 million in annual sales. The territory proposed for annexation also includes a number of governmental facilities. These are concentrated along the Sterling Highway, Diamond Ridge Road, and Skyline Drive areas.



Millers Landing.



Boat storage at Millers Landing.

calculation increases the City's population density to 359 persons per square mile. The population density in Millers Landing and the area to the west closest to the City of Homer have a combined

The territory proposed for annexation is generally higher in elevation than the area within the existing boundaries of the City of Homer. Natural geography has significant influence on development both inside the City of Homer and the territory proposed for annexation. There is no shortage of property for sale in the territory proposed for annexation or within the existing boundaries of the City of Homer.

Population density in the territory proposed for annexation is 86.0 persons per square mile, as compared to 188 persons per square mile within the City of Homer. Excluding the estimated ten square miles of water within the City of Homer from the

population density of 265.2 people per square mile.

There has been significant development in the territory proposed for annexation. Since 1995, real property improvements (mostly homes) valued at more than \$25 million have been undertaken in the territory proposed for annexation. The territory is generally suitable for community purposes.

The existing per capita value of taxable real property in the territory proposed for annexation is estimated to be \$60,238. The comparable figure for the area within the City of Homer is \$58,527.

Current property taxes in the territory proposed for annexation, except Millers

Landing, are 2.75 mills lower than they are within the City of Homer. Property taxes in Millers Landing are 4.5 mills lower than those levied within the City of Homer. Sales taxes throughout the territory proposed for annexation are 2%. Sales taxes within the City of Homer are 5.5%.

Notwithstanding the diversity of the territory and its limited distinctions compared to the City of Homer, That the 25.64 square mile area in question is compatible in character with the City of Homer. DCED acknowledges

that the portion of the territory closest to the existing northern boundaries of the City of Homer generally has the greatest residential, commercial, and other development. Farther to the north, the properties tend to become less developed. Still, all of the territory is unmistakably part of the greater community of Homer.

Based on the findings presented in this section of the Preliminary Report, DCED concludes that the Petition for annexation of territory to the City of Homer satisfies the compatible character standard set out in 3 AAC 110.100.



Aerial view of the Homer area.

4.2 Proposed New Boundaries of the City of Homer in Relation to Boundaries of other Existing Local Governments

A. Standard Established in Law

The Commission cannot approve the extension of a city government so that it encompasses a portion of more than one borough (organized or unorganized). Similarly, the Commission cannot approve the expansion of a city government so that it overlaps the corporate bound-

aries of another existing city government without providing for detachment from or dissolution of the other city. Specifically, 3 AAC 110.130(e) provides as follows:

If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat the annexation petition to the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city.



Left: City of Kachemak. Center: Millers Landing.

B. Application of the Overlapping Boundary Standard to the City of Homer Petition

1) Facts in this Proceeding

The circumstances of the pending Petition relating to this standard are uncomplicated and unambiguous. The proposed enlarged jurisdictional territory of the City of Homer lies entirely within the corporate limits of the Kenai Peninsula Borough. Moreover, although the proposed

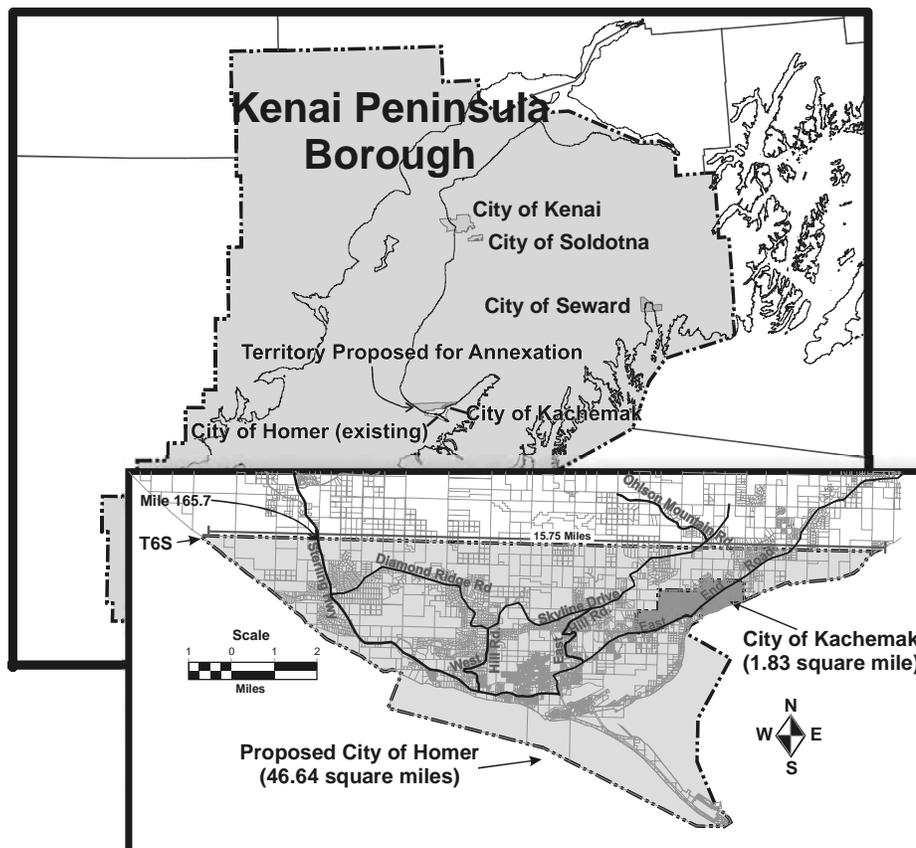
expanded boundaries of the City of Homer adjoin the corporate limits of the City of Kachemak, they do not overlap the jurisdictional area of any existing city government.

2) Conclusion

Given the simple facts in this matter, the City of Homer annexation proposal clearly satisfies the overlapping boundary standard set out in 3 AAC 110.130(e).

202

**Figure 4-V
Proposed Expanded Boundaries of the City of Homer in Relation to Existing Local Governments**



The territory proposed for annexation to the City of Homer is contiguous to the area within the existing boundaries of the City.

2) Conclusion

Given the specific facts in this matter, DCED concludes that the City of Homer annexation proposal clearly satisfies the proximity standard set out in 3 AAC 110.130(b).

4.4 Effects of Annexation on Civil and Political Rights

A. Standard Established in Law

Annexation is prohibited if it will deny any person the enjoyment of any civil or political right, including voting rights because of race, color, creed, sex, or national origin.

Two separate laws apply here. The first is 3 AAC 110.910, which states as follows:

3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

The second law is the Federal Voting Rights Act of 1965, codified as amended at 42



U.S.C. Section 1973. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. Specifically, the federal law provides as follows:

42 USC Sec. 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation.

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not

“just” as the adverb “rightly” is equivalent to the adverb “justly” and, when used in the abstract, some writers “right” is synonymous with the noun substantive “justice.”

In a narrower signification, an interest or title in an object of property; a just and legal claim to hold, use, or enjoy it, or to convey or donate it, as he may please. See Co. Litt. 345b.

The term “right” is not strictly confined to cases that which a man is entitled to have, or to do, or to receive from another, within the limits permitted by law. See, also, *Drout v. Hoy*, 4 Neb. 41, 27 Am.Rep. 261.

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense “right” has the force of “claim,” and is properly expressed by the Latin “*ius*.” Lord Coke considers this to be the proper signification of the word, especially in writs and pleadings, where an estate is claimed in a right; as by discontinuance, disseisin, etc. Co. Litt. 350a.

See, also, *Drout v. Hoy*.

Classification

Rights may be described as perfect or imperfect, according as their action or scope is clear, settled, and determinate, or is vague and undefined.

Rights are either in personam or in rem. A right in personam is one which imposes an obligation on a definite person. A right in rem is one which imposes an obligation on persons generally; i. e., either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right in rem in respect of that land; and, if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right in rem. See, also, *Drout v. Hoy*.

Rights may also be described as either primary or secondary. Primary rights are those which can be created without reference to rights already existing. Secondary rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive (protective) or remedial (reparative). See, also, *Drout v. Hoy*.

Preventive or protective secondary rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extra-judicial when they are capable of being exercised by the party himself. Remedial or reparative secondary rights are also of their judicial or extra-judicial. They may further be divided into (1) rights of restriction or restraint, which entitle the person injured to be repleated in his original position; (2) rights of enforcement, which entitle the person injured to the performance of all acts by the person bound; and (3) rights of satisfaction or compensation. See, also, *Drout v. Hoy*.

With respect to the ownership of external objects of property, rights may be classed as absolute and qualified. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all

purpose. A qualified right is one which, under certain circumstances, is subject to the control of another person. It has been subdivided into (1) rights of restriction or restraint, which entitle the person injured to be repleated in his original position; (2) rights of enforcement, which entitle the person injured to the performance of all acts by the person bound; and (3) rights of satisfaction or compensation. See, also, *Drout v. Hoy*.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. *Winnett v. Adams*, 71 Neb. 817, 99 N.W. 681. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof. *State of Iowa v. Railroad Co.*, C.C.Iowa, 37 F. 498, 3 L.R.A. 554; *State v. Powers*, 51 N.J.L. 432, 17 A. 969.

Political rights consist in the power to participate directly or indirectly in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold

to the standards at issue. Specifically, Black’s Law Dictionary (Revised Fourth Edition) defines “civil rights,” “political rights,” and “creed” as follows.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

The word “creed” has been defined as “confession or articles of faith,” “formal declaration of religious belief,” “any formula or confession of religious faith,” and “a system of religious belief.”

Black’s Law Dictionary

equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

B. Application of the Civil and Political Rights Standard to the City of Homer Petition

1) Background

It may be helpful to review certain of the terms used in the State and Federal laws relating

Because the U.S. Justice Department must provide an independent review of any annexation in the context of the Voting Rights Act, it may also be helpful to provide background concerning the Federal Voting Rights Act and its application to Alaska. The Voting Rights Act was passed in 1965, at which time the U.S. Justice Department established standards to determine which jurisdictions nationwide would be required to “preclear” changes in voting rights and practices under Section 5 of the Act.

The standards provided that if the U.S. Justice Department determined that a state or political subdivision maintained a “test or device,”²² and if the Census Bureau determined that fewer than 50% of the voting-aged residents of the jurisdiction

were either registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had both low voter registration and turnout. The U.S. Justice Department also determined that Alaska maintained a literacy test, which was a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Rights Act, Alaska immediately filed a lawsuit asserting that the State had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State’s position and Alaska was allowed to withdraw from the preclearance requirements.

The Federal Voting Rights Act was amended in 1970, at which time Alaska was again made subject to the preclearance requirements. With the concurrence

²² “Test or device” was defined as “any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

of the Justice Department, Alaska again withdrew from the requirement to preclearance changes affecting voting.

In 1975, the Voting Rights Act was amended again. The amendments expanded the definition of “test or device” to apply to a jurisdiction that conducted elections only in English if 5% or more of the residents were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have remained subject to the Section 5 Voting Rights Act requirements since 1975.

In addition to the definitions of certain terms and background on the Voting Rights Act, it is appropriate to note here that in 1962, the Alaska Supreme Court held that

the legislative review process for annexation – the same one employed in this proceeding by the City of Homer – does not infringe or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution. Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.²³

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of ‘liberty, or property, without due process of law.’²⁴ The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.²⁵ The state may

²³ 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).
²⁴ U.S.Const. amend. XIV, § 1.
²⁵ *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); 1 Antieau, *Municipal Corporation Law* § 1.15 at 30 (1958).

permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.²⁶ There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the *Gomillion*²⁷ case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

The Alaska Supreme Court's interpretation is consistent with a U.S. Supreme Court ruling one hundred and twenty years ago. In *Kelly v. City of Pittsburgh*, 104

U.S. 78 (1881), a taxpayer claimed that taxes assessed by a city into which his land had recently been annexed without his vote, deprived him of his property without due process of law. The court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

2) Facts in this Case

The record in this proceeding lacks any compelling argument that annexation will affect any civil right of any person within the territory proposed for annexation. However, annexation would clearly alter a number of political rights of citizens in the territory proposed for annexation. Certain political rights would be lost, while others would be gained. Figure 4-X lists the effects that annexation would have on political rights.

²⁶ Cf. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); *Mount Pleasant v. Beckwith*, 100 U.S. 514, 524-525, 25 L.Ed. 699, 701 (1880).

²⁷ *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

Although the Local Boundary Commission will make a determination concerning the standard at issue, the U.S. Justice Department will conduct an independent review under the terms of the Federal Voting Rights Act of any annexation approved for the City of Homer. Appendix F lists information about the nature of the Department of Justice review.

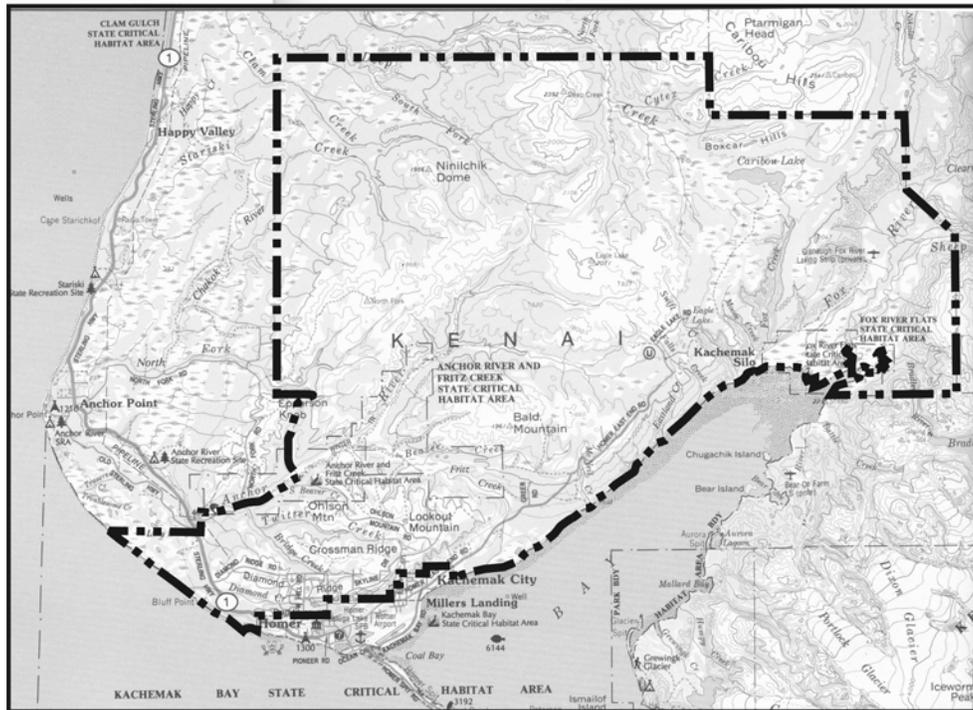
3) Conclusion

Although annexation would clearly affect the political rights of citizens of the area proposed for annexation, there is no evidence whatsoever that the effects are “because of race, color, creed, sex, or national origin.” More-

Figure 4-X Effects that Annexation to the City of Homer Would have on Political Rights		
Right	Effect	Area Affected
To hold appointed office as a member of the board of supervisors of the KPB's Road Service Area	Loss of right	All annexed areas
To hold elected office as a member of the board of supervisors of the KPB's Kachemak Emergency Service Area (see Figure 4-Y)	Loss of right	All annexed areas excluding Millers Landing
To hold office as a member of the Kachemak Bay Advisory Planning Commission	Loss of right	All annexed areas excluding Millers Landing
To propose and enact laws of the City of Homer through the initiative process	Gain of right	All annexed areas
To approve or reject laws of the City of Homer through the referendum process	Gain of right	All annexed areas
To vote on propositions (e.g., bonds) submitted to the voters of the City of Homer	Gain of right	All annexed areas
To hold any appointed office (e.g., Planning Commission) of the City of Homer*	Gain of right	All annexed areas
To hold any elected office (i.e., mayor or city council) of the City of Homer	Gain of right	All annexed areas
*The City of Homer states in its Reply Brief that, “. . . the City [of Homer] has already put a number of [the residents of the territory proposed for annexation] on formal City boards and commissions.”		

over, there is no indication in this proceeding that annexation would result in the imposition or application of voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

Figure 4-Y
Kachemak Bay Advisory Planning Area



210

Based on the foregoing, DCED concludes that the City of Homer annexation proposal satisfies the standards set out in 3 AAC 110.910 and 42 U.S.C. Section 1973.

4) Other Considerations

While DCED concludes that the City of Homer annexation proposal satisfies the standards at issue here, DCED also recognizes that the proposed annexation would increase the population of the City of Homer by an estimated 55.9%. Given the potential for such a significant

population increase, questions have arisen whether it would be appropriate and permissible to truncate the terms of existing elected City officials as a result of annexation. Doing so would allow the significantly expanded citizenry to participate in the election of officials without waiting as much as two years for the terms of some incumbents to expire. It would also allow qualified citizens of the newly annexed area to seek office for those elected positions without waiting for the terms of current incumbents to expire.

DCED knows of no instance in Alaska or any other state where the terms of a local governing body have been truncated as a result of annexation. However, the Alaska Supreme Court concluded in *Egan v. Hammond*, 502 P.2d 856, 873 (Alaska 1972), with respect to reapportionment of the State legislature that (emphasis added):

A need to truncate the terms of incumbents may arise when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.²⁸ We accordingly hold that the Governor had the power to terminate Senate terms as incidental to his general reapportionment powers.²⁹

If approved by the LBC this fall and by the legislature in 2002, Homer’s annexation would take effect in March of 2002 (assuming that the City provides DCED with timely evidence of Voting Rights Act preclearance).

²⁸ Mann v. Davis, 238 F.Supp. 458 (E.D. VA. 1964), aff’d, 379 U.S. 694, 85 S.Ct. 713, 13 L.Ed.2d 698 (1965); Moss v. Burkhardt, 220 F.Supp. 149, 157 (W.D. Okl.1963), aff’d sub nom., Williams v. Moss, 378 U.S. 558, 84 S.Ct. 1907, 12 L.Ed.2d 1026 (1964); Sims v. Amos, 336 F.Supp. 924, 940 (M.D.Ala.1972); Butcher v. Bloom, 420 Pa. 305, 216 A.2d 457, 459 (1966).

²⁹ In the interim plan promulgated by this court, Senate terms of incumbent Senators were not terminated. The interim plan did not contain the drastic reapportionment of the Anchorage Senatorial districts. We felt that it was preferable not to shorten the terms of Senators, particularly as this may become a necessity upon the formulation of a permanent plan. The additions or substitutions of geographical areas under the interim plan have not so materially changed the population base which elected each of the Senators as to prevent him from adequately representing his designated district. There is ample authority for permitting Senators to serve out their terms *under an interim plan* even when the boundaries of their districts have been changed. Mann v. Davis, 238 F.Supp. 458 (E.D. VA. 1964), aff’d, 379 U.S. 694, 85 S.Ct. 713, 13 L.Ed.2d 698 (1965); Moss v. Burkhardt, 220 F.Supp. 149, 157 (W.D. Okl.1963), aff’d sub nom., Williams v. Moss, 378 U.S. 558, 84 S.Ct. 1907, 12 L.Ed.2d 1026 (1964); Sims v. Amos, 336 F.Supp. 924, 940 (M.D.Ala.1972); Butcher v. Bloom, 420 Pa. 305, 216 A.2d 457, 459 (1966).

Figure 4-Z
Current Terms of Elected Officials of the City of Homer

Name	Office	Term Expires
John Fenske	Council member	October 2001
Michael Yourkowski	Council member	October 2001
Jack Cushing	Mayor	October 2002
Kurt Marquardt	Council member	October 2002
Patricia Cue	Council member	October 2002
Ray Kranich	Council member	October 2003
Rick Ladd	Council member	October 2003

212

Figure 4-Z lists the current terms of elected officials of the City of Homer. All elected officials of the City of Homer are elected at large.

The City of Homer has a one-year residency requirement for the office of Mayor and member of the City Council. Specifically, Section 1.24.020 of the Homer City Code states as follows:

A person is eligible for the office of City Council or the office of Mayor if he is a voter of the City as prescribed by 4.05.010 and has been a resident within the City for a period of one year immediately preceding the election day on which he is a candidate.³⁰

The City interprets the Code such that any newly annexed person could run for the office of Mayor or Council in 2002 if that

³⁰ HCC 4.05.010 states as follows:

Voter qualifications. A person is qualified to vote in a municipal election who:

- a. Is a Citizen of the United States;
- b. Has passed his 18th birthday or is such other age as prescribed by law for voting in state elections;
- c. Has been a resident of the municipality for thirty days immediately preceding the election;
- d. Is registered to vote in State elections at a residence address within the municipality at least thirty days before the municipal election at which the person seeks to vote.

person met the requirements of HCC 4.05.010 and also lived in the annexed area for at least one year preceding the election.

Thus, any person annexed to the City of Homer in March 2002 as a result of the ongoing proceedings that also meets the qualifications of HCC 4.05.010 could be a candidate for the office of mayor or for one of two council seats in the 2002 election. Such persons, of course, could also vote in the election for those officials.

However, barring the truncation of terms of the remaining four seats on the council, qualified voters in the newly annexed area will not have an opportunity to vote for or to be a candidate for two of the council seats until October 2003 and for the remaining two council seats until October 2004.

DCED has asked the State Attorney General's office for its opinion whether the Local Boundary Commission has the power under AS 29.06.040(a) or other provisions of the statutes or Constitution to require the truncation of terms of the govern-

ing body of an annexing municipality as a condition of annexation. Again, DCED is unaware of any instance where such has occurred in Alaska or elsewhere in the nation. However, given the potential relative increase in the population of the City of Homer, the matter warrants consideration here.

4.5 Inclusion of Geographic Regions and Large Unpopulated Areas

A. Standard Established in Law

Annexation of geographical expanses or large unpopulated areas to a city government is prohibited, except where justified by the application of the city annexation standards. Specifically, 3 AAC 110.040(c) states as follows:

The boundaries of the proposed city must not include entire geographical regions or large unpopulated areas, except when such boundaries are justified by the application of the standards in 3 AAC 110.010 - 3 AAC 110.040.

B. Application of the Regional Standard to the City of Homer Petition

1) Background

Certain of the fundamental terms in 3 AAC 110.040(c) are clearly subjective. “Entire geographical regions” and “large unpopulated areas” mean different things to different people.

The standard set out in 3 AAC 110.040(c) was first instituted in 1992. Its purpose was to underscore distinctions between city governments and borough governments, and to deter proposals for the expansion of city governments to encompass large natural regions.

Boundaries encompassing expansive natural regions are appropriate for boroughs, but not cities. The Constitution requires that every area of Alaska – regardless of its remoteness, suitability for municipal purposes, level of development, and other

factors – must be within a borough. Specifically, Article X, Section 3 of the Constitution of the State of Alaska provides as follows (emphasis added):

The *entire* State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Organized boroughs in Alaska range in size from 850 square miles to 94,770 square miles. The average size of Alaska’s sixteen organized boroughs is 17,599 square miles. The Kenai Peninsula Borough encompasses an estimated 21,330 square miles.

In contrast to boroughs, which are regional municipal governments, cities are community-based units of municipal government. Before 3 AAC 110.040(c) was adopted, some city governments (particularly those in the unorganized borough) proposed large-scale annexations of uninhabited and undeveloped territory. A few city governments in Alaska have boundaries that encompass large uninhabited areas. For example, in 1980, the City of Skagway annexed approximately 432.10 square miles. The City of Skagway has the most expansive boundaries of any city government in Alaska.³¹

2) Facts in this Case

There are 146 city governments in Alaska. Figure 4-AA lists the 10 city governments in Alaska whose corporate bound-

**Figure 4-AA
City Governments in Alaska Ranked in Descending Order of Jurisdictional Area (Land and Water)**

City Government	Land (sq. mi.)	Water (sq. mi.)	Total (sq. mi.)	Rank Among 146
Skagway	452.4	11.9	464.3	1
Saint Paul	40.3	255.2	295.5	2
Valdez	222.0	55.1	277.1	3
Togiak	45.2	183.3	228.5	4
Unalaska	111.0	101.3	212.3	5
Saint George	34.8	147.6	182.4	6
Pilot Point	25.4	115.1	140.5	7
Egegik	32.8	101.2	134.0	8
Adak	122.4	4.9	127.3	9
Nightmute	97.0	4.6	101.6	10
Mean of all cities	19.9	10.1	30.0	NA
Median of all cities	7.6	2.0	9.6	73.5
Homer (proposed)	36.2	11.9	48.1	19
Homer (existing)	10.6	11.9	22.5	45

The figures used in this and other tables in this section of the report, with the exception of data relating to the size and population of the territory proposed for annexation, are derived from the 2000 Census. The Census data for the size of city governments may, in some cases, differ slightly from data used elsewhere by DCED. For example, the Census indicates that the City of Homer encompasses 22.4 square miles. DCED and the City of Homer use 21 square miles elsewhere. The 21 square mile figure is believed to be more accurate than the figure used by the Census Bureau.

aries encompass the largest areas. Mean and median figures for all 146 cities are also provided. Comparisons to the exist-

³¹ Residents of the City of Skagway have petitioned to dissolve the City of Skagway and reconstitute the local government as an organized borough with boundaries identical to those of the City of Skagway. The Local Boundary Commission will likely consider that matter in 2002.

ing and proposed jurisdictional territory of the City of Homer are also provided.

The City of Homer currently ranks 45th among the 146 cities in terms of the size of its jurisdictional territory. If the pending annexation proposal were approved, the City of Homer would move up in the ranking to the 19th position.

As noted under the discussion of the character of the territory proposed for annexation earlier in this chapter, much of the jurisdictional territory of the City of Homer is comprised of water. Considering land jurisdiction only, the existing City of Homer drops in rank to the 61st largest city government. If the annexation proposal takes effect, the City of Homer would move up to the 20th rank (Figure 4-AB).

The jurisdictional needs of city governments are, of course, influenced by a number of fac-

**Figure 4-AB
City Government in Alaska Ranked
in Descending Order of Jurisdictional
Area
(Land Only)**

City	Land (sq. mi.)	Rank among 146
Skagway	452.4	1
Valdez	222.0	2
Adak	122.4	3
Unalaska	111.0	4
Nightmute	97.0	5
Cordova	61.4	6
Cold Bay	54.4	7
McGrath	48.9	8
Anderson	46.7	9
Wrangell	45.3	10

Mean	19.9	NA
Median	7.6	73.5

Homer (proposed)	36.2	20
Homer (existing)	10.6	61

tors. Among the factors is the level of population directly served by the city. Many of Alaska's city governments have small populations. Specifically, 83.6% of the city governments in Alaska (122 of 146) have populations under 1,000. Figure 4-AC

Figure 4-AC
Populous City Governments in Alaska (1,000+ Residents)
Ranked in Descending Order of Jurisdictional Area
(Land and Water)

City	Land (sq. mi.)	Water (sq. mi.)	Total (sq. mi.)	Rank	2000 population
Valdez	222.0	55.1	277.1	1	4,036
Unalaska	111.0	101.3	212.3	2	4,283
Cordova	61.4	14.3	75.7	3	2,454
Wrangell	45.3	25.6	70.9	4	2,308
Bethel	43.8	5.1	48.9	5	5,471
Petersburg	43.9	2.2	46.1	6	3,224
Dillingham	33.6	2.1	35.7	7	2,466
Kenai	29.9	5.6	35.5	8	6,942
Fairbanks	31.9	0.8	32.7	9	30,224
Kotzebue	27.0	1.7	28.7	10	3,082
Houston	22.4	1.1	23.5	11	1,202
Homer (existing)	10.6	11.9	22.5	12	3,946
Nome	12.5	9.1	21.6	13	3,505
Seward	14.4	7.1	21.5	14	2,830
Haines	13.5	8.0	21.5	15	1,811
Barrow	18.4	2.9	21.3	16	4,581
Wasilla	11.7	0.7	12.4	17	5,469
Craig	6.7	2.7	9.4	18	1,397
Hooper Bay	8.7	0.1	8.8	19	1,014
Soldotna	6.9	0.5	7.4	20	3,759
Kodiak	3.5	1.4	4.9	21	6,334
North Pole	4.2	0.0	4.2	22	1,570
Ketchikan	3.4	0.8	4.2	23	7,922
Palmer	3.8	0.0	3.8	24	4,533

lists the jurisdictional areas of the 24 cities in Alaska that have populations of 1,000 or more.

3) Conclusion

Without question, portions of the territory proposed for annexation to the City of Homer encompass large parcels. Moreover, many parts of the territory are

uninhabited. Details about such characteristics were explored with respect to the first standard addressed in this chapter.

As noted above, the standard set out in 3 AAC 110.040(c) is aimed at prohibiting the annexation of a vast (borough-like) region to a city government. The standard does not preclude city governments from annexing

Figure 4-AD

**Percentile Ranking of the City of Homer Among City Governments in Alaska
(Existing and Proposed Boundaries)**

Characteristic	City of Homer (Existing)	City of Homer (Proposed)
Cities with largest area (land and water)	69 th percentile	87 th percentile
Cities with the largest land jurisdiction	58 th percentile	86 th percentile
Populous (1,000+) cities with largest area (land and water)	50 th percentile	79 th percentile
Populous (1,000+) cities with largest land jurisdiction	33 rd percentile	75 th percentile

218

territory that is only partially inhabited. Neither does 3 AAC 110.040(c) preclude the annexation of territory encompassing undivided parcels of land.

In comparison to other existing city governments in Alaska, the City of Homer’s existing and proposed boundaries are not excessive. Figure 4-AD provides four different comparisons of the proposed expanded boundaries of the City of Homer to the other 145 city governments in Alaska.

The proposed boundaries of the City of Homer fall within a range from the 75th percentile to the 87th percentile in the four different comparisons. Considering the fact that the City of Homer would be at the 97th percentile in terms of its population, its rankings with respect to the proposed size of the City are certainly not unbalanced.

Given the foregoing circumstances, DCED concludes that the City of Homer annexation proposal satisfies the standard

set out in 3 AAC 110.040(c) prohibiting the annexation of entire geographical regions and large unpopulated areas.

4.6 Size and Stability of Population

A. Standard Established in Law

Territory may be annexed to a city only if the expanded boundaries of the city will encompass a population that is well established and big enough to support the expanded government. Specifically, 3 AAC 110.120 states as follows:

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

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

B. Application of the Resources Standard to the City of Homer Petition

1) *The facts in this case*

a) Census Enumeration

The U.S. Census Bureau reports that 3,946 residents inhabited the City of Homer at the time of the 2000 census. As noted in this chapter under the examination of the first standard, DCED estimates that the territory proposed for annexation was inhabited by 2,204 residents in 2000.

Based on 2000 census data, the City of Homer currently ranks as the eleventh most populous city government in Alaska, placing it in the 92nd percentile for that measure among Alaska's 146 city governments. If the City of Homer's annexation proposal were approved as proposed, the City of Homer would become the fifth most populous city government in Alaska.

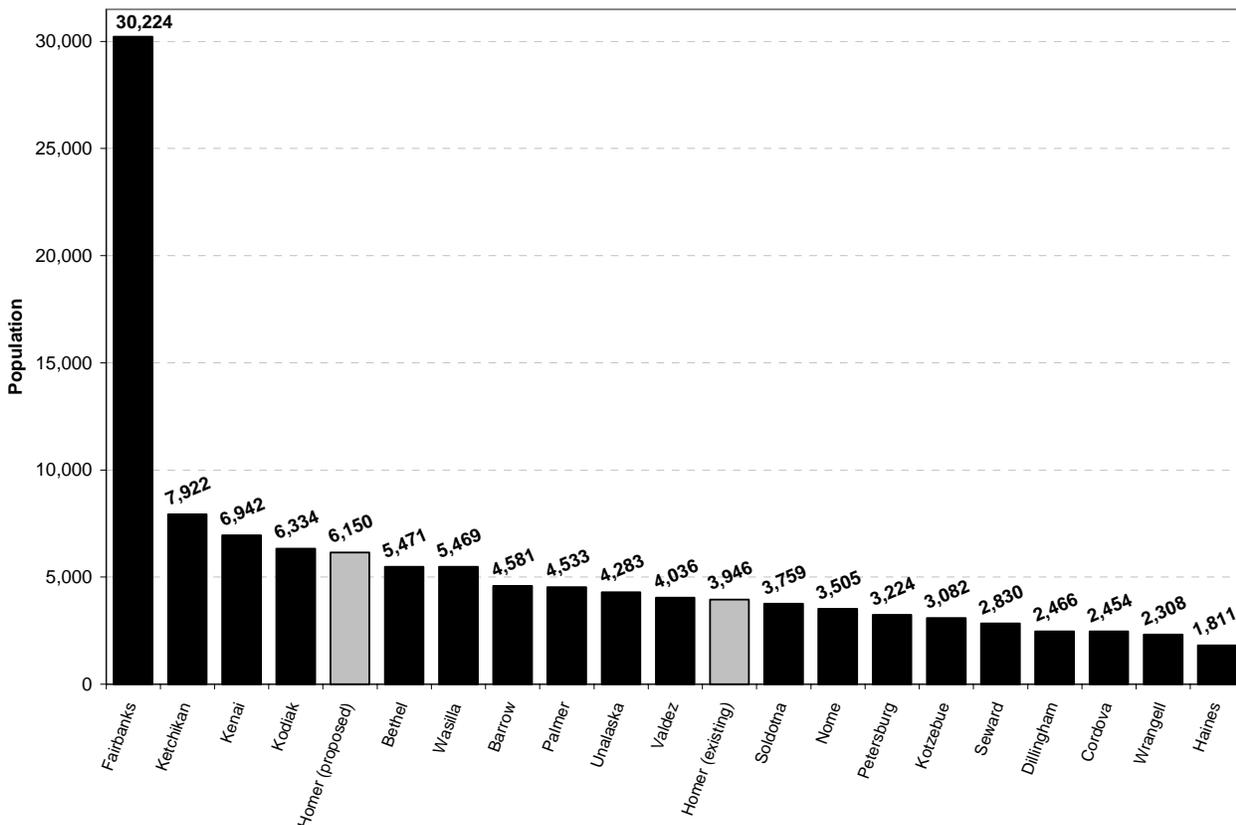
The population in the territory proposed for annexation alone exceeds that of 127 of Alaska's 146 city governments.

In other words, only 19 city governments in Alaska have populations exceeding that of the territory proposed for annexation.

Figure 4-AE lists the twenty most populous city governments in Alaska. Also listed in the rankings is the proposed expanded City of Homer.

Figure 4-AF lists population characteristics of the three classes of city governments in Alaska, both inside and outside of organized boroughs. The City of Homer, a first class city within an organized borough, would become the most populous first class city in Alaska if annexation occurs. The population of the proposed expanded City of Homer exceeds the mean popula-

**Figure 4-AE
Twenty Most Populous Cities in Alaska
(2000 Census Data)**



**Figure 4-AF
Population Characteristics of the Six Different Types of Cities in Alaska**

Type of City	Number of Cities	Population of City with Smallest Population	Population of City with Largest Population	Mean Population	Median Population
Home rule city in organized borough	7	1,570	30,224	8,622	6,334
First class city in organized borough	8	286	5,469	2,700	2,785
Second class city in organized borough	34	64	3,082	412	269
Home rule city in unorganized borough	5	402	4,036	2,485	2,454
First class city in unorganized borough	13	163	4,283	1,305	854
Second class city in unorganized borough	79	23	5,471	409	293

tion for comparable cities by 127.8%, and would exceed the median figure for comparable cities by 120.8%.

DCED finds from the preceding discussion that the population of the proposed expanded boundaries of the City of Homer is larger than any other first class city government, both inside and outside an organized

borough. If annexation occurred as proposed, the population of the City of Homer would exceed every city government in Alaska except for the home rule city governments in Fairbanks, Ketchikan, Kenai, and Kodiak.

Figure 4-AG
Population in Households vs. Group Quarters
Owner-Occupied Housing vs. Renter-Occupied Housing

Characteristic	City of Homer	Millers Landing	Anchor Point CDP	Diamond Ridge CDP	Fritz Creek CDP	State of Alaska
Population in Households	97.3%	100.0%	100.0%	98.4%	100.0%	96.9%
Population in Group Quarters	2.7%	0.0%	0.0%	1.6%	0.0%	3.1%
Owner Occupied Housing	61.7%	58.1%	85.1%	81.1%	78.2%	62.5%
Renter Occupied Housing	38.3%	41.9%	14.9%	18.9%	21.8%	37.5%

222

b) Duration of Residency

Specific data concerning the duration of residency within the City of Homer and the territory proposed for annexation are not available. However, some broad indications of the duration of residency for those areas are provided by examining the percentage of population within households versus group quarters. Other indications of the duration of residency are offered by a review of the number of owner-occupied homes versus renter-occupied homes. Figure 4-AG examines those data for the City of Homer, Millers Landing,

and the three Census Designated Places *partially* within the territory proposed for annexation (see Figure 4-Q for a map showing those areas). For comparison purposes, data for the State of Alaska are also provided.

As reflected by the percentage of residents in households vs. group quarters, the population in the territory proposed for annexation is slightly more stable than the population of the City of Homer. With the exception of Millers Landing, the same holds true with respect to the figures for owner-occupied versus renter-occupied housing. There is a

slightly lower percentage of owner-occupied housing in Millers Landing compared to the City of Homer.

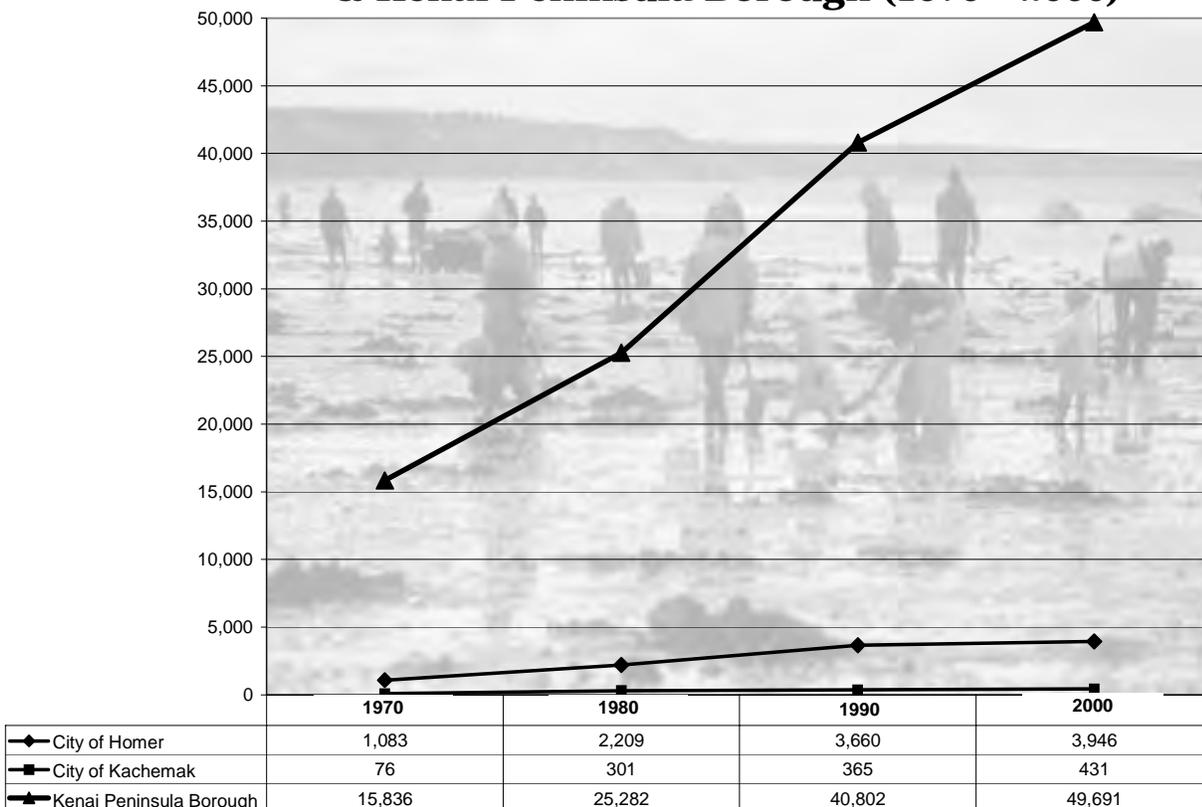
The percentage of residents in households and the percentage of owner-occupied housing suggest that the population both in the City of Homer and the territory proposed for annexation is well established.

c) Historical Population Patterns

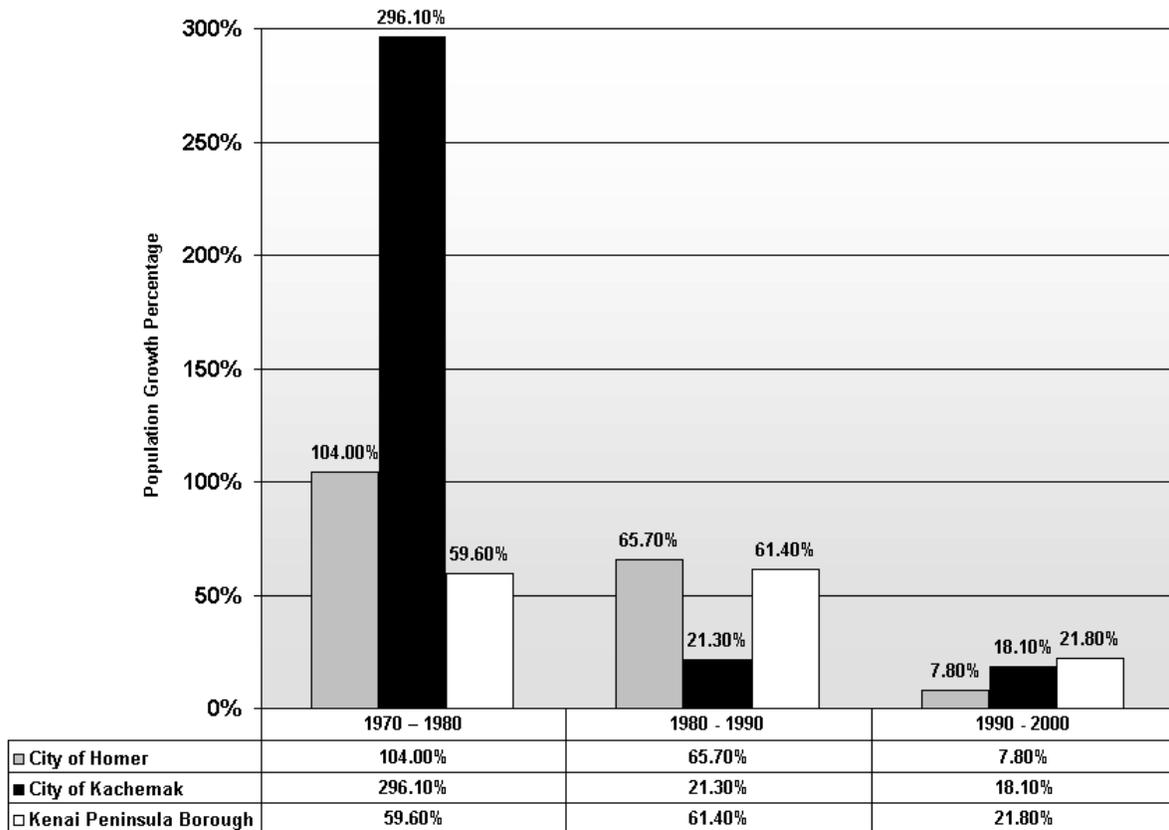
Figure 4-AH lists decennial Federal census data for the City of Homer, City of Kachemak, and Kenai Peninsula Borough for 1970, 1980, 1990, and 2000.

Figure 4-AI on the following page shows the percentage population growth in the City of Homer, City of Kachemak, and Kenai Peninsula Borough in each of the past three decades.

**Figure 4-AH
Population - City of Homer, City of Kachemak,
& Kenai Peninsula Borough (1970 - 2000)**



**Figure 4-AI
Percentage Population Growth - City of Homer,
City of Kachemak, & Kenai Peninsula Borough
(1970 - 2000)**



224

The data show that the area in and around Homer experienced very substantial growth in population during the 1970s and 1980s. Although it still grew during the 1990s, the rate of population increase in and around Homer moderated considerably compared to the two previous decades.

d) Seasonal Population Changes

DCED’s community profiles summarize Homer’s economy and seasonal population in the following general fashion:³²

³² See < http://www.dced.state.ak.us/mra/CF_BLOCK.cfm >

Figure 4-AJ
Age Distribution Expressed as a Percentage of Total Population

Age	Diamond					
	City of Homer	Millers Landing	Anchor Point CDP	Ridge CDP	Fritz Creek CDP	State of Alaska
Under 5 years	6.40%	8.10%	5.70%	6.20%	6.80%	7.60%
5 to 9 years	7.50%	9.50%	7.10%	7.50%	7.90%	8.60%
10 to 14 years	8.30%	5.40%	10.10%	9.70%	9.90%	9.00%
15 to 19 years	8.10%	2.70%	9.00%	8.50%	6.90%	8.00%
20 to 24 years	4.50%	2.70%	4.10%	3.00%	2.80%	6.40%
25 to 34 years	10.20%	20.30%	8.70%	9.70%	11.20%	14.30%
35 to 44 years	16.70%	12.20%	16.70%	20.80%	19.20%	18.20%
45 to 54 years	19.00%	17.60%	21.10%	19.90%	20.50%	15.10%
55 to 59 years	5.70%	2.70%	6.20%	6.20%	5.60%	4.40%
60 to 64 years	3.60%	12.20%	4.00%	2.50%	3.70%	2.80%
65 to 74 years	5.20%	4.10%	4.20%	4.20%	4.10%	3.60%
75 to 84 years	3.60%	2.70%	2.40%	1.60%	1.00%	1.70%
85 years and over	1.20%	0.00%	0.40%	0.20%	0.40%	0.40%

Homer is primarily a fishing, fish processing, trade and service center, and enjoys a considerable seasonal tourist industry. Approximately 10 cruise ships dock in Homer each summer. During summer months, the population swells with students and others seeking cannery or fishery employment. Sport fishing for halibut and salmon contributes significantly to the economy. . .

Many communities in Alaska, particularly those in which tourism and commercial fishing are major segments of the economy, experience substantial seasonal population fluctuations. There is no indication in this proceeding that the Homer City

government is unable to manage the circumstances surrounding the seasonal population changes in the greater community.

e) Age Distributions

Figure 4-AJ lists the age distribution patterns for the City of Homer, Millers Landing, and the three Census Designated Places *partially* within the territory proposed for annexation (see Figure 4-Q for a map showing those areas). For comparison purposes, data for the State of Alaska are also provided.

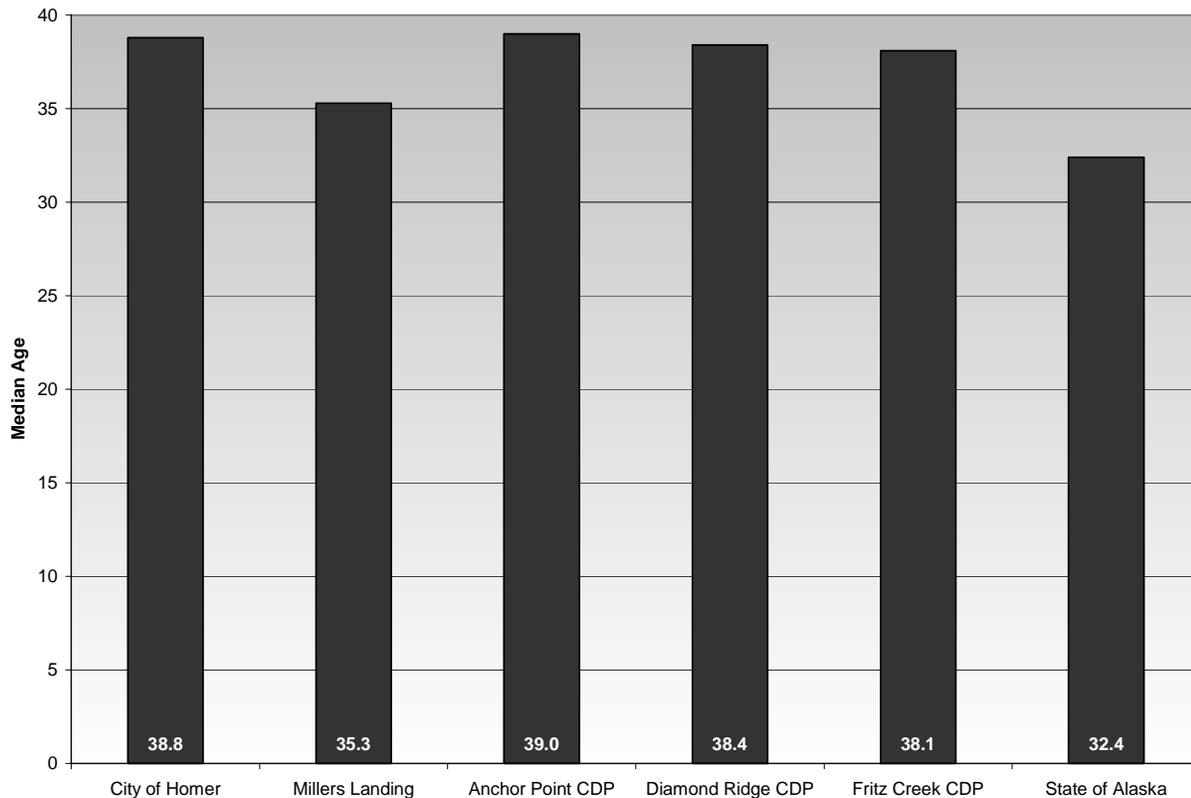
Figure 4-AK shows the median age in the City of Homer, Millers Landing, and the three Census Designated Places *partially* within the territory proposed for annexation (see Figure 4-Q for a map showing those areas). For comparison purposes, the median age for the State of Alaska is also listed.

Although there are slight deviations in the age distribution patterns of the areas in question, none of data reflect an unstable population.

2) Conclusion

Based on the foregoing, DCED concludes that the population within the proposed expanded boundaries of the City of Homer is sufficiently large and stable to support the extension of city government. Thus, in DCED’s view, the City of Homer’s annexation proposal satisfies the standard set out in 3 AAC 110.120.

**Figure 4-AK
Median Age**



4.7 Human and Financial Resources

A. Standard Established in Law

The resources standard provides that territory may be annexed to a city only to the extent that the expanded boundaries of the city include the human and financial resources needed to provide essential city services on an efficient and cost effective level. Specifically, 3 AAC 110.110 states as follows:

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

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

- (5) economic base of the territory after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled people.

The phrase “essential city services” has a specific meaning as it relates to this standard. It is defined by 3 AAC 110.990(8) as follows:

“essential city services” means those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; “essential city services” may include

- (A) assessing, levying, and collecting taxes;
- (B) providing primary and secondary education in first class and home rule cities in an unorganized borough;
- (C) public safety protection;
- (D) planning, platting and land use regulation; and

(E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

B. Application of the Population Standard to the City of Homer Petition

1) The facts in this case

a) Reasonably Anticipated City Functions in the Territory

Section 17 of the City of Homer's Petition states that the City plans to provide the following services to the territory upon annexation:

- water and sewer services as quickly as residents and funding permit;
- bulk sales of potable water to

commercial water carriers will continue;

- processing of septic waste from the area will continue;
- enhanced fire and emergency medical services;
- police;
- dispatch services [911, fire, AST, police];
- jail;
- animal control support and animal shelter;
- continued support assistance for the State Trooper post;
- library services;
- City parks;
- recreational services through City facilities and City funded community schools program;
- improved road maintenance;
- land use planning services;



City of Homer animal shelter.

- City Clerk services including voter services and information support services;
- grant management; and
- general government services.

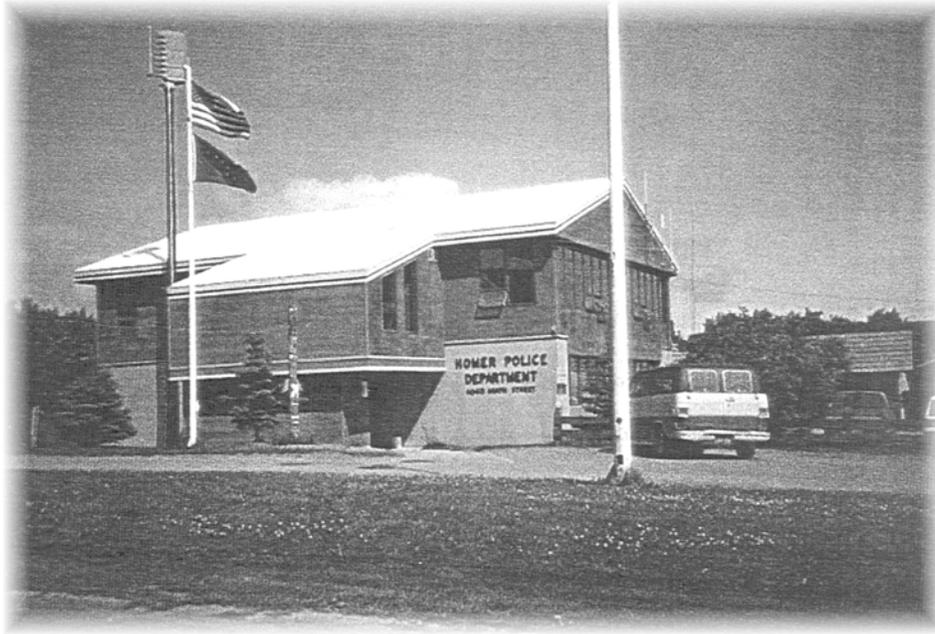
DCED finds the list above to reflect the reasonably anticipated functions of the City of Homer in the territory proposed for annexation.

b) Reasonably Anticipated New Expenses of the City.

The City of Homer projects that annexation will not result in increased *operating* expenses for administration services, finance, library services, animal shelter functions (excluding animal patrol), emergency dispatch services, jail services, port and harbor operations, water utility operations, and sewer utility operations. However, the City projects it would

incur increased *operating* costs with respect to six other functions if its annexation proposal is approved. The City's projected increase in expenditures amounts to \$414,463 annually. Figure 4-AL summarizes the projected cost increases based on information taken from Section 16 of the Petition, the Transition Plan, and the City's Reply Brief.

Figure 4-AL Projections by the City of Homer of Increases in its Annual Operating Expenses due to Annexation	
Planning and Zoning	
■ planning technician	\$36,000
■ supplies, etc.	3,000
Animal Control	
■ additional patrol services, fuel, supplies, etc.	3,000
Fire & Emergency Services	
■ Operational expenses of new Bridge Creek Substation.	20,000
■ Maintenance of additional vehicles for Bridge Creek Substation.	15,000
Police Department	
■ Two additional Police Officers and supplies	113,330
Streets & Roads	199,000
City Clerk	
■ Additional staff	25,133
Total Increased Operating Costs	\$414,463



Homer Police Department.

230

The City of Homer projects that it will not incur any increased *capital* expenses as a result of annexation in the areas of administration services, finance, library services, planning and zoning, animal control shelter services, emergency dispatch services, jail services, port and harbor operations, water utility services, and sewer utility services. However, the City estimates that it will incur *capital*

expenses with respect to four functions as a result of annexation. Those projected expenses are summarized in Figure 4-AM.

The City proposes to fund the anticipated capital expenses through the sale of general obligations bonds subject to approval by the voters. The Petition indicates that debt service on a \$1.2 million 10-year general obligation bond would be \$166,966 annually.

Figure 4-AM Projections by the City of Homer of Increases in its Capital Expenses that would Result from Annexation	
Animal Control Mobile Services	
■ new vehicle	\$20,000
Fire & Emergency Services	
■ new substation to be built on property owned by City near Bridge Creek Reservoir.	200,000
■ wildland/urban interface fire truck. [used]	80,000
■ tanker/tender [used]	50,000
■ EMS first response vehicle	40,000
Police Department	
■ two patrol vehicles	80,000
■ two snow machines with trailers	12,000
■ two ATVs with trailers	12,000
■ two portable radios	4,600
■ equipment for two officers	6,000
Public Works	
■ equipment:	585,000
■ two graders for snow plowing and road grading	
■ two 4X4 sanding trucks with plows or snow blowers	
■ one D-6 bulldozer w/ trailer for drainage & ditch maintenance	
■ one loader for loading sanders for other road maintenance	
Total Increased Capital Costs	\$1,089,600

If the bond proposition should fail, the City indicates that capital costs could be paid through the City’s general fund at the rate of \$300,000 per year over four years.

DCED carefully considered the comments and concerns by several of the Respondents regarding the City’s operating and capital cost projections. DCED finds that the City has effectively defended its cost projections in the City’s Reply Brief.

The City states in its Reply Brief (at 10) that “Homer’s petition is based upon . . . liberal estimates for costs.” DCED finds the cost projections to be reasonable. However, due to reductions in interest rates since the City’s Petition was filed, debt service on a 10-year \$1.2 million general obligation bond under current interest rates is

conservatively estimated by DCED at \$147,949. That figure is \$19,017 less per year than the City’s estimate (\$190,170 less over the life of the bond).

c) Actual Income and the Reasonably Anticipated Ability to Collect Local Revenue and Income from the Territory

Figure 4-AN shows total projected revenues of the City of Homer for all funds based on the City’s existing jurisdiction for Fiscal Year 2001.

232

Figure 4-AN Projected Revenues of the City of Homer for all Funds Fiscal Year 2001	
Operating Revenue	\$4,090,875
Non-operating Revenue	\$320,089
Reserve Accounts	\$1,812,855
Miscellaneous projects	\$388,276
Other financing sources	\$1,162,651
Property taxes	\$1,459,779
Sales & use taxes	\$2,054,960
Permits & Licenses	\$5,700
Fines and Forfeitures	\$20,600
Use of Money & property	\$95,200
Revenues from other agencies	\$676,948
Charges for Services	\$522,772
Other Revenue	\$500
Airport	\$71,694
Total	\$12,682,899

Source: *Adopted Budget for Fiscal Year 2001*, City of Homer, page O-2



Development in Millers Landing.

The City estimates that annexation would increase its property tax revenues by \$696,163 annually. The City based its property tax revenue estimates on the certified real property assessed values provided by the Kenai Peninsula Borough.

The City also estimates that annexation would increase its sales tax revenues by \$493,600 each year. The estimate of sales tax revenues was also based on data provided by the Kenai Peninsula Borough. Specifically, the estimate was based on taxable

sales reported to the Kenai Peninsula Borough by businesses within the territory proposed for annexation. Taxable sales reported by Kenai Supply were excluded because the City was aware that the business was planned to close. The remaining taxable sales were then multiplied by the City's current sales tax rate of 3.5%. The City indicates that estimated sales tax was then reduced by 20% to provide an even more conservative estimate of sales tax revenues. (See City's Reply Brief, pages 10 and 50).

No sources of additional revenue other than property taxes and sales taxes were included in the City's revenue estimates. The City's total projected annual increase in revenue amounts to \$1,189,763.

As noted earlier in this chapter in the discussion of the first standard, the current assessed value of taxable real property in the territory proposed for annexation has increased by \$13,111,400 or 11.0% since the Petition was filed. Additionally, according to records of the Kenai Peninsula Borough, taxable sales in the City of Homer rose 5.0% in the year 2000.³³ Given the City's intentional underestimation of sales tax revenues, coupled with the growth in taxable sales following the filing of the Petition, DCED finds that potential sales tax revenues for the City of Homer in

the territory proposed for annexation are more reasonably estimated to be \$647,850.³⁴

The City of Homer also intentionally excluded State shared revenues attributable to annexation. Those funds were excluded because the City felt that there was too much uncertainty as to whether they would be available on a long-term basis.

With one exception, State funding for general local government assistance in programs such as revenue sharing and safe communities was cut in every year from Fiscal Year 1987 to last year. However, after the prolonged period of substantial cuts, funding was actually increased for the current fiscal year. Absent significant reductions in State revenues, DCED anticipates that levels of State financial aid for local government have stabilized.

³³ See http://www.borough.kenai.ak.us/CEDD/0101Qtr/Homer_Sales.htm

³⁴ Sales tax records of the City of Homer and the Kenai Peninsula Borough are confidential. There are not available for review by DCED. Regarding DCED's estimate of sales taxes, it is noted that the City estimated sales taxes at 80% of reported taxable sales in the territory to result in sales tax revenues of \$493,600. If revenues were based on 100% of 1999 reported taxable sales, the estimate would increase to \$617,000. To reflect a 5% growth in taxable sales, the figure would increase further to \$647,850.

Based on the foregoing, DCED finds the following to be a reasonable estimate of additional annual income that would result from annexation of the territory in question.

Real property taxes	\$768,276
Personal property taxes	\$38,068
Sales taxes	\$647,850
State Revenue Sharing	\$22,428
Safe Communities Funding	\$38,328
Capital Matching Grants	<u>\$25,000</u>
Total	\$1,539,950

The City states in its Reply Brief that “Homer’s petition is based upon very conservative estimates for revenues . . .” Such is apparent from the fact that DCED’s estimate of annual revenues is \$312,119 (26.2%) greater than the City’s figure.

The anticipated ability of the City to collect the revenue in question is substantial since all of the projected revenues stem from long-established sources.

d) Feasibility and Plausibility of the Anticipated Operating Budget of the City through the Third Full Fiscal Year of Operation after Annexation

Revenues for both the existing City of Homer and the proposed expanded City were addressed under the preceding subsection. Reasonably projected costs associated with annexation were previously reviewed under subsection (b). That leaves a review of the reasonably projected expenditures of the City of Homer as shown in Figure 4-AO.

Figure 4-AO Total Government Estimated Expenditures by Function City of Homer - Fiscal Year 2001	
Enterprise Funds	\$4,298,924
Capital Project Funds	\$1,157,935
General Fund	\$5,753,262
Internal Service Fund	\$410,000
Total	\$11,620,121

Given its long-established nature, size and scope of its operations, competency of its staff, and good financial reputation,³⁵ DCED considers the City's projections of revenues and expenditures for the existing City of Homer to be credible. Based on the information presented here and in subsections (b) and (c), Figure 4-AP summarizes the

Figure 4-AP Revenues and Expenditures of the Existing City of Homer and the Proposed Expanded City of Homer	
Projected FY 2001 revenues of the existing City of Homer	\$12,682,899
Reasonably projected new revenues resulting from annexation	\$1,501,882
Less: projected FY 2001 expenditures of the existing City of Homer	(\$11,620,121)
Less: reasonably projected new operating expenses resulting from annexation	(\$414,463)
Less: reasonably projected annual debt service for capital improvements in the territory proposed for annexation	(\$147,949)
Surplus	\$2,002,248

revenues and expenditures of the existing City of Homer and the proposed expanded City of Homer.

³⁵ For example, for the fourteenth consecutive year, the City of Homer has been awarded the prestigious Certificate of Achievement for Excellence in Financial Reporting. The Government Finance Officers Association of the United States and Canada, a nonprofit professional association serving approximately 14,000 government finance professionals, awarded the Certificate. The Certificate is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. In 1998, the City of Homer was among only 7 city governments in Alaska (4.8% of the total number of cities in Alaska) to receive the recognition. In addition, 8 of the 16 organized boroughs (50%), and 5 of the 53 public school districts (9.4%) in Alaska also received the same recognition.

Another example of the City of Homer's good financial reputation is found in Appendix E of the Authorization of the 1998 General Obligation Bonds Refunding Series for the City of Homer. That appendix notes that "Homer has always promptly met principal and interest payments on its debt obligations when due."



Cafe in Millers Landing.

DCED finds that the existing and projected revenue and expenditure data addressed in subsections (b), (c), and (d) represent a feasible and plausible anticipated operating budget for the proposed expanded City of Homer. DCED finds further that the budget should remain feasible and plausible through the third full fiscal year of operation after annexation absent notable changes in the: (1) population of the City of Homer (apart from that due to annexation), (2)

powers and duties of the Homer city government, (3) rate of inflation, (4) local economic conditions, and (5) levels of State financial aid to local governments. While the population of the Homer area is growing, changes to the other four factors are not currently anticipated. It can be reasonably anticipated that any increased costs associated with future population growth will likely be offset with increased property tax and sales tax revenues.

e) Economic Base of the Territory after Annexation

Figure 4-AQ reflects the economic base of the City of Homer, according to the reported gross sales (taxable and non-taxable) within the corporate boundaries of the City of Homer during 2000.

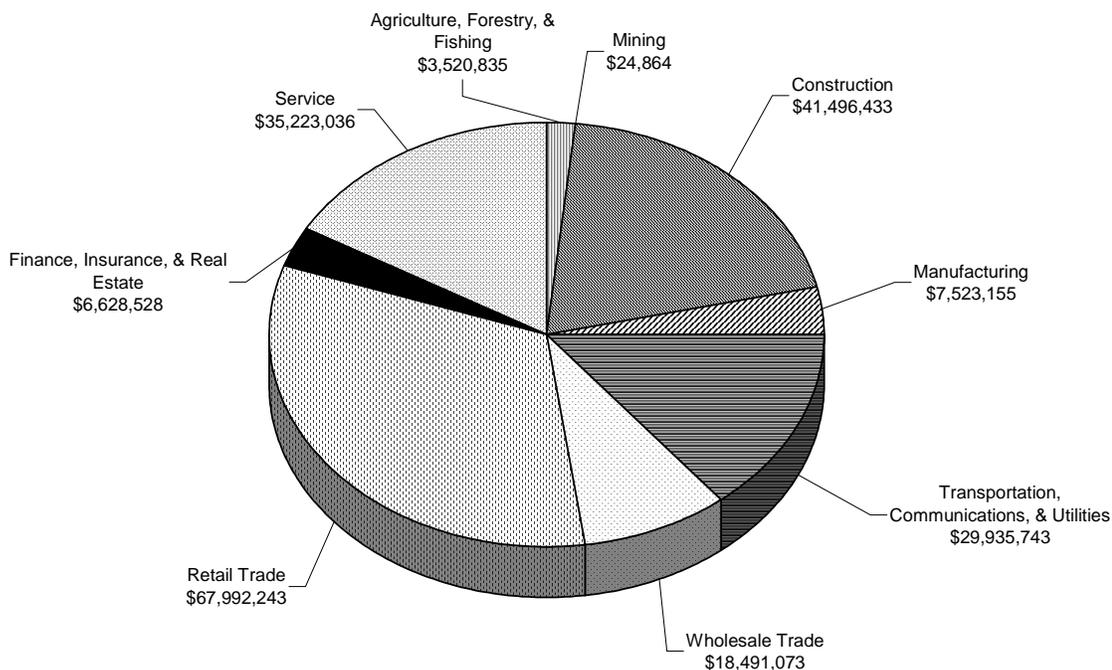
As noted previously in this chapter under the examination of the first standard, there are forty commercial properties within the territory proposed for annex-

ation. The City estimated that commercial operations in the territory have taxable sales of \$14,102,848 annually.

As indicated in the discussion under subsection (c), the City intentionally underestimated taxable sales in the territory by 20%. Thus, true reported taxable sales in the territory would have been \$17,628,560 during 1999 (excluding sales from Kenai Supply). Additionally, if taxable sales in the territory proposed for annexation

238

**Figure 4-AQ
Gross Reported Sales by Industrial Classification within the City of Homer (2000)**



Source: Kenai Peninsula Borough Key Economic Indicators (<http://www.borough.kenai.ak.us/CEDD/0101Qtr/Homer_Sales.htm>)

increased at the same rate as taxable sales in the City of Homer during 2000, the level of taxable sales in the territory during 2000 would have climbed to \$18,509,988. That figure compares to taxable sales in the City of Homer of \$102,968,477 during 2000. Thus, the territory proposed for annexation comprises about 15.2% of the economy of the proposed expanded City of Homer.

The sales tax figures reflect the private sector plus the City of Homer. (The City of Homer reported taxable sales amounting to \$3,524,282 during calendar year 2000).

Beyond the characteristics of the economy reflected in the sales tax data, the Kenai Peninsula Borough, State of Alaska, and U.S. governments represent a significant component of Homer’s economic base. Facilities operated by those governments within the existing boundaries of the City of Homer include the following:

Kenai Peninsula Borough

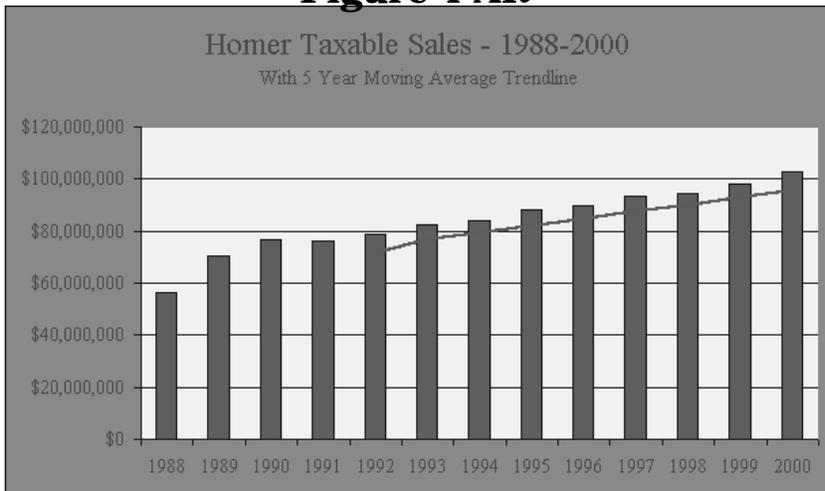
- Administrative offices
- West Homer Elementary School

- Homer Middle School
- Homer High School
- Paul Banks Elementary School

State of Alaska

- Court system business office
- Department of Fish & Game
 - ◆ Business office
 - ◆ Commercial Fisheries Division
 - ◆ Habitat & Restoration Division
- Department of Health & Social Services
 - ◆ Family and Youth Services Division
 - ◆ Nursing Division
 - ◆ Public Assistance Division
- Department of Labor and Workforce Development
 - ◆ Alaska Employment Service
- Legislative Information Office
- Motor Vehicle Division
- Department of Natural Resources
 - ◆ Forestry Division
 - ◆ Land Recording Office
- Department of Public Safety
 - ◆ State Troopers
 - ◆ Fish and Wildlife
- Department of Transportation & Public Facilities
 - ◆ Homer Airport Maintenance
 - ◆ Marine Transportation

Figure 4-AR



Source: Kenai Peninsula Borough Key Economic Indicators
 (<http://www.borough.kenai.ak.us/CEDD/0101Qtr/Homer_Sales.htm>)

tion, and City water treatment plant. There are 82 State employees listed for the Homer area on the State's Internet employee directory.³⁶

The economic base of

the Homer area, as reflected by reported taxable sales within the City of Homer, has exhibited steady growth over the past thirteen years. Figure 4-AR portrays the growth of reported taxable sales within the City of Homer since 1988.

f) Property Valuations in the Territory Proposed for Annexation

As reported earlier in this chapter under the examination of the first standard, the taxable value of real property in the territory proposed for annexation amounts to \$132,765,100.

Federal Government

- Farm Service Agency
- Natural Resources Conservation Services
- USDA Service Center
- National Marine Fisheries Service
- Alaska Maritime National Wildlife Refuge
- Flight Service Station
- U.S. Coast Guard
- U.S. Post Office

As noted in this chapter under the examination of the first standard, there is also a limited number of government facilities within the territory proposed for annexation. These include the Borough's solid waste baling facility, State highway maintenance station, State Parks Southern District Ranger Sta-

³⁶ <<http://www.state.ak.us/cgi-bin/whitepage.cgi>>

g) Land Use in the Territory Proposed for Annexation

Land use in the territory proposed for annexation was previously addressed extensively in this chapter under the examination of the first standard. To avoid redundancy, the topic will not be addressed here.

h) Existing and Reasonably Anticipated Industrial, Commercial, and Resource Development

The record in this proceeding does not reflect any anticipated significant new industrial, commercial, or resource development. Existing industrial, commercial, and resource development have been addressed earlier in this chapter under the examination of the first standard, as well as the examination of the standard at issue here.

Household Income	City of Homer	City of Kachemak	Kenai Peninsula Borough	Anchor Point	Fritz Creek
Less than \$10,000	5.75%	4.81%	5.81%	0.00%	2.03%
\$10,000 - \$19,999	12.81%	7.69%	9.87%	8.13%	9.28%
\$20,000 - \$29,999	15.85%	6.73%	12.45%	11.96%	10.43%
\$30,000 - \$39,999	12.92%	7.69%	11.76%	11.96%	11.01%
\$40,000 - \$49,999	9.45%	12.50%	11.84%	18.18%	16.23%
\$50,000 - \$59,999	10.42%	0.00%	11.08%	9.57%	11.88%
\$60,000 - \$74,999	12.92%	27.88%	14.79%	25.36%	9.28%
\$75,000 - \$99,999	9.66%	7.69%	13.10%	6.70%	6.09%
\$100,000 - \$125,000	5.86%	6.73%	5.00%	1.91%	13.04%
\$125,000 - \$149,000	1.09%	11.54%	1.61%	2.39%	6.38%
Over \$150,000	3.26%	6.73%	2.69%	3.83%	4.35%

i) Personal Income of Residents in the Territory and in the City

The most recent source of community-level income data is the 1990 Census. Community-level income data from the 2000 Census is not scheduled to be released until some time between March and May 2002.

Figure 4-AS shows the percentage of families earning various levels of income in 1990 within the City of Homer, City of Kachemak, Anchor Point CDP, Fritz Creek CDP, and Kenai Peninsula Borough (Diamond Ridge was not a CDP at the time of the 1990 Census). Figure 4-AT provides 1990 data on the median family income, median household income, and percent of

persons living in poverty in the City of Homer, City of Kachemak, Kenai Peninsula Borough, Anchorage Point CDP, and Fritz Creek CDP.

While the most recent community-level income data comes from the 1990 Census, more current income figures are available on the regional level. Figure 4-AU shows the per capita personal income within the Kenai Peninsula Borough from 1990 to 1999.

j) Need for and Availability of Employable Skilled and Unskilled People

The City anticipates that annexation will increase its staff needs by one planning technician, two police officers, and one ¼-time or full-time clerical position in the City Clerk’s office. The record reflects no basis to conclude that skilled people to fill those positions would be unavailable.

Figure 4-AT Median Family Income Median Household Income Percent in Poverty (1990)					
Household Income	City of Homer	City of Kachemak	Kenai Peninsula Borough	Anchor Point	Fritz Creek
Median Household Income	\$36,652	\$ 55,000	\$42,403	\$42,847	\$45,143
Median Family Income	\$42,824	\$ 64,313	\$48,339	\$47,292	\$50,657
Percent in Poverty	5.0%	7.3%	7.7%	0.7%	3.4%

2) *Conclusion*

DCED carefully considered how annexation would affect the reasonably anticipated functions, income, and expenses of the City of Homer. Operating costs are reasonable projected to rise by nearly \$415,000 annually. One-time capital improvement costs are reasonably estimated to amount to nearly \$1.1 million. If funded by the sale of general obligation bonds, the debt service on a \$1.2 million general obligation bond would amount to about \$148,000 per year for ten years.

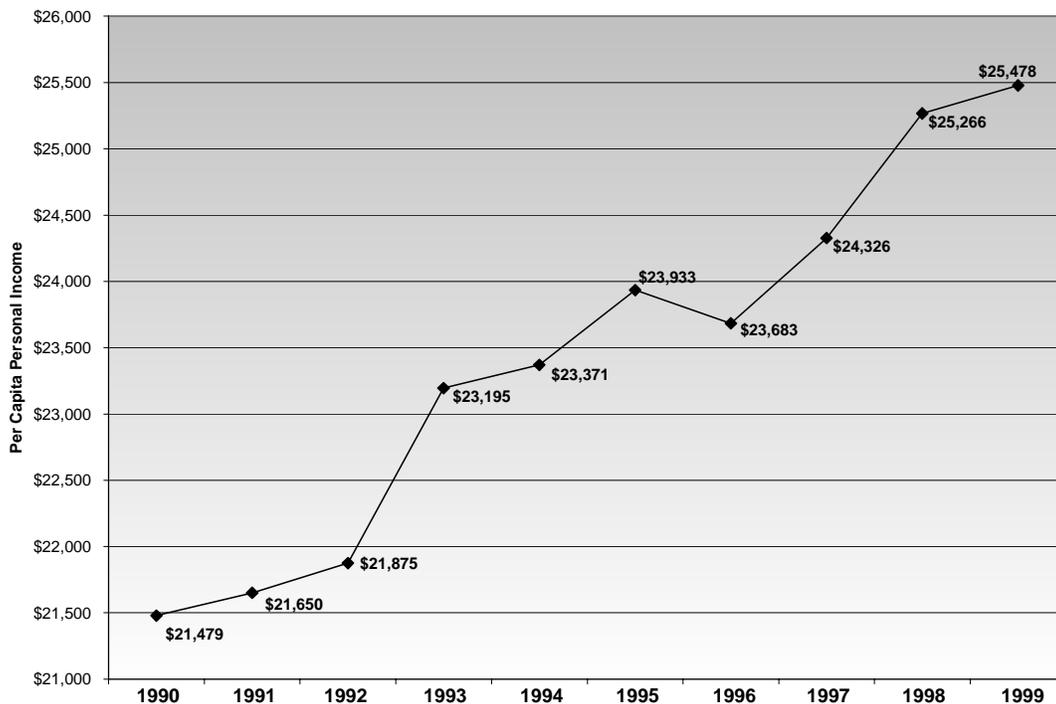
The City of Homer estimated annexation would increase its revenues by \$1,189,763 annually. The City acknowledged that the projection was intentionally

conservative. With growth and development in the territory proposed for annexation and with consideration to other revenues intentionally excluded from the City's projections, DCED finds that a more realistic estimate of the annual increase in revenues likely to result from annexation is \$1,501,882.

The greater Homer community has a strong economic base. Population, property values, and taxable sales are rising in the greater Homer area.

Contemporary personal income figures at the community level are not available. 1990 figures indicated that median household income in the City of Homer was \$36,652. Figures for the surrounding area were even higher. For example, the figures for the Anchor Point CDP and Fritz Creek CDP were, respectively, \$42,847 and \$45,143. For comparison purposes, the figure for the State of Alaska as a whole was \$41,408.

Figure 4-AU
Per Capita Personal Income Kenai Peninsula Borough



Specifically, 3 AAC 110.900 provides as follows:

TRANSITION.

(a) A petition for incorporation, annexation, merger or consolidation must include a practical plan in which the municipal government demonstrates its intent and capability to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for detachment or dissolution must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment.

(b) A petition for a proposed action by the commission must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city or service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) A petition for a proposed action by the commission must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough,

city, or service area affected by the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission will, in its discretion, require that all affected boroughs, cities, service areas, or other entities execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

B. Application of the Transition Plan Standard to the City of Homer Petition

1) Facts in this Case

The Petitioner's transition plan is comprised of nine pages included in the Petition as Exhibit G. In response to assertions contained in various Responsive Briefs, the Petitioner's Reply Brief provides supplementary information regarding the City's plan for transition of the area to the jurisdiction of the City.

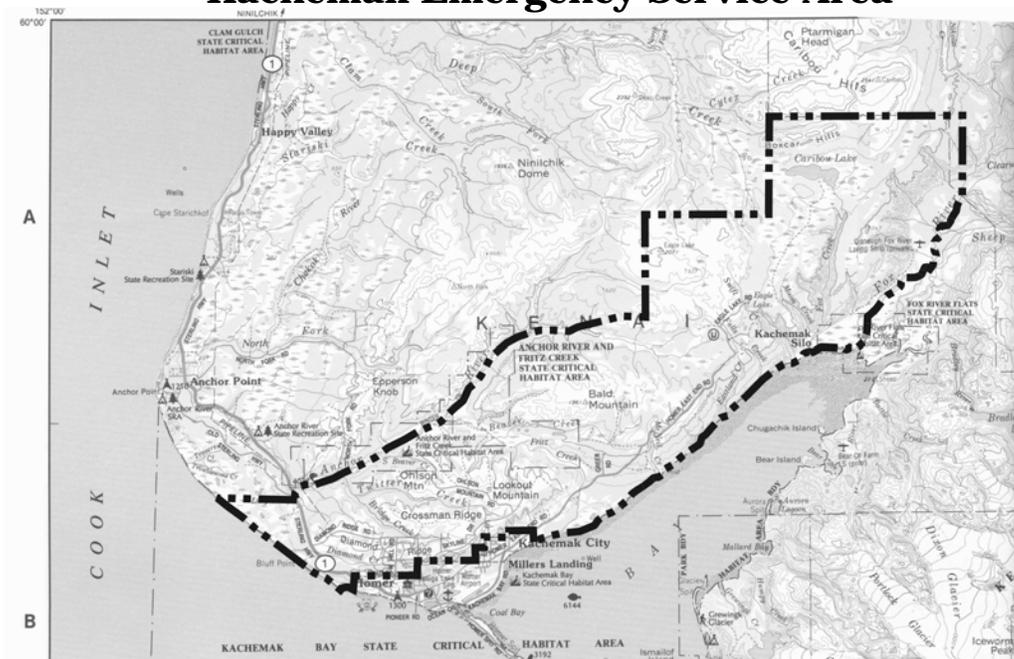
The City’s transition plan was prepared prior to the creation of the Kachemak Emergency Service Area (KESA). KESA was created by the Kenai Peninsula Borough to provide fire protection and emergency medical services. As shown in Figure 4-AU, the KESA boundaries encompass all of the territory proposed for annexation except Millers Landing. The City of Homer provides fire protection and emergency medical services to the Kachemak Emergency Service Area pursuant to a contract with the Kenai Peninsula Borough.

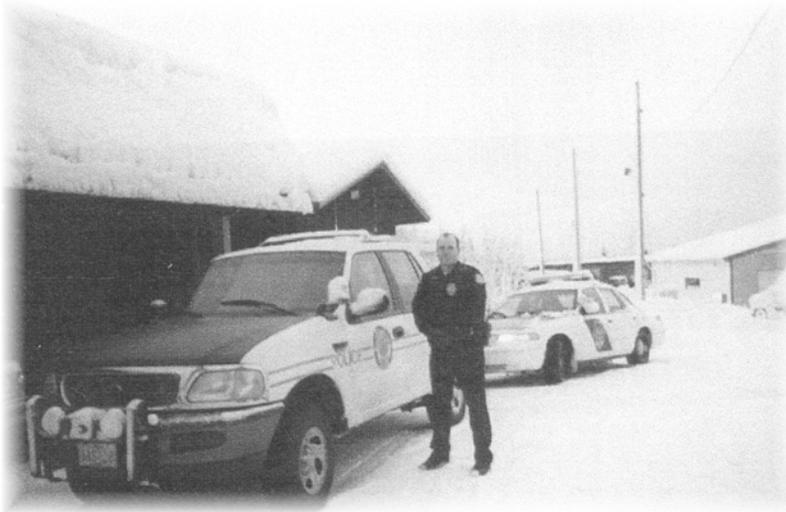
The City’s transition plan describes the City’s intent and capability to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed change. The plan is summarized as follows.

Fire Protection. Fire suppression service will be enhanced “over a period of no more than two years” with financing from the issuance of general obligation bonds or general fund revenues as described earlier in this chapter. The plan states that:

246

**Figure 4-AU
Boundaries of the
Kachemak Emergency Service Area**





City of Homer police officer and vehicle.

... the City will construct a fire sub-station on property that is City owned near the Bridge Creek Reservoir capable of accommodating (1) a Wildland/Urban Interface Fire Truck [similar to an engine/pumper but with higher ground clearance and all-wheel drive], (2) a tanker/tender and (3) an EMS First Response Vehicle.

These vehicles are designed to meet the demands of the territory to be annexed. The cost of these vehicles and the sub-station would be paid for by the \$1.2 million Annexation Bond the City of Homer will issue upon annexation approval or by general tax revenues. (at 25)

Emergency Medical Services. The Homer fire department currently is the sole provider of emergency fire, rescue,

and emergency medical services (EMS) for the area proposed for annexation, with the exception of wildland fires.

Police.

Additional police will be hired and

additional equipment will be acquired to extend police services to the expanded area upon annexation. The plan indicates

... the Homer Police Department will hire two additional officers and purchase additional equipment to safely and adequately provide services to the area. The cost of the new equipment will be paid for by the issuance of bonds.

Animal Control Services.

The City will purchase a new animal control vehicle. Plans for a new animal shelter are currently being developed. Proceeds from the annexation bond or general fund will pay for the vehicle purchase; the shelter will be constructed with existing funds.



City maintenance equipment.

Planning. One additional planner will be hired upon approval of annexation. The City will endeavor to develop land use plans for the areas annexed within two years of annexation.

Road Maintenance. The Petition states that the City would assume responsibility for year-round maintenance of those roads in the newly annexed areas that are currently maintained by the Kenai Peninsula Borough immediately upon annexation. In its Reply Brief, the Petitioner added the following statement about its intention to deliver road maintenance service to the area proposed for annexation.

The City will commit to providing a road maintenance budget of \$199,000 immediately upon assuming road maintenance responsibilities. This is slightly dif-

ferent from what was originally presented in road maintenance portion of the transition plan, but consistent with the expenditure portion of the formal petition. This should clarify any question as to whether the City can 'afford to' maintain these roads. The recently adopted KPB budget anticipates using contractors, as does the City of Homer. As shown in the expenditure section of the formal annexation petition, the City's proposed

annual road maintenance budget is stated to be \$199,000. The KPB has never spent \$199,000/year maintaining the roads in the annexation area, so the City's budgeted amount should be sufficient for all necessary maintenance. (Reply Brief at 15)

Water Services. Certain lots located on the main line between the City's extraterritorial water plant and the City limits are presently provided with water service. The City plans to increase its storage capacity to allow provision of water service to additional water utility consumers in the area proposed for annexation. Extension of City water service to newly annexed areas would require the following steps, according to the Transition Plan. (at 28)

- Establish policy for using available sales tax revenue for water improvements.
- Develop a 20-year master plan showing where water transmission, distribution, and reservoir improvements should be located based on ultimate development, and establish a phasing plan with associated costs.
- Identify innovative methods of providing for economical water service to low density outlying residential areas.
- Begin phased design and construction of water transmission main extensions and storage reservoirs that provide residents in the annexed area access to City water.

Sewer. The following steps will be taken to prepare for and to extend sewer service within the expanded boundaries of the City after annexation.

- Establish policy for using available sales tax revenue for sewer improvements.

- Develop an area-wide 20-year master plan showing where sewer trunk line improvements should be located based on ultimate development and establish a phasing plan with associated costs.
- Identify innovative methods of providing for economical sewer service to low density outlying residential areas.
- Begin phased design and construction of sewer trunk lines that provide annexed area residents access to City sewer.

The Petition suggests that the extension of sewer services will be gradual, as financing becomes available and as demand for the service increases over time. (Petition at 30)



City sewer treatment plant.

Since any new sewer customers would pay a monthly sewer charge (and assuming that the charge covers the cost of operating and maintaining the sewer collection and treatment system), the City's operating budget would not be greatly affected by an expansion of sewer service into the annexed area. There is increased efficiency in providing sewer service to a larger group of people. The real impact to the budget would be on capital improvement outlay for sewer trunk line extensions into areas without service. Providing public sewer service to an area can dramatically increase property values and the property taxes generated from the property. The extension of sewer service into the annexed area will require a substantial increase in capital spending.

Library, Parks & Recreation, and Port & Harbor.

Library services, parks and recreation services, and port and harbor services are already provided to the area proposed for annexation by the City of Homer.



Homer city library.

Annexation will not, in the Petitioner's view, require additional city staff or additional capital investment for those facilities.

The Petition indicates that legislative consent to annexation will permit the timely assumption of any remaining relevant and appropriate powers, duties, rights, and functions presently exercised within the territory proposed for annexation.

According to the Petition, the Transition Plan was prepared in consultation with a variety of Borough officials, including the Mayor, Finance Director, Assessor, Planning Department officials, Borough Clerk, Emergency Planning Director, Attorney, and a Borough road maintenance official. Additionally, Borough assembly members and State officials were also consulted, according to the Transition Plan. (at 33)

The Petition states that there are no assets or liabilities to be transferred to the City as a consequence of annexation. Therefore, the Petitioner contends that there is no prospect that transfer and integration of assets and liabilities would result in a loss of value in assets, loss of credit reputation, or a reduced bond rating. Further, the lack of a need to transfer assets and liabilities would negate a need for an agreement between the Borough and City of Homer for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

2) Conclusion

Based on the review of Exhibit G of the Petition and the City's Reply Brief, DCED concludes that the City has provided a practical plan for the extension of City services and facilities into the territory proposed for annexation. The City of Homer has demonstrated the intent and capability to extend essential services in the shortest practical time after annexation.

With the exception of water and sewer utilities, all other services would be extended to the territory within two years; most would be extended immediately upon annexation. As is typically the case with other municipal governments in Alaska, the City of Homer operates its water and sewer utilities as enterprise funds, with extensions funded by property owners benefitting from such.

Given the substantial capital investment involved, the City of Homer plans to undertake major water and sewer utility extensions over a long-term period, as demand and funding allow. DCED also recognizes that parts of the area within the existing boundaries of the City of Homer currently lack water and sewer utility services. However, these circumstances do not render the City of Homer's transition plan or its annexation proposal inadequate or unacceptable.

Such conditions are not uncommon in other municipalities in Alaska – even in Ketchikan, the most densely populated city in Alaska. Consider, for example, the findings

and conclusions reached by the Local Boundary Commission regarding the annexation of the Shoreline Service Area to the City of Ketchikan. (See *Decisional Statement in the Matter of the 1999 Amended Petition of the City of Ketchikan for Annexation of Approximately 1.2 Square Miles*, pages 5, 8, and 11, LBC December 16, 1999.) (Emphasis added)

Shoreline conceded in its responsive brief, and the Alaska Department of Environmental Conservation (DEC) agreed, that future development in the territory is constrained by the lack of public water and sewer utilities. Shoreline and DEC also share the view that significant public health risks often arise in areas of concentrated development that lack sewer and water utilities. Further, several correspondents, including the Borough, criticized the City because it lacked specific plans for the extension of water and sewer utility service into the territory. DEC expressed its support for the City's annexation proposal in the hope that it would lead to the extension of City sewer and water utilities into the territory. The Commission finds from these circumstances that there is a need for water and sewer utility service in the territory proposed for annexation.

. . . Annexation critics asserted that the two areas are incompatible, in part, because the territory proposed for annexation allegedly lacks certain services that are available to City residents. Specifically cited were the absence of

water and sewer utilities, bus service, street maintenance, and municipal garbage collection. However, many areas within the City of Ketchikan lack Borough bus service and some even lack City service with respect to garbage collection, water, and sewer. The Commission finds that current differences in the level of services noted are not a basis to conclude incompatibility. The boundaries for the delivery of such services are flexible. City street maintenance would be extended upon annexation, bus service could be readily extended (the Borough Assembly approved a plan for such on September 20, 1999), and water and sewer utilities could be extended upon funding for capital improvements. The boundaries for City solid waste collection are under the control of the Regulatory Commission of Alaska.

. . .
The Commission would also have preferred that the City's plans for the extension of water and sewer utilities to the territory offered greater assurance that the utilities would, in fact, be extended. Nevertheless, the Commission recognizes that the extension of water and sewer utilities are often funded, in part, by assessments on the area that benefits from the improvements. The Commission also recognizes that the City is presently developing engineering plans for the extension of its water utility to a portion of the territory proposed for annexation.

In addition to demonstrating the City of Homer's intent and capability to extend services, DCED concludes further that the City's transition plan addresses

the assumption of the Kenai Peninsula Borough's powers, duties, rights, functions, assets, and liabilities regarding road maintenance in the territory. In DCED's view, the formation of the Kachemak Emergency Service Area subsequent to the filing of the Petition will not impede the formal extension of City fire protection and emergency medical services to any annexed territory.

Based on the foregoing facts in this matter, DCED concludes that the City of Homer annexation proposal satisfies the transition plan standard set out in 3 AAC 110.900.

4.9 Inclusion of Areas Necessary to Provide Services on an Efficient, Cost-Effective Level

A. Standard Established in Law

State law provides that an expansion of city boundaries must include all areas needed by the annexing city to provide full

development of essential city services on an economical basis. Specifically, 3 AAC 110.130(a) states as follows:

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

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

B. Application of the 'Areas Necessary for Efficient Services' Standard to the City of Homer Petition

1) Facts in this Case.

a) Land Use and Ownership Patterns.

Land use characteristics and land ownership patterns in the territory proposed for annexation were addressed extensively earlier in this chapter under the examination of the first standard. Readers are referred again to Figures 4-E and 4-L. The

former is a map showing the land use characteristics of the territory proposed for annexation and the latter shows land ownership patterns.

DCED previously concluded with respect to the first standard that, “the territory closest to the existing northern boundaries of the City of Homer generally has the greatest residential, commercial, and other development. Farther to the north, the properties tend to become less developed.” Figure 4-AV provides further details about those characteristics.

Specifically, Figure 4-AV shows the land use characteristics for three different parts of the territory proposed for annexation. Those are (1) Millers Landing, (2) a 3.04 square mile “urban area”,³⁷ and (3) the remnant territory proposed for annexation. Information for the territory as a whole is also provided 4-AV. Land use characteristics shown in Figure 4-AV are expressed as a percentage of the total acreage within each of the areas shown (excluding public rights-of-way).

³⁷ The use of the term “urban area” is not intended to infer that other parts of the territory are not urban. Clearly some, such as Millers Landing, are also urban in character. The term is simply used here to distinguish the particular area in question from the remainder of the territory proposed for annexation. The locality identified by DCED as the “urban area” is generally described as that portion of the territory proposed for annexation that encompasses the more extensively subdivided properties immediately north of the existing boundaries of the City of Homer, extending from the Sterling Highway to the City of Kachemak. The area includes that portion of Rodgers Loop not presently within the boundaries of the City of Homer, Sprucewood Drive, Eagle View Drive, Jeffery Avenue, West Hill Road, Westwood Avenue, portions of Skyline Drive, Fireweed Avenue, Mission Avenue, Cottonwood Lane, Race Road, Horizon Court, Scenic Place, and adjoining secondary roads. The perimeter of the urban area follows aliquot parts of sections within Township 6 South. A map of the urban area appears in Chapter 5 of this report. Details of the estimated population in the urban area are set out in Appendix G.

Figure 4-AV
Land Use in Different Parts of the Territory Proposed for Annexation (expressed as a percentage of the total acreage within each area – rights-of-way excluded)

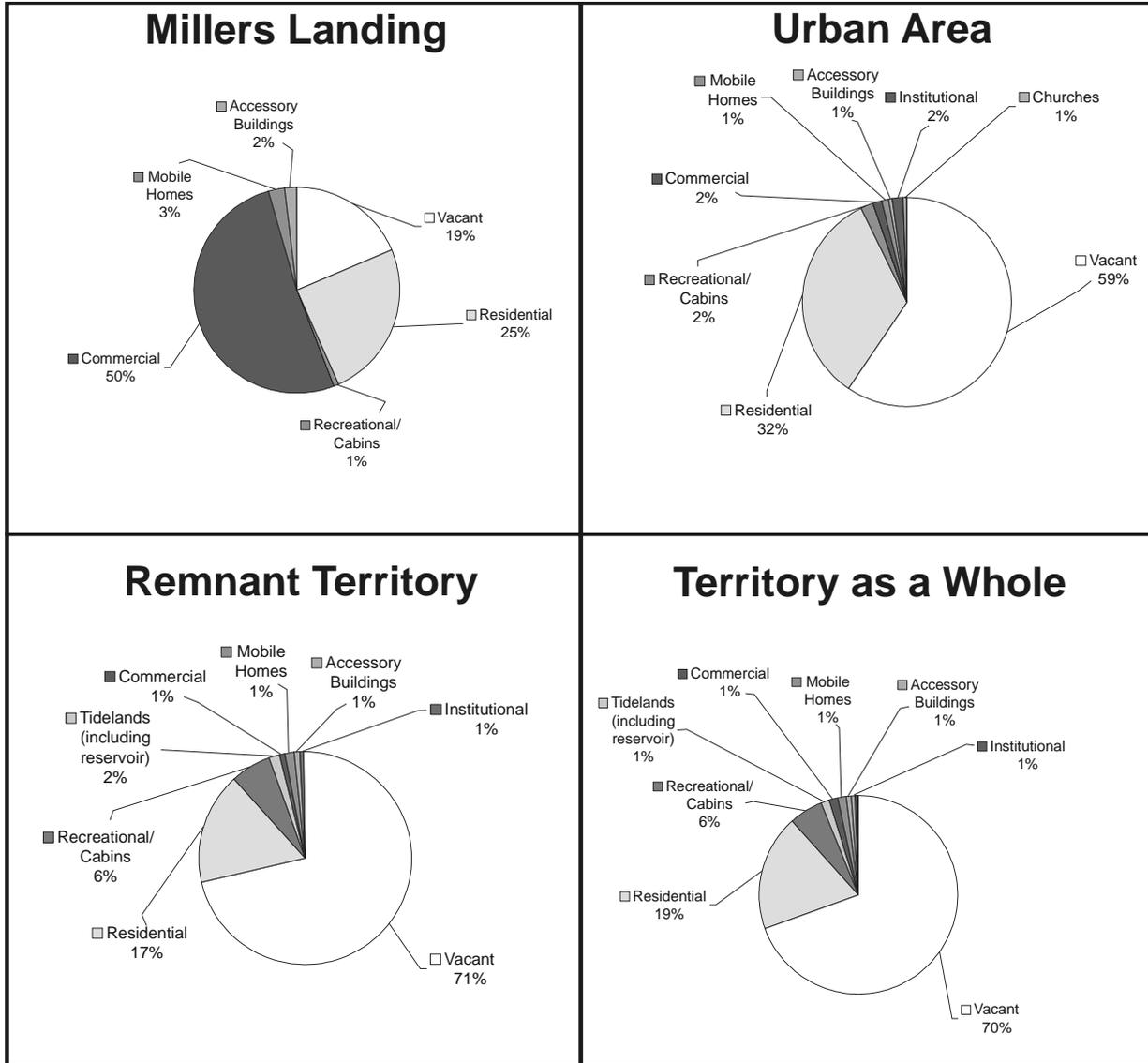


Figure 4-AV shows, for example, that while 70% of the territory as a whole is vacant property, only 19% of Millers Landing is vacant. Further, while only 1% of the territory as a whole is developed for commercial purposes,

50% of Millers Landing is so developed. Moreover, while 32% of what DCED terms the “urban area” is developed for residential purposes, the figure for the remnant territory is about half of that.

This further discussion of land use characteristics reinforces DCED’s earlier conclusion that the areas immediately adjoining the City of Homer’s northern boundary, including Millers Landing, are more heavily developed for residential and commercial purposes.

b) Population Density

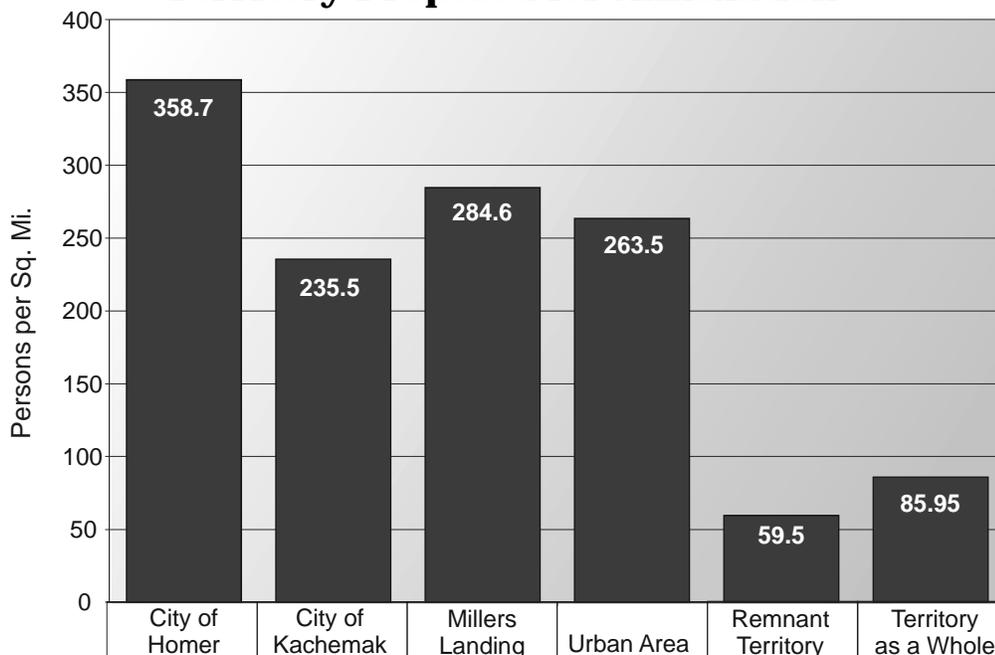
Aspects of population density were explored earlier in this chapter with regard to the first standard. However, further

consideration of the factor is warranted under the examination of the standard at issue here.

Figure 4-AW shows the population densities of the City of Homer, City of Kachemak, Millers Landing, the “urban area,” the remnant territory, and the territory as a whole.

256

**Figure 4-AW
Population Density of the City of Homer, City of Kachemak, and Different Parts of the Territory Proposed for Annexation**



	City of Homer	City of Kachemak	Millers Landing	Urban Area	Remnant Territory	Territory as a Whole
Density (persons per sq. mi.)	358.7	235.5	284.6	263.5	59.5	85.95
Population	3,946	431	74	801	1,329	2,204
Land Area (sq. mi.)	11	1.83	0.26	3.04	22.34	25.64

Figure 4-AW provides further evidence that the areas immediately north of the existing corporate boundaries have substantial population densities. Millers Landing has a population density of 284.6 persons per square mile. The urban area has a population density 263.5 persons per square mile, slightly less than that of Millers Landing. Both Millers Landing and the urban area have population densities greater than that of the City of Kachemak. In contrast, the remnant territory has a population density of 59.5 persons per square mile.³⁸

For comparison purposes, the population densities of Alaska's 146 city governments range from 2,330 persons per square mile of land in the City of Ketchikan to 0.9 people per square mile of land in the City of

Platinum. The average population density of all cities in Alaska is 174.7 residents per square mile of land.

The urban area immediately north of the City of Homer has a greater population density than 122 of the 146 cities in Alaska (83.6%). Millers Landing has a greater population density than 125 cities in Alaska (85.6%). Among the cities with lesser population densities than those two portions of the territory proposed for annexation are three cities within the Kenai Peninsula Borough – the City of Kachemak, City of Kenai, and City of Seward.

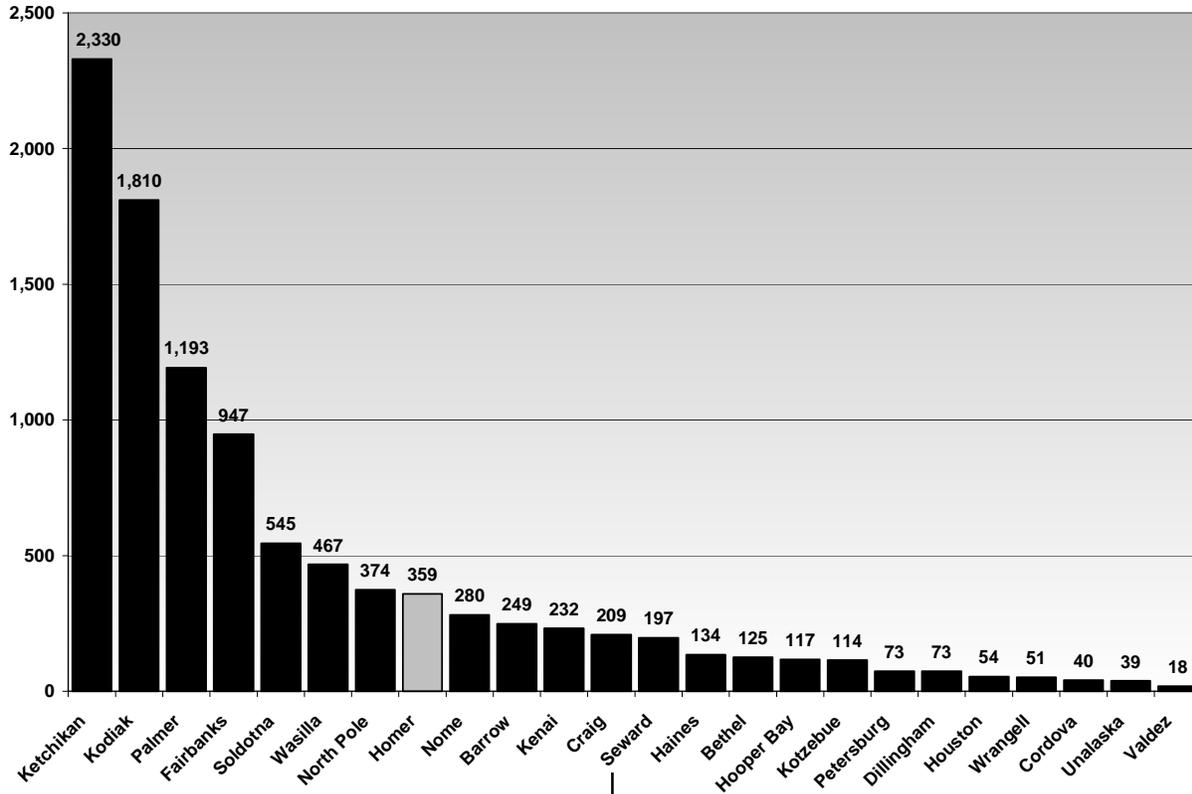
Figure 4-AX summarizes the population densities of cities in Alaska with 1,000 or more residents.

c) Existing and Reasonably Anticipated Transportation Patterns and Facilities

Figure 4-A presented in the discussion of the character of the territory proposed for annexation, provides a map showing seven principal roadways in the territory. These consist of the Sterling Highway,

³⁸ DCED does not intend to infer that the remnant territory has a uniform population density. Clearly, it too has varying population densities.

**Figure 4-AX
Population Densities of Most Populous Cities in Alaska
(land only)**



258

Diamond Ridge Road, West Hill Road, East Hill Road, Skyline Drive, East End Road, and Kachemak Drive. The State of Alaska maintains all seven of those principal roadways. In addition, the City indicates that the Kenai Peninsula Borough currently maintains 41.7 miles of gravel roads in the territory proposed for annexation.

Of course, air and marine transportation facilities are also vital to the greater Homer area. The Homer airport is located within the existing corporate boundaries of the City of Homer. The airport terminal is owned by the City of Homer. Additionally, the City of Homer provides a boat harbor that accommodates more than 770 boat slips. The

City also provides two large vessel docks. Users of the docks include the Alaska Marine Highway and the U.S. Coast Guard.

d) Natural Geographical Features and Environmental Factors

Natural geography and environmental factors were addressed previously in this chapter under the standard relating to the character of the territory proposed for annexation. DCED has nothing to add concerning such factors that is relevant to the standard at issue.

e) Extraterritorial Powers of Cities

AS 29.35.020 authorizes municipal governments to exercise certain powers beyond their corporate boundaries under certain conditions.

Pursuant to AS 29.35.020(b), the Kenai Peninsula Borough authorized the City of Homer to exercise extraterritorial jurisdiction in the Bridge Creek Watershed for the purpose of protecting the City's water supply and watershed. Authorization was granted by Ordinance Number 99-7 of the Kenai Peninsula Borough, which was unani-

mously adopted by the Assembly on September 7, 1999. More specifically, Ordinance Number 99-7 approved:

the exercise by the City of Homer of the power necessary to protect its water supply and watershed in . . . the Bridge Creek watershed, which is situated in the borough but outside of the Homer City limits:

However, in granting extraterritorial powers to the City of Homer for the regulation of the Bridge Creek Watershed, the assembly specifically reserved "its full powers to amend, modify or repeal" the grant of extraterritorial power "without first obtaining the consent of the City of Homer."

Although an ordinance of the City of Homer to implement the City's extraterritorial watershed regulatory powers has been drafted, none has yet been adopted by the Homer City Council. As of mid-August 2001, the Homer City Planning Commission has held two public meetings on the proposed ordinance.

Bill Smith, Chairman of the Homer City Planning Commission, recently expressed the belief that adequate control of the watershed will necessitate

regulation of future subdivisions within the Bridge Creek Watershed. The Planning Commission Chairman anticipates that aspects of the prospective regulations are bound to conflict with development plans. He noted that the potential for such conflict has initiated some to call for the Borough to rescind its grant of extraterritorial powers to the City of Homer. (Personal communication – August 20, 2001)

As was noted at the beginning of this chapter, the Local Boundary Commission approved the annexation of an 11.7 square mile watershed to the City of Kodiak. The Bridge Creek Watershed is approximately 3.6 square miles – less than one-third the size of the Kodiak watershed. On the surface, it might seem that the exclusion of the Bridge Creek Watershed from the City of Homer would be inconsistent with the action taken in Kodiak. However, every petition that comes before the Local Boundary Commission is unique.

There are legitimate distinctions between the proposed annexation of watersheds in Kodiak and Homer. Most notably, full jurisdiction over the Kodiak watershed was considered to be a key element in the ability of the City of Kodiak to retain a waiver of federal treatment requirements for public water systems that use surface water sources. It was estimated at the time that the loss of the waiver would require the City of Kodiak to construct a water filtration system at a cost of \$15 million. Further, it was estimated that the annual operating costs of the water utility would increase by \$400,000 if a filtering system were required. Similar circumstances are not present in the Homer annexation proceeding.

The following sets out the Commission's reasoning to include the Kodiak watershed within the corporate boundaries of the City of Kodiak in 1999, although the Commission had rejected a similar proposal twenty-one years earlier. (See *Decisional Statement in the Matter of the March 19, 1999*

Petition of the City of Kodiak for Annexation of Approximately 19.5 Square Miles, pages 6-7, LBC September 3, 1999.)

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

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

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

In 1989, the U.S. Environmental Protection Agency (EPA) adopted regulations establishing treatment requirements for public water systems that use surface water sources. Under those re-

quirements, water utilities that use surface water sources and do not filter the water would be allowed to continue such practices only if they met ten criteria specified in the regulations by December 30, 1991.

An assessment of the City's water utility in July of 1991 resulted in a determination by EPA that the City did not comply with five of the ten criteria. One of the criteria which the City failed to meet was adequate control over its watersheds. In December 1992, EPA found that the City still failed to comply with the requirement for adequate watershed controls.



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Henry Cunningham
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Third Judicial
District

William Walters
Member
Fourth Judicial
District



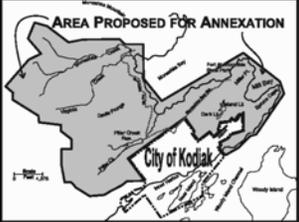
State of Alaska
Local Boundary Commission

Statement of Decision

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

**SECTION I
INTRODUCTION**

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



**SECTION II
PROCEEDINGS**

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

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

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

Notwithstanding, EPA allowed the City to continue to use surface water sources without filtration, but ordered that it “must achieve compliance with the watershed control program by establishing a program to determine if a correlation exists between wildlife populations and the quality of the source water, complete the fencing of the Upper Reservoir Watershed, and the on-site inspection requirements.” The City advised DCED that imposition of a requirement by EPA to filter its water system would cost an estimated \$15 million in capital funding and \$400,000 in annual costs of operating the water utility.

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

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

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

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

In addition to extraterritorial regulation of the Bridge Creek Watershed, the City of Homer provides other services outside its boundaries. Most notably, these include water utility service to portions of the territory proposed for annexation, sewer utility service to parts of the City of Kachemak, fire protection service, and emergency medical service.

An estimated fifty or so properties between the City’s water treatment plant on Skyline Drive and the City limits are presently provided with water service from the City’s transmission main. Although not a direct extraterritorial service, it should also be noted here that the City makes bulk water sales to commercial water carriers who, in turn, sell water to customers within the territory proposed for annexation.

The City of Homer provides sewer services to the City of Kachemak through what the City of Homer terms “a system of ‘gray water’ lines and septic pumping services.” Presently, about 90 connections are provided in that manner. While not a direct extraterritorial service, the City also processes septic waste from the territory proposed for annexation.

Fire protection and emergency medical services are provided to the entire territory proposed for annexation and the



City of Homer fire engine.

City of Kachemak by the City of Homer³⁹, either directly or indirectly. At the time the Petition was filed, the City of Homer provided fire protection services and emergency medical services to the entire territory proposed for annexation directly. However, as noted previously, the Kenai Peninsula Borough created the Kachemak Emergency Service Area subsequent to the filing of the Petition. The Borough now contracts with the City to provide fire protection and emergency medical services throughout the

³⁹ Volunteer fire department personnel living inside the City of Homer, the territory proposed for annexation, and other areas comprise an essential component of the fire protection and emergency medical services in question.

Kachemak Emergency Service Area. That Borough service area, however, excludes Millers Landing which still receives fire protection and emergency medical services directly from the City of Homer. In addition to the contract with the Borough, the City of Homer also provides fire protection and emergency medical services to the City of Kachemak.

f) Other Factors

Other factors relevant to consideration of the ability of the City of Homer to provide services efficiently and cost effectively relate to the value of property in the territory proposed for annexation. Figure 4-AY shows the value of improvements, land, tax exempt property, and the assessed value of taxable property in Millers Landing, the urban area, the remnant territory, and the territory proposed for annexation as a whole.

Figure 4-AZ shows the property values in different parts of the territory proposed for annexation on a per capita basis. As shown in Figure 4-AZ, the per capita values of improvements, land, and taxable property at Millers Landing are substantially

higher than other parts of the territory proposed for annexation. In per capita terms, tax exempt property at Millers Landing is also substantially less than in other parts of the territory proposed for annexation.

Figure 4-AZ also shows a clear distinction between the per capita value of improvements in the urban area as compared to the remnant territory. The per capita value of improvements in the urban area is \$44,849.31, or 22.5% greater than the \$36,614.52 per capita figure for the remnant territory.

Figure 4-BA lists the improvements and land values of exempt and taxable property in different parts of the territory proposed for annexation. Figure 4-BA provides further evidence that Millers Landing and the urban area are significantly more developed than the remnant territory. Improvements at Millers Landing and the urban area comprise roughly two-thirds of the value of property in those areas. In contrast, the value of improvements and land in the remnant territory are nearly equal.

Figure AY
Property Value in Different Parts of the Territory Proposed for Annexation

Use	Millers Landing	Urban Area	Remnant Territory	Territory as a Whole
Improvements	\$6,652,900	\$35,924,300	\$48,660,700	\$91,237,900
Land	\$2,986,100	\$21,169,700	\$45,630,700	\$69,786,500
Less: tax exempt	\$590,800	\$9,755,300	\$17,913,200	\$28,259,300
Taxable	\$9,048,200	\$47,338,700	\$76,378,200	\$132,765,100

Source: Data extracted by DCED from the Kenai Peninsula Borough GIS

Figure 4-AZ
Per Capita Property Value in Different Parts of the Territory Proposed for Annexation

Use	Millers Landing	Urban Area	Remnant Territory	Territory as a Whole
Improvements	\$89,904.05	\$44,849.31	\$36,614.52	\$41,396.51
Land	\$40,352.70	\$26,429.09	\$34,334.61	\$31,663.57
Less: tax exempt	\$7,983.78	\$12,178.90	\$13,478.71	\$12,821.82
Taxable	\$122,272.97	\$59,099.50	\$57,470.43	\$60,238.25

Source: Data extracted by DCED from the Kenai Peninsula Borough GIS

Figure 4-BA
Improvements and Land Values Expressed as a Percentage of the Total Property Value in Different Parts of the Territory Proposed for Annexation (exempt and taxable property)

Use	Millers Landing	Urban Area	Remnant Territory	Territory as a Whole
Improvements	69.0%	62.9%	51.6%	56.7%
Land	31.0%	37.1%	48.4%	43.3%
	100.0%	100.0%	100.0%	100.0%

Source: Data extracted by DCED from the Kenai Peninsula Borough GIS

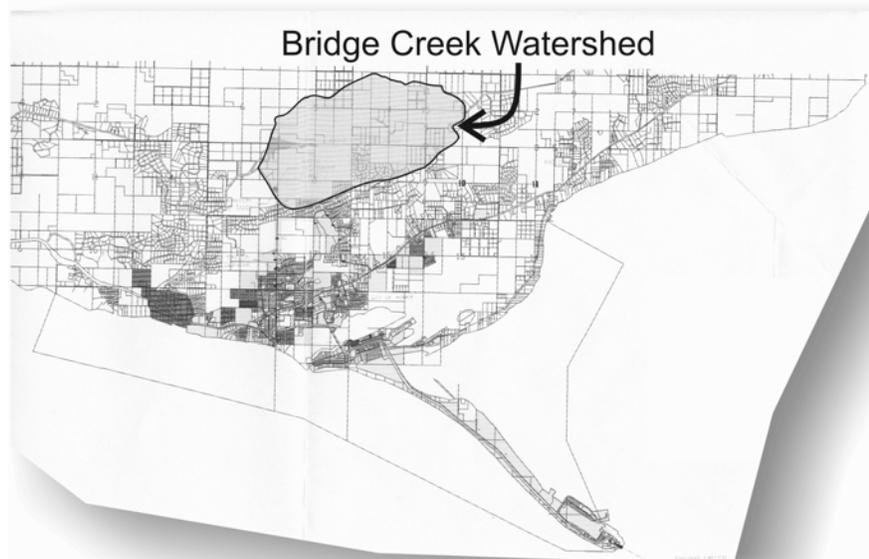
2. Conclusion

On its surface, the standard at issue – 3 AAC 110.130(a) – is typically applied in a manner to determine only whether the proposed expanded boundaries of a city are expansive enough to encompass “all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.” However, DCED believes that the standard can also be properly applied to determine whether parts of the territory proposed for annexation will hinder the efficient, cost-effective delivery of services if such are included within the expanded boundaries of the city.

Two years ago, the City received formal permission from the Kenai Peninsula Borough to regulate the Bridge Creek Watershed on an extraterritorial basis. However, the City has yet

to formally exercise that power, although an ordinance to do so is currently under development. While it has been reported that some are calling for the Borough to rescind the grant of extraterritorial powers, DCED is unaware of any serious interest on the part of Borough officials to consider such a measure.

DCED believes that the grant of extraterritorial powers provides the City of Homer with the *full legal and moral* authority to enact technically sound and socially responsible regulations governing the use and development of the watershed. As such, DCED does not consider the Bridge Creek Watershed *per se* to



be essential to the efficient, cost-effective delivery of services by the City of Homer *at this time*.⁴⁰ However, in the event that serious consideration is given to a proposal to rescind the grant of extraterritorial powers in question, as some now fear, DCED would, as a consequence, immediately alter its position and encourage annexation of the entire watershed to the City of Homer.

The analysis of land use characteristics earlier in this section of the report provided further evidence of the diversity of the territory proposed for annexation. For example, 81.3% of Millers Landing is developed, while only 28.5% of what DCED termed the “remnant territory” is developed. Further, the percentage of land developed for commercial purposes in Millers Landing is nearly 37 times greater than the territory as a whole. Moreover, the percentage of land developed for residential

purposes in the area termed by DCED as the “urban area” is twice that of the remnant territory.

Population density is another key measure of the ability of a city to provide efficient and cost-effective services. The population density of Millers Landing is nearly 63% greater than the average population density of all cities in Alaska. The population density in the urban area is 50.8% greater than the statewide average. In stark contrast, the population density in the remnant territory is about one-third of the average of all cities in Alaska.

Various measures of property values in different parts of the territory proposed for annexation clearly show that Millers Landing and the urban area are more developed than the remnant territory proposed for annexation.

Ultimately, however, as the remnant territory continues to grow and develop, so too may the ability of the City of Homer to serve that territory efficiently and effectively. There are many individuals and organizations

⁴⁰ Limited portions of the territory termed by DCED as the “urban area” are included in the southern portions of the Bridge Creek Watershed.

with overlapping interests regarding the future delivery of essential local government services to the area in question on an efficient and cost-effective level. Those individuals and organizations clearly include the Homer city government, residents and property owners within the City of Homer, the Kenai Peninsula Borough government, along with residents and property owners of the remnant territory. All would be well served by recognition of their mutual interests in that regard so that better planning for future alterations of the structure of local government in the greater Homer area may occur in a productive manner.

Moreover, DCED concludes that the area within the City of Kachemak has been given far too little attention in these proceedings. For reasons that are obvious and others that will be ad-

dressed later in this chapter under the balanced best interests standard, the area within the City of Kachemak cannot be ignored when considering the ideal framework for local government in the greater Homer area. As such, Kachemak city government officials along with the other residents and property owners within the City of Kachemak should also be directly involved in planning the future structure of local government in the greater Homer area.

Based on the foregoing, DCED concludes that the standard set out in 3 AAC 110.130(a) is best met *at this particular* time if the expansion of the boundaries of the City of Homer is limited to Millers Landing and the property termed by DCED as the “urban area.” A map showing those areas appears in Chapter 5 of this report.

4.10 City Boundaries Limited to Community

A. Standard Established in Law

A city government is permitted to annex only the area comprising that portion of the existing community lying beyond the current corporate boundaries of the city, plus areas in which the community may be reasonably expected to grow over the next decade. Specifically, 3 AAC 110.130(c) states as follows:

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

State law sets out criteria for determining a community for purposes of the Local Boundary Commission’s deliberations. Specifically, 3 AAC 110.920 provides as follows:⁴¹

DETERMINATION OF COMMUNITY.

(a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people

(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community or social unit if

(1) public access to or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

⁴¹ While 3 AAC 110.920(a) is relevant to defining the “community of Homer”, provisions in 3 AAC 110.920(b) are relevant only to determinations regarding petitions for city incorporation. As such, they are not relevant to these proceedings.

B. Application of the Community Standard to the Homer Petition.

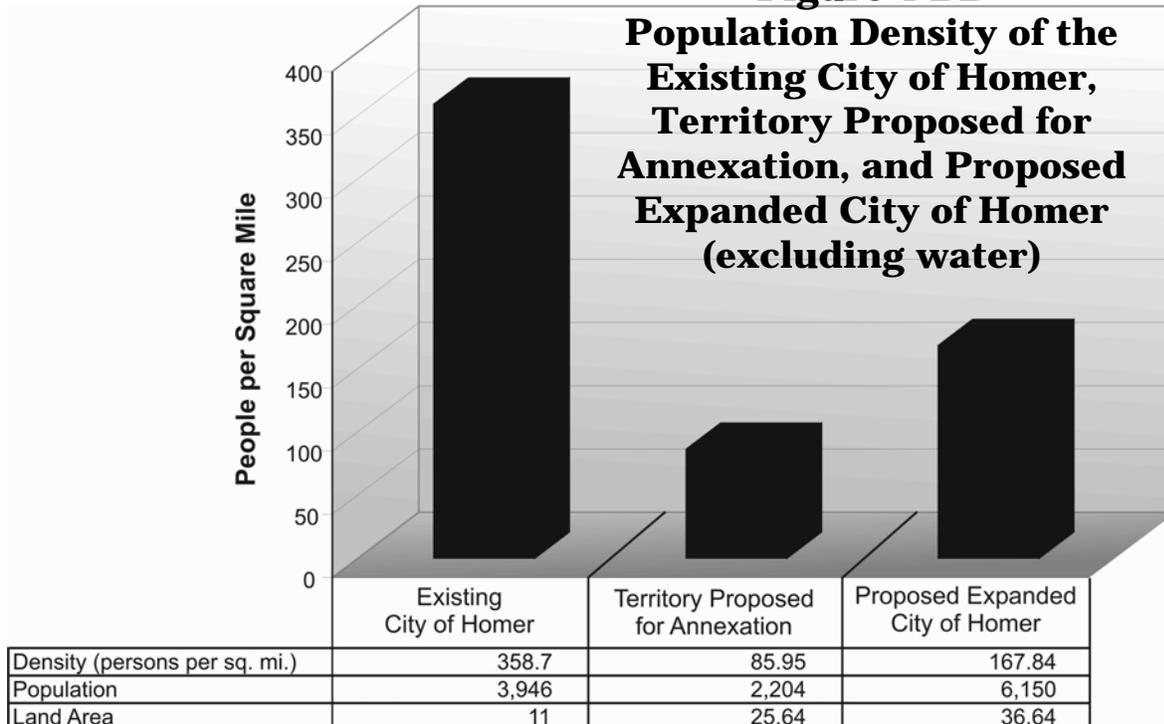
1) Background

Some cities in Alaska have historically approached annexation in a piecemeal and inefficient fashion. For example, one city in Alaska undertook forty-two annexations from 1970 – 1992. In 1992, the standard at issue here was adopted to encourage petitioners to take a more comprehensive and long-term approach to annexation.

3 AAC 110.130(c) is intended to urge petitioners to identify all proximate areas that are part of the existing community and that may reasonably warrant inclusion within the city during the next decade. This standard reflects the fact that development of an annexation petition requires a substantial commitment of time and energy and that, in general, municipal governments, residents, and property owners are often better-served if municipal boundary

270

**Figure 4-BB
Population Density of the Existing City of Homer, Territory Proposed for Annexation, and Proposed Expanded City of Homer (excluding water)**



changes are few in number and comprehensive in scope rather than small, frequent, and piecemeal.

2) Facts in this Proceeding.

a) Whether people in the proposed expanded boundaries of the City of Homer reside permanently in close geographical proximity that allows frequent personal contacts and whether the area has a population density that is characteristic of neighborhood living.

It is generally the case that each city government in Alaska encompasses all or portions of a single community. Therefore, in addressing the factor of whether people in the proposed expanded boundaries of the City of Homer reside in close geographic proximity, it is useful to compare the population density of the proposed expanded City of Homer with other existing city governments in Alaska.

Figure 4-BB shows the population density of the existing City of

Homer, the territory proposed for annexation, and the proposed post-annexation boundaries of the City of Homer (excluding water).

As noted earlier in this chapter, the population density of all cities in Alaska averages 174.7 residents per square mile of land. The figure for the proposed expanded City of Homer is only 3.9% below the statewide average. Thus, DCED finds that the residents within the proposed expanded boundaries of the City of Homer reside within close geographic proximity that allows frequent personal contacts.

Figure 4-BC	
Kenai Peninsula Borough Public Schools within the City of Homer	
School	Enrollment as of October 1, 2000
Fireweed Academy	26
Homer Flex School	35
Homer High School	555
Homer Middle School	230
Paul Banks Elementary	242
West Homer Elementary	323
Total	1,411

School Enrollment.

The Kenai Peninsula Borough operates several schools serving the greater Homer community. Figure 4-BC lists the Kenai Peninsula Borough schools located within the corporate boundaries of the City of Homer.

Generally, public school enrollment of any area in Alaska makes up roughly one-fifth (20%) of that area's total population. The Kenai Peninsula Borough conforms to the general rule of thumb almost precisely. In October 2000, there were 9,925 students enrolled in the Kenai Peninsula Borough's schools. The 2000 census reported 49,691 people living in the Kenai Penin-

sula Borough. Thus, public school students comprised 19.97% of the total population of the Borough during 2000.⁴²

1,411 pupils were enrolled in the six public schools located within the corporate boundaries of the City of Homer in October of last year. The enrollment suggests that the area served by those schools has a general population of approximately 7,055 (1,411 is 20% of 7,055).⁴³ That figure is 905 (14.7%) greater than the 6,150 people estimated to live within the proposed expanded boundaries of the City of Homer.

The Homer High School and Homer Middle School attendance area boundaries are defined by the Kenai Peninsula Borough School District as follows:⁴⁴

⁴² The relative figure statewide was slightly higher in 2000. Specifically, 133,356 students were enrolled in public schools in Alaska in October of last year. The 2000 census counted 626,932 residents in the state. Thus, statewide, public school students comprised 21.27 percent of the total population.

⁴³ That figure is probably low since it does not take into account students at either Chapman School (the majority of whom attend Homer High School) or McNeil Canyon School (the majority of whom attend Homer Middle School and Homer High School). The Homer High School serves grades 9 – 12, or four of the thirteen grades served by the Kenai Peninsula Borough School District (K-12). If the total number of students in public schools represent approximately 20% of the population, it can be stated that the students at Homer High School represent approximately 4/13ths of 20% (6.15%) of the population within the Homer High School attendance area. Thus, the 555 students enrolled at Homer High School suggest a population of the attendance area of 9,024 (555 is 6.15% of 9,024).

⁴⁴ 2001 - 2002 Boundaries – Kenai Peninsula Borough School District, page 4.

North Fork Road on the north, into Homer and south to Mile 22.5 on the East End Road. Includes all of the area encompassed by McNeil Canyon, Paul Banks and Homer Intermediate.

Because of the bus schedules, 7th & 8th grade students living on the south end of the North Fork Road have the choice of being bused to either Chapman, Nikolaevsk or Homer Middle. 9-12 grade students have the choice of Nikolaevsk or Homer High.

The Kenai Peninsula Borough School District does not have a map of the Homer High School and Homer Middle School attendance area. The boundaries

of the area are somewhat vague, particularly with respect to the northwestern portion. However, school district officials indicate that the majority of students at Anchor Point attend high school in Homer. North of Anchor Point, students generally attend high school at Ninilchik. As such, DCED reasonably assumes the northwestern boundary of the Homer High School and Homer Middle School attendance area crosses the Sterling Highway somewhere around mile 156 –

Figure 4-BD
Map Showing Approximate Boundaries of the Homer High School and Homer Middle School Attendance Area Boundaries

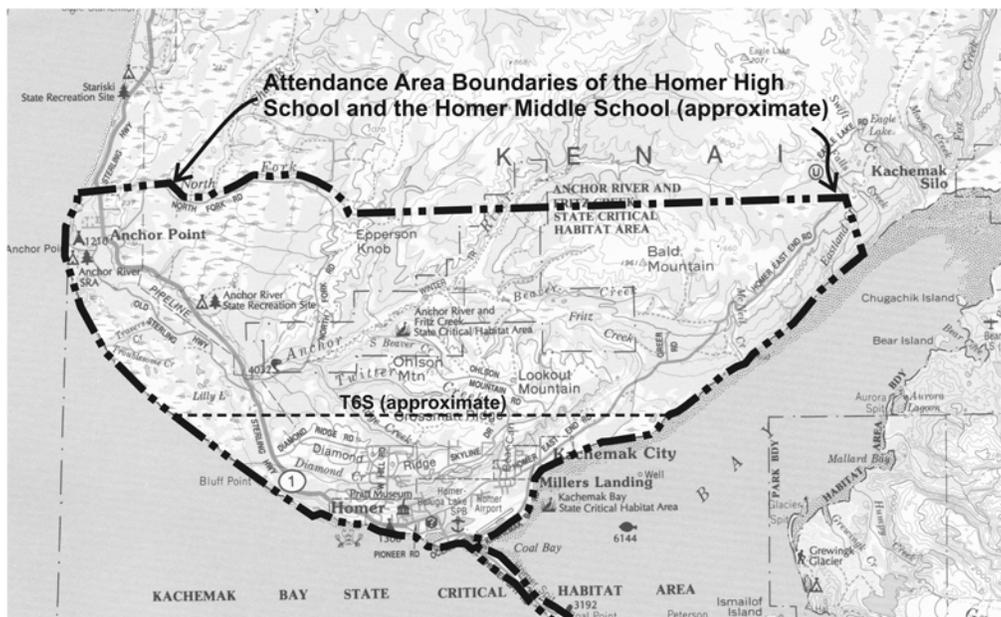


Figure 4-BE Public Schools in the General Vicinity but Beyond the Proposed Expanded Boundaries of the City of Homer			
School	Location	10/1/00 Enrollment	Range of Grade Levels
Chapman School	34215 Sterling Highway near Anchor Point	182	Kindergarten – Grade 8
Kachemak Selo School	North of Fritz Creek	69	Kindergarten – Grade 10
McNeil Canyon Elementary	Mile 12.5 of East End Road (approx. 6 road miles north of the territory proposed for annexation)	136	Kindergarten – Grade 6
Nikolaevsk School	Near Anchor Point on Nikolaevsk Road leading from North Fork Road and the Sterling Highway	131	Kindergarten – Grade 12
Razdolna School	North of Fritz Creek	26	Kindergarten – Grade 10
Voznesenka	North of Fritz Creek	135	Kindergarten – Grade 12

Schools operated by the Kenai Peninsula Borough outside the proposed expanded boundaries of the City of Homer but in the general vicinity are listed in Figure 4-BE.

274

about 9.7 highway miles beyond the northern boundary of the territory proposed for annexation. In the eastern portion of the attendance area, the boundary is defined to cross East End Road at mile 22.5 – about 15.8 road miles beyond the northern boundary of the territory proposed for annexation.

Figure 4-BD is a map prepared by DCED to show the approximate boundaries of the Homer High School and Homer Middle School attendance areas. The northern boundary of the territory proposed for annexation is also shown (T6S).

DCED finds from the foregoing that the school enrollment patterns for schools in the Homer area suggest that the boundaries proposed by the Petitioner are within the community of Homer.

Sources of Employment.

Community level employment figures from the 2000 census are not yet available. However, employment figures from the 1990 census demonstrate that residents of the community were employed in a broad range of public and private sector

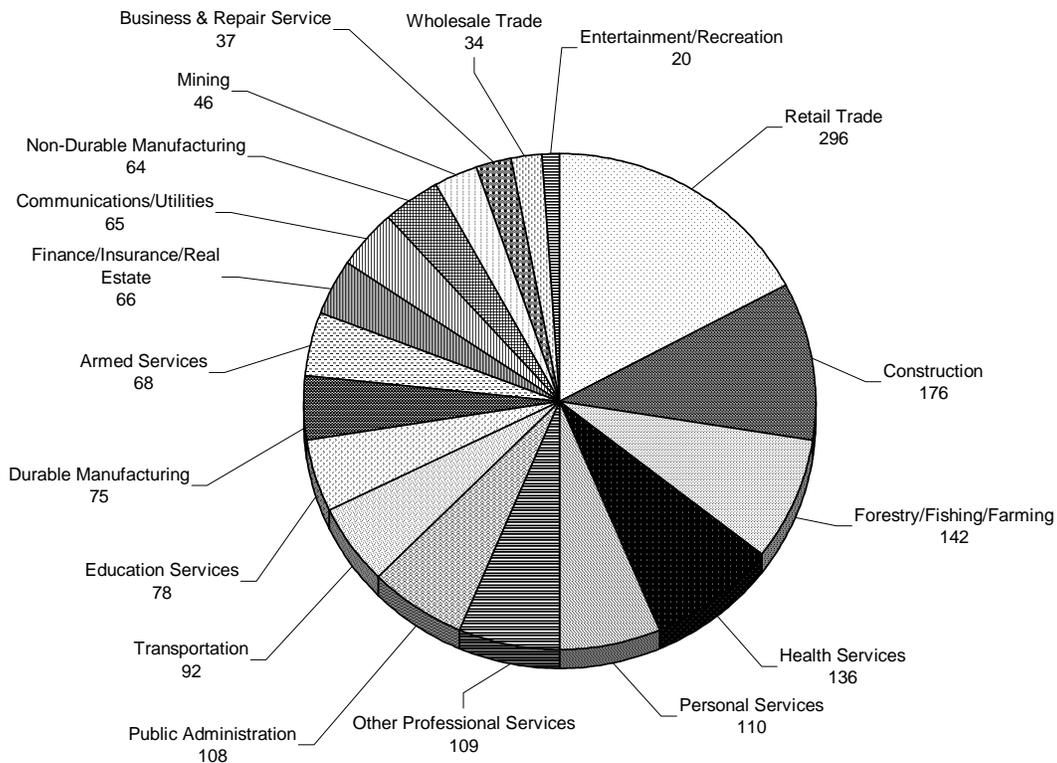
jobs including fishing, fish processing, trade and service, and a considerable seasonal tourist industry.

The 1990 census reported 1,722 residents of the area within the corporate boundaries of the City of Homer to be employed. Figure 4-BF-1 shows occupations in which those 1,722

persons were engaged. Figure 4-BF-2 shows the industries in which the 1,722 persons were employed.

General descriptions in DCED's community database of the areas immediately north of Homer indicate that a number of those who live in the Diamond Ridge, Millers Landing, Fritz Creek, and Anchor Point areas are employed in Homer. Specifically, the database states as follows:

**Figure 4-BF-1
Employment by Occupation among Residents of the
City of Homer (1990)**



General Description of the Local Economy:

Diamond Ridge

Many residents work in Homer in a variety of positions. The community caters to the sport-fishing industry, and several lodges provide services.

Millers Landing

Nearby Homer offers a variety of employment opportunities. There are few local businesses; supplies and services are provided by Homer.

Fritz Creek

Nearby Homer offers fishing, fish processing and a relatively diverse economy. Unemployment is low. Twelve residents hold commercial fishing permits.

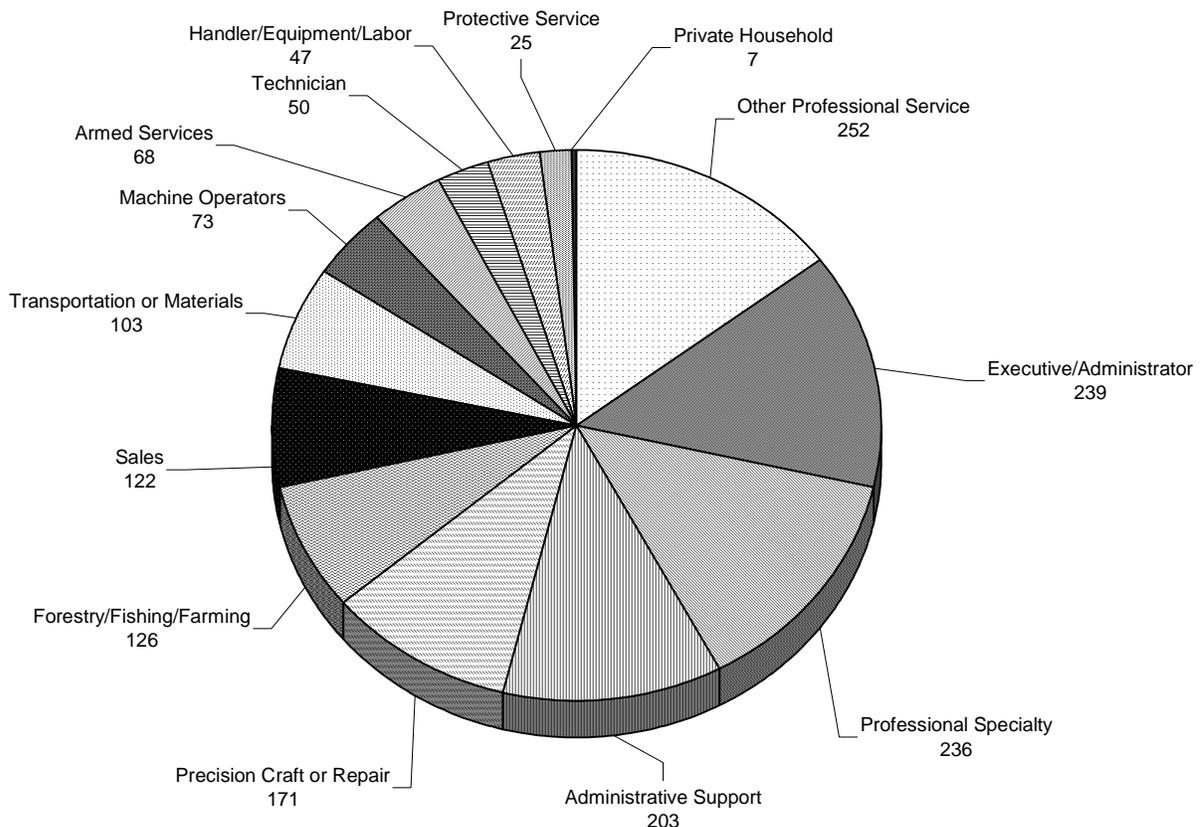
Anchor Point

Many residents work in Homer in a variety of positions. The community caters to the sport-fishing industry, and several lodges provide services. A small sawmill helps to process timber from various borough sites. 84 residents hold commercial fishing permits. The North Pacific Volcano Learning Center will be developed in Anchor Point; it is scheduled for completion in 2002.

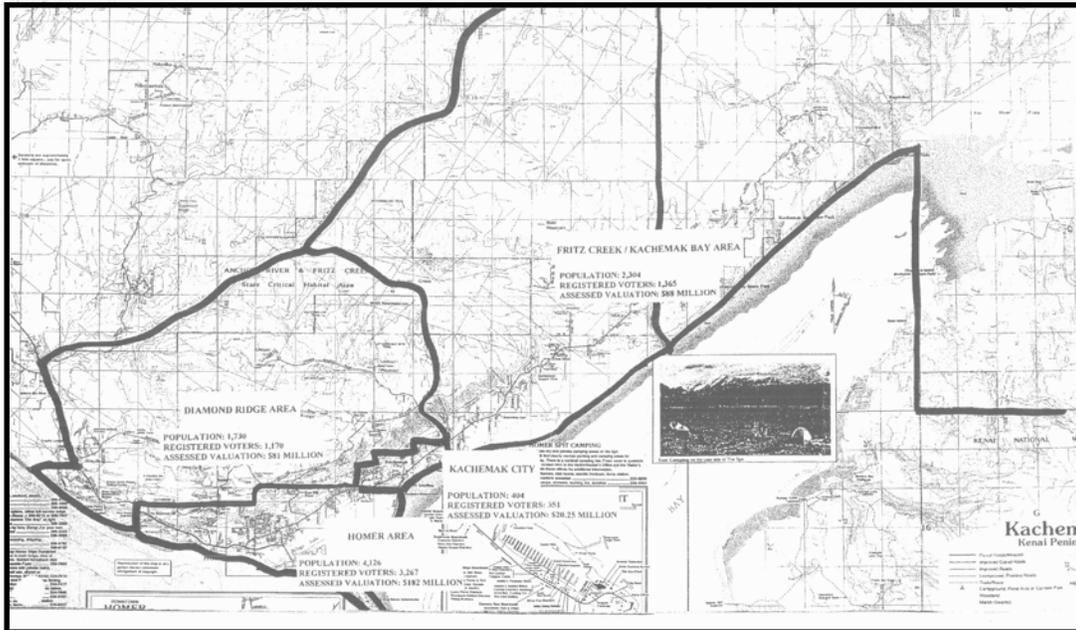
On the basis of the foregoing, DCED finds that employment opportunity patterns indicate that the territory proposed for annexation is part of the community of Homer.

276

**Figure 4-BF-2
Employment by Industry among Residents of the City of Homer (1990)**



**Figure 4-BG
Reply Brief, Exhibit 67**



Precinct Boundaries.

In 1998, the City of Homer contemplated annexation of the Diamond Ridge and the Fritz Creek/Kachemak voting precincts. As indicated on the map developed by the City at that time (see Figure 4-BG), annexation of those areas would have included areas unlikely to be developed within the next decade.

The Petition currently seeks annexation of an area that is relatively compact compared to the area the City contemplated annexing in 1998. The area sought by the Petition does not conform to the expansive voting precincts contemplated in 1998. As such, DCED considers the boundaries proposed by the current Petition to better satisfy 3 AAC 110.130(c) than the area considered for annexation by the City in 1998.

Permanency of Dwelling Units.

Figure 4-AG (presented earlier in this chapter under the discussion of the character of the territory proposed for annexation) provides information about housing characteristics in the City of Homer and the territory proposed for annexation. To avoid repetition, that information will not be restated here. However, readers are encouraged to review the material stated previously. DCED also reported earlier in this chapter that there are forty-four mobile homes in the territory proposed for annexation.⁴⁵

DCED finds from the foregoing that the dwelling units in the City of Homer and the territory proposed for annexation are, with the possible exception of the forty-four mobile homes, permanent.

Community Commercial Establishments and other Service Centers.

Two local publications provide extensive listings and additional information concerning current commercial and service establishments in Homer. These are *The Official Guide of the Homer Chamber of Commerce – The Homer News’ 2001 Tourism & Recreation Guide*, and the guide published by Homer Secretarial Services entitled *2001 Homer Business Directory & Visitor Guide*. The former describes Homer commercial service area as follows:

Homer’s population has grown to 4,150, but the city serves as a trading and service center for nearly 11,000, from Anchor Point to the villages across Kachemak Bay. The City has a modern hospital, newspapers, a branch campus of the University of Alaska Anchorage, public and commercial radio stations, a movie theater, thriving commercial and sport fishing fleets and a high school considered one of the best in the nation.

⁴⁵ The Kenai Peninsula Borough’s GIS indicates that there are 44 mobile homes in the territory. However, the GIS land use data also indicate that 56 parcels in the Borough are used for mobile homes. The discrepancy may be due to the use of multiple parcels by a single mobile home.

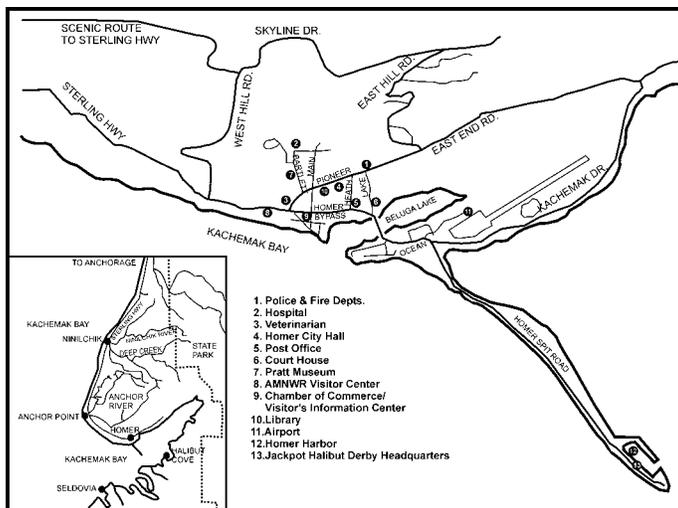
Both publications list businesses inside the existing corporate boundaries of the City of Homer and the territory proposed for annexation.

The Homer Chamber of Commerce Internet web site provides a detailed map of what that organization apparently considers, in a general manner, to be the Homer community. The area shown on that map, reflected in Figure 4-BH, includes all but about the northernmost mile of the territory proposed for annexation, along with the westernmost and easternmost parts of the territory.

DCED finds from the facts noted above that the character of commercial establishments and other service providers in the territory proposed for annexation suggest that they are part of the greater community of Homer.

3. Conclusion

Based on the foregoing findings, DCED concludes that the area proposed for annexation is a part of one reasonably compact urban community and its suburbs comprising the metropolitan area of Homer. Corporate boundaries notwithstanding, the area proposed for annexation is, without question, part of the social and economic fabric of the greater Homer community.



**Figure 4-BH
Homer Chamber of Commerce map indicating locations of several key community facilities. Several of these basic public facilities, including the airport, library, hospital, post office and harbor, serve both residents of the City of Homer and the greater Homer community.**

People in the proposed expanded boundaries of the City of Homer attend the same schools, utilize the same governmental offices and facilities, patronize the same library, shop at the same commercial facilities, attend the same clubs, associations, and churches, read the same newspapers, listen to the same radio stations, and utilize the same medical service facilities. Moreover, many of the area's major local streets and roads, such as West Hill Road, East Hill Road, Rogers Loop, East End Road, and Kachemak Drive bind portions of the territory proposed for annexation with adjacent areas within the current City boundaries.

Although the two areas are divided by an invisible political boundary, the record indicates that the de facto Homer community encompasses the territory proposed for annexation. Given the facts in this matter, the City of Homer annexation proposal satisfies the standard set out in 3 AAC 110.130(c).

4.11 Comparative Ability to Provide Essential Municipal Services

A. Standard Established in Law

In order to be successful in its annexation bid, the annexing city must demonstrate to the satisfaction of the Local Boundary Commission that it is better able to provide needed services to the territory proposed for annexation than another existing city or an organized borough. Specifically, 3 AAC 110.090(b) provides:

A territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

B. Application of the Comparative Ability Standard to the City of Homer Petition

1) Background

3 AAC 110.090(b) does not list any specific factors for the Commission to consider in determining whether an annexing city is best able to provide services. However, certain factors merit obvious consideration.

First, it is appropriate to identify all existing municipal governments that, by virtue of their proximity to the territory proposed for annexation, might have the ability to serve the territory. Next, consideration should be given to geographic features that limit the ability of any of the identified municipalities to provide services to the territory proposed for annexation. It is essential then to examine the legal capacity of the municipalities to provide needed services. Further, it is appropriate to review the fiscal capacity of the municipal governments in question, existing municipal capital facilities, and, lastly, current staff capabilities.

2) Facts in this Proceeding

a) Existing Municipal Governments within the Vicinity of the Territory Proposed for Annexation and Geographic Limitations.

Four municipal governments have jurisdictional boundaries within a fifty-mile radius of the territory proposed for annexation. Those are, of course, the Kenai Peninsula Borough, City of Homer, City of Kachemak, and the City of Seldovia.

The corporate boundaries of the Kenai Peninsula Borough wholly encompass (and extend well beyond) the territory proposed for annexation, while the City of Homer and the City of Kachemak adjoin the territory.

The territory proposed for annexation is approximately twenty miles distant from the corporate boundaries of the City of Seldovia.



Foreground: portion of the City of Kachemak. Middle: portion of Millers Landing. Background: Homer airport runway.

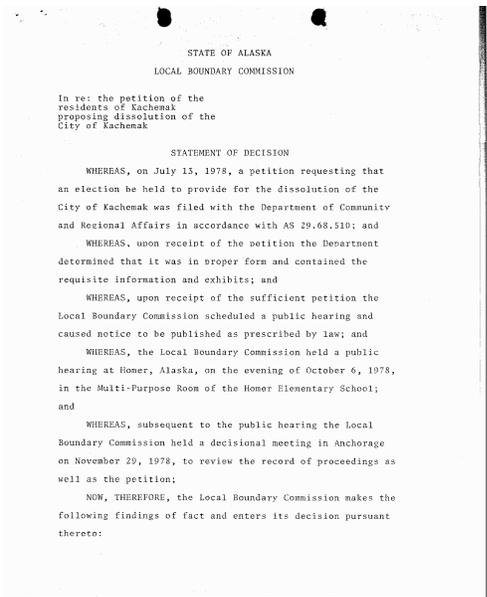
Since three of the municipalities encompass or adjoin the territory proposed for annexation, DCED finds the considerable distance between City of Seldovia and the territory proposed for annexation to be a major limitation on that city's comparative ability to serve the territory. That limitation is greatly amplified by the lack of a roadway connecting Seldovia and the territory proposed for annexation. Given those circumstances, DCED finds that the City of Seldovia lacks any reasonable capacity to provide municipal services to the territory in question. Geographic considerations, however, do not rule out any of the other three municipal governments from consideration.

The City of Kachemak is the oldest of the three remaining municipal governments. Widely reported anecdotal accounts indicate that residents of Kachemak initiated a petition to incorporate a city in order to preempt the possibility of being included in a prospective City of Homer.⁴⁶

The petition to incorporate the City of Kachemak was initiated in the spring of 1961. The Superior Court held a hearing regarding the petition on May 17, 1961.⁴⁷ The court concluded that the petition satisfied the applicable third class city incorporation standards and directed an election to be held regarding the matter on July 25, 1961. The subsequent tally of the election results demonstrated that a majority

⁴⁶ At the time, a public utility district served Homer. Territorial law authorized the creation of public utility districts in 1935. They were multipurpose special districts governed by an elected board of directors with powers to provide a wide range of local services and facilities (e.g., utilities, hospitals, dams, cold storage plants, warehouses, and canneries). Public utility districts were not recognized under Alaska's Constitution, which went into effect on January 3, 1959. Article X, Section 15 of Alaska's Constitution provided that such special districts were to be integrated into constitutionally recognized forms of government. Thus, incorporation of a future City of Homer was foreordained at the time of incorporation of the City of Kachemak.

⁴⁷ Prior to 1969, petitions to form city governments in Alaska were reviewed by the courts. The responsibility for such was subsequently transferred to the Local Boundary Commission.



voters favored incorporation. However, opponents contested the election. The court ultimately upheld the election and the City of Kachemak incorporated as a third class city on September 1, 1961.

The corporate boundaries of the City of Kachemak encompass 1.83 square miles. The boundaries have never been altered in the forty years since it incorporated.

DCED does not have a record of the population of the City of Kachemak at the time of incorporation. However, the population of the City of Kachemak nine years after incorporation was 76.

The City of Kachemak was reclassified as a second class city effective September 1, 1973, following elimination of the third class form of city government by the State legislature.

In 1978, a petition to dissolve the City of Kachemak was filed with the Local Boundary Commission. The Commission held a hearing on the matter at the Homer Elementary School on October 6, 1978. Following the hearing, the Commission denied the petition.

The Kenai Peninsula Borough is the second oldest of the three municipalities in question. It was incorporated as a second class borough by legislative fiat without voter approval on January 1, 1964.⁴⁸ The 1960 population of the area was 9,053; by 1970, the population of the Kenai Peninsula Borough had climbed to 15,836.

⁴⁸ The Kenai Peninsula region and seven other populous regions were compelled to form organized boroughs under the Mandatory Borough Act, adopted by the 1963 Legislature and signed into law by Governor Egan as Chapter 52, SLA 1963.

The Kenai Peninsula Borough encompasses an estimated 21,330 square miles, including the territory proposed for annexation, City of Homer, and City of Kachemak. The areawide, nonareawide, and service area functions within the territory proposed for annexation were described in Chapter 1, Section 1.2 of this report.

The City of Homer was formed shortly after the Kenai Peninsula Borough. Voters in Homer petitioned for incorporation of a first class city. The Superior Court approved the petition.⁴⁹ Voters subsequently endorsed the incorporation proposal. The City of Homer was formally incorporated as a first class city on March 31, 1964. The 1970 population of the City of Homer was 1,083. Information about the municipal boundaries and functions of the City of Homer was provided previously.

b) Legal capacity of the municipalities to provide services.

The three municipal governments in question are all general law municipalities – a second class borough, second class city, and first class city. Those specific forms of local government and all other types of municipal government in Alaska enjoy broad powers.

Article X, Section 1 of the Alaska Constitution states, in part that, “A liberal construction shall be given to the powers of local government units.” In 1978, the Alaska Supreme Court ruled as follows with regard to the liberal construction clause in a matter involving the Bristol Bay Borough, a second class borough (like the Kenai Peninsula Borough) and a general law municipality (like all three governments in question):⁵⁰

⁴⁹ The 1961 and 1964 actions by the Superior Court to approve petitions for incorporation of the City of Kachemak and the City of Homer apparently gave little or no consideration to the provisions of Article X, Section 1 of the Constitution of the State of Alaska. That section of the Constitution provides, in relevant part, for “a minimum of local government units.” That constitutional provision and the limitations imposed by the current AS 29.05.021(b) support a single city government to serve the areas in question. (AS 29.05.021(b) states, “A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided . . . by annexation to an existing city.”)

⁵⁰ *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).

The constitutional rule of liberal construction was intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.⁵¹

Further, the legislature has enacted broad statutory provisions consistent with Article X, Section 1 concerning the construction of general law municipal powers. Those provisions state as follows:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions

necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983), the Alaska Supreme Court addressed Article X, Section 1 along with the version of the two statutes noted above that was in effect at the time. The Court concluded that the Kenai Peninsula Borough had powers beyond those expressly stated in law. More specifically, the Court concluded that even though State statutes did not specifically authorize the Kenai Peninsula Borough to dispose of land by lottery, that power was "fairly implied."

⁵¹ (Footnote original) The rule, called Dillon's rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merrian v. Moody's Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Hellenenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

footnote continued on next page

Moreover, the Court indicated that the Kenai Peninsula Borough's ordinance providing for the lottery appeared to conflict with State law. To resolve the apparent conflict, the Court applied the same principle (irreconcilable conflict rule) in *Gilman v. Martin* that it had used previously to resolve conflicts between State statutes and home rule ordinances. Specifically, the Court stated (at 124):

We further conclude that Ordinance 79-53 is not invalid even though it arguably conflicts with AS 11.60.010. As we stated in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974):

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

Accord City of Kodiak v. Jackson, 584 P.2d 1130, 1132 (Alaska 1978); *Johnson v. City of Fairbanks*, 583 P.2d 181, 184 (Alaska 1978); *Simpson v. Municipality of Anchorage*, 635 P.2d 1197, 1200 (Alaska App.1981). Municipalities have not been expressly prohibited from authorizing land sale lotteries and Ordinance 79-53 is not irreconcilable with AS 11.60.010; the statute

footnote continued from previous page

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called "Dillon's Rule", or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

....

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.

120 Alaska 662 PACIFIC REPORTER, 2d SERIES

with Dudley and Ekness before their alleged negligence or breach of contract occurred. Furthermore, ASHA failed to establish any material issue of fact that would preclude finding as a matter of law that Blomfield could not be liable as a joint venturer by estoppel for the alleged negligence or breach of contract by Dudley and Ekness. On the evidence presented to the superior court by the parties, it was proper for the superior court to grant summary judgment for Blomfield.

The judgment of the superior court is **AFFIRMED**.



Don GILMAN, Kenai Peninsula Borough Mayor, Francis Bryner, Borough Clerk, Phillip Waring, Borough Planning Director, and Elroy Barton, Finance Director, Appellants,

v.

Harry V. MARTIN, Larry C. Zervos, Garland Dean Thompson and Harry V. Martin, a Kenai Peninsula Borough Assemblymember, Appellees.

No. 5987.
Supreme Court of Alaska.
April 1, 1988.

President and taxpayer of borough and two individuals who were ineligible for borough land sale lottery brought action seeking declaration that land sale lottery ordinance was unconstitutional. The Superior Court, Third Judicial District, Ralph E. Moody, J., entered judgment and appeal was taken. The Supreme Court, Compton, J., held that: (1) land sale lottery ordinance did not violate statute prohibiting unlawful gambling; (2) ordinance violated equal protection clauses by requiring participants to have been residents of borough for one year preceding the application; and (3) provision in ordinance granting reductions

in purchase price of borough lands based upon length of residence was unconstitutional.

Affirmed in part and modified in part. Rabinowitz, J., filed an opinion dissenting in part.

1. Declaratory Judgment \Rightarrow 292
Resident and taxpayer of municipality had sufficient interest in disposition of significant number of acres of municipality's land to seek declaratory judgment as to validity of the disposition by means of land sale lottery.

2. Declaratory Judgment \Rightarrow 300
Two individuals, who had not resided in municipality for a one-year period and who thus would have been ineligible to participate in land sale lottery pursuant to borough ordinance requiring participants to have been residents of borough for one year preceding their applications, had standing to seek declaratory judgment that ordinance was invalid.

3. Lotteries \Rightarrow 3
Land sale lottery ordinance was not invalid on basis that it violated statute prohibiting certain forms of gambling in the state since it was specifically authorized by law allowing municipality to establish formal procedure for acquisition from state of land or rights in land and disposal of land or rights in land, and thus, lottery was not "unlawful gambling." AS 11.66.200, 11.66.280(2, 11); AS 11.60.010 (Repealed).

4. Constitutional Law \Rightarrow 83(1)
Right to interstate or intrastate travel is impinged upon only when governmental entity creates distinctions between residents based upon duration of their residency and not when distinctions are created between residents and nonresidents. U.S. C.A. Const. Amend. 14.

5. Constitutional Law \Rightarrow 213.1(1)
Discrimination on basis of residence must be supported by valid interest independent of discrimination itself. U.S.C.A. Const. Amend. 14; Const. Art. I, § 1.

only prohibits gambling not authorized by law and Ordinance 79-53 is a law authorizing land sale lotteries. We thus conclude that the Borough's land sale lottery does not violate Alaska's statute prohibiting unlawful gambling.

The court quoted the irreconcilable conflict rule and cited *Jefferson v. State* as the source without making a distinction as to the deference due to an enactment by a home rule municipality as compared to a general law municipality. The application of the irreconcilable conflict rule in *Gilman v. Martin* clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature eliminated the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general law municipalities; i.e., "...any power not otherwise prohibited by law." [AS 29.35.200(a) & (c); 210(c) & (d); 220(d); 250(a); 260(a)]

This grant has no general limitations such as 'any municipal power' or 'any local government power' which might imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, § 1, *Liberati v. Bristol Bay Borough, Gilman v. Martin*, and the literal language of the grant.



Alaska Constitutional Convention delegates (1955-1956).

Similarly, it may be relevant that the second sentence of Article X, § 1 reads “A liberal construction shall be given to the powers of local government units” instead of, “A liberal construction shall be given to local government powers.” The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a “local government power” as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska’s Constitution

does not lend itself as easily to such an interpretation. The constitutional language coupled with the language of the AS 29 grants (“any power not otherwise prohibited by law”), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, the nature of the powers to which a general law municipality has access under current AS 29 are substantially the same as those to which a home rule municipality has access, bearing in mind the specific AS 29 limitations that apply to general law municipalities.

For example, AS 29.35.250 states that, “A city inside a borough may exercise any power not otherwise prohibited by law.” Thus, the first class (general law) City of Homer and the second class (general law) City of Kachemak have the authority to employ any power that is not barred by law.

Moreover, AS 29.35.490(a) provides that “A second class borough may exercise in a service area any power granted a first class city by law . . .” Since a first class city can exercise any power “not otherwise prohibited by law,” that same authority is available to a second class borough in a service area. However, the exercise of powers on a service area basis by a second class borough is subject to approval by the voters (AS 29.35.490).

A second class borough has the same broad powers available to it on a nonareawide basis and areawide basis. However, with the exception of a limited number of powers, voter authorization for the assumption of additional areawide and nonareawide powers is required. Specifically, AS 29.35.210 provides as follows:

Sec. 29.35.210. Second class borough powers.

(a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) subject to AS 29.35.050 , provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control under AS 46.14.400;
- (6) provide water pollution control;
- (7) participate in federal or state loan programs for housing rehabilitation and improvement for energy conservation;
- (8) provide for economic development;
- (9) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251;
- (10) establish an emergency services communications center under AS 29.35.130;
- (11) subject to AS 28.01.010, regulate the licensing and operation of motor vehicles and operators;
- (12) engage in activities authorized under AS 29.47.460;
- (13) contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that

is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210.

(b) A second class borough may by ordinance exercise the following powers on an areawide basis:

- (1) provide transportation systems;
- (2) license, impound, and dispose of animals;
- (3) provide air pollution control under AS 46.14.400;
- (4) provide water pollution control;
- (5) license day care facilities.

(c) In addition to powers conferred by (a) of this section, a second class borough may, on a nonareawide basis, exercise a power not otherwise prohibited by law if the exercise of the power has been approved at an election by a majority of voters living in the borough but outside all cities in the borough.

(d) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300.

If the Kenai Peninsula Borough were to extend services such as water utility service, sewer utility service, and police protection to the territory proposed for annexation, it would seem abundantly more reasonable and practical for it to do so on a service area basis rather than an areawide or nonareawide

basis. To do otherwise would require substantially greater resources. It would also require approval by the voters in a far more expansive area. Under those circumstances, voters in areas beyond the territory proposed for annexation are less likely to accept a proposal to extend services that are arguably needed in the territory proposed for annexation, but perhaps not so in all other parts of the Borough's areawide or nonareawide jurisdictions. DCED finds from these circumstances that it is unlikely to be reasonable or practical for the Borough to provide such services on an areawide or nonareawide basis. Thus, for purposes of analyzing the capacity of the Kenai Peninsula Borough to serve the territory, DCED will focus on the Borough's legal capacity to provide services on a service area basis.

Alaska's Constitution and statutes place particular limitations on the creation of new service areas. Specifically, Article X, Section 5 of the Constitution states:

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

The intent of the constitutional convention delegates regarding that provision is addressed in *Borough Government in Alaska* (at 42), a leading treatise on Alaska’s unique form of regional government:⁵²

The stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for the constitutional provision that “A new service area shall not be established if . . . the new service can be provided by an existing

service area, by incorporation as a city, or by annexation to a city.”⁵³ The committee’s objective was to avoid having “a lot of separate little districts set up . . . handling only one problem . . .”; instead, services were to be provided wherever possible by other jurisdictions capable of doing so.⁵⁴ Moreover, an amendment to eliminate the preference given to city incorporation or annexation over establishment of new service areas was defeated by the convention.

Additionally, AS 29.35.450(b) states:

A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

In 1995, the Alaska Supreme Court examined Article X, Section 5 of the Constitution and AS 29.35.450(b) in the context of a proposal to incorporate a new city

⁵² *Borough Government in Alaska*, University of Alaska, March 1971, was written by Thomas Morehouse and Victor Fischer. Misters Morehouse and Fischer are regarded as experts in matters relating to borough government in Alaska. Both individuals have published a number of works dealing with the topic. Further, Victor Fischer was not only a delegate to the Alaska Constitutional Convention, but was secretary to the Convention’s Committee on Local Government. Moreover, the Alaska Supreme Court relied on *Borough Government in Alaska* in *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974) and in *Keane v. Local Boundary Commission*, 893 P.2d 1239 (Alaska 1995).

⁵³ Constitution of the State of Alaska, Article X, Section 5.

⁵⁴ *Alaska Constitutional Convention Proceedings*, November 1955 to February 1956, Alaska Legislative Council at 2715.

within an organized borough.
The Court stated as follows in
Keane v. Local Boundary Com-
mission, 893 P.2d 1239, 1243
(Alaska 1995):

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.⁵⁵ Constructing a

barrier to approving an excessive number of government units does not prohibit the creation of them when they are necessary.⁵⁶ 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 fu-

⁵⁵ 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).

⁵⁶ 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.” *DCED 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 DCED has concluded that “the constitutional language ‘minimum of local government units’ does admonish the LBC to guard against approving the creation of an excessive number of local governments.” *Yakutat Report, supra* at 52. We note that neither view supports the addition of unnecessary government units.

ture.⁵⁷ Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.⁵⁸

Based on the above discussion, we interpret AS 29.05.021(b) as follows: when needed or desired services can be reasonably and practicably provided on an areawide or nonareawide basis by the borough, they should be.⁵⁹ As discussed *supra*, this inquiry is not limited to an evaluation of service areas. When it is established that the services cannot be provided reasonably or practicably, then the LBC is required to consider other available options. We also clarify that there is a statutory and constitutional preference for incorporation of cities over the

establishment of new service areas. We believe these to be reasonable and practical interpretations of the Alaska Constitution in accordance with common sense. *See Arco Alaska*, 824 P.2d at 710.

Based on the plain language in both Article X, Section 5 and AS 29.35.450(b), DCED believes it is reasonable to extend the Court’s holding in *Keane* to reflect a preference for city annexation over the creation of a new service area.⁶⁰ Thus, it is DCED’s view that the Kenai

⁵⁷ Delegate Doogan referred to a city as a “combination of service areas within a borough.” 4 PACC 2652 (January 19, 1956).

⁵⁸ 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).

⁵⁹ We reject Keane’s interpretation that incorporation of a city is allowed only when it is theoretically impossible for a borough to provide services. To accept such an interpretation would render the LBC powerless to approve the incorporation of any new city that is located within an organized borough because all organized boroughs have the power to provide services. *See* Alaska Const. Art. X, § 5; AS 29.35.450.

⁶⁰ DCED stresses that exceptions to the constitutional and statutory preference for a city government versus a borough service area generally exist in cases involving merger, consolidation, or unification of city and borough governments. *See Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough*, p 42-45, DCED (December 2000). *See also, Statement of Decision in the Matter of the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough*, p 19-20, LBC (June 7, 2001).

Peninsula Borough cannot legally create a new service area to serve the territory proposed for annexation if the desired service can be provided by an existing service area, an existing city, or a new city.⁶¹

Both the City of Homer and the City of Kachemak have broad legal capacity to provide services for reasons outlined earlier. Arguably, the City of Homer (as a first class city) possesses slightly greater existing legal capacity than the City of Kachemak (a second class city) because the latter lacks the unilateral power of eminent domain under AS 29.35.030 and unilateral power to levy property taxes under AS 29.45.590.

⁶¹ It should also be noted here again that AS 29.05.021(b) provides that, "A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city." Thus, a new service area or new city cannot be created if the services can be provided by annexation to an existing city.

Based on the foregoing, DCED finds that the City of Homer possesses the greatest legal capacity to extend services to the territory proposed for annexation, followed closely by the City of Kachemak. Because of the significant restrictions on its ability to create new service areas, DCED finds that the Kenai Peninsula Borough ranks last among the three municipalities in terms of its legal capacity to extend city-type services to the territory proposed for annexation.

DCED's Ranking of Legal Capacity to Provide City-type Services to the Area

1. City of Homer
2. City of Kachemak
3. Kenai Peninsula Borough

c) Fiscal capacity of the municipalities to provide services.

Property tax base. Figure 4-BI lists the actual or estimated per capita assessed values of taxable real and personal property within the City of Homer, City of Kachemak, Kenai Penin-

Figure 4-BI

Per Capita Real and Personal Property Tax Base of Various Jurisdictions Relevant to the Annexation Proposal

Area	Total Assessed Value	Population	Per Capita Value
Kenai Peninsula Borough	\$3,503,198,694	49,691	\$70,500
Territory Proposed for annexation	\$139,686,601	2,204	\$63,379
City of Kachemak	\$26,153,022	431	\$60,680
City of Homer	\$231,586,412	3,946	\$58,689
Kachemak Emergency Service Area	\$216,588,767	4,013	\$53,972

Sources: (1) Alaska Taxable (January 2001) was used for 2000 assessed values for the Kenai Peninsula Borough (\$3,041,692,284 plus \$461,506,410 oil/gas), City of Homer, and City of Kachemak; (2) Kenai Peninsula Borough provided KESA value and preliminary estimated KESA population; (3) populations for KGB, City of Homer, and City of Kachemak from 2000 census; and (4) data on territory proposed for annexation was derived from this report (real property of \$132,765,100 plus personal property of \$6,921,501).

sula Borough, Kachemak Emergency Service Area, and the territory proposed for annexation.

The Kenai Peninsula Borough has the highest per capita value of any of the areas shown in Figure 4-BI. However, that value reflects the assessment for

the entire borough (i.e., areawide jurisdiction). As noted earlier, DCED has found, for purposes of reviewing the pending annexation proposal, that it would generally be unreasonable or impractical to extend new bor-

Figure 4-BJ
Per Capita Revenues Per 1% Sales Tax Levy

Area	2000 Sales Tax Revenue	Tax Levy	2000 Population	Per Capita Revenue per 1% of Tax
City of Homer	\$3,465,157	3.5%	3,946	\$250.90
Kenai Peninsula Borough	\$12,688,268	2.0%	49,691	\$127.67
Territory Proposed for Annexation	\$647,850*	3.5%**	2,204	\$83.98

Source: Alaska Taxable (January 2001) for sales tax revenues for the KPB and City of Homer.

* DCED's projection of sales tax revenues that would accrue to the City of Homer within the area proposed for annexation. ** 3.5% reflects prospective City sales tax in the area proposed for annexation.

ough services on an areawide or nonareawide basis to serve needs of the territory proposed for annexation.

For that reason, it is more relevant to make comparisons here of the assessed values of the City of Kachemak, City of Homer, and the Kachemak Emergency Service Area. The City of Kachemak has the highest per capita assessed value of the three. The City of Homer is a close second in the ranking (3.3% less than the City of Kachemak).

The Kachemak Emergency Service Area is a more distant third (11.1% less than the City of Kachemak).

Sales tax base. Figure 4-BJ lists the per capita revenues per 1% of sales tax in the Kenai Peninsula Borough, City of Homer, and the territory proposed for annexation.

Information about taxable sales in the City of Kachemak is not available.⁶² However, the map presented earlier in this chapter showing land use charac-

⁶² The City of Kachemak does not levy a sales tax and the Kenai Peninsula Borough had no readily available information about taxable sales only within the corporate boundaries of the City of Kachemak.

teristics indicates that commercial development in the City of Kachemak is quite limited. Specifically, the map indicates that only seven parcels within the City of Kachemak are developed for commercial purposes. Such development includes a cold storage plant, sheet metal shop, petroleum distributor, propane distributor, excavation/construction operation, and gravel sorting & equipment facility.

Nearly four times as many parcels within Millers Landing are developed for commercial purposes. Thus, DCED reasonably assumes that potential sales tax revenues within the City of Kachemak are modest – in per capita terms, less than sales taxes within the territory proposed for annexation.

By a wide margin, the City of Homer has the highest capacity of any of the areas examined to generate revenues from taxable sales. In per capita terms, the ability of the City of Homer to generate sales tax revenue is nearly twice that of the Kenai Peninsula Borough and nearly three times greater than the territory proposed for annexation. Again, no figures are available for the City of Kachemak, but DCED

reasonably assumes that the sales tax generating capacity of the City of Kachemak would place it last in the rankings, below the territory proposed for annexation.

The City of Homer’s 3.5% sales tax levy clearly represents one of the most significant components of the City of Homer’s fiscal capacity to provide services and facilities. The City of Homer’s reported 2000 sales tax revenues of \$3,465,157 are equivalent to a 15.0 mill property tax levy by the City of Homer. That figure is nearly three times (2.7) the revenue generated by the City of Homer’s current property tax levy.

The City’s 3.5% sales tax levy is comprised of three parts – a 2% levy for general fund services, a 0.75% levy for the Homer Accelerated Roads Program, and a 0.75% levy for the Homer Accelerated Water and Sewer Program.

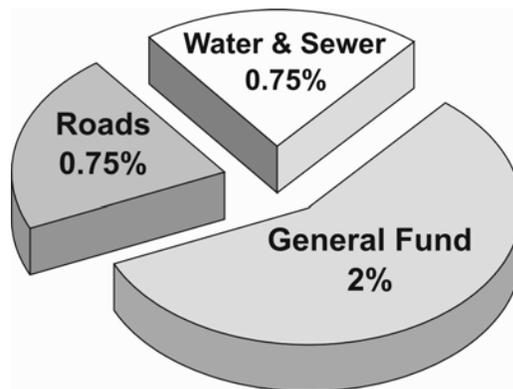


Figure 4-BK
Water and Sewer Construction Projects Recently Authorized within the City of Homer

Project	Total Estimated Cost	Amount Funded by City	Number of Parcels	Assessment Per Parcel
East Road Sewer Assessment District	\$131,154	\$65,577	8	\$8,197.13
Forest Glen Water and Sewer Assessment District	\$731,328	\$365,664	20	\$18,283.20
Harrington Heights Water and Sewer Assessment District	\$1,159,646	\$579,823	50	\$11,596.46
Hillside Acres Water Assessment District	\$1,410,795	\$705,397.50	42	\$16,795.18
Mariner Drive/Thorn Subdivision Water and Sewer Assessment District	\$610,693	\$305,346.50	28	\$10,905.23
West Lakeshore Drive Water and Sewer Assessment District	\$494,708	\$247,354	19	\$13,018.63
Totals	\$4,538,324	\$2,269,162	167	

million dollars would be added to the reserve in the current year.

Funds from the Homer Accelerated Water and Sewer Program reserve will be used to pay a

The Homer Accelerated Water and Sewer Project reserve fund had an estimated balance of \$1,743,000 at the beginning of this year. It was projected that more than three-quarters of a

portion of cost of extending water and sewer utilities.⁶³ In August of this year, the Homer City Council authorized construction to begin on 6 water and/or sewer projects encompassing 167 par-

⁶³ Historically, property owners paid 25% of the cost of water and sewer extensions while the remainder was funded through State grants. However, the State funding has become much more difficult to obtain in recent years. Statewide, the Alaska Department of Environmental Conservation (DEC) provides roughly \$15 million in municipal grants for water and sewer annually. However, applications for such grants generally total about \$90 million annually. DEC also provides about \$20 million in low interest (2.5%) loans annually to municipalities. Loan demand is roughly \$120 million annually. Thus, competition for State grants and loans is very intense. Given the difficulty in obtaining State grants, the Homer City Council adopted Resolution Number 01-21 on March 27 of this year to alter provisions for funding water and sewer projects. The resolution provides that the City will pay 50% of the cost of water and sewer lines and property owners would pay the other 50% share within as many as nine previously authorized local improvement districts. The resolution further provides that new local improvement districts, however, would be funded at a ratio of 25% City funding and 75% funding by property owners.

Figure 4-BL

Proposed Local Improvement Districts for Water and Sewer Construction Projects Recently Rejected within the City of Homer

Project	Total Estimated Cost	Amount Funded by City	Number of Parcels	Assessment Per Parcel
Saltwater Drive Water and Sewer Assessment District	\$1,353,120	\$676,560	25	\$27,062.40
Hillside Acres Sewer Assessment District	\$963,000	\$481,500	42	\$11,464.29
Thompson Drive Sewer Assessment District	\$372,672	\$186,336	17	\$10,960.94
Totals	\$2,688,792	\$1,344,396	84	

cells within the existing boundaries of the City of Homer. Those projects are outlined in Figure 4-BK.

Property owners who would bear at least half of the private share of the water and/or sewer improvements in three other proposed local improvement districts within the existing boundaries of the City of Homer recently objected to the proposed assessments. As such, AS 29.46.050 prohibits the City of Homer from proceeding with the improvements unless it revises the assessment plan to meet the objections and the objections are reduced to less than 50 percent.

The City has provided property owners in those three areas an opportunity to reconfigure the proposed districts in an effort to win support for the assessments by the necessary number of property owners. That matter is currently pending.

The three proposed local improvement districts rejected by the property owners are summarized in Figure 4-BL.

If three pending proposed local improvement districts proceed, the City will be obligated to pay upwards of roughly \$3.6 million for its share of the

costs of the nine local improvement districts. That would deplete the existing reserve and future reserve funds through the early months of 2003.⁶⁴

If annexation occurs, the 0.75% sales tax levy for the Homer Accelerated Water and Sewer Project reserve would generate approximately \$900,000 annually to support new water and sewer extensions. With the City's share of future water and sewer utility extensions limited to 25% of the total cost, the City's funding would support \$3.6 million annually in water and sewer utility extensions.

Like the water and sewer reserve fund, the Homer Accelerated Road Program reserve fund also has a substantial balance.

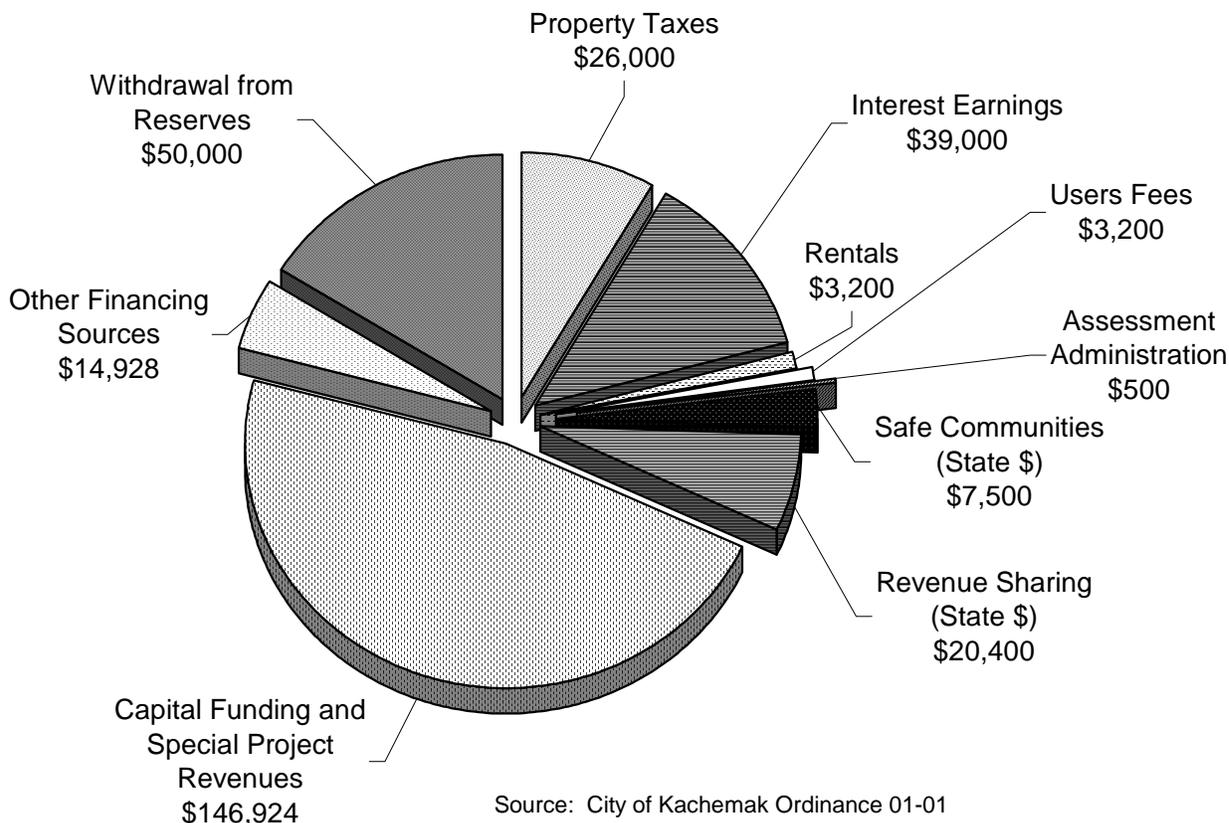
The City's current fiscal year budget indicates that the reserve will have more than \$2.3 million this year.

Pending and proposed local improvement districts for road improvement projects in the City of Homer include reconstruction of Swatzell Street, paving of Rangeview, Jenny Way road reconstruction, and Mariner Drive/Starboard Way road reconstruction.

Annual contributions to the Homer Accelerated Road Project reserve are identical to those outlined above for the Homer Accelerated Water and Sewer Program.

⁶⁴ The City estimates that it will have \$2,497,480 in the reserve fund this year. The City's share for the nine existing and proposed local improvement districts is upwards of \$3,613,558 – a difference of \$1,116,078. At current levels, the City estimates that \$754,480 will be deposited into the reserve fund from taxable sales within the existing boundaries of the City of Homer annually. DCED estimates that taxable sales in the territory proposed for annexation are \$647,850, \$138,825 of which would be deposited into the Homer Accelerated Water and Sewer Program. Thus, if annexation occurs, the \$1,116,078 difference would be funded by March 2003. Of course, since property owners in three of the proposed local improvement districts previously rejected the assessments, it is likely that the City's costs in those three proposed local improvement districts – if they proceed at all – will be less than the \$1,344,396 shown above. In that case, of course, the improvement projects would be fully funded earlier than March 2003.

**Figure 4-BM
City of Kachemak Current Fiscal Year Funding Resources**



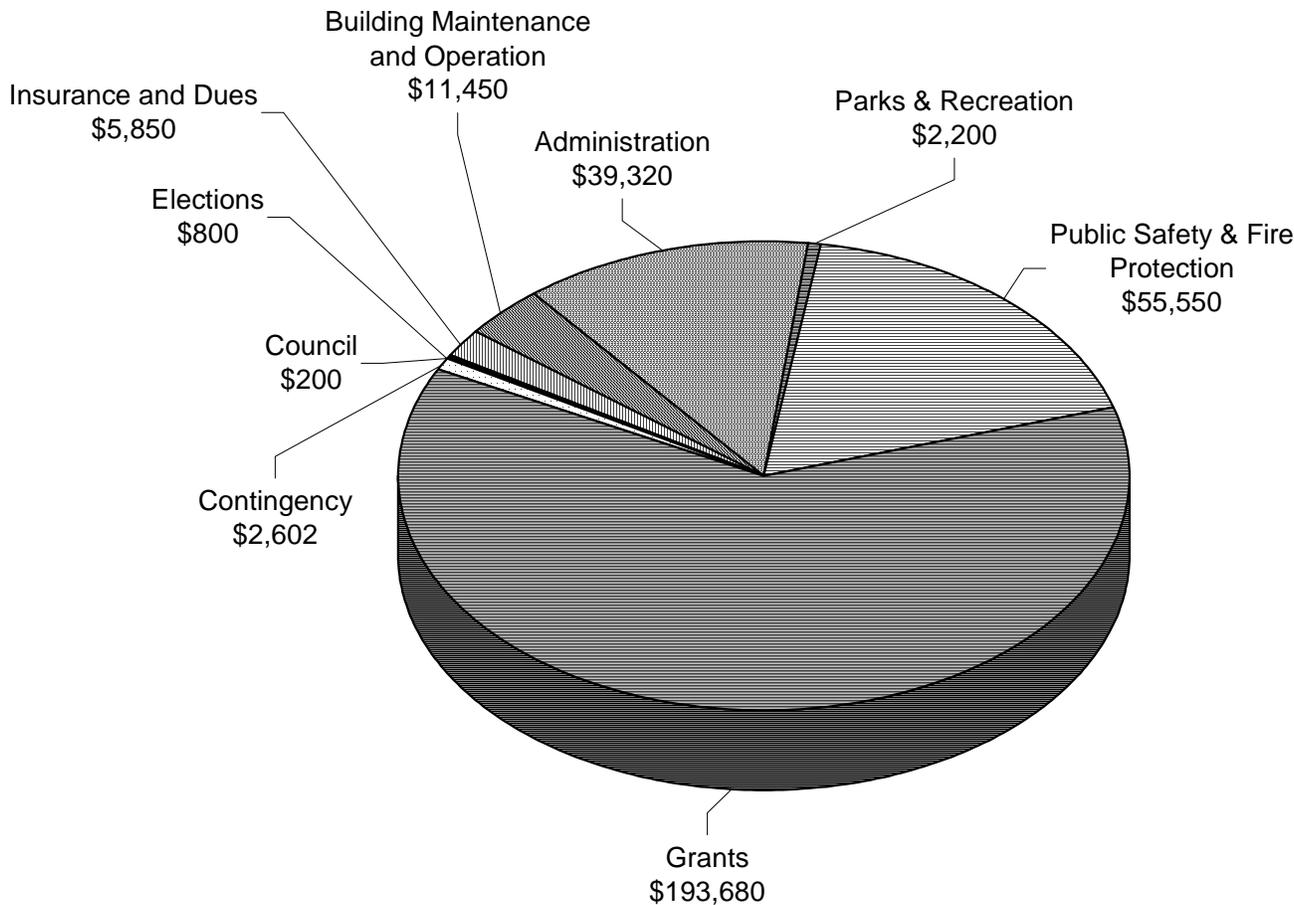
c) Other considerations regarding the City of Kachemak’s fiscal capacity.

Figure 4-BM lists the projected revenues of the City of Kachemak for the current fiscal year. Comparable figures were provided previously in this chapter for the City of Homer.

Projected locally generated revenues of the City of Kachemak during the current fiscal year total \$71,900. Pro-

jected State shared revenues equal \$27,900. The City also plans to withdraw \$50,000 from its reserves to fund expenses. Additionally, the City identified \$146,924 in capital funding and special project revenues and \$14,928 in other financing sources. Thus, projected resources available to the City of Kachemak during the current fiscal year total \$311,652.

**Figure 4-BN
City of Kachemak Current Fiscal Year Projected
Expenditures**



302

Current fiscal year projected expenditures for the City of Kachemak are summarized in Figure 4-BN.

DCED compiles financial data on all municipal governments in Alaska. The most current data available based on financial audits or certified financial statements is for fiscal year 1999. There were 145 city

governments at that time. During fiscal year 1999, the City of Kachemak reported \$105,810 in locally generated revenues. The 1999 population of the City of Kachemak was estimated to be 419. Thus, the 1999 per capita locally generated revenues of the City of Kachemak amounted to \$253. Only thirteen of Alaska's 145 cities had smaller per capita locally generated revenues. The

statewide average per capita locally generated revenues for all 145 cities in Alaska during 1999 was \$2,365, or more than nine times the level of the City of Kachemak. The City of Homer's per capita locally generated revenues in 1999 totaled \$2,508.

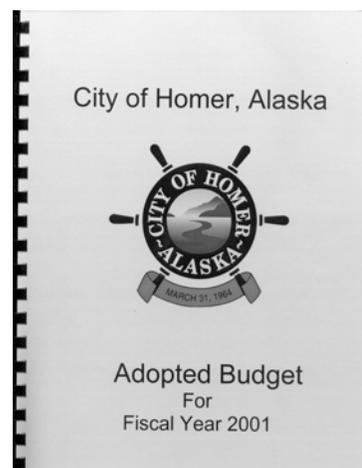
DCED concludes from the foregoing that the City of Homer has the superior fiscal capacity to provide services to the territory proposed for annexation. The City of Kachemak, by virtue of its relatively higher property values (compared to the Kachemak Emergency Service Area) ranks second. The Kenai Peninsula Borough's fiscal capacity to provide services on a service area basis follows closely behind the City of Kachemak.

d) Existing capital facilities and staff resources.

Water Service. The City of Homer is the only municipal government among the three in question with existing capital facilities to provide some level of water service to any portion of the territory proposed for annexation. The City listed more than \$20 million in existing fixed assets to support its water utility

system (Petition at 11). The system consists of the water source (Bridge Creek Reservoir), water treatment plant, storage tanks, pressure-reducing stations, booster pumps, transmission pipelines, and distribution pipelines.

Moreover, the City of Homer has the only trained technical staff to support the operation and maintenance of a complex water utility system to provide a reliable source of water for residential, commercial, and industrial purposes, and to provide water for fire suppression. The current fiscal year budget of the City of Homer appropriates \$394,706 to support the equivalent of 6.1 full-time positions associated with the water system.



As noted previously, approximately fifty properties between the City's water treatment plant on Skyline Drive and the existing corporate limits of the City of Homer are currently provided with water service from the City's transmission main.

More significantly, the City makes substantial bulk water sales (approximately 17.5 million gallons annually) to commercial water carriers who, in turn, sell water to customers within the territory proposed for annexation. While not a direct service of the City of Homer, such bulk water sales are clearly an indirect service of the City of Homer to the territory proposed for annexation.

The expansion of the City's capacity to provide additional water utility services directly to the territory proposed for annexation will, of course, entail additional capital investment. The Petition outlines general plans for the extension of water utility service to the area proposed for annexation over a twenty-year period.

In the 1999 City of Ketchikan annexation proceedings, the Local Boundary Commission noted that the Alaska Department of Environmental Conservation advanced fundamental public policy arguments that favor the expansion of an existing utility over the creation of a new utility. (Ketchikan decisional statement at 6.)

... the Alaska Department of Environmental Conservation favors, as a matter of public policy, the extension of water and sewer services to the territory by the City as compared to the establishment of an independent water and/or sewer utility operated by Shoreline. That policy recognizes that the expansion of *existing* utilities generally promotes greater economies of scale and greater rates of success in serving public needs. The City has the infrastructure to extend water and sewer utility service to the territory. The City is currently preparing an engineering plan to extend its water utility system to a portion of the territory.⁶⁵

⁶⁵ The Commission recognizes that the extension of City water and sewer utilities into the territory will require substantial capital funding through, perhaps, some combination of State grants, local improvement district assessments, and other sources.



City of Homer sewage treatment plant.

Sewer. Here again, the City of Homer is the only municipal government among the three in question with capital facilities to provide prospective service to any of the territory proposed for annexation. The City identified approximately \$38.5 million in existing fixed assets used in its sewer utility operations.

Additionally, the City of Homer is the only one among the three municipalities in question that has the staff to operate a complex sewer utility system. The current fiscal year budget of the City of Homer appropriates \$386,037 to support the equivalent of 6.05 full-time positions associated with the sewer system.

As noted earlier in this chapter, the City of Homer provides sewer services to about 90 connections within the City of

Kachemak through a system of 'gray water' lines and septic pumping services. While not a direct extraterritorial service, the City also processes septic

waste from the territory proposed for annexation.

The City of Kachemak relies on the City of Homer for sewer services. Such circumstances are prima facie evidence that the City of Homer has superior capacity to provide the needed service as compared to the City of Kachemak. Any argument that the Kenai Peninsula Borough could provide the service on a service area basis would encounter the same fundamental public policy arguments noted previously.

Fire Suppression and Emergency Medical Services.

The City of Homer utilizes more than \$1.4 million in fixed assets to support fire suppression and emergency medical services in the greater Homer area. Additionally, the current fiscal year budget appropriates funds for the



City of Homer Volunteer Fire Department emergency vehicle.

equivalent of four full-time staff to provide fire suppression and emergency medical services. A number of volunteers living in the City of Homer, the territory proposed for annexation, and adjoining areas also represent a critical resource that enables the City of Homer to provide adequate fire protection and emergency medical services.

The City of Homer has contracted with the City of Kachemak to provide fire protection and emergency medical services to the area within the corporate boundaries of the City of Kachemak. The City of Kachemak pays the full proceeds from its only tax – a one-mill property tax levy – to the City of Homer for fire protection and emergency medical services. Additionally, the City of Kachemak allows unlimited use of its fire station

and equipment (notably a 1986 fire truck) by the City of Homer to serve the City of Homer, City of Kachemak, and surrounding area.

In addition, the City of Homer provides fire protection and emergency medical services to

the Kachemak Emergency Service Area under a contract with the Kenai Peninsula Borough. As noted previously, the service area in question encompasses all of the territory proposed for annexation except Millers Landing.⁶⁶

The City of Homer has a contract with the Kenai Peninsula Borough to provide service to the Kachemak Emergency Service Area during the first six

⁶⁶ The Kachemak Emergency Service Area was established in October 2000, more than six months after the City of Homer filed its annexation petition. To date, there has been no formal legal challenge over the creation of the service area in terms of the previously noted limitations set out in Article X, Section 5 of the Constitution and AS 29.35.450(b).

Figure 4-BO Current Fiscal Year Appropriations to Support the Kachemak Emergency Service Area (Kenai Peninsula Borough Ordinance 2001-19-07)	
Temporary Wages	\$ 1,000
Office Supplies	250
Operating Supplies	15,000
Medical Supplies	20,000
Fuel, Oil, Lubricants	1,000
Small Tools & Minor Equipment	4,960
Contract Services	108,627
Communications	250
Postage	50
Transport/Subsistence	1,750
Advertising	500
Insurance	500
Public Utilities	1,000
Vehicle Maintenance	4,000
Rents and Operating Leases	3,000
Equipment Replace Payment	7,000
Dues and Subscription	200
Vehicle Licenses	100

Homer \$106,227 to deliver EMS and fire service within the service area.

Figure 4-BO lists the current fiscal year appropriations made for the Kachemak Emergency Service Area.

The City of Homer also provides fire protection and emergency medical services to Millers Landing. Such services are provided without the benefit of any formal arrangements.

The fact that City of Homer has contracts to provide fire suppression and emergency medical services to the City of Kachemak and

months of FY2001-2002.⁶⁷ The six-month contract requires the Borough to pay the City of

Kachemak Emergency Service Area, and the fact that it also serves Millers Landing is, again,

⁶⁷ According to Respondent Mary Griswold, the City suggested and the Borough agreed to a 6-month contract in part because the city is on a calendar fiscal year and anticipates as much as a 37% increase in its fire department budget in January. The Homer City Manager also noted that parties approved a short-term contract in order to allow greater flexibility in dealing with the pending annexation proposal.

prima facie evidence that the City of Homer is currently best capable of providing fire protection and emergency medical services to the territory proposed for annexation.

However, as noted, the contract arrangements for the Kachemak Emergency Service Area cover only a very short term. The service area was recently awarded a federal grant for \$159,556 to purchase vehicles. A fire station will reportedly be constructed at McNeil Canyon (beyond the territory proposed for annexation) to accommodate the vehicles.⁶⁸

Police, dispatch services, jail, animal control, and animal shelter. The City of Homer dedicates more than \$1.25 million in fixed assets to house its police, dispatch services, jail, animal control, and animal shelter operations. Substantial additional capital resources are provided for vehicles and other equipment.

⁶⁸ Personal communication, HVFD Fire Chief, August 31, 2001.

The current fiscal year budget of the City of Homer provides for the equivalent of 21.95 full-time personnel to support those operations. In addition to the staff positions, the City of Homer contracts with Coastal Animal Care for the operation of the animal control shelter.

The 21.95 staff positions are allocated as follows:

Function	Full-time Equivalent Staff
Police Administration	1.10
Dispatch Services	7.00
Investigations	1.70
Police Patrol.....	6.80
Jail	5.35
Animal Control	<u>0.00</u>
Total	21.95

The City's transition plan anticipates that two additional police officers would be hired if its annexation proposal is approved.

In comparison, neither the Kenai Peninsula Borough nor the City of Kachemak provide police, dispatch services, jail, animal control, and animal shelter operations. In the past, the Borough has rejected at least one proposal in Nikiski to establish a police (sheriff) service area.



City of Homer WKFL Pocket Park.

Library services. The City of Homer estimates the value of its library and contents at more than \$1.8 million. The current fiscal year budget of the City of Homer appropriates funds for the equivalent of 5.17 full-time staff. Neither the City of Kachemak nor the Kenai Peninsula Borough operates a public library.

Reportedly, most (51%) of the library card holders utilizing the City’s library do not live within the current boundaries of the City and most of the library’s circulation is generated by people who do not reside in the City.

It is also noteworthy that the City of Kachemak has reportedly often used its State capital grants to fund projects in the City of Homer such as the Homer library.

Parks and recreation.

Parks and recreational facilities provided by the City of Homer reportedly include baseball fields, playgrounds, public parks, campsites, and a facility used for amateur theater productions and drama camps. Parks and recreation staff also maintain the City’s cemetery. Recreational and educational opportunities are also reportedly provided through the Community Schools program, which is partially funded by the City of Homer. The City of Homer’s current fiscal year budget appropriates funding for the equivalent of 4.59 full-time employees for parks and recreation.

The City of Kachemak has a playground and tennis court. Additionally, the Kenai Peninsula Borough provides recreational services on a service area basis, but only in the northern portion of the Borough.⁶⁹

Road Maintenance. As noted in Chapter 1, Section 1.3 of this report, the Petition for annexation indicates that the City of Homer currently maintains a total of 21.5 miles of gravel and paved roads; however, the City's current budget puts the figure at 18.4 miles of roads.⁷⁰ When asked to clarify the discrepancy, the City carefully reexamined its road maintenance responsibilities and determined that it is currently maintaining 13.21 miles of paved roads and 6.11 miles of gravel roads. In addition, the City noted that there are 3.24 miles of roads main-



City of Homer street sweeper.

tained only during the winter. Those three figures total 22.56 miles of roads maintained by the City of Homer.

The City's current budget appropriates funds for 2.43 full-time equivalent staff to maintain roads and streets within the City of Homer. The City owns equipment necessary to provide road maintenance. The City Council has appropriated \$278,972 to fund road maintenance in the City during the current fiscal year.

⁶⁹ The Kenai Peninsula Borough operates the North Peninsula Recreation Service Area north of Kenai at mile 23.4 of the Spur Highway. The service area provides a swimming pool, ice rink, multipurpose field, recreation programs, cross-country skiing and running trail, nature and fitness trails, outdoor volleyball, camping, and picnic area.

⁷⁰ The City of Homer also reports for purposes of the State Revenue Sharing program, that it maintains 23.83 miles of roads.

The territory proposed for annexation is part of the huge Kenai Peninsula Borough Road Service Area. The road service area encompasses that portion of the Kenai Peninsula Borough lying outside of cities, excluding Halibut Cove.

According to the Petition, there are 41.7 miles of gravel roads presently maintained in the territory proposed for annexation by the Kenai Peninsula Borough at an annual budgeted cost of \$80,000.⁷¹ However, the Kenai Peninsula Borough disputed the cost figure in its Responsive Brief. Specifically, the Borough estimates its costs for maintenance of the roads in question over the past three years as follows:

Activity	FY 1998	FY 1999	FY 2000	Average
Routine Summer & Winter Maintenance	\$110,164	\$148,604	\$122,538	\$127,102
Capital Improvement Projects	\$34,043	\$60,734	\$0	\$31,592
Personnel & overhead	\$25,000	\$25,000	\$25,000	\$25,000
TOTAL	\$169,207	\$234,338	\$147,538	\$183,694

The City stressed in its Reply Brief that the Borough itself had provided the original \$80,000 cost figure used in the City's Petition. Nonetheless, the City committed to spending \$199,000 per year on the maintenance of roads in the territory proposed for annexation. That is the equivalent of \$4,775 per mile. The commitment by the City provides a level of funding that is 8.3% more than the annual average expenditure by the Borough during the past three years.

Planning services. The Kenai Peninsula Borough has delegated planning, platting, and zoning powers within the City of Homer to the City and has granted the City authority to exercise planning powers extraterritorially in the Bridge Creek watershed. The City Planning Department and five-member Planning Commission engage in plat review, plan-

⁷¹ The estimate of the total length of roads maintained in the territory by the Borough was provided by the Kenai Peninsula Borough; however, the accuracy of the estimate has been questioned. Specifically, the Crossman Ridge Neighborhood Responsive Brief states that the Petition indicates that more than eight thousand feet of roads are maintained by the Borough within the Crossman Ridge neighborhood although the actual figure is less than one thousand feet.



Fishing boats at the fish dock in Homer.

ning, zoning, permitting, comprehensive planning, and code enforcement. The City's current budget appropriates funds for the full-time equivalent of 2.5 planning positions. The City anticipates that it will create one additional planning position if its annexation proposal is granted.

Because of the City of Homer's extraterritorial zoning powers concerning the Bridge Creek Reservoir, planning is already underway for that area. The Petition states that within two years of annexation long and short range land use plans for the area within the City's expanded jurisdiction should be complete.

The City's land use regulations address lot size, subdivision standards, septic system requirements, drainage controls, property management, and construction standards to protect all watersheds. The City of Homer's planning, platting, and land use regulation activities are more comprehensive than current Kenai Peninsula Borough activities.

Ports and Harbors. The City of Homer estimates that its port and harbor facilities are valued at \$20.8 million. The City's current fiscal year budget appropriates funds for 17.52 full-time equivalent positions with port and harbor functions. The City's port and harbor facilities serve the entire southern Kenai Peninsula. The Kenai Peninsula Borough has nonareawide authority to administer ports and harbors, but has no such facilities in the Homer vicinity, including the area proposed for annexation.

DCED finds from the foregoing that the City of Homer has superior capacity in terms of existing capital facilities needed to serve the territory proposed

for annexation. In particular, the City has substantial capital investments with respect to facilities to provide water utility service, sewer utility service, fire protection, police protection, emergency medical services, jail, library, port, parks and recreation, road maintenance, and harbors. Altogether, the City has nearly \$80 million in fixed assets to provide public services.

Similarly, DCED finds that the City of Homer has superior existing staff resources needed to serve the territory proposed for annexation. The current budget of the City of Homer allocates funding for 90.3 full-time equivalent positions.

C. Conclusion

The fact that the City of Homer is currently providing a broad range of services and facilities that directly or indirectly benefit the territory proposed for annexation is prima facie evidence of its greater capability to provide those services to the territory proposed for annexation.

DCED concludes that the legal ability of the Kenai Peninsula Borough to provide services to the territory proposed for annexation is circumscribed by the provisions of Article X, Section 5 of the Constitution of the State of Alaska and AS 29.35.450(b). DCED does not ascribe any overriding significance to the establishment of the Kachemak Emergency Service Area with respect to the capability of the Kenai Peninsula Borough to serve the territory proposed for annexation.

The City of Homer enjoys superior fiscal capacity, capital facilities, and staff resources to serve the territory proposed for annexation as compared to other existing municipal governments.

In sum, the record demonstrates that no other existing city government or organized borough can provide essential city-type services to the area proposed for annexation more efficiently or more effectively than the City of Homer. Thus, DCED concludes that the City of Homer's annexation proposal satisfies the comparative ability standard set out in 3 AAC 110.090(b).

4.12 Need for City Government

A. Standard Established in Law

State law provides that the Local Boundary Commission must determine that an area shows evidence of a reasonable need for city government before that area may be annexed to a city. Specifically, 3 AAC 110.090(a) provides as follows:

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. Application of the Need for City Government Standard to the City of Homer Petition

1) *Introduction*

The issue of the need for city government in the territory proposed for annexation requires consideration of local government service needs that are presently being met, not just those that are unfulfilled.

2) *Facts in this Case*

a) Existing or Reasonably Anticipated Social or Economic Problems.

Fire protection and emergency medical services. At the time the Petition was filed, formal arrangements for fire protection and emergency medical services were lacking in the territory proposed for annexation. The subsequent creation of the Kachemak Emergency Service Area provided such formal arrangements in the area proposed for annexation, except Millers Landing.

The lack of formal arrangements to provide fire protection and emergency medical services to Millers Landing clearly represents an economic



Portion of Millers Landing.

problem for both the City of Homer and Millers Landing. It is an economic problem for the City of Homer in the sense that the City is providing services to the area in question without compensation. More importantly, the City lacks express extraterritorial authority to provide fire protection. AS 29.35.020 authorizes cities in Alaska to provide emergency medical services on an extraterritorial basis, but not fire protection. The absence of clear authority to provide fire protection services extraterritorially may expose the City of Homer to certain liabilities.

The lack of formal arrangements for fire protection and emergency medical services is an economic problem for the residents and property owners in Millers Landing in the sense that it is, at least theoretically, conceivable that the City of Homer might abandon such services if the area is not annexed. This would expose Millers Landing property owners and residents to risk of significant property loss. While Millers Landing could be added to the Kachemak Emergency Service Area, such action would raise issues relating to previously noted constitutional and statutory limits regarding service areas.

Other aspects concerning fire protection and emergency medical services in the territory proposed for annexation are addressed under the next factor regarding this standard (3 AAC 110.090(a)(2), "existing or reasonably anticipated health, safety, and general welfare problems").

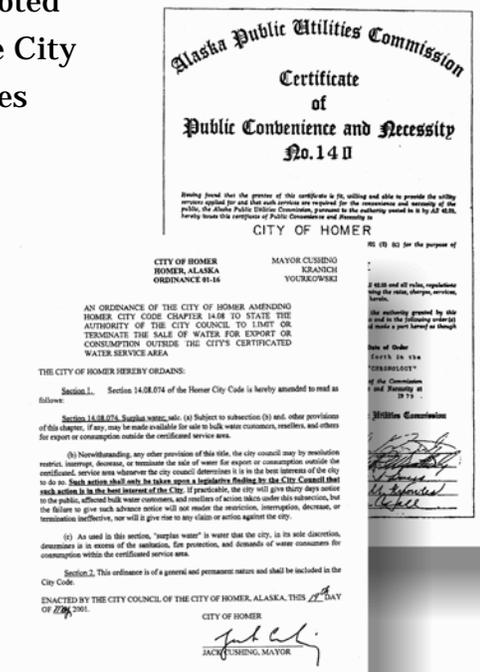
Water utility service. As noted previously, the City of Homer makes bulk water sales to commercial water carriers. The City estimates that the bulk water carriers serve approximately 460 customers (principally households) – 80% of whom (368) are outside the current boundaries of the City of Homer.

The City indicates further that the overwhelming majority of the estimated 368 bulk water customers outside the existing boundaries of the City of Homer are within the territory proposed for annexation. Those circumstances support the City's claim about generally inadequate sources of water in the territory proposed for annexation.

Lack of adequate sources of water has potential for severely limiting growth and development in the territory proposed for annexation. As such, a shortage of potable water is an economic problem.

Concerns on the part of officials of the City of Homer regarding the capacity of the City's existing water utility system led to the establishment of formal procedures for the cancellation of water sales for the area outside the City of Homer's

316



“certificated service area” in times of need.⁷² Specifically, the City’s Code authorizes the City Council to:

... restrict, interrupt, decrease, or terminate the sale of water for export or consumption outside the certificated service area whenever the city council determines it is in the best interest of the city to do so. Such action shall only be taken upon a legislative finding by the City Council that such action is in the best interest of the City.

In addition to being an economic problem, the lack of a public water utility can constitute a significant threat to public health, particularly in heavily developed areas. That issue is addressed in this section of the report with regard to the factor dealing with existing or anticipated threats to public health.

The extension of water utilities to the entire territory proposed for annexation would, of course, be a major undertaking

requiring considerable capital investment. However, it would be more viable in the foreseeable future to extend City water utility service to properties in the urban area. In 1998, the City of Homer identified 71 lots in Bayview Gardens subdivision along Skyline Drive with existing connections or immediate access to the City’s water utility.

Sewer Utility Service.

The Alaska Department of Environmental Conservation (DEC) was asked to review relevant aspects of the Homer annexation proposal. DEC noted that soil conditions in the Homer area sometimes preclude the use of conventional septic systems. In such cases, septic systems may have to be designed or engineered for specific site conditions that deal with “tight soils or slopes.”

⁷² The City of Homer was granted Certificate of Public Convenience and Necessity No. 140 on March 9, 1979 to provide water service to the following described area:

Within the City limits of Homer, Alaska, as of July 1, 1970.

T6S R13W Partial Section: Lots 1, 2, 3, 4, 5 and 6 of Block 5, Lots 1, 2, 3, 4, 5 and 35 through 68 of Block 6 and Lots 1 through 25 and Lots 29 through 31 of Block 7 of Bayview Gardens Subdivision Addition 1 located in the S ½ of Section 8; Lots 18 of Tract A within the SE ¼ of the SE ¼ of Section 10.

T6S R13W Partial Section: Lot 10A, Scenic View Subdivision, located within the SE ¼ of Section 10.

DEC noted further that the functional life of septic systems is affected by site conditions. DEC expressed the view that the “proposed area to be annexed can handle more individual septic systems if they are designed and installed properly.” (Personal communication September 2001).

In prior proceedings, DEC has expressed the general view that growth and development can be constrained by the lack of water and sewer utilities. Specifically, in the 1999 Ketchikan annexation proceedings, the Local Boundary Commission noted as follows (Decisional Statement at 5).

Shoreline conceded in its responsive brief, and the Alaska Department of Environmental Conservation (DEC) agreed, that future development in the territory is constrained by the lack of public water and sewer utilities.

As is the case with the prospective extension of water utilities, the extension of sewer utilities to the territory proposed for annexation would be a major undertaking requiring considerable capital investment. Given the concentrated development, future growth in the urban area and Millers Landing may be constrained because of the lack of a sewer utility service. Because of their proximity to the existing



Portion of Millers Landing.

utility system and other characteristics, those areas would seem to be easier to serve than the remnant territory.

Here again, the lack of sewer and water utilities can represent a significant threat to public health, particularly in heavily developed areas. That issue is also addressed with regard to the factor dealing with existing and or anticipated threats to public health.

Land use regulation. In its Brief, the Petitioner asserts that land use conflicts abound in the area proposed for annexation. Specifically, the Petition states:

Commercial uses are crowding traditional residential uses in the Baycrest/Sterling areas and residents have not been comfortable with the decisions the Soldotna based Kenai Peninsula Borough has been making concerning this area. The conflicts in the Diamond Ridge/Skyline area include subdivision development, logging and roads issues. East End Road/Kachemak Drive issues deal with development that doesn't solely rely on unsightly strip development.

Obviously, the potential for conflicts over land use increases in proportion to the level of development. Since the level of development is substantially

greater in the Millers Landing area and the urban area, the need for land use regulation can be reasonably expected to be greatest in those areas. Land use conflicts might reasonably be considered to be both a social problem and an economic problem.

b) Existing or Reasonably Anticipated Health, Safety, and General Welfare Problems.

Water and sewer utilities.

In prior proceedings, DEC has expressed the general view that significant public health risks may arise in areas of concentrated development that lack water and sewer utilities. Referring again to the 1999 Ketchikan annexation proceedings, the Local Boundary Commission recounted the following (Decisional Statement at 5).

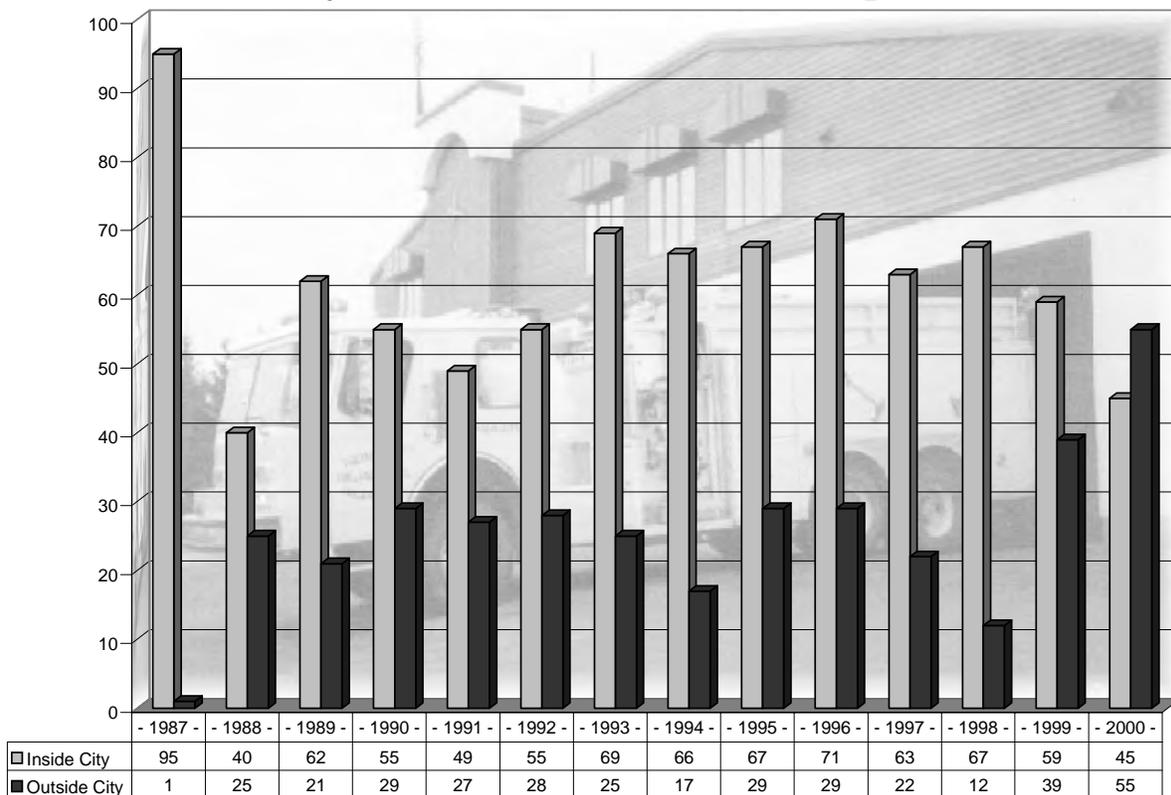
... Shoreline and DEC also share the view that significant public health risks often arise in areas of concentrated development that lack sewer and water utilities. Further, several correspondents, including the Borough, criticized the City because it lacked specific plans for the extension of water and sewer utility service into the territory. DEC expressed its support for the City's annexation proposal in the hope that it would lead to the extension of City sewer and water utilities into the territory. The Commission finds from

these circumstances that there is a need for water and sewer utility service in the territory proposed for annexation.

Fire protection and emergency medical services. Given its substantial population and level of development, the territory proposed for annexation generates a significant demand for fire protection and emergency medical service response capability.

Figure 4-BP shows the number of fire service responses of the City of Homer Fire Department inside and outside the existing City boundaries. While it is not clear how many of the fire responses outside the City of Homer originated from the territory proposed for annexation, DCED considers it reasonable to conclude that a significant number of the responses were generated from that area.

**Figure 4-BP
City of Homer Fire Service Responses**



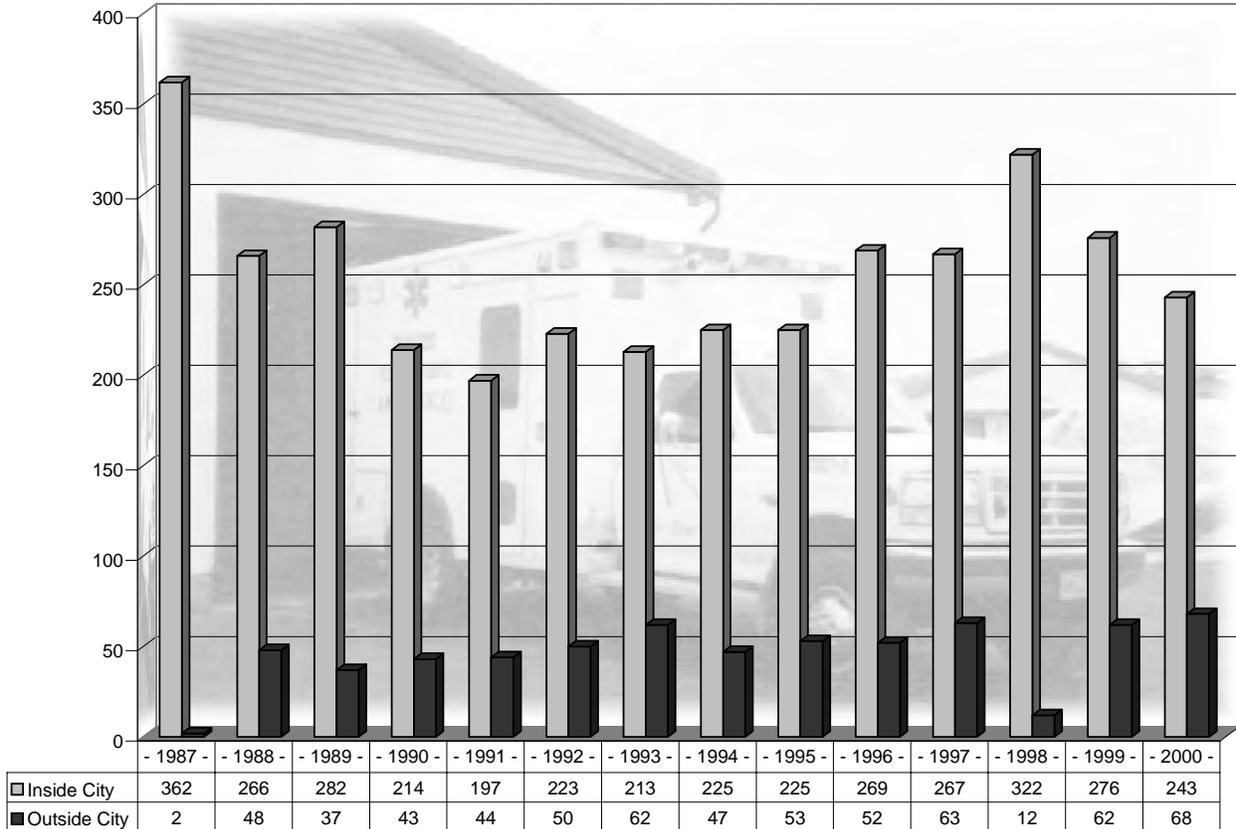
Source: 2000 Situations and Prospects of the Kenai Peninsula Borough, Kenai Peninsula Borough, at 81.

The relative number of fire service calls outside the corporate boundaries of the City of Homer has escalated in the past two years. Last year, for the first time, the reported number of fire service calls outside the City of Homer exceeded the number of calls within the City of Homer.

Figure 4-BQ provides information about emergency medical services provided by the City of Homer inside and outside the existing boundaries of the City of Homer.

Here again, the number of calls outside the City of Homer has generally been rising. Too, it is possible, even probable, that some of the calls inside the City of Homer were made on behalf of non-residents who were working,

Figure 4-BQ
City of Homer Emergency Medical Treatment Responses



Source: 2000 Situations and Prospects of the Kenai Peninsula Borough, Kenai Peninsula Borough, at 82.

shopping, or conducting other affairs within the City of Homer. Last year had the highest reported number of emergency medical service responses by the City of Homer outside its boundaries.

As previously noted, a formal structure for fire protection and emergency medical services to much of the territory proposed for annexation was recently established through the creation of the Kachemak Emergency Service Area.

Under very particular circumstances in other proceedings, the Local Boundary Commission has minimized the significance of certain formal service delivery structures such as borough service areas in the context of the standard at issue. Specifically, the Commission has virtually ignored increases in borough services within an area

proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.

For example, in 1999, the City of Ketchikan petitioned to annex the adjoining 1.2 square mile Shoreline Service Area.⁷³ On November 15, 1999 – just nineteen days prior to the Commission’s hearing on the annexation proposal – the Ketchikan Gateway Borough Assembly adopted an ordinance greatly expanding the powers of the service area. The City of Ketchikan was already exercising the proposed new service area powers. The Commission dealt with the proposed expansion of the Shoreline Service Area powers in the context of the need for city government standard as follows: (Ketchikan decisional statement at 5) (Emphasis added)

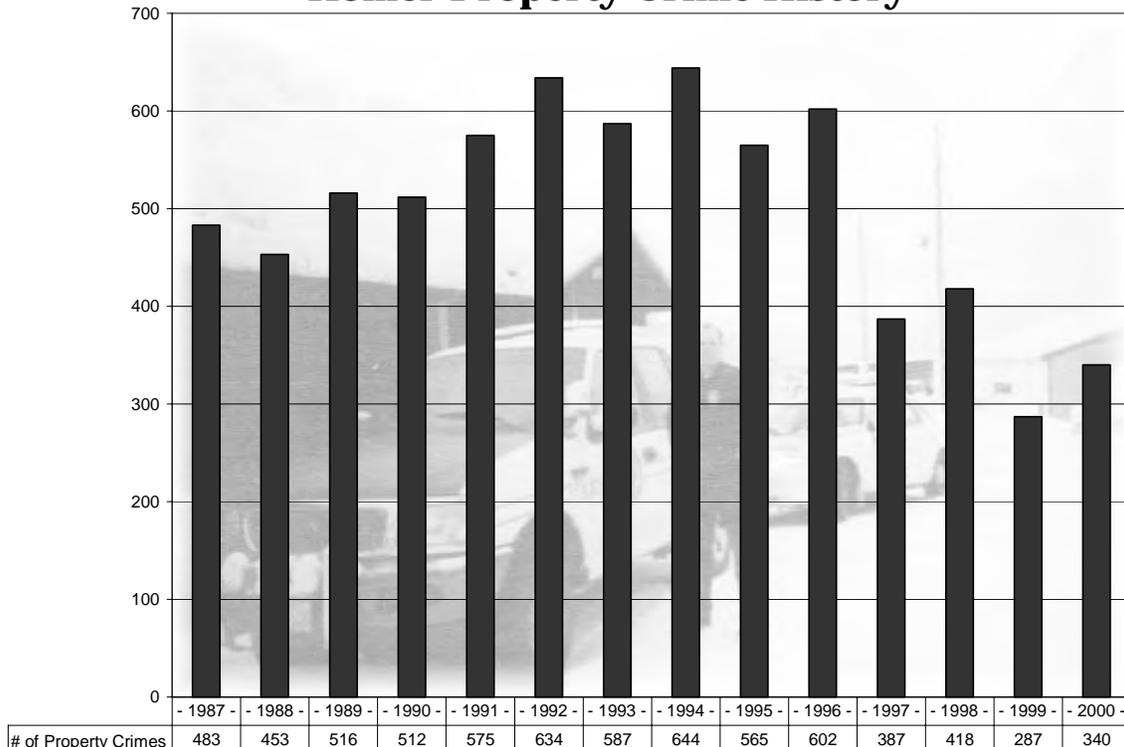
⁷³ The City of Ketchikan’s original annexation petition, filed in February 1999, proposed to annex approximately one-half square mile adjoining the City’s existing boundaries. The area in question was already heavily developed and was the planned location for the Ketchikan Wal-Mart. The area proposed for annexation comprised approximately forty percent of the Ketchikan Gateway Borough Shoreline Service Area. The service area had been created years before to provide fire protection services. After being criticized for proposing to divide the service area, the City of Ketchikan amended its petition in May 1999 to encompass the entire 1.2 square mile service area.

On November 15, 1999, the Borough Assembly adopted Ordinance No. 1123 adding to the Borough's service area powers in Shoreline. The ordinance was subject to ratification by Shoreline's voters at an election held December 14, 1999. The proposed additional powers consist of the construction, maintenance, and operation of roads; "general property security services"; and "hospital and other public works services". Ordinance No. 1123 would also impose a two and one-half percent "fire, roads and security sales tax" and a one percent "hospital and other public works sales tax" on a service area basis in Shoreline. As noted above, the Commission has already found that a reasonable need exists for road maintenance, police service, hospital, and a multitude of other services offered by the City. The Commission does not ascribe any

significance to the adoption of Ordinance No. 1123 with respect to the need for city government in the territory proposed for annexation.

Police services. The City contends that law enforcement coverage is less than ideal in the territory proposed for annexation due to budget cuts affecting the Alaska State Troopers. According to the Petitioner, the City of Homer Police Department provides back up to the Alaska State Troopers, but lacks the financial resources to fund additional personnel, vehicles, and equipment.

**Figure 4-BR
Homer Property Crime History**



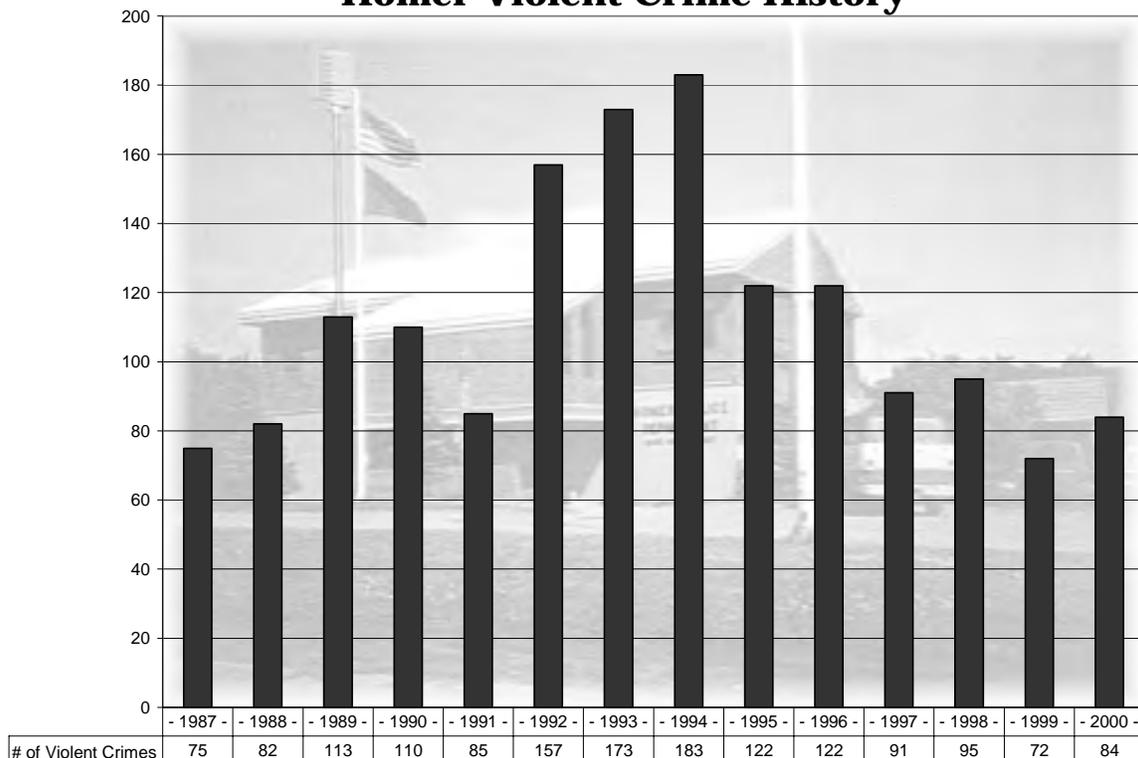
After a steady decline in the number of property crimes in Homer during the 1990s, the incidence of such crimes increased significantly in 2000. As shown in Figure 4-BR, there were 340 property crimes reported to the City of Homer Police Department last year. That represented an 18.5% increase over 1999.

As was the case for property crimes, violent crimes in Homer declined steadily during the 1990s, but increased substantially last year. As reported in

Figure 4-BS, there were 84 violent crimes reported to the City of Homer in 2000. That represented a 16.7% increase over the prior year.

Lieutenant Tom Bowman, Commander of the Alaska State Trooper's E Detachment (Kenai Peninsula Unit) headquartered in Soldotna, concurred with the City's assertion that the State Troopers cannot provide 24 hour per day service in the southern Kenai Peninsula. Such would require a minimum of six Troopers. The Homer Trooper post is

**Figure 4-BS
Homer Violent Crime History**



staffed with one sergeant and two troopers. A single trooper attached to the Ninilchik post is also available to serve Homer.

Lieutenant Bowman said that E Detachment, which also has posts in Cooper Landing, Seward, and Soldotna, has a ratio of 1,048 people per trooper (9.5 troopers per 10,000 residents).

DCED estimates the population of the area served by the troopers in Homer and Ninilchik (i.e., southern Kenai Peninsula) to be at least 12,701.⁷⁴

Thus, the ratio of residents per trooper in the area served by the Homer-Ninilchik posts is on the order of 3,175 residents per trooper (3.1 troopers per 10,000 residents) – more than three times the ratio in E Detachment as a whole.

The current fiscal year budget of the City of Homer authorizes 9.6 full-time equivalent positions in its police department (excluding dispatchers and jail staff). Those positions are shown in Figure 4-BT.

In addition to the City of Homer Police Department and the Alaska State Troopers, there is one other police agency serving a portion of the southern Kenai Peninsula. Specifically, the City of Seldovia currently employs two full-time police officers.

Thus, the total equivalent of 15.6 full-time sworn local police officers and full-time sworn primary State police officers serve the estimated 12,701 residents in the southern Kenai Peninsula. That represents a ratio of 12.3 officers for every 10,000 residents in the area.

⁷⁴ The area is conservatively assumed to include Nanwalek CDP (pop. 177); Port Graham CDP (pop. 171); City of Seldovia (pop. 286), Seldovia Village CDP (pop. 144); City of Homer (pop. 3,946); Miller Landing CDP (pop. 74); City of Kachemak (pop. 431); Anchor Point CDP (pop. 1,845); Diamond Ridge CDP (pop. 1,802); Fritz Creek CDP (pop. 1,603); Fox River CDP (pop. 616); Nikolaevsk (pop. 345); Happy Valley CDP (pop. 489); and Ninilchik CDP (pop. 772). The total 2000 census population of those areas equaled 12,701.

**Figure 4-BT
City of Homer Police Positions Authorized
by Current Budget**

Function	Position	Full-Time Equivalency
Police Administration	Chief of Police	1.0
	Lieutenant	0.1
Investigations	Investigations Sergeant	1.0
	Lieutenant	0.2
	Uniformed Investigator	0.5
Police Patrol	Lieutenant	0.3
	Patrol Sergeant	1.0
	Police Officer III	1.0
	Police Officer II	1.5
	Police Officer I	3.0
Total		9.6

326

According to the Bureau of Justice Statistics in the U.S. Justice Department, during 1996 (the most recent year on record) there were 12 full-time sworn local police officers and 5 full-

time sworn primary State police officers for every 10,000 residents throughout Alaska.⁷⁵ Nationally, there were 15 local officers and 2 primary state police officers per 10,000 residents. Although the numbers of local and state police were different for Alaska and the nation, both provided a combined total of 17 officers per 10,000

⁷⁵ <http://www.ojp.usdoj.gov/bjs/dtdata.htm#demo>

residents. The 1996 average number of full-time sworn local officers and primary State officers in Alaska (17) and the entire nation (also 17) was 38.2% greater than the current level available in the southern Kenai Peninsula area (12.3).

Bureau of Justice statistics also indicated that during 1996, 61 local police departments in Alaska employed 740 full-time sworn police officers. On average, those departments employed 12 full-time sworn officers for every 10,000 residents. In comparison, the national average was 15 full-time local sworn officers for each 10,000 residents.

The City of Homer has authorized 9.6 full-time equivalent police officers to serve 3,946 residents (or 24.3 officers for every 10,000 residents). The City proposes to employ 2 additional officers if annexation occurs. The City of Homer would then employ 11.6 officers to serve 6,150 residents (or 18.9 officers per 10,000

residents). Although higher than the state and national averages, the existing and proposed ratios of City of Homer police to residents appear reasonable given fundamental characteristics of the Homer economy.⁷⁶

Bureau of Justice statistics indicated that in 1996, 5 primary sworn State police officers were employed for every 10,000 residents in Alaska. As noted above, the ratio in the southern Kenai Peninsula area is 3.2 troopers per 10,000 residents. The 1996 ratio of State troopers in Alaska is estimated to be 56.3% greater than the current ratio in the southern Kenai Peninsula.

Lieutenant Bowman of the Troopers said that annexation could reasonably be expected to facilitate faster police service to the annexed area, make more marked units visible with greater frequency in the annexed area, and thus be beneficial to delivery of law enforcement in the Homer area.

⁷⁶ In particular, it is noted that Homer is a regional commercial hub serving well in excess of 10,000 residents. The community also has a substantial tourism industry.

With its greater commercial development and more concentrated residential development, DCED finds that the greatest need for expanded police service exists in the urban area and Millers Landing.

Bridge Creek Watershed land sales. The University of Alaska recently placed on the market three large parcels of land in the Bridge Creek Watershed.⁷⁷ These consist of one 220-acre parcel, one 50-acre parcel, and one 130-acre parcel (400 acres total). The University is soliciting sealed offers on the properties through October 31, 2001. The minimum price of the 220-acre parcel is \$275,000, the minimum price on the 50-acre parcel is \$80,000, and the minimum price on the 130-acre parcel is \$175,000. The combined minimum price of the three parcels is \$530,000.

The University notes in its sales literature that the three parcels are in the Bridge Creek Watershed and are subject to extraterritorial regulation by the City of Homer. Specifically, the University states:

The University of Alaska is offering three large parcels located approximately three miles north of Homer in or adjacent to the Bridge Creek Watershed. All three parcels are gently sloping with streams running through them. Although not within the boundaries of the City of Homer, the City of Homer recently secured limited management authority to regulate the Bridge Creek Watershed for the protection of the public water supply. The City is in the process of developing a water quality related ordinance for the Bridge Creek Watershed. Such an ordinance may impact development opportunities for these parcels. All or portions of the parcels overlook the Bridge Creek reservoir.

DCED does not suggest that the proposed sale of the land by the University of Alaska represents a “health, safety, or general

⁷⁷ The University has also recently placed on the market four other parcels in the greater Homer area. Two of the four parcels are in the territory proposed for annexation, one is within the City of Homer, and one is outside both the City and territory proposed for annexation but in the vicinity of Homer. The two other parcels in the territory proposed for annexation consist of an 80-acre parcel referred to as the “Fritz Creek Overlook Parcel” (minimum price \$80,000) and an 80-acre parcel referred to as the “Neilson Canyon Bluff” (minimum price \$60,000).

welfare problem” *per se*. However, it does raise the prospect that additional development within the Bridge Creek Watershed will occur. It is important, therefore, that the Local Boundary Commission consider that prospect in its deliberations.

c) Existing or Reasonably Anticipated Economic Development.

As described previously in this chapter, Millers Landing and the southern portion of the Sterling Highway corridor in the territory proposed for annexation exhibit the highest concentrations of commercial development within the territory proposed for annexation.

d) Adequacy of Existing Services.

The need for fire protection, emergency medical services, police services, water utility service, sewer service, and land use regulation was addressed in the discussion of the first two factors regarding the standard at issue. The factor addressed here deals with services such as road maintenance, library, parks and recreation, and ports and harbors.

Road maintenance. The Kenai Peninsula Borough provides road maintenance on a reported 41.67 miles of Borough roads in the area proposed for annexation. The City describes the Borough’s road maintenance as minimal and inadequate. That description may not appear to be fully warranted. Notwithstanding, the City has pledged to provide road improvements and enhanced road maintenance in the area.

Library. The City of Homer operates the only public library in the greater Homer area. It was reported with respect to the prior standard that the majority of those holding City of Homer library cards live outside the boundaries of the City of Homer. Moreover, people who live outside the City of Homer reportedly generate the majority of the library’s circulation. Those circumstances reasonably reflect a need for library services in the territory proposed for annexation.

Parks and Recreation. The City of Homer provides substantial parks and recreational facilities. As previously

noted, these include baseball fields, playgrounds, public parks, campsites, and a facility used for amateur theater productions and drama camps. The City of Homer parks and recreation staff also maintain the City's cemetery. In addition, recreational and educational opportunities are reportedly provided through the Community Schools program, which is funded in part by the City of Homer.

Although the City of Kachemak has a playground and tennis court and the Borough has school playgrounds in Homer, it is reasonable to assume that residents of the territory proposed for annexation make use of the City of Homer's parks and recreational facilities.

Ports and Harbors. The City's \$20.8 million port and harbor facilities serve fisherman, fish charter operators, tour operators, boaters, and others who live within the City of Homer and the territory proposed for annexation. The City has recently raised fees with the intention of making the Port and Harbor fund self-supporting.

e) Extraterritorial Powers of Adjacent Municipalities.

Neither the City of Kachemak nor any other municipality except the City of Homer exercises any powers in the area proposed for annexation on an extraterritorial basis.

The City of Homer has historically provided a range of services, directly or indirectly, to the area proposed for annexation. The Petition indicates that the City provides the following services to the residents of the territory proposed for annexation.

- Fire protection and emergency medical services
- Police protection dispatch services for police, Troopers, fire and EMS
- Jail services
- Sewer services in limited areas
- Septic waste disposal
- Water services to limited area
- Library services
- Recreational services
- Animal control services
- Port and harbor facilities
- Planning and zoning (to the Bridge Creek Reservoir area).

The Petition indicates that the City's willingness and capability to deliver services on an extraterritorial basis is diminishing because of associated costs. Without annexation, the delivery of certain City services to the area proposed for annexation will be curtailed or, in some cases, cease. (Petition at 37-38)

3. Conclusion

The lack of formal fire protection and emergency medical services for Millers Landing represents an economic problem for both the City of Homer and Millers Landing. The general lack of water and sewer utility service potentially restricts growth and development. It also represents a potential health hazard in concentrated and growing areas such as the urban area and Millers Landing. The greatest potential for land use conflicts exists in the urban area and Millers Landing. Police protection in the territory proposed for annexation is significantly less than state and national averages. The need for police protection is arguably greatest in those areas with the most substantial residential and

commercial development (i.e., Millers Landing and the urban area). It is reasonably assumed that residents of the territory proposed for annexation generally make use of City facilities and services such as the library, parks and recreation, and ports and harbors. Lastly, DCED finds that no extraterritorial powers of adjacent municipalities constitute an impediment to annexation by the City of Homer.

Given the above findings, DCED concludes that there is a clear need for city services in the urban area and Millers Landing. The need for city services in the remnant territory is markedly less. Thus, DCED concludes that the standard set out in 3 AAC 110.090(a) is satisfied with respect to Millers Landing and the urban area. The need for city government in the remnant territory, while not *de minimus*, generally exists to a noticeably lesser degree, particularly with respect to water and sewer utilities, land use regulation, and police service.

4-13. Balanced Best Interests of the State, Territory, and Affected Political Subdivisions

A. Standard Established in Law

Any expansion of municipal boundaries utilizing the legislative review process must first be determined by the Local Boundary Commission to serve, on balance, the best interests of the state, territory proposed for annexation, and affected political subdivisions. The law lists six discretionary factors that the Commission may apply in making its determination regarding this standard. However, the Commission is free to consider other factors that it determines are relevant to the particular proposal at issue. Specifically, 3 AAC 110.140 provides as follows:

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected

by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) whether the territory is an enclave surrounded by the annexing city;
- (2) whether the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;
- (3) whether the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- (4) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (5) whether annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city; and
- (6) whether the territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

B. Application of the Balanced Best Interest Standard to the City of Homer Petition

1) Facts in this case

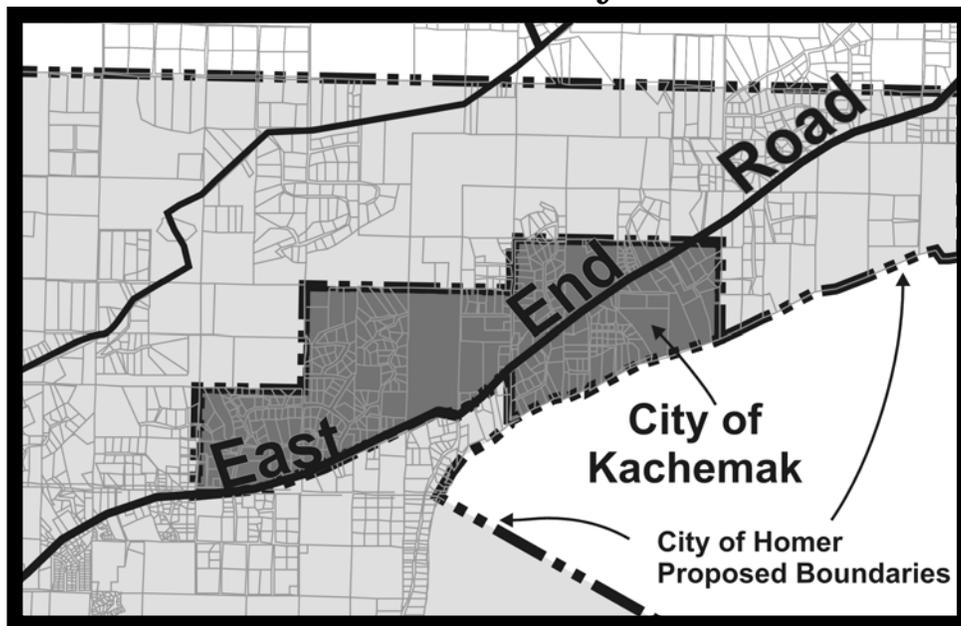
a) Whether the territory is an enclave surrounded by the annexing city.

This factor reflects the long-standing municipal boundary principle of eliminating existing enclaves (“donut holes”) or avoiding the creation of new enclaves within the corporate boundaries

of municipalities. Enclaves diminish efficiency and effectiveness in the delivery of local government services.

The City of Homer does not surround the territory proposed for annexation. Therefore, no part of the territory is an enclave. However, implementation of the City of Homer’s annexation proposal would create an enclave. The annexation, as proposed, would render the area within the corporate boundaries of the City of Kachemak an enclave in the eastern portion of the post-annexation boundaries of the City of Homer.

**Figure 4-BU
City of Kachemak Surrounded by the Proposed Boundaries of the City of Homer**



The Petition implies that it would be ideal to make the area within the City of Kachemak part of the City of Homer, but that such was not requested in the current proposal because the Petitioner considered it to be too contentious.

The territory proposed for annexation is contiguous to the City's present corporate boundaries. However, Kachemak City, a Second Class incorporated City will now become an enclave in the eastern portion of the new City of Homer boundaries. Kachemak City was incorporated two years before the City of Homer and, historically, its residents have enjoyed their independence from their larger neighbor. Kachemak City contracts with the City of Homer for Fire and Waste Water Services. It has likewise often used its state capital grant to fund projects in Homer that its residents often use, such as the Library, Little League facilities and the like. The relationship between the two cities is good and workable.

To include Kachemak City in the present legislative annexation plan would probably create problems that would doom its success. The City of Homer believes the joining of the two municipalities is probably eventual as it is illogical to duplicate needed municipal services and facilities, but it should only be at Kachemak City's request.

By the Boundary Commission and the State Legislature permitting this enclave to exist will not be harmful to either municipality and can be addressed in the near future.

Notwithstanding the Petitioner's views, DCED considers the prospect of altering the boundaries of the City of Homer in a manner that would create an enclave – particularly one encompassing another entire city government – to be inappropriate. Such a boundary configuration would amplify previously noted concerns over the fundamental constitutional policy against proliferation of local governmental units. It would also be counter to general and long-standing principles relating to the creation and alteration of municipal boundaries.⁷⁸

⁷⁸ Only two of Alaska's 162 municipal governments have enclaves. Those are the City of Palmer and the Haines Borough. The Commission and DCED have expressed public policy concerns about the existence of such enclaves in prior proceedings involving both of those governments. Moreover, the Commission has denied boundary proposals for other municipal governments that would have created enclaves.

b) Whether the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions.

The Petitioner indicates that soil characteristics and drainage conditions constitute a basis for concern that failure of septic systems and leach fields may occur in portions of the area proposed for annexation. This situation is allegedly being exacerbated by increases in the territory’s population, commercial development, scarcity of quality well water, and other issues of water quality in the Homer area.

In its Reply Brief, the Petitioner suggests that concerns over water and sewer constitute major health issues involving areas both inside and outside the current City boundaries because of the area’s drainage patterns.

The health issues relate to the fact that most of the surrounding area’s soils do not percolate. Because the soils are clay-heavy, impurities suspended in fluids,

including those from failed septic systems, tend to flow down hill. At the bottom of this particular hill is Beluga Lake.

The Petition predicts that an expensive and prolonged controversy involving the City of Homer and the Kenai Peninsula Borough over wastewater disposal will ensue if annexation does not occur. The Petitioner asserts that the solution to that problem is the extension of the City of Homer’s water and sewer utilities. (Petition at 4-5)

The Alaska Department of Environmental Conservation (DEC) offered the following comments regarding groundwater and surface water issues in the Homer area.⁷⁹

The soil conditions in the Homer area have sometimes been difficult for conventional septic systems to operate properly. Septic systems installed in the Homer area may have to be designed or engineered for specific site conditions that deal with tight soils or slopes. All septic systems have a life span. Some septic systems have shorter life spans than others due to limiting site conditions. The proposed area to be annexed can handle more individual septic systems if they are designed and installed properly.

⁷⁹ September 17, 2001 personal communication.

Some of the streams in the Homer area have been tested and show high levels of total coliform bacteria. Total coliform bacteria can come from a variety of sources such as animals, birds or people. Total coliform bacteria are not used to determine if the water quality is acceptable. The high level of total coliform bacteria may be coming from live or dead warm blooded animals or birds that live in the Homer watershed. Test results suggest that further monitoring may be warranted to determine if water quality problems are occurring.

The degree to which ground water and surface water is contaminated or threatened by contamination as a consequence of conditions existing or developing in the area proposed for annexation is open to argument. However, as noted in the discussion of the previous standard (need for city government), DEC has advised the Commission in prior proceedings that, generally, significant public health risks may arise in areas of concentrated development that lack sewer and water utilities.

Given the potential for serious contamination, it is evident that the City of Homer and portions of the area proposed for annexation, particularly Millers Landing and the urban area, have a mutual interest in ad-

ressing water and sewer matters in concert. Again, Millers Landing and the urban area generally have more concentrated development, smaller parcels, and greater population density compared to the remnant territory. Therefore, DCED considers annexation of the urban area and Millers Landing to be consistent with enabling the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory proposed for annexation.

The factor at issue also calls for consideration of whether annexation will enable the City to regulate or control the detrimental effects of those conditions. As noted in Section 4.11 of this Chapter, the City of Homer has superior capital facilities, staff resources, and fiscal capacity compared to other existing local governments in the vicinity. Extension of water and sewer utility service to the entire territory proposed for annexation may be neither financially viable nor necessary from a public health standpoint *at this time*. However, given the relatively greater development, smaller parcel size,

and higher population density that generally exists in Millers Landing and the urban area, arguments regarding the need for and financial viability of further extending water and sewer utility services to those areas are compelling.

c) Whether extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city.

Erosion of tax base. It is evident from the record that substantial commercial growth of the Homer community has occurred beyond the City of Homer's current jurisdictional boundaries. This is particularly the case in Millers Landing and along the Sterling Highway corridor in the southern portion of the territory proposed for annexation.

The City of Homer's sales tax is an especially significant element of its capacity to fund essential services. As noted previously, the City of Homer's sales tax

generates nearly three times more revenue than its property tax (the equivalent of a 15-mill property tax).

DCED views annexation as the appropriate means to ensure that the City of Homer maintains the legal jurisdiction (including the authority to levy sales, property, and other taxes) necessary to continue to fund essential services that benefit the residents of the Homer community.

Unless its boundaries are expanded, the City will likely face the prospect of continued long-term erosion of its tax base as further commercial and residential development occurs adjacent to the City's present boundaries. Erosion of its tax base could eventually threaten the City's capacity to fund the level of services currently provided.

d) Whether residents or property owners within the territory proposed for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits.

Establishment of the Kachemak Emergency Services Area notwithstanding, DCED considers the Petitioner's contention that the City of Homer delivers a range of services to residents in all or portions of the territory proposed for annexation to be valid. Examples include fire protection and emergency medical service under provisions of a six-month contract with KESA, jail, emergency dispatch services, back up to Alaska State Troopers, animal control, port and harbor services, economic development, parks, city roads, and public library.

The Petitioner notes that because property owners in the territory proposed for annexation pay no City property taxes, they do not render tax contributions commensurate with City services they receive.

DCED recognizes that those who regularly patronize commercial establishments within the existing boundaries of the City of Homer – as many in the territory proposed for annexation presumably do – contribute to the City of Homer's sales tax revenues. Moreover, some citizens in the territory proposed for annexation contribute in other ways, such as donating their services to the City of Homer fire department.

DCED considers the City's argument about the lack of commensurate property tax contributions to be legitimate. Burdening City taxpayers for services provided to residents in the territory proposed for annexation has been justified by some on the basis that those residents render their proportionate contribution for City services they may have directly or indirectly received through paying the City's sales tax for those services. However,

that argument ignores the 5.5-mill property tax paid by owners of taxable property located within the City. Tax inequality is evident in the status quo and annexation could be instrumental in relieving it.

Certain Respondents and correspondents have suggested alternatives to annexation.

These include:

- imposing new fees or increasing existing user fee schedules for City services;
- transfer of powers from the City of Homer to Kenai Peninsula Borough service areas; and
- raising the City sales tax.

Instituting user fees. The City of Homer currently imposes user fees in the traditional areas of water utilities, sewer utilities, boat harbor, and port. Imposing new user fees for services such as fire protection, emergency medical service, police service, or libraries is not considered practi-

It is simply not realistic, for example, to suggest that the City of Homer would deny fire protection service or emergency medical service to any resident of Millers Landing in need of such service because they were not a "subscriber" to fire and emergency medical services.

cal or equitable by DCED. User fees in those areas are non-traditional among local governments in Alaska. User fees, by defini-

tion, are not taxes. They are voluntary and not comprehensive in scope. It is simply not realistic, for example, to suggest that the City of Homer would deny fire protection

service or emergency medical service to any resident of Millers Landing in need of such services because they were not a "subscriber" to fire and emergency medical services. Neither is it realistic to suggest that the City would deny emergency backup to the Alaska State Troopers when called upon to assist in any portion of the territory proposed for annexation.

Moreover, the prospect of imposing user fees for certain fundamental services is widely criticized from a public policy standpoint because such would require those who earn less to utilize a greater percentage of their disposable income for the library, fire protection, police, and emergency medical services.

Further, in many cases, user fees that cover both operating and capital costs would have to be greater than patrons would be willing to pay. Lastly, user fees would add to the City's operating costs. In contrast, the Kenai Peninsula Borough bears the cost of collecting sales taxes and property taxes levied by the City of Homer. The Borough remits the entire proceeds of taxes levied by the City of Homer to the City of Homer without any charge.

Transferring City powers to the Borough to be exercised within service areas.

The alternative of transferring powers from the City of Homer to

the Kenai Peninsula Borough for operation in service areas raises the same fundamental legal and policy issues that were addressed in Section 4.11 of this chapter.

Moreover, the Kenai Peninsula Borough would be compelled to levy taxes in the service area to support new services. For ex-

ample, the Borough recently imposed a 1.75 mill property tax to support the newly created Kachemak Emergency Service Area. As a result of that levy, the property tax differential between the City of Homer and the territory pro-

posed for annexation has narrowed considerably.

It is conceivable that service areas could proliferate to the extent that overall property tax rates in those service areas would exceed the rates in the City of Homer. For example, in Kodiak, borough service areas have proliferated around the corporate limits of the City of Kodiak. Many residents of the area out-

It is conceivable that service areas could proliferate to the extent that overall property tax rates in those service areas would exceed the rates in the City of Homer.

side the City of Kodiak pay higher property taxes for fewer services than their counterparts in the City of Kodiak. Additionally, rates charged for water and sewer utility services in the areas adjoining the City of Kodiak are 25% higher than they are within the City of Kodiak.

Raising City sales taxes.

Increasing the City sales tax rate does not appear to be a practical and equitable alternative for the City over the long-term. Such could prove counterproductive since it might provide an incentive for businesses to locate immediately outside City boundaries to achieve a competitive advantage.

There have been several instances when the Commission has approved annexations, in large part, to address shifting tax bases. For example, the Commission approved the annexation of 6.5 square miles to the City of Haines that took effect in March 1999. The Commission approved that annexation, partly, to respond to concerns by the City of Haines that its property and sales tax bases were being eroded. The

Increasing the City sales tax rate . . . could prove counterproductive since it might provide an incentive for businesses to locate immediately outside City boundaries to achieve a competitive advantage.

Commission noted as follows:
(LBC decisional statement regarding annexation to the City of Haines, page 5) (Emphasis added)

. . . it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation is the most appropriate means to ensure that the City of Homer acquires both the jurisdiction and enhanced financial ability necessary to deliver services that benefit the residents of both the City and the outlying areas. Empowering the City of Homer by expanding its jurisdiction is in the interests of the residents and property owners of the City as well as those in the territory proposed for annexation, particularly Millers Landing and the urban area. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. Such could degrade the quantity

Empowering the City of Homer by expanding its jurisdiction is in the interests of the residents and property owners of the City as well as those in at least portions of the territory proposed for annexation, particularly Millers Landing and the urban area.

and quality of essential services available to a substantial number of residents of the territory proposed for annexation and place greater burdens on the Kenai Peninsula Borough and the State of Alaska.

e) Whether annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city.

As noted in earlier discussions in this chapter, DCED considers the record to clearly demonstrate that the territory proposed for annexation, particularly Millers Landing and the urban area, has undergone substantial commercial and residential growth and that the area is reasonably anticipated to continue to grow and develop in the foreseeable future.

The Petitioner notes that urban development is occurring throughout the greater Homer area, not just the territory proposed for annexation. The implication is that the post-annexation boundaries do not include all development in the greater Homer area, since the area

sought for annexation neither extends the length of East End Road nor does it extend into the Anchor Point vicinity. (Petition at 40)

The Petitioner contends that unless annexation occurs, both the City and the area proposed for annexation could be negatively affected because, absent planning, development detrimental to both areas will occur. DCED considers this argument to be credible, but more applicable to the urban area and Millers Landing than to the remnant territory.

f) Whether the territory proposed for annexation is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

The record demonstrates that the area proposed for annexation is populated to the degree that if it were a separate city, it would rank as the twentieth most-populous city in Alaska. However, development patterns in the urban area and Millers

Landing generally demonstrate much higher population densities and more commercial activities than the remnant area.

The record does not conclusively demonstrate that the territory proposed for annexation is extensively inhabited by persons who are not landowners.

g) Other considerations.

Shift of appropriate responsibilities to the government unit closest to the citizens. Extending the City’s jurisdiction would benefit the Kenai Peninsula Borough and the State of Alaska by relieving each of responsibility for the delivery of services assumed by the City.

For the Borough, annexation would shift planning related functions, fire protection, emergency medical services, and responsibility for road maintenance within any territory added

The record does not conclusively demonstrate that the territory proposed for annexation is extensively inhabited by persons who are not landowners.

to the City of Homer. Annexation would also relieve the Alaska State Troopers of primary responsibility for serving those areas. The jurisdiction of Alaska State Troopers is, of course, statewide. Nevertheless, annexation of the urban area and Millers Landing would shift additional responsibility for local law enforcement duties in those areas to the City of Homer and to a limited extent relieve some of the burden of service delivery currently borne by the Alaska State Troopers.

Empowerment of qualified local governments to assume greater responsibilities is appropriate when such local governments exhibit the willingness and capability to do so. In a prior proceeding, the Local Boundary Commission expressed the following policy views concerning such matters.⁸⁰ (LBC Decisional Statement on 1999 Ketchikan annexation, page 12.)

Annexation will also shift responsibility for certain local services in the territory from the State to local government. These consist of police service and maintenance of certain roads. Annexation may also foster the extension of water and sewer utilities to the territory. The Commission finds that, as a matter of public policy, where communities have the resources to as-

sume responsibility for local services, the State should transfer those responsibilities to the local government. (Emphasis added.)

Enfranchisement of community residents. DCED recognizes that certain actions taken by the Homer City government can have considerable effect (or the potential for such) upon residents beyond the corporate boundaries of the City. For example, as noted in Section 4.12 of this chapter, the City of Homer has the authority to “restrict, interrupt, decrease, or terminate the sale of water for export or

⁸⁰ The 1999 Ketchikan annexation involved a limited transfer of road maintenance responsibility from the State to the City of Ketchikan. The City of Ketchikan had volunteered to accept the additional road maintenance responsibility. Annexation to the City of Homer will not bring about any transfer of road maintenance responsibility from the State to the City per se. Of course, if annexation occurs, the City may, at some future time, agree to maintain some of the roads in the territory that are currently being maintained by the State (just as the City maintains some of the State roads within the existing boundaries of the City).

consumption outside the certificated service area whenever the city council determines it is in the best interest of the city to do so.” An estimated 368 households and other customers outside the corporate boundaries of the City of Homer rely on the City to provide water “for export.” There are a number of other aspects of the daily lives of residents in the territory proposed for annexation that are affected by decisions rendered by elected and appointed officials of the City of Homer (e.g., port and harbor tariffs; public safety issues, maintenance of streets where people shop, go to work, attend schools and churches, et cetera).

Moreover, DCED reasonably assumes that residents of the territory proposed for annexation generally shop at businesses within the existing boundaries of the City of Homer. Those individuals pay a 3.5% sales tax to the City of Homer on all taxable purchases made within the corporate boundaries of the City of Homer. However, they have no formal role in determining how those monies will be spent. In an informal sense, such amounts to “taxation without representa-

tion.” Ideally, regularly recurring sales tax contributions should reasonably be reflected by direct participation of the taxpayers in the body politic of the City of Homer.

In DCED’s view, it would be preferable to enfranchise citizens of the territory proposed for annexation in order to provide them with a formal voice in the affairs of a local government that generally affects their daily lives.

Potential for proliferation of local government units. If the City of Homer’s boundaries are not adjusted, the demand for establishment of additional local governmental units (cities or borough service areas) to provide services in the territory proposed for annexation will likely grow as the area’s population and level of development increases. Indeed, as noted earlier, one new borough service area encompassing most of the territory proposed for annexation was created during the course of this annexation proceeding. Additionally, DCED fielded an

inquiry from one of the Respondents in this proceeding about the prospects of forming a “City of Diamond Ridge.”

2) Conclusion

Certain aspects of the foregoing analysis suggest that the balanced best interest standard would be satisfied if all 25.64 square miles were annexed to the City of Homer. For example, doing so would extend City of Homer citizenship to residents of an area who are part of the community of Homer, who already rely on the City of Homer for a number of essential services, and who are otherwise significantly affected by that local government. It would also address, in a more comprehensive fashion, concerns over the provision of services without commensurate local tax contributions.

However, a number of other aspects relating to the standard at issue weigh against expanding the boundaries to encompass all 25.64 square miles. For example, approving the City’s annexation proposal would create an enclave encompassing another entire municipal government. Further, concerns over health, safety, and

general welfare are more evident in the urban area and Millers Landing. Additionally, the threat of erosion of the City of Homer’s sales tax base is limited largely to Millers Landing and the Sterling Highway corridor in the territory proposed for annexation.

DCED concludes that the balanced best interest standard is satisfied in the most favorable manner *at this time* by limiting the expansion of the City of Homer’s boundaries to the urban area and Millers Landing. Such an annexation would meet the requirements set out in 3 AAC 110.140.

4.14 Best Interests of the State

A. Standard Established in Law

For decades, State law required the Local Boundary Commission to apply the “best interests test” addressed in Section 4.13 of this chapter only to legislative review annexations. However, in 1999, the legislature modified the statutes governing annexation to require a “best interests of the state” determina-

tion before the Commission could approve any annexation. Specifically, AS 29.06.040(a), as amended in 1999, provides as follows (emphasis added):

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

The “best interests of the state” standard set out in AS 29.06.040(a) and the balanced best interest standard set out in 3 AAC 110.140 are essentially redundant. That redundancy will be eliminated when recently adopted amendments to the Local Boundary Commission’s regulations take effect. However, to avoid any assertion that failure to address that standard separately would constitute a procedural

flaw, DCED addresses the best interests standard set out in AS 29.06.040(a) here as a separate standard.

On July 27, 2001, the Local Boundary Commission adopted a definition of the “best interests of the state.” The definition has not yet been formally implemented; however, it serves here as an informal guide for interpreting the phrase. The definition adopted by the Commission provides as follows:

“best interests of the state” means the broad policy benefit to the public statewide; the concept is applied by the Local Boundary Commission on a case-by-case basis; a determination of the best interests of the state is substantially guided by the applicable provisions of the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code to reflect the exigencies of any petition as is necessary to develop appropriate local government boundaries which, in turn, serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests which the Local Boundary Commission, in its discretion, considers to be relevant;

B. Application of the Best Interest of the State Standard to the City of Homer's Annexation Petition

The facts outlined with respect to the preceding standard apply equally to this standard. To avoid repetitiveness, that analysis will not be restated or even summarized here.

Conclusion

The "best interests of the state" as set out in AS 29.06.040(a) are served to the greatest degree if the expansion of the boundaries of the City of Homer is limited *at this time* to Millers Landing and the urban area.

Chapter 5

Recommendations to the Local Boundary Commission

The question whether the corporate boundaries of the City of Homer should be expanded to include some or all of the 25.64 square miles proposed for annexation involves broad judgments of political and social policy. So too does the question of what, if any, special conditions should apply to any expansion of the boundaries of the City of Homer. Alaska’s Constitution and statutes delegate the responsibility for such judgements to the Local Boundary Commission.

The Commission has been granted broad powers under Alaska’s Constitution and statutes to decide whether the extension of city jurisdiction is warranted based on the particular circumstances presented by each proposal. The broad powers of the Commission include the ability to amend petitions and impose special conditions on the approval of petitions.

The Commission’s policy determinations regarding city annexations are guided by consitutional principles, statutory provisions, and standards established in 3 AAC 110.090 – 3 AAC 110.140 and 3 AAC 110.900 – 3 AAC 110.920. Those provisions apply to every city annexation proposal in Alaska regardless of its geographic size, population, powers,



Local Government Committee in session during the Alaska Constitutional Convention, February 1956.

resources, and other fundamental characteristics. The diversity found in the 146 cities throughout Alaska necessitates a flexible application of the guidelines to the unique characteristics involved in each proposal.

DCED has the responsibility and duty under State law to make recommendations to the Local Boundary Commission regarding petitions that come before the Commission. In carrying out its responsibility and duty, DCED applies the same standards that will be used by the Commission to judge the merits of a proposal. That necessarily entails making the same broad judgements of social and political policy as the Local Boundary Commission, albeit on a basis that lacks the authority of the Commission.

Certain fundamental characteristics of the City of Homer's annexation proposal had great influence in the formulation of DCED's policy views regarding the pending proposal. For example, the City of Homer's Petition is believed to be, in relative terms of the population affected, the largest-scale proposal for legislative review annexation to a city in the history of the State of

607 ALTERATION OF MUNICIPALITIES § 29.06.040

the date the name change takes effect shall proceed in the municipal name as changed by the order.

(d) This section applies to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 29. 62 C.J.S., Municipal Corporations, § 35.

Article 2. Annexation and Detachment.

Section
40. Local Boundary Commission
50. Annexation of military reservations
60. Application

Sec. 29.06.040. Local Boundary Commission. (a) The Commission may consider any proposed municipal boundary change. The commission determines that the proposed change, as amended or printed, meets applicable standards under the state constitution as it is in the best interests of the state, it may accept. Otherwise it shall reject the proposed change. A Local Boundary Commission under this section may be appealed under AS 44.62 (Administered by the Legislature during the first 10 days of a regular session becomes effective 45 days after presentation or at the end of the session, unless disapproved by a resolution occurred in by a majority of each house.

(c) In addition to the regulations governing annexation by local AS 44.33.812, the Local Boundary Commission shall establish procedures and detachment of territory by municipalities by local action. The provisions under this subsection must include a provision that

(1) a proposed annexation and detachment must be approved by the question cast by voters residing in the area proposed to be annexed;

(2) municipally owned property adjoining the municipality ordinance without voter approval; and

(3) an area adjoining the municipality may be annexed by local action if all property owners and voters in the area petition for a boundary change initiated by local action, without regard to this section. (b) A boundary change effected under (a) and (b) of this section shall be effective 45 days after presentation or at the end of the session, unless disapproved by a resolution occurred in by a majority of each house.

Cross references. — For Local Boundary Commission and procedures, see AS 44.47.600 — 44.47.603. **Effect of amendments.** — The 1994 amendment, effective August 25, 1994, in subsection (a), in the second sentence, substituted "may" for "shall" and deleted "to alter the boundaries" and deleted "to alter" at the end. The 1996 amendment, effective May 16, 1996, in subsection (c) inserted "must" in the second sentence of subsection (c).

Notes to Decisions
Defining boundaries is a legislative function. — The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. *Fairbank v. Barack*, 282 P.2d 1147, 1148, 35 U.S. 615, 43

847 CONSTITUTION OF ALASKA Art. X, § 12

1971; *Roderick v. Sullivan*, 528 P.2d 450 (Alaska 1974); *Taiter v. Municipality of Anchorage Sch. Dist.*, 481 P.2d 67 (Alaska 1971); *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982). Cited in *Keane v. Local Boundary Comm'n*, 803 P.2d 1239 (Alaska 1990).

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution occurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Cross references. — For provisions concerning the local boundary commission, see AS 44.47.565 — 44.47.583.

NOTES TO DECISIONS

The intention of this section and its implementing statute. AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the danger that a small, self-interested group could stand in the way of boundary changes which were in the public interest. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The advantages of the method proposed, in the words of the committee on local government. "... has advantages over a local government commission (SLA 1959, ch. 64, § 7) and conferring powers upon it (SLA 1960, ch. 45) Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 640 (Alaska 1962).

The relevant minutes of the meetings of the committee on local government show clearly the concept that was in mind when this section was being considered. That local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 640 (Alaska 1962).

The concept that was in mind when this section was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *Ocean v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

The framers of the Alaska Constitution thought that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *City of Douglas v. City of Juneau*, 484 P.2d 1040 (Alaska 1971).

The basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obtain the type of situation where there was a controversy over municipal boundaries which apparently could not be settled at the local level. *Mohi Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

This section does not reach creation of an organized borough from the nonfunctioning unorganized borough. *Mohi Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Creating a new unit of government from the unorganized borough generates no controversy between

governments with competing economic and political interests. The conflicts accompanying boundary adjustments between two functioning governments which must be submitted to the legislature under this section do not afflict mere incorporation. *Mohi Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

When method became operative. — The method for making boundary changes contemplated by this section was operative upon the enactment of the 1969 statute creating a local boundary commission (SLA 1959, ch. 64, § 7) and conferring powers upon it (SLA 1960, ch. 45) Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 640 (Alaska 1962).

This section established two methods by which local boundaries might be changed: (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

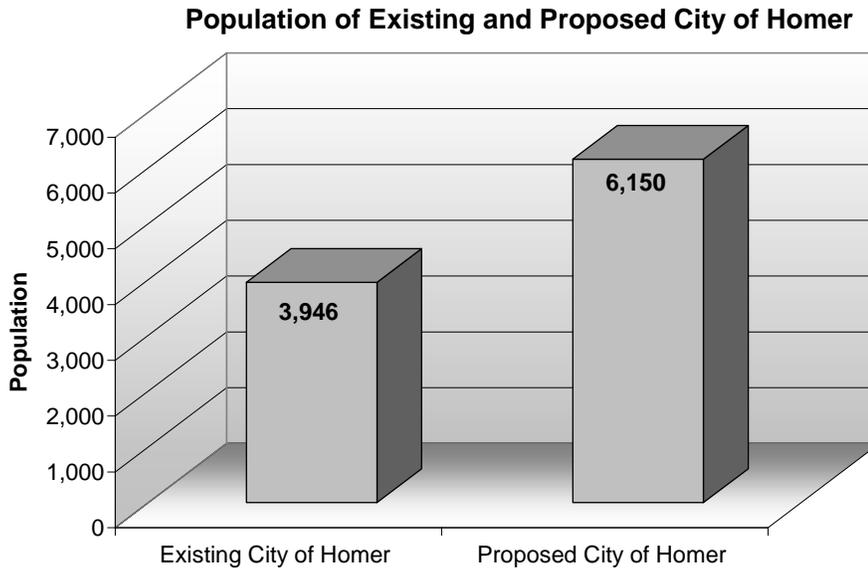
The local action provision of this section has been implemented by legislation (AS 29.60.010) and by administrative action (19 AAC § 15.010 et seq.). *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Section implemented by AS 44.47.567. — See *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Provisions of AS 44.47.567 and 44.47.568. — By AS 44.47.567 and 44.47.568, it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves, legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section empowers the legislature to veto commission actions. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Legislative review for compliance. — This section does not require to compel the legislature to review

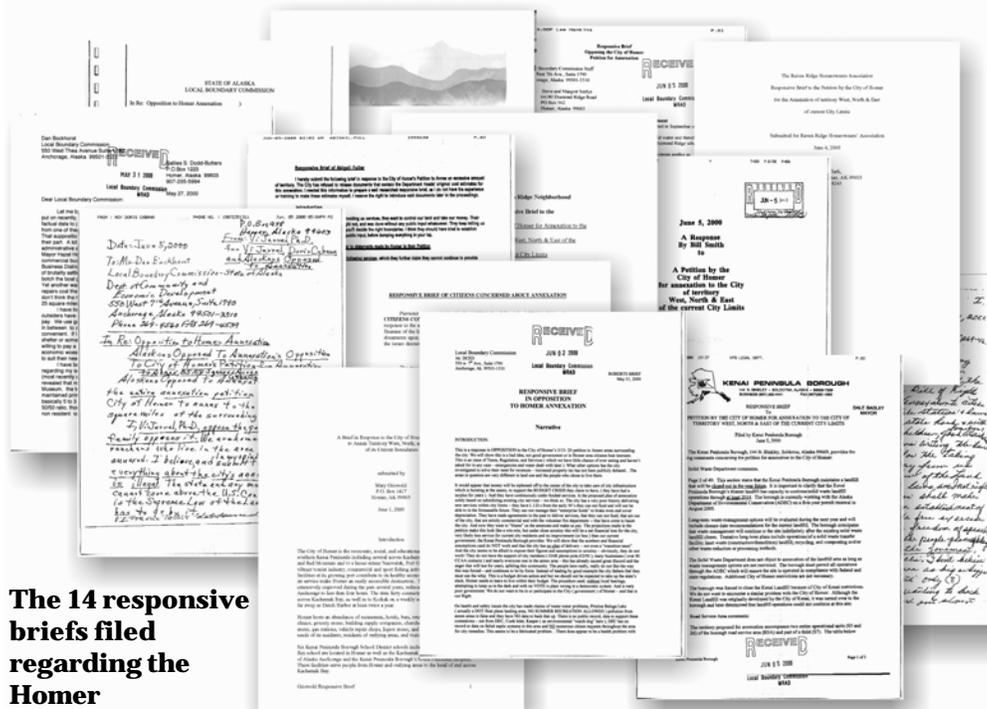


Alaska. The proposal seeks to expand the population of the City of Homer by more than half (nearly 56%).

Even in absolute terms, the number of residents in the territory proposed for annexation (2,204) may be a record setting proposal for legislative review annexation to a city. The population of just the territory proposed for annexation is larger than nearly 87% of all existing cities in Alaska. It is even larger than the current population of one-quarter of all organized boroughs in Alaska.

Moreover, the property tax base of the territory proposed for annexation is probably at record setting levels for a legislative review annexation to a city government. At \$132,765,100, the real property tax base of the territory proposed for annexation is greater than that of 60% of the city governments in Alaska for which local assessed values exist.⁸¹ City governments in Bar-

⁸¹ Local assessed values exist for only 40 of Alaska's 146 cities. These include 13 of the 97 cities in the unorganized borough and 27 of the 49 cities within organized boroughs in Alaska. Generally, the remaining 106 cities have substantially smaller per capita tax bases than the 40 cities for which assessed values exists.



The 14 responsive briefs filed regarding the Homer annexation.

352

row, Cordova, Dillingham, Haines, and Wrangell are among those whose taxable real property is less than that of the territory proposed for annexation (both in total and per capita terms).

The City of Homer's annexation Petition has set other records as well. It has generated more written comments from the

public (168) and more formal responsive briefs (14) than any prior city annexation proposal submitted to the Commission.

Needless to say, given the circumstances noted above, the proposed annexation to the City of Homer is a vast undertaking. It has potential for enormous impact on the current body politic of the City of Homer. DCED has confidence that the elected and appointed officials of the City of

Homer, along with the residents of any expanded City of Homer, can effectively manage the change. However, it is likely that some impacts of such a major change cannot be fully anticipated or appreciated at this time. Implementing transitions required by much smaller municipal boundary changes can sometimes be challenging.

One other important characteristic of the annexation proposal bears noting here. The

Petition seeks to expand the boundaries of the City of Homer by 25.64 square miles. Yet, at the same time, the City of Homer has dealt with the prospect of merging⁸² with the 1.83 square mile City of Kachemak in a distinctly different manner.⁸³

In DCED's view, the merits of "merging" the City of Homer and the City of Kachemak are about on par with the merits of annexing the so-called urban area. The

⁸² The term "merging" or "merger" is used colloquially in this chapter. The City of Homer and the City of Kachemak could be combined through a variety of means including consolidation, annexation, or merger as defined in the law.

⁸³ While pursuing a legislative review proposal for the annexation of 25.64 square miles, the City of Homer states as follows regarding the City of Kachemak in its Petition.

... Kachemak City, a Second Class incorporated City will now become an enclave in the eastern portion of the new City of Homer boundaries. Kachemak City was incorporated two years before the City of Homer and, historically, its residents have enjoyed their independence from their larger neighbor. Kachemak City contracts with the City of Homer for Fire and Waste Water Services. It has likewise often used its state capital grant to fund projects in Homer that its residents often use, such as the Library, Little League facilities and the like. The relationship between the two cities is good and workable.

To include Kachemak City in the present legislative annexation plan would probably create problems that would doom its success. The City of Homer believes the joining of the two municipalities is probably eventual as it is illogical to duplicate needed municipal services and facilities, but it should only be at Kachemak City's request.

By the Boundary Commission and the State Legislature permitting this enclave to exist will not be harmful to either municipality and can be addressed in the near future.

urban area and the City of Kachemak have many similar characteristics. Further, nearly all of the arguments favoring annexation of the urban area apply equally to a prospective “merger” of the City of Homer and the City of Kachemak.

Moreover, there are fundamental principles of sound local government that favor such a merger. These include the express policy in Article X, §1 of Alaska’s Constitution promoting a “minimum of local government units.” The “minimum of local government units” policy is also reflected in AS 29.05.021(b).⁸⁴ Additionally, annexation of the 25.64 square miles in question, but not the City of Kachemak,

would effectively render the City of Kachemak an enclave surrounded by the City of Homer. The Commission’s standards clearly disfavor such developments.

Given the totality of the circumstances described above, DCED has concluded that a conservative political and social policy approach is warranted *at this time* with respect to the expansion of the corporate boundaries of the City of Homer.

Accordingly, DCED makes the following four recommendations to the Local Boundary Commission with respect to the pending Petition for annexation to the City of Homer.

⁸⁴ AS 29.05.021(b) states that “A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided . . . by annexation to an existing city.”

Recommendation Number One
Amend the boundaries of the territory proposed for annexation to include only Millers Landing and the Urban Area.

As detailed in the previous chapter, DCED has concluded that the proposal by the City of Homer for annexation of 25.64 square miles meets most of the annexation standards established in State law. Specifically, in DCED's view, the evidence in this proceeding supports the following conclusions.

- The 25.64 square mile territory proposed for annexation is compatible in character with the territory presently within the corporate boundaries of the City of Homer, as required by 3 AAC 110.100.
- No portion of the 25.64 square miles proposed for annexation overlaps the boundaries of another existing local government, in compliance with 3 AAC 110.130(e).
- The 25.64 square miles proposed for annexation are contiguous to the City of Homer, as required by 3 AAC 110.130(b).
- Annexation will not deny any civil or political right to any individual *because of race, color, creed, sex or national origin*, in satisfaction of the standard set out in 3 AAC 110.910. Moreover, annexation will not result in the imposition or application of voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group, in compliance with 42 U.S.C. Section 1973.
- The 46.64 square miles encompassed by the proposed expanded boundaries of the City of Homer do not include large unpopulated areas or entire geographic regions, in compliance with 3 AAC 110.130(d).
- The estimated 6,150 residents of the proposed expanded City of Homer comprise a population that is sufficiently large and stable to support the extension of city government, as required by 3 AAC 110.120.

- The 46.64 square miles within the proposed expanded boundaries of the City of Homer include the human and financial resources needed to provide essential city services on an efficient, cost-effective level, in accordance with 3 AAC 110.110.
- The City of Homer has provided a practical plan for the extension of services and facilities into the territory proposed for annexation, as required by 3 AAC 110.900.
- The 46.64 square miles within the proposed expanded boundaries of the City of Homer include only the community of Homer, plus reasonably predictable growth, development, and public safety needs during the ten years following annexation, in accordance with 3 AAC 110.130(c).
- The City of Homer is better able to provide essential city services to the 25.64 square miles proposed for annexation than the Kenai Peninsula Borough, the City of Kachemak, or any other existing local government, as required by 3 AAC 110.090(b).

356 | However, DCED concludes that the remaining annexation standards are met to varying degrees in different parts of the territory proposed for annexation. These standards require the post annexation city boundaries to:

- Include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level, as required by 3 AAC 110.130(a).
- Exhibit a reasonable need for city government, as necessitated by 3 AAC 110.090(a).
- Fulfill the balanced best interests of the state, the territory proposed to be annexed, and all political subdivisions affected by the annexation, as required by 3 AAC 110.140.
- Serve the best interests of the state, as mandated by AS 29.06.040(a).

Based on the analysis in Chapter 4 and other evidence in this proceeding, DCED considers the merits of annexing Millers Landing to be incontrovertibly strong. Further, the evidence in this proceeding convincingly shows that the standards are also clearly met with respect to the so-called urban area. Together, Millers Landing and the urban

area encompass nearly all of the significant commercial development in the 25.64 square miles proposed for annexation. Those areas also generally include the more densely inhabited portions of the territory proposed for annexation.

However, DCED’s analysis and other evidence in the record show that the arguments favoring annexation of the so-called remnant territory are less compelling.

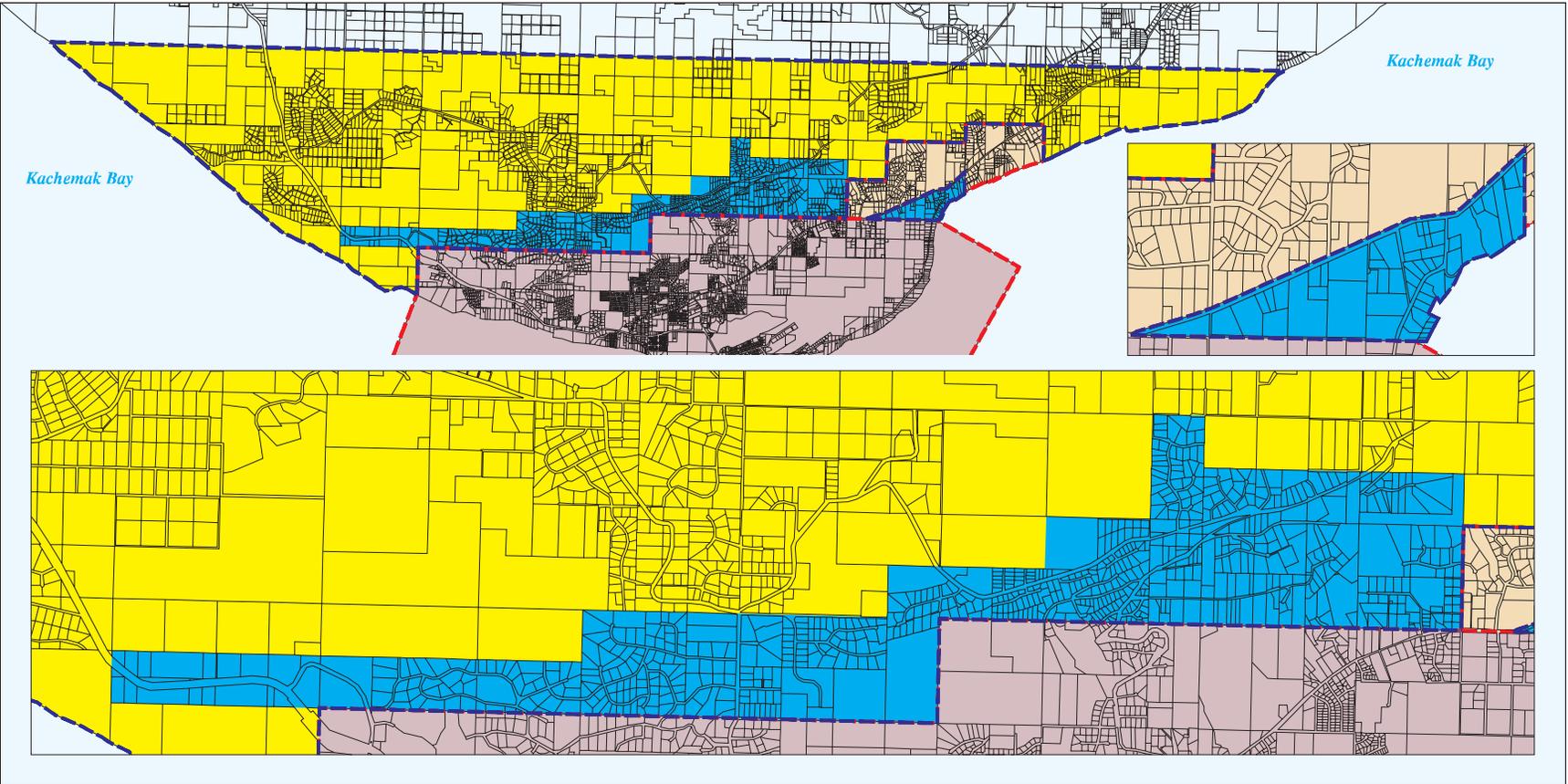
Accordingly, DCED hereby recommends that the Local Boundary Commission amend the City of Homer’s annexation proposal to exclude the remnant territory.⁸⁵ A map showing the two areas recommended for annexation (urban area, Millers Landing) and the remnant territory is presented as Figure 5-A.

⁸⁵ In making its recommendation to substantially reduce the territory proposed for annexation, DCED has carefully considered whether its recommendation would meet the legal standards for expansion of city boundaries. DCED concludes that the smaller area would clearly satisfy all applicable standards.

For example, in terms of the financial ability of the City of Homer to extend essential services, DCED reasonably estimates (based on current data) that the City would gain \$942,085 in annual revenues as a result of annexation of the 3.3 square miles recommended by DCED. Specific projections are outlined below.

DCED Projections of Revenues from 3.3 Square Mile Area Recommended for Annexation	
\$583,065	Sales taxes (conservatively projected to be 90% of the \$647,850 estimated for the entire territory proposed for annexation)
\$310,128	Real property taxes (\$56,386,900 x 0.0055)
\$15,113	Personal property taxes (conservatively estimated to be \$2,747,818 [875 / 2204 X the value of personal property listed in the petition] X 0.0055)
\$8,563	State Revenue Sharing funds
\$15,216	Safe Communities funds
\$10,000	Municipal capital matching grants
\$942,085	Total

Footnote continued on page 361



Legend

-  City of Kachemak
-  City of Homer
-  Area Proposed For Annexation
-  Area Recommended for Annexation by DCED

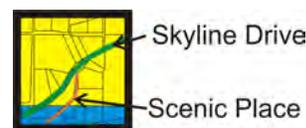
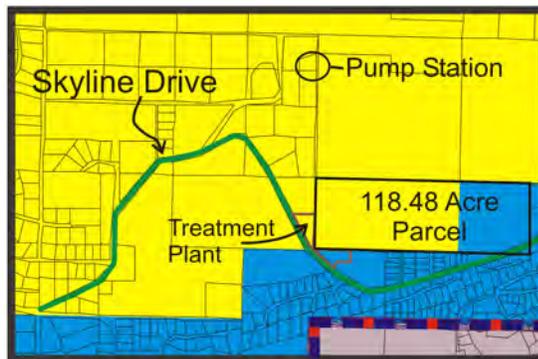
-  City Limits
-  Proposed Annexation Area

FIGURE 5-A
MAP SHOWING
AREA RECOMMENDED FOR
ANNEXATION BY DCED

Proposed City of Homer Annexation

The boundaries recommended by DCED follow aliquot parts of sections within Township 6 South. DCED notes that its conservative boundary recommendation would:

- exclude the westernmost portion of Skyline Drive, which provides access to other parts of the territory recommended by DCED for annexation;
- exclude the City’s water treatment plant but include an adjoining vacant City-owned parcel;
- exclude the City’s water pumping station;
- transect a single parcel comprising 118.48 acres; and
- exclude an eastern portion of Skyline Drive and the northern portion of Scenic Place, which provide access to other parts of the territory recommended for annexation.

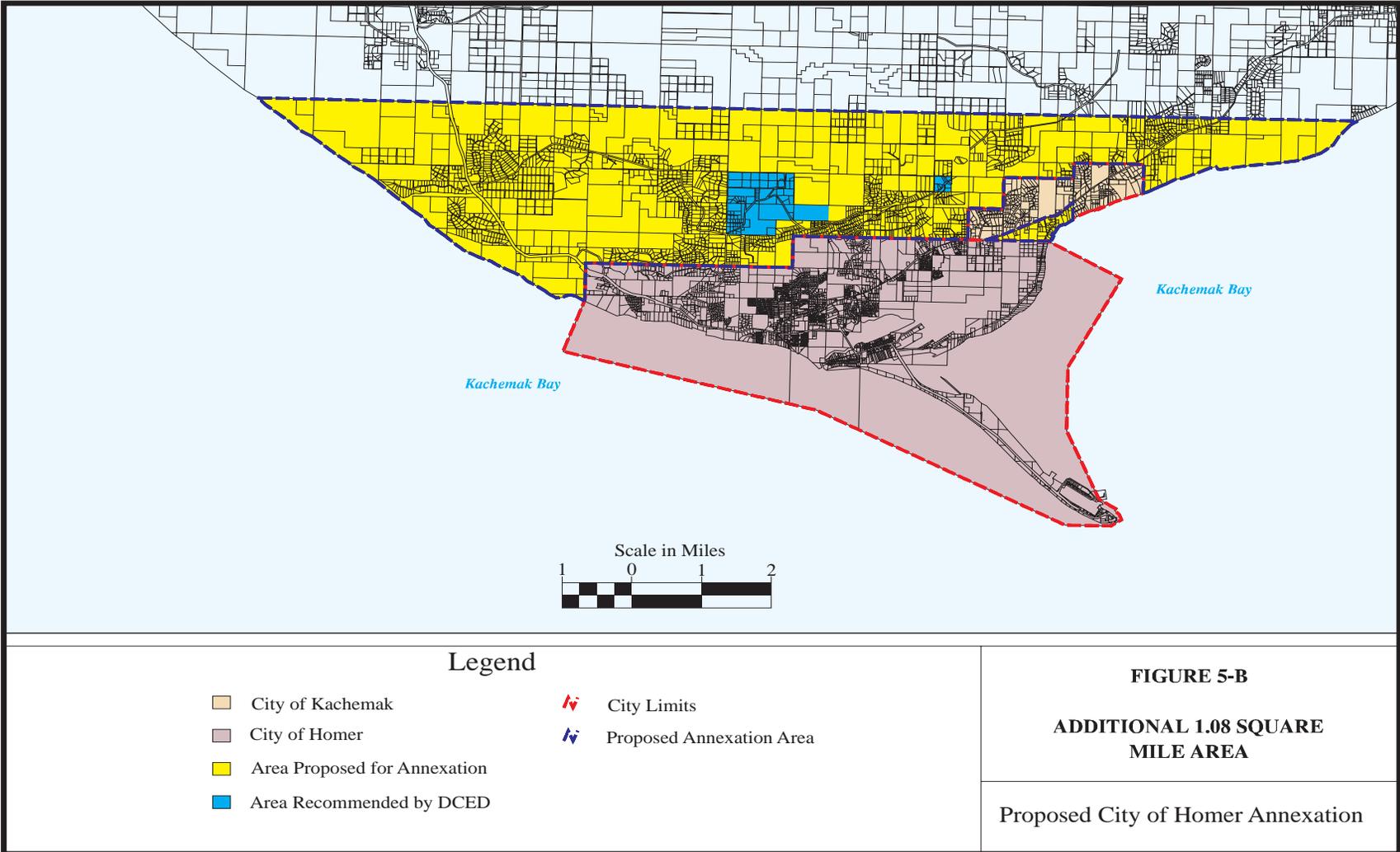


Footnote continued from page 358

In terms of the costs of serving the 3.3 square miles recommended for annexation, DCED estimates that the area contains 13.15 miles of roads currently maintained by the KPB. That represents 31.5% of the KPB-maintained roads in the territory sought for annexation by the City. The City had committed to spending \$199,000 annually to maintain those roads. Proportionally, the City’s commitment for maintenance of the roads in the territory recommended for annexation would be \$62,754. Even if all other projected operating costs remained the same, the total annual cost of serving the 3.3 square miles recommended for annexation (excluding debt service for capital improvements) would be \$278,217.

Although DCED did not confer with the City on this point, it seems that capital needs, originally estimated to be \$1,089,600 as outlined in Figure 4-AM of this report, could be substantially cut if the size of the annexation were reduced. With nearly 70% fewer roads to maintain than the area petitioned for annexation, DCED conservatively projects that the original estimate of public works equipment needs could be reduced by 50% to \$292,500. It seems that fire department capital needs could also be cut. The creation of KESA, the \$159,556 federal grant to purchase equipment for KESA, and the recommended 87% reduction in the annexation territory leads DCED to estimate that the original projection of \$370,000 in fire department capital costs could be cut in half. With the reductions noted above, DCED estimates that the total capital costs associated with annexation of the recommended 3.3 square miles would amount to \$612,100. The annual cost of debt service to fund such capital costs is conservatively estimated to be \$75,466.

DCED’s estimated annual operating and capital costs for the 3.3 square miles total \$353,683. The projected increased revenues exceed projected increased expenditures by \$588,402.

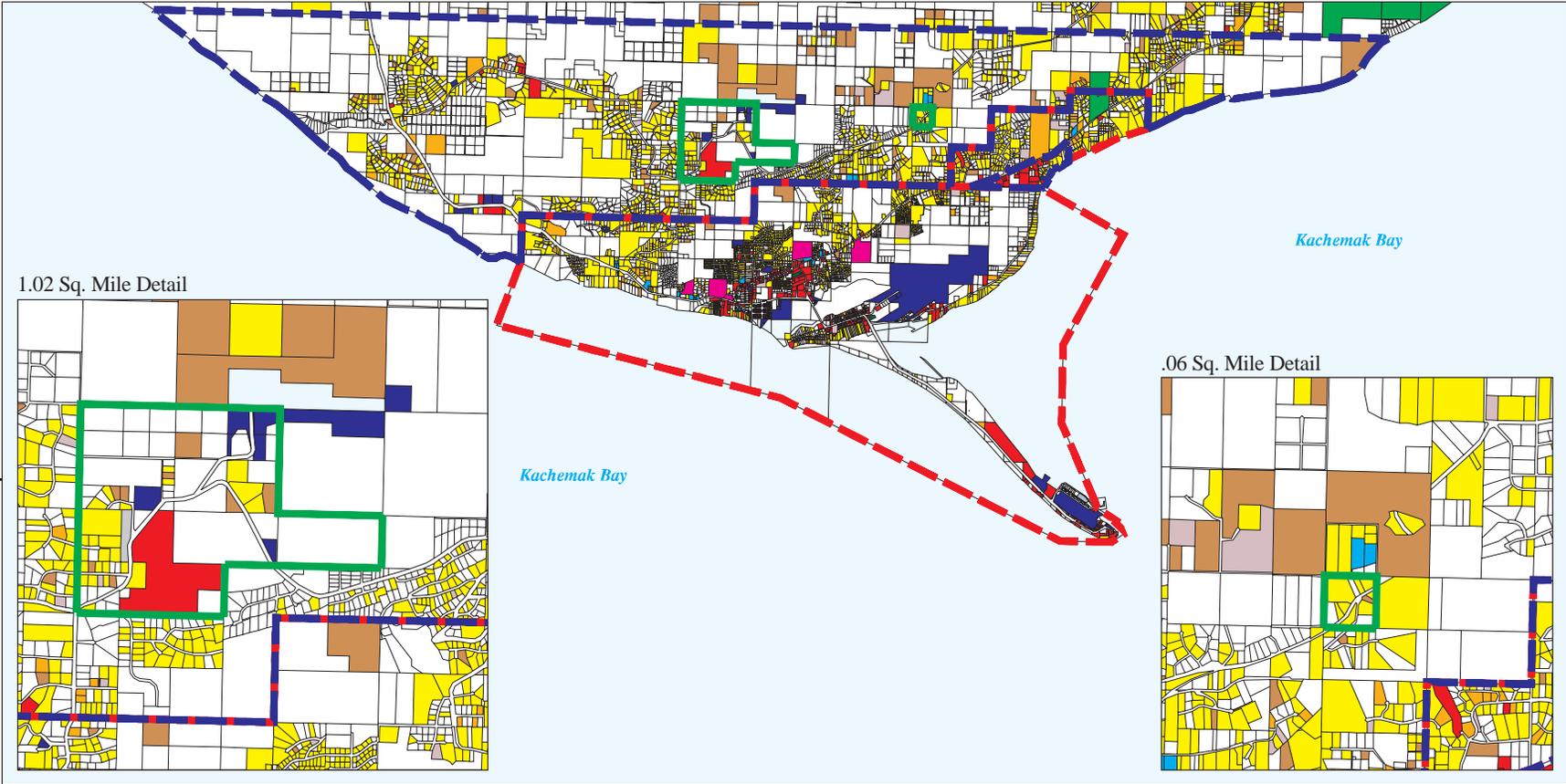


While some may argue that such boundary characteristics may be less than ideal, DCED does not consider the characteristics to be especially critical in terms of the efficient and effective operation of a city government. However, if the Commission concludes otherwise, including two additional areas as shown in Figure 5-B should satisfy concerns raised by the boundary configuration recommended by DCED.

While the inclusion of the two additional areas would address the issues noted earlier, there would be tradeoffs. The territory recommended for annexation by DCED encompasses 3.3 square miles (0.26 square miles in Millers Landing and 3.04 square miles in the urban area). The alternative boundary scenario would entail the annexation of 4.38 square miles (an additional 1.02 square miles for the larger alternative area and an additional 0.06 square miles for the smaller area). That represents a 32.7% increase in the size of the territory recommended for annexation by DCED. It would also increase the amount of vacant land and large parcels within the City, although the two areas in question show evidence of moderate levels of development. Figure 5-C shows the land use characteristics of the two areas in question.

DCED does not consider it possible to attain a “perfect solution” to the question of the jurisdictional boundaries of the City of Homer at this time given the options formally before the Local Boundary Commission. A long-term approach to the delivery of local government services in the greater Homer area must also address the relationship between the City of Homer and the City of Kachemak.

Devising a plan for the further improvement of the local government structure in Homer will require careful deliberation and action by local government officials, residents, and property owners of the existing and prospective expanded City of Homer, City of Kachemak, and the Kenai Peninsula Borough.



Legend			
	Vacant		Mobile Homes
	Residential		Accessory Buildings
	Recreational/Cabins		Institutional
	Tidelands		Farm/Agriculture
	Commercial		Churches
	Gravel Pits		Parking Lots
	Industrial		School
	City Limits		Proposed Annexation Area
	1.08 Square Mile Areas		

**FIGURE 5-C
LAND USE CHARACTERISTICS
IN THE ADDITIONAL 1.08
SQUARE MILE AREA**

Proposed City of Homer Annexation

However, the inability to achieve a faultless resolution of the boundary issue currently before the Commission should not deter a *conservative* expansion of the boundaries of the City of Homer at this time. Again, the arguments favoring the immediate annexation of the urban area and Millers Landing are, in DCED's judgment, clear and convincing. To annex those areas now would advance the degree to which the City of Homer satisfies the standards and principles relating to ideal jurisdictional boundaries of city governments in Alaska.

Recommendation Number Two: Do not require truncation of terms of City officials as a condition for annexation of the 3.3 square mile area (or even the 4.38 square mile alternative).

DCED noted in Chapter 4 that the truncation of terms of elected municipal officials might be warranted in cases where an annexation resulted in a very significant influx of new residents into the municipality.

Although the truncation of terms of local elected officials as a result of a city annexation has never occurred in Alaska, DCED believes that the Local Boundary Commission has the ability to require such under its broad constitutional and statutory powers.⁸⁶

However, the Commission has not adopted any guidelines for the exercise of such authority. As such, no threshold exists to determine under what circumstances a truncation of terms is warranted. If the Commission adopts DCED's recommendation in this matter, the population of the City of Homer would increase by 875 to 4,821. The residents of the annexed area would then comprise 18.1% of the population of the expanded City of Homer.

⁸⁶ DCED will confer with the State Attorney General's office for its views on the matter.

Absent formal guidelines concerning such matters, DCED is reluctant to suggest that the annexation of 875 residents comprising less than 20% of the population of an expanded city government warrants the truncation of terms of elected officials of the city.

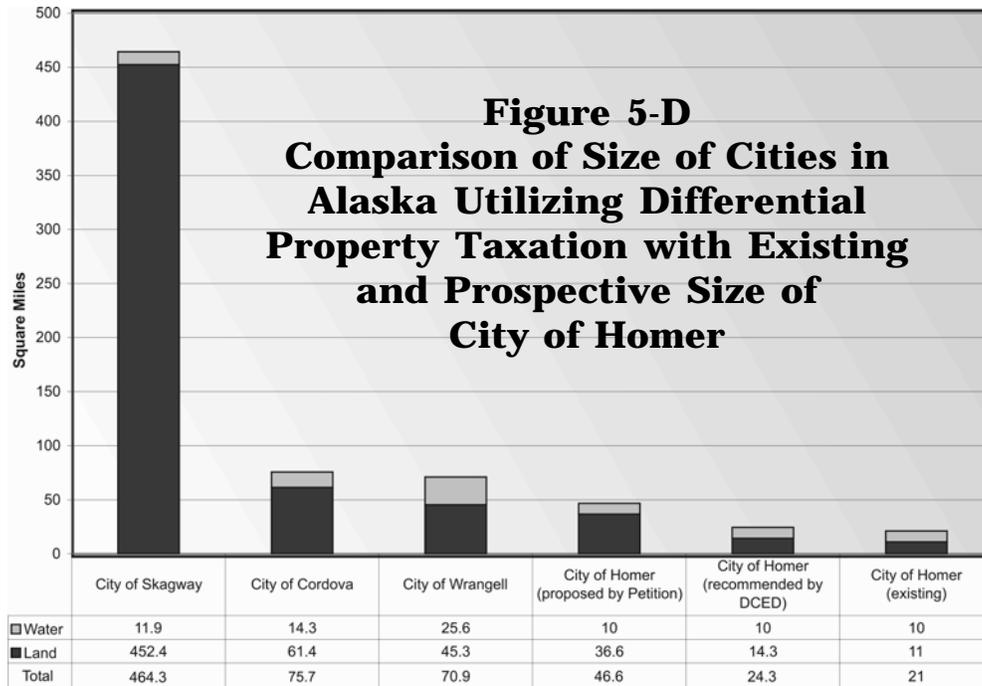
However, if all 2,204 residents of the 25.64 square mile territory proposed for annexation were brought into the City of Homer, they would then comprise nearly 36% of the total population of the expanded City. Under those circumstances a much stronger argument exists for the truncation of terms of the local elected officials.

Recommendation Number Three: Do not require the City of Homer to implement differential property taxation as a condition for annexation of the recommended 3.3 square mile area (or even the 4.38 square mile alternative).

AS 29.45.580 allows city governments in Alaska to “. . . establish, alter, and abolish differential tax zones to provide and levy property taxes for services not provided generally in the city or a different level of service than that provided generally in the city.”

Certain of the Respondents and others in this proceeding have raised the prospect of differential property taxation in the event the City of Homer’s annexation proposal is approved. Only three city governments in Alaska currently utilize differential tax zones. Those are the City of Skagway, City of Cordova, and City of Wrangell.

The jurisdictional area of each of those three city governments is substantially greater than any of the options being contemplated for the City of Homer. Figure 5-D lists the size of the jurisdictional area of the three city governments that currently utilize differential property taxation. Information is also provided in Figure 5-D regarding the City of Homer’s existing boundaries, boundaries proposed by the City of Homer, and boundaries recommended by DCED.



In DCED’s view, the character of the territory recommended for annexation by DCED (even the character of the 4.38 square mile alternative annexation scenario) is such that provision for differential property tax zones is unwarranted.

Reasonable arguments might, however, be made for the use of differential property tax zones in portions of the remnant territory if it included within the corporate boundaries of the City of Homer. For example, the Crossman Ridge Neighborhood seems to lack the same access as other areas to services funded by property taxes levied by the City of Homer.

As a final point, it is noted that if the City of Homer committed a substantial portion of the net revenue gain from annexation to the reduction of property taxes, the tax differential between the expanded City and the adjoining territory could be reduced significantly.⁸⁷

Recommendation Number Four: Ensure that the City of Homer consents to the particular boundary determination made by the Commission.

It is essential to ensure that any party that brings a petition before the Local Boundary Commission is not left with a proposal that the petitioner considers to be untenable as a result of modifications or conditions imposed by the Commission. Therefore, if the Commission amends and/or imposes conditions on the City of Homer's Petition, DCED recommends that the Commission ensures that the Petitioner's Representative (Homer City Manager), or elected officials of the City of Homer, express concurrence with the Commission's action. In the event that the City does not concur with the Commission's action, DCED recommends that the Commission ask the City of Homer to withdraw its Petition. Such withdrawal would be allowed under the provisions of 3 AAC 110.540(d) based on a clear showing that the public interest of both the state and the affected population is best served by the withdrawal. If the City of Homer does not withdraw its Petition, DCED recommends that the Commission dismiss the Petition *without prejudice*.

Final Comment – A Reminder Regarding the Nature of DCED's Preliminary Recommendation.

Readers are advised again that this Preliminary Report is subject to revision based on comments regarding DCED's preliminary analysis, conclusions, and recommendations.

Further, it is again stressed that whatever final recommendations DCED makes to the Local Boundary Commission in this proceeding, the Commission will not be bound by those recommendations. DCED's reports and recommendations are an important component of the evi-

⁸⁰ As noted in Chapter 4, aggregate property taxes in the City of Homer are presently 2.75 mills higher than they are in the adjoining Kachemak Emergency Service Area. As indicated earlier in this chapter, DCED reasonably projects that its annexation recommendation would result in an annual \$588,402 net gain in City revenue. However, not all of that net gain would be available for property tax relief. The proceeds of the 0.75% sales tax levy for the Homer Accelerated Roads Program and the 0.75% sales tax levy for the Homer Accelerated Water and Sewer Program (estimated to total \$249,885) must be dedicated to the respective reserve funds.

That would leave an unreserved net gain of \$338,517 for the City annually. That figure is equivalent to 1.16 mills of the estimated taxable value within the expanded City of Homer boundaries recommended by DCED.

If the entire projected unreserved net gain of \$338,517 were utilized for property tax relief throughout the expanded City of Homer, it would reduce the current property tax differential by forty-two percent, from 2.75 mills to 1.59 mills.

The average taxable value of a home in the area recommended for annexation is \$129,003. A 1.59 mill tax on such would amount to \$205.11 annually or \$17.09 per month.

While the prospect of property tax relief is no doubt attractive to all concerned, DCED hesitates to urge City officials to pledge the projected unreserved net gain for that purpose. DCED recognizes that elected officials of the City of Homer have the responsibility to determine how City revenues are best allocated. In some years, there simply may be more compelling uses of the funds. For example, this year, the City of Homer's general fund began the fiscal year with a projected deficit of \$92,458. During the course of the year, the City Council authorized the expenditure of an additional \$300,812 in general fund monies (including \$239,408 for capital improvements at the port). Increases to projected general fund revenues during the year amounted to \$39,342 (although the \$106,227 six month contract payment for services to the Kachemak Emergency Service Area is not reflected in that figure, but is treated as deferred revenue).

The changes increased the current fiscal year general fund deficit of the City of Homer by \$261,470 to \$353,928. While the City of Homer has ample reserves to cover the deficit in the current fiscal year (the general fund balance was estimated to be more than \$2.1 million at the beginning of the fiscal year), long-term deficits will, of course, eventually deplete the fund balance.

Applying the unreserved net gain for property tax relief would, of course, diminish arguments for differential tax zones within the expanded City of Homer. Moreover, it would achieve one of the implicit fundamental goals of the City with respect to annexation – tax relief for property owners who have heretofore financed services available to a growing population outside the City of Homer. Tax relief would also mute criticism – unfounded though it would be – that the City is making nearly a six hundred thousand dollar “profit” from annexation. Lastly, tax relief might mitigate some concerns of annexation critics by reducing the adverse financial effects on property owners in the annexed territory.

DCED stresses that the City of Homer does not routinely incur deficits in its general fund. The City of Homer ended last fiscal year with a general fund surplus of \$426,080. Moreover, it is unlikely that all \$6,054,074 authorized for expenditure and transfer in the general fund this year will be spent or transferred. Last year, general fund expenditures were roughly \$200,000 less than the level authorized. If the same occurred this year and if the Kachemak Emergency Service Area revenues were annualized and included in the general fund revenues, there would be no deficit.

dence that the Commission will consider in its deliberations on this matter. However, those reports and recommendations do not alter the proposal pending before the Commission. The issue pending before the Commission remains the City of Homer's Petition to annex the entire estimated 25.64 square miles proposed in the Petition of the City of Homer.

Appendix A

Key Terms and Acronyms

Unless the context in which the terms and acronyms listed below are used in this report suggests otherwise, they are defined as follows.

AOA refers to the Respondent Alaskans Opposed to Annexation.

Areawide means the area throughout the entire Kenai Peninsula Borough.

Borough refers to the Kenai Peninsula Borough.

CCAA means Respondent Citizens Concerned About Annexation.

CDP refers to census designated place.

City refers to the City of Homer.

City of Homer is a first class (general law) city incorporated in 1964. The current boundaries of the City of Homer encompass an estimated 21 square miles. The City of Homer initiated the pending Petition for annexation of 25.64 square miles.

City of Kachemak is a second class (general law) city incorporated in 1961. The corporate boundaries of the City of Kachemak encompass an estimate 1.83 square miles. Portions of the southern boundary of the City of Kachemak adjoin portions of the northern boundary of the City of Homer

Commission refers to the Alaska Local Boundary Commission.

Correspondents means the 168 individuals who submitted timely letters to the Local Boundary Commission concerning the annexation proposal. These consist of the following:

1. Dorothy R. Cline, a 3-page letter opposing annexation, May 8, 2000
2. Michael S. Cline, a 3-page letter opposing annexation, May 8, 2000
3. Marlaina Thiel, a 1-page letter and 4-page paper concerning annexation, May 3, 2000
4. Ken & Nancy Branch a 3-page letter opposing annexation, June 5, 2000
5. Joanne Collins, a Anchor Point Advisory Planning Commission 1 page letter opposing annexation
6. Jerry Vantrease, 2 page letter opposing annexation, June 5, 2000
7. Robert H. Tripp, 2 page letter opposing annexation, June 5, 2000
8. Marti and Frederick Anderson a 1-page letter opposing annexation, May 5, 2000
9. Raymond L. Bellamy, a 1-page letter opposing annexation, May 9, 2000
10. Captain Leroy G. Krumm, a 3-page letter opposing annexation, May 12, 2000
11. Captain Leroy G. Krumm, a 3-page letter opposing annexation, June 2, 2000
12. Kathy Hill, a 1-page letter opposing annexation, May 9, 2000
13. Larry Smith, Objective Annexation Review a 3-page letter opposing annexation (OP ED) May 9, 2000
14. Hardin & Joan Terrell, a 1-page letter opposing annexation, May 11, 2000

15. Everett Richards, a 2-page letter supporting annexation, May 12, 2000
16. Randall L. Yount and Amy L. Kelpel, a 1-page letter opposing annexation, May 24, 2000
17. Evan and Virginia Cundiff, a 3-page letter opposing annexation, May 12, 2000
18. Rev. Richard Olson, a 2-page letter opposing annexation, May 16, 2000
19. Allen Thomas, a 1-page letter opposing annexation, June 2, 2000
20. Linda S. Reinhart, a 4-page letter opposing annexation, May 15, 2000
21. Mildred M. Martin, a 2-page letter opposing annexation, May 16, 2000
22. Tom Keffer, a 2-page letter opposing annexation, May 16, 2000
23. Marsha Korpi, a 2-page letter opposing annexation, May 16, 2000
24. Bill Aberle, a 1-page letter opposing annexation, May 15, 2000
25. Bill Aberle, a 1-page letter opposing annexation, May 24, 2000
26. Mr. and Mrs. Rolland Eggert, a 2-page letter opposing annexation, May 16, 2000
27. Hardin Terrell, a 1-page letter opposing annexation, May 24, 2000
28. Mary Griswold, a 6-page letter opposing annexation, May 17, 2000
29. Nancy Hillstrand, a 3-page letter opposing annexation, May 22, 2000
30. Paul A. Carlson, a 2-page letter opposing annexation, May 18, 2000
31. Jim and Beverly Clauss, a 1-page letter opposing annexation, May 19, 2000
32. Sally Fisher, a 1-page letter opposing annexation, May 22, 2000
33. Diana Sedor, a 1-page letter opposing annexation, May 18, 2000
34. Virginia Tornes & Larry Zuccaro, a 1-page letter supporting annexation, May 22, 2000
35. Charles & Beverly Buck, a 1-page letter opposing annexation, May 22, 2000
36. LaRene and Lawrence Rogers, a 1-page letter opposing annexation, April 14, 2000
37. City of Kachemak, resolution 2000-03, requesting that the City of Kachemak be excluded from any annexation to the City of Homer, April 17, 2000
38. Harry Wilson, a 1-page letter opposing annexation, April 12, 2000
39. Terry Jones, (Kachemak Auto Body and Paint) a 1-page letter opposing annexation, April 17, 2000
40. Ann and Dick Koskovich, a 1-page letter opposing annexation, April 24, 2000
41. Dana and Becky Hofseth, a 1-page letter opposing annexation, May 23, 2000
42. Joan Hoyt, a 1-page letter opposing annexation, May 23, 2000
43. Ero S. and Marie E. Walli, a 4-page letter opposing annexation, June 2, 2000
44. Mr. & Mrs. Leonard Gross, a 2-page letter opposing annexation, May 24, 2000
45. Bob Barnett 1-page letter supporting annexation, May 22, 2000
46. Jim Darling, a 2-page letter opposing annexation, May 22, 2000
47. Larsen and Nadya Klingel a 2-page letter with 1 photograph opposing annexation, May 31, 2000
48. Ron and Diane Poston, a 2-page letter opposing annexation with one-page attachment, May 24, 2000
49. Ned West, a 1-page letter opposing annexation, May 22, 2000
50. Joanne Collins, Anchor Point Advisory Planning Commission, a 1-page letter opposing annexation, May 30, 2000
51. J. Eve Cook, a 2-page letter opposing annexation, May 24, 2000
52. Terry Evans, a 1-page letter opposing annexation, May 24, 2000
53. Roy D. Evans, Jr., a 1-page letter opposing annexation, May 26, 2000
54. Gladys E. and James W. Stewart, a 1-page letter opposing annexation, May 24, 2000
55. Robert E. Archibald, a 2-page letter opposing annexation, May 31, 2000
56. Timothy C. Fuller, a 1-page letter opposing annexation, May 26, 2000
57. Abigail Fuller 2 page letter regarding denial of access to public records, May 9, 2000
58. J. Roberta Harris, a 2-page letter opposing annexation, May 30, 2000

59. James J. Lempe and Linda S. Lempe, a 2-page letter opposing annexation, June 5, 2000
60. Arn & Kathy Johnson, , a 1-page letter opposing annexation, May 25, 2000
61. Capt. Jeff Sharp, a 1-page letter opposing annexation, May 31, 2000
62. Kim Sharp, a 1-page letter opposing annexation, May 31, 2000
63. Roy L. Morris, a 1-page letter opposing annexation, May 30, 2000
64. Edward B. Todd DDS, and Janice Todd, RN a 4-page letter opposing annexation, May 30, 2000
65. Rich and Sonja Corazza, a 3-page letter opposing annexation, May 31, 2000
66. Kate Gill, a 1-page letter opposing annexation, May 31, 2000
67. Judith Rothstein, a 1-page letter opposing annexation, May 31, 2000
68. Fred W. Yenney, Jr. and Eileen Yenney, a 1-page letter opposing annexation, May 30, 2000
69. Paul Field, a 1-page letter opposing annexation, May 31, 2000
70. Randel Jones, a 1-page letter opposing annexation, May 30, 2000
71. Mary Olson, a 3-page letter, with 50 photographs, opposing annexation, June 1, 2000
72. Betsy Pitzman, a 3-page letter opposing annexation, June 1, 2000
73. Henry J. Reinhart, , a 3-page letter opposing annexation, May 31, 2000
74. Douglas & Johanna Fraiman, a 1-page letter opposing annexation, June 2, 2000
75. Carl Glanville, a 1-page letter opposing annexation, June 1, 2000
76. Loren and Carrie Kauffman, a 2-page letter opposing annexation, May 31, 2000
77. James W. Kienitz, a 1-page letter opposing annexation, June 2, 2000
78. Dayton L. Butters, a 4-page letter opposing annexation, May 31, 2000
79. Valerie Byrd, a 1-page letter opposing annexation on behalf of The Kachemak Group, May 30, 2000
80. R. M. Daly, a 1-page letter opposing annexation, June 1, 2000
81. David D. Daly, a 1-page letter opposing annexation, June 1, 2000
82. Jack Polster, a 1-page letter opposing annexation, May 30, 2000
83. Laura A. Barton, a 3-page letter opposing annexation, May 31, 2000
84. Dave & Eileen Becker, a 2-page letter opposing annexation, June 1, 2000
85. Sharon Bouman, a 1-page letter opposing annexation, June 1, 2000
86. Patricia A. Brennan a 1-page letter opposing annexation, May 31, 2000
87. Deborah S. Smith, a 4-page letter opposing annexation, June 5, 2000
88. Gay and David Fraker 1-page letter opposing annexation, June 1, 2000
89. Emily Koskovich, a 1-page letter opposing annexation, June 1, 2000
90. Patricia Hammond-Krumm, a 1-page letter opposing annexation, June 2, 2000
91. Ruth Longhenry, a 1-page letter opposing annexation, June 1, 2000
92. Leonard P. and Laura Miller , a 1-page letter opposing annexation, June 5, 2000
93. Karen Northrop and Doug Reid, a 1-page letter opposing annexation, June 2, 2000
94. Paul Pellegrini, a 2-page letter opposing annexation, June 5, 2000
95. Rebecca Ravin, a 1-page letter opposing annexation, June 2, 2000
96. Dean Ravin, a 1-page letter opposing annexation, June 2, 2000
97. Dean H. Ravin, a 1-page letter opposing annexation, June 2, 2000
98. David Schroer, a 1-page letter opposing annexation, June 5, 2000
99. Douglas A. Stark, a 1-page letter opposing annexation, June 1, 2000
100. Wayne and Linda Watson, a 2-page letter opposing annexation, May 31, 2000
101. James L. Calkins, a 1-page letter opposing annexation, June 5, 2000
102. Daniel and Elaine Chalup, a 1-page letter opposing annexation, June 2, 2000
103. Darrell Walker, a 1-page letter opposing annexation, June 5, 2000

104. Mary F. Deihl, a 2-page letter opposing annexation, June 2, 2000
105. John Glanville, a 1-page letter opposing annexation, May 28, 2000
106. Marilyn C. Hendren, a 1-page letter opposing annexation, June 2, 2000
107. Roberta Highland, a 3-page letter opposing annexation, June 1, 2000
108. Robert O. Lucas, a 2-page letter opposing annexation, June 2, 2000
109. Duane B. Perk, a 1-page letter opposing annexation, June 1, 2000
110. Rev. Richard Olson, an informal petition opposing annexation (signed by 3 people), June 1, 2000
111. Cheryl Rykaczewski, a 2-page letter opposing annexation, June 2, 2000
112. Steve Rykaczewski, a 3-page letter opposing annexation, June 2, 2000
113. Audrey Thomas, a 1-page letter opposing annexation, June 2, 2000
114. Rieta Walker, a 1-page letter opposing annexation, June 5, 2000
115. Allan Wetsel & Elizabeth Wetsel, a 2-page letter opposing annexation, June 2, 2000
116. David Beer, a 1-page letter opposing annexation, June 2, 2000
117. Jim Claus, a 1-page letter opposing annexation, June 2, 2000
118. Beverly D. Clauss, a 1-page letter opposing annexation, May 18, 2000
119. Beverly Clauss, a 1-page letter opposing annexation, June 2, 2000
120. Kathy (Tillman) Corp, a 2-page letter opposing annexation, June 2, 2000
121. Frank S. Griswold, a 3-page letter opposing annexation, and a 7-page attachment, June 5, 2000
122. Brad Faulkner, (President, Alaska Custom Seafood) a 5-page letter opposing annexation, June 2, 2000
123. Amelia Geusen, a 1-page letter opposing annexation, June 2, 2000
124. Gary and Terri Lyon, a 2-page letter opposing annexation, June 2, 2000
125. Dennis & Kathy Oakland, a 6-page letter opposing annexation, and a 6-page attachment, June 2, 2000
126. Marvin L. Peters, a 1-page letter opposing annexation, June 5, 2000
127. Cris Rideout, a 1-page letter proposing requirements and conditions for annexation, June 2, 2000
128. Sandy Stark, a 1-page letter opposing annexation, June 2, 2000
129. Allen Thomas, a 1-page letter opposing annexation, June 2, 2000
130. Kristi Sherman, University of Alaska Statewide Office of Land Management, a 1-page letter opposing annexation, June 2, 2000
131. Kristi Sherman, a 1-page letter that the University of Alaska Office of Land Management had not adopted a position supporting or opposing annexation, June 5, 2000
132. David Van Liere, a 1-page letter opposing annexation, June 2, 2000
133. Veronica Van Liere, a 1-page letter opposing annexation, June 2, 2000
134. Linda Eason, a 2-page letter opposing annexation, June 5, 2000
135. John Farmer and Joyce Keele, a 1-page letter opposing annexation, June 5, 2000
136. Mary Griswold, a 2-page letter opposing annexation, May 8, 2000
137. Roger and Jody Pryor, a 1-page letter opposing annexation, June 5, 2000
138. Kent Redmon, Board Member of Diamond View Estates Homeowners Association, a 3-page letter opposing annexation, June 5, 2000
139. Capt. Al Rusk and Carla Rusk, Ph.D. a 1-page letter opposing annexation, June 5, 2000
140. Richard and Diana Walrath, a 1-page letter opposing annexation, June 5, 2000
141. Cindy Argus, a 1-page letter opposing annexation, June 5, 2000
142. Craig Cutler, a 1-page letter opposing annexation, June 5, 2000
143. Joanne Cutler, a 1-page letter opposing annexation, June 5, 2000
144. Bob and Anne Haynes, a 1-page letter opposing annexation, June 4, 2000
145. Mark P. Kinney, a 2-page letter opposing annexation, June 5, 2000

146. Michael A. LeMay, a 3-page letter and one page attachment opposing annexation, June 5, 2000
147. Paul Morton, a 3-page letter opposing annexation, June 3, 2000
148. Geoffrey Olson, a 1-page letter opposing annexation, June 4, 2000
149. James and Janice E. Preston, a 1-page letter opposing annexation, June 5, 2000
150. Al and Marcia Veldstra, a 1-page letter opposing annexation, June 5, 2000
151. Tom Wallace, a 1-page letter opposing annexation, June 5, 2000
152. Dale Banks, a 2-page letter opposing annexation, June 6, 2000
153. Jane Beck, a 1-page letter opposing annexation, June 5, 2000
154. Tom Beck, a 1-page letter opposing annexation, June 5, 2000
155. Daisy Lee Bitter, a 2-page letter opposing annexation, June 6, 2000
156. John Fejes and Michele Bournonville, a 1-page letter opposing annexation, June 5, 2000
157. Ed and Elsie Cooley, a 1-page letter opposing annexation, June 6, 2000
158. Joel Cooper & Marla McPherson 4-page letter opposing annexation, June 5, 2000
159. Charles H. Davis, Jr., a 1-page letter opposing annexation, June 5, 2000
160. Lynda Haynes, a 1-page letter opposing annexation, June 5, 2000
161. Leah (undecipherable), a 1-page letter opposing annexation, June 5, 2000
162. Bill Noomah, a 2-page letter expressing concern about aspects of the proposed annexation, June 5, 2000
163. Craig Phillips, a 7-page letter opposing annexation, June 5, 2000
164. Paul & Nancy Raymond, a 2-page letter opposing annexation, June 5, 2000
165. Chris Rideout, a one page informal petition signed by 11 Crossman Subdivision residents proposing requirements and conditions for annexation, June 5, 2000
166. Steve and Margret Seelye, a 1-page letter opposing annexation, June 1, 2000
167. Richard W. Tyler, a 2-page letter and one page attachment opposing annexation, June 5, 2000
168. Geo Beach & Sydney Webb, a 4 page letter opposing annexation, June 5, 2000

A-5

DCED refers to the Alaska Department of Community and Economic Development.

DEC refers to the Alaska Department of Environmental Conservation.

Department of Community and Economic Development means the State agency that serves as staff to the Alaska Local Boundary Commission.

General law municipality refers to a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first class borough, second class borough, third class borough, first class city, or second class city organized under the laws of the State of Alaska.

GIS refers to the Geographic Information Systems of the Kenai Peninsula Borough.

Kachemak Emergency Service Area refers to a Kenai Peninsula Borough service area encompassing all of the territory proposed for annexation, except Millers Landing. The Kachemak Emergency Service Area also extends well beyond the territory proposed for annexation.

Kenai Peninsula Borough is a second class (general law) borough incorporated by legislative fiat on January 1, 1964. The Kenai Peninsula Borough is a Respondent in the pending annexation proceedings

KESA means the Kachemak Emergency Service Area.

KPB refers to the Kenai Peninsula Borough.

LBC refers to the Alaska Local Boundary Commission.

Local Boundary Commission is the independent board established under Alaska's Constitution (Article X, Section 12) to render judgments regarding proposals to alter municipal boundaries. The Local Boundary Commission is one of only five boards of the State of Alaska with constitutional origins.

Millers Landing refers to the estimated 0.26 square mile area along East End Road and Kachemak Drive bordered on the north by the City of Kachemak and to the south by City of Homer. The area is also known locally as the "Triangle Area" or "No Mans Land". It is also listed in the 2000 Census as the "Miller Landing Census Designated Place" (no "s" on "Miller").

OAR refers to the Respondent named Objective Annexation Review.

Petition refers to the March 20, 2000 proposal for annexation entitled *A Petition by the City of Homer for Annexation to the City of territory West, North & East of the current City Limits*.

Petitioner refers to the City of Homer.

Petitioner's Representative refers to Homer City Manager Ron Drathman, designated representative of City of Homer regarding the pending annexation proceedings.

Nonareawide refers to the area within the Kenai Peninsula Borough that is outside the jurisdiction of any cities.

Political means pertaining or relating to the policy of the administration or government. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state; as political theories; or pertaining to exercise of rights and privileges or the influence by which individuals of a state seek to determine or control its public policy; having to do with organization or action of individuals, parties or interests that seek to control appointment or action of those who manage affairs of a state. (Blacks Law Dictionary)

Remnant Territory refers to the 22.34 square miles proposed for annexation that is not within the urban area or Millers Landing.

Reply Brief refers to the reply brief filed by the Petitioner with the Local Boundary Commission pursuant to 3 AAC 110.490 on September 11, 2000.

Respondents refer to the fourteen parties who filed formal Responsive Briefs in this proceeding. These consist of Alaskans Opposed to Annexation; Doris Cabana; Sallie Dodd-Butters; Abigail Fuller; Mary Griswold; Dr. Vi Jerrel; Kachemak Area Coalition, Incorporated, d/b/a Citizens Concerned About Annexation; Kenai Peninsula Borough; Objective Annexation Review; Peter Roberts; Steve and Margret Seelye; Bill Smith; The Crossman Ridge Neighborhood; and the Raven Ridge Homeowners Association.

Respondent's Representative refers to the individuals who signed the Responsive Briefs.

Responsive Brief refers to any of the fourteen briefs filed with the Local Boundary Commission pursuant to 3 AAC 110.480.

Service area refers to an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided; borough service areas are not local governments, they lack legislative and executive powers; nonetheless, borough service areas are local governmental *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska's Constitution.

State refers to the State of Alaska government.

Territory proposed for annexation refers to the estimated 25.64 square miles that the City of Homer seeks to annex. (Note: the City of Homer estimated the area to be 25.58 square miles.)

Urban area refers to the 3.04 square mile area identified by DCED as consisting of that portion of the territory proposed for annexation that encompasses the more extensively subdivided and heavily developed properties immediately north of the existing boundaries of the City of Homer, extending from the Sterling Highway to the western boundary of the City of Kachemak. The area includes that portion of Rodgers Loop not presently within the boundaries of the City of Homer, Sprucewood Drive, Eagle View Drive, Jeffery Avenue, West Hill Road, Westwood Avenue, portions of Skyline Drive, Fireweed Avenue, Mission Avenue, Cottonwood Lane, Race Road, Horizon Court, Scenic Place, and adjoining secondary roads.

Appendix B

Additional Information About the Local Boundary Commission and the Nature of Local Government Boundary Changes

Alaska Local Boundary Commission.

Alaska's Constitution (Art. X, § 12) provides for the establishment of a five-member commission appointed by the Governor to "consider any proposed local government boundary change." In the first of ten rulings relating to the Commission over a span of forty-two years, the Alaska State Supreme Court characterized the purpose and nature of the Local Boundary Commission as follows:

Article X was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.¹ The advantage of the method proposed, in the words of the committee –

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

This expressed need for state adjustment of local boundaries was of immediate concern, and not something that the delegates considered would arise only after a borough government had been formed.³ Following World War II the City of Anchorage, the largest municipality in Alaska, experienced such a rapid growth that it soon outgrew its bound-

¹ Alaska Constitutional Convention Minutes of Committee on Local Government, Nov. 28 and Dec. 4, 1955. (This and all subsequent statements and quotes concerning proceedings of the Alaska Constitutional Convention refer to Records of the Alaska Constitutional Convention, now in the custody of the Secretary of State, Juneau, Alaska.)

² Alaska Constitutional Convention, Commentary on Proposed Article on Local Government, Dec. 19, 1955 at 6.

³ Alaska Const. art. X, § 3, states in the first sentence 'The entire State shall be divided into boroughs, organized or unorganized.' It was not until 1961 that the legislature enacted a statute providing for the establishment of boroughs. SLA 1961, ch. 146 effective Oct. 1, 1961.

aries, and the population of adjacent and contiguous areas became greater than that of the city. This resulted in efforts by the city to annex a number of these heavily populated and unincorporated areas. Those efforts were met by the most determined opposition. In a 1954 case involving the attempted annexation of adjacent territory, Judge Folta remarked:

'Every impediment and dilatory tactic has been employed by the opponents of annexation, except the home-steaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith.⁴

In 1955 there were petitions for the annexation of three additional areas adjacent to the city. Again there were protests and concerted opposition, which required determination by the Territorial District Court. In his written opinion Judge Folta commented on the history of the growth of urban areas, and the deficiencies in existing procedures for annexation. He said:

'The areas sought to be annexed are a part of one compact, urban community comprising the metropolitan area of Anchorage, and, except for the invisible corporate boundaries, are a part of the city's social and economic existence. The real boundaries extend away beyond the corporate boundaries. Moreover, not only do the streets of the city extend through these areas, but they bear the names originally given them by the city and the areas themselves are indistinguishable from that part of the city adjacent thereto. The opposition in part is traceable to the failure of the city during the boom to extend its facilities and services into the areas as they developed. This delay resulted in the extension of privately owned utilities and the organization of public utility districts. The situation is such that the annexation law appears to be inadequate, and gerrymandering, or the appearance thereof, would appear to be excusable in attempting to cope with it; otherwise it may well develop that several municipalities will be carved out of this one community, each with a government of its own, resulting in a multiplication of facilities and services, increased tax burdens, and inevitable jurisdictional conflict and chaos. *Henrico County, Windsor Farms, Inc. v. City of Richmond*, 177 Va. 754, 760, 15 S.E.2d 309. The Court is not going to lend itself to the imposition of a hydra headed government on the people of a single urban area unless it has no alternative under the law.⁵

B-2

⁴ *Annexation to the City of Anchorage*, 15 Alaska 67, 69, 128 F.Supp. 717, 718 (D.Alaska 1954).

⁵ *In re Annexation to City of Anchorage*, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

Rejecting the arguments in opposition, the court ordered an annexation election 'so that the people may determine for themselves whether the City of Anchorage is to be allowed to expand in the traditional manner or be put in a strait jacket.'⁶

[4] We cannot assume that when the delegates to the constitutional convention assembled later in 1955, they were unaware of these obstacles faced by Alaska's cities. We cannot assume that they were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.⁷ In the light of these contemporary realities, we cannot assume that the adjustment of local boundaries at a state level was intended to be delayed pending the formation of boroughs. We must assume that the convention would have used specific language to accomplish that result. We hold that the method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission⁸ and conferring powers upon it.⁹

Fairview Public Utility Dist. No. One v. City of Anchorage, 368 P.2d 540, Alaska 1962.

The specific statutory powers and duties of the Commission include, but are not limited to, judging proposals for:

- ◆ incorporation of cities and boroughs (AS 29.05);
- ◆ annexation to cities and boroughs (AS 29.06.040 – 29.06.060; AS 44.33.812);
- ◆ detachment from cities and boroughs (AS 29.06.040 – 29.06.060; AS 44.33.812);
- ◆ merger of cities and boroughs (AS 29.06.090 – 29.06.170);
- ◆ consolidation of cities and boroughs (AS 29.06.090 – 29.06.170);
- ◆ dissolution of cities and boroughs (AS 29.06.450 – 29.06.530); and
- ◆ reclassification of cities (AS 29.04.040).

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

⁶ Id. at 510 (129 F.Supp. at 554).

⁷ In 1955 a proposal for annexation would be defeated if at least fifty five percent of the votes cast in the area sought to be annexed were not in favor of the proposal. SLA 1951, ch. 7, § 2. In 1957 this was changed to fifty percent. SLA 1957, ch. 183, § 10 (§ 16 1 29i ACLA Cum.Supp.1957).

⁸ SLA 1959, ch. 64, § 7 (§ 2A 1 7 ACLA Cum.Supp.1959).

⁹ SLA 1959, ch. 185 (§ 16 7 2 ACLA Cum.Supp.1959).

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. Current members of the Commission are noted below.

Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed 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 original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



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 new terms on January 31, 1996 and March 9, 2001. Commissioner Wasserman also serves as the current Mayor of the City of Pelican.



Moreover, she serves as a member of the Board of Directors of the Alaska Municipal League. 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 is self-employed. Her present term on the Commission expires January 31, 2006.

Second Judicial District (seat is currently vacant).

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 that 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.



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

Nature of Local Government Boundary Changes

Eugene McQuillin's *The Law of Municipal Corporations*, Third Edition, Section 7.03 addresses the nature of local government boundary changes as follows.

§ 7.03. Power of legislature with respect to boundaries. Unless restricted by the constitution, the legislature may not only establish the original limits of the municipal corporations,¹⁰ to accommodate both present needs and future growth,¹¹ but may also alter or change the boundaries at any time, either directly,¹² or by prescribing the procedure by which such change may be made.¹³ Otherwise stated, the legislature has plenary power, within constitutional limits, to fix municipal boundaries and establish municipal jurisdiction over any part of the state.¹⁴ So, also, boundaries which have been established may be validated or confirmed by subsequent legislation.¹⁵ Thus where the boundaries of a town had been defined by ordinance, and as thus defined the town authorities claim and exercise jurisdiction, a subsequent act of

¹⁰ **Florida.** *Riviera Club v. Ormond*, 147 Fla 401, 2 So 2d 721 (abolition of town and creation of city by statute).

Indiana. *Perry Civil Tp. Of Marion County v. Indianapolis Power & Light Co.*, 222 Ind 84, 51 NE2d 371.

Kansas. *State v. Kansas City*, 169 Kan 702, 222 P2d 714.

New Jersey. *Lower Tp. V. Wildwood*, 130 NJL 186, 31 A2d 807 affg NJL 22, 28 A2d 74.

the legislature recognizing the corporate existence of the town will operate to confirm such claim as well as other matters of jurisdiction.¹⁶ It is held, however, that a statute validating a municipal charter does not, in the absence of an express provision validate boundaries.¹⁷

The fixing of municipal boundaries is generally considered to be a legislative function,¹⁸ involving questions which are political in nature,¹⁹ and the legislative action is not reviewable by the courts,²⁰ unless it is arbitrary, unreasonable or violative of constitutional rights.²¹ The exercise of the legislative power in the fixing of municipal boundaries ordinarily does not infringe upon constitutional rights,²² and, generally speaking, is not within the scope of the restrictions under the federal Constitution.²³ However, legislative action which impairs rights guaranteed under state or federal constitutional provisions is subject to judicial scrutiny and control, notwithstanding the political nature of the municipal boundary question with which the legislation deals.²⁴ Such action is subject to judicial review under the Fourteenth Amendment where it involves infringement of fundamental rights or the creation of a suspect classification.²⁵ Thus, an action seeking to invalidate municipal annexation ordinances for the reason that annexation is sought only to broaden the municipal tax base and to increase revenues does not assert a violation of due process under the Fourteenth Amendment since protection against the burden of municipal taxation involves neither a suspect classification or infringement of a fundamental right.²⁶

In most of the states, the statutes contain restrictions respecting the establishment upon incorporation of municipal boundaries, and also upon changes of boundaries.²⁷

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North Carolina. Chimney Rock Co. v. Town of Lake Lure, 200 NC 171, 156 SE 542, 544 (noncontiguous lands could be included within municipal area by statute, quoting McQuillin text).

Texas. Richardson v. State (Tex Civ App), 199 SW2d 239 (application of statute prohibiting incorporation of cities of less than 2000 inhabitants with area greater than two square miles); Cohen v. Houston (Tex Civ App), 176 SW 809, 813 (legislative power to fix and to alter municipal boundaries is not dependent upon consent of residents in affected areas).

Washington. Port of Tacoma v. Parosa, 52 Wash 2d 181, 324 P2d 438, citing McQuillin text; Wheeler School Dist. No. 152 of Grant County v. Hanley, 18 Wash 2d 37, 137 P2d 1010.

¹¹ **Colorado.** Purpose of Municipal Annexation Act is to encourage natural and well-ordered development of municipalities in state. Denver v. Board of County Com'rs of Jefferson County, 191 Colo 104, 550 P2d 862.

Florida. Fort Lauderdale v. Town of Hacienda Village (Fla), 172 So 2d 451.

¹² **California.** The legislature, by the adoption of appropriate legislation, has the exclusive power to regulate the formation of new cities. Ceres v. Modesto, 274 Cal App 2d 545, 79 Cal Rptr 168.

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In most cases, state constitutions or statutes delegate those powers to other entities. In the case of annexations, for example:

- ◆ 6 states (Idaho, Indiana, Kansas, Nebraska, North Carolina, and Tennessee) provide for municipal determination where a local government extends its boundaries by unilateral action of the governing body;
- ◆ 6 states (Arkansas, Illinois, Mississippi, Missouri, North Dakota, and Virginia) use judicial determination where the court determines if a proposed boundary change will take place;
- ◆ 10 states (Alaska, California, Iowa, Michigan, Minnesota, Nevada, New Mexico, Oregon, Utah, and Washington) use an independent tribunal or board that is empowered to determine if a proposed annexation will occur;
- ◆ 6 states (Connecticut, Hawaii, Maine, New Hampshire, Rhode Island, and Vermont) use legislative determination in which municipal boundary changes are made by special acts of the state legislature; and
- ◆ 22 states (Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Montana, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, West Virginia, Wisconsin, and Wyoming) use popular determination which involves voting or the direct use of political power by people to determine whether an annexation will occur. (*Report by Center for Urban Policy and the Environment, November 1998*)

B-7

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Georgia. Bruck v. Temple, 240 Ga 411, 240 SE2d 876; Troup County Elec. Membership Corp. v. Georgia Power Co., 229 Ga 348, 191 SE2d 33.

Illinois. People v. Village of North Barrington, 94 Ill App 2d 265 237 NE2d 350 (without notice, hearing, consent and against protests of inhabitants). Legislature is given power of prescribing the conditions relative to the alteration of municipalities- whether through annexation, disconnection or incorporation. LaSalle Nat. Bank v. Village of Burr Ridge, 81 Ill App 2d 209, 225 NE2d 33.

Kansas. Existing townsites may be vacated by the legislature either expressly or by clear implication. Eudora v. French, 204 Kan 258, 461 P2d 762.

Kentucky. Sanitation Dist. No. 1 of Jefferson County v. Louisville, 308 Ky 368, 213 SW2d 995.

Louisiana. Edwards v. Town of Ponchatoula, 213 La 116, 34 So 2d 394.

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Maryland. Extending limits is exclusively with the legislature, if the constitution does not forbid, with or without a referendum. *McGraw v. Merryman*, 133 Md 247, 104 A 540.

Michigan. Legislature could empower municipalities to alter their boundary lines so as to bring within their limits the parts of any subdivision lots which may have been divided into fractions by existing boundary lines, without requiring the filing of a petition or other procedure prerequisite to annexation generally. *Benjamin v. Huntington Woods*, 349 Mich 545, 84 NW2d 789, citing *McQuillin* text.

Missouri. *McCormick v. St. Louis, I.M.&S. Ry. Co.*, 20 Mo App 640 (extending limits exclusively legislative).

North Carolina. *Abbott v. Town of Highlands*, 52 NC App 69, 277 SE2d 820.

South Carolina. *Sanders v. Greater Greenville Sewer Dist.*, 211 SC 141, 44 SE2d 185 (annexation of contiguous or other territory to municipality by legislative act).

Texas. Home rule city may, if authorized by charter, fix its own boundaries by ordinance, subject only to limitations otherwise imposed by constitution and statutes. *Monahans v. State* (Tex Civ App), 348 SW2d 176.

Wyoming. *Scarlett v. Town Council, Town of Jackson, Teton County* (Wyo), 463 P2d 26. See also §§3.02e, 3.15 et seq.

¹³ **Arizona.** *Goodyear Farms v. City of Avondale*, 148 Ariz 216, 714 P2d 386.

Connecticut. *Romanowski v. Foley*, 10 Conn App 80, 521 A2d 601. See generally §7.10.

¹⁴ **Arizona.** *Goodyear Farms v. City of Avondale*, 148 Ariz 216, 714 P2d 386.

Colorado. *Rogers v. Denver*, 161 Colo 72, 419 P2d 648.

Connecticut. *Romanowski v. Foley*, 10 Conn App 80, 521 A2d 601, citing *McQuillin Mun Corp.*

Florida. *Fort Lauderdale v. Town of Hacienda Village* (Fla), 172 So 2d 451.

Georgia. It has always been within the power of the general assembly to extend or diminish the corporate limits of a municipality. *Ballentine v. Willingham*, 237 GA 60, 226 SE2d 593.

Idaho. *Willows v. Lewiston*, 93 Idaho 337, 461 P2d 120.

North Carolina. *Abbott v. Town of Highlands*, 52 NC App 69, 277 SE2d 820.

Washington. *City of Seattle v. State of Washington*, 103 Wash 2d 663, 694 P2d 641. See also §§3.02e, 3.15 et seq.

- ¹⁵ **Texas.** Boundaries erroneously copied into ordinance may be corrected by adoption of ordinance causing records to reflect boundaries as they existed at the time of the adoption of the charter. *State v. Del Rio* (Tex Civ App), 92 SW2d 287.
- ¹⁶ **Illinois.** *People v. Farnham*, 35 Ill 562.
- ¹⁷ **Texas.** *Richardson v. State* (Tex Civ App), 199 SW2d 239; *State v. Del Rio* (Tex Civ App), 92 SW2d 287.
- ¹⁸ **Arizona.** *Goodyear Farms v. City of Avondale*, 148 Ariz 216, 714 P2d 386.

Arkansas. *Wallace School Dist. No. 1, Little River County v. County Board of Education, Little River County*, 214 Ark 436, 216 SW2d 790 (organization of school districts exclusively legislative power).

California. The matter of forming and adding new territory to municipal corporations, and the extent and character of the territory to be included, are legislative matters which the legislature has delegated to local municipalities to be performed in accordance with the appropriate legislative acts. *Bookout v. Local Agency Formation Commission of Tulare County*, 49 Cal App 3d 383, 122 Cal Rptr 668.

Colorado. *Louisville v. District Court in & for the County of Boulder*, 190 Colo 33, 543 P2d 67; *Board of County Com'rs v. Denver*, 37 Colo App 395, 548 P2d 922, citing *McQuillin Mun Corp.*

Connecticut. *Romanowski v. Foley*, 10 Conn App 80, 521 A2d 601, citing *McQuillin Mun Corp.*

Florida. *Auburndale v. Adams Packing Ass'n (Fla)*, 171 So 2d 161; *State v. Tampa (Fla App)*, 316 So 2d 570.

Georgia. *Jamison v. Atlanta*, 225 Ga 51, 165 SE2d 647.

Indiana. *Board of County Com'rs of Lake County v. Sims*, 252 Ind 531, 251 NE2d 9; *Perry Tp., Marion County v. Indianapolis Power & Light Co.*, 222 Ind 84, 64 NE2d 296, 302.

Iowa. *State v. Town of Riverdale*, 244 Iowa 423, 57 NW2d 63.

Kansas. *State v. Kansas City*, 169 Kan 702, 222 P2d 714 (increase or decrease of municipal area by changing boundaries legislative act).

Kentucky. *Kelley v. Dailey (Ky)*, 366 SW2d 181, quoting *McQuillin* text.

"The legislature of the state has power to define what shall be urban property and what shall be country property. It has power to define the limits of the cities and towns of the commonwealth. All persons hold their property subject to this power of the legislature to include it within the boundaries of a city when the public necessity so requires. City property is subject to burdens and enjoys benefits not possessed by county property. The including in a city of property which had theretofore been without the city is the act of the state." *Gernert v. Louisville*, 155 KY 589, 159 SW 1163.

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Michigan. Hempel & Chemical Co. v. Rogers Tp., 313 Mich 1, 20 NW2d 787; State v. Bennett, 29 Mich 451 (criticizing Kayser v. Trustees of Bremen, 16 Mo 88, which declares that such power as judicial in character); Residents of West Side of Wayburn Street, Grosse Pointe v. Detroit, 109 Mich App 321, 311 NW2d 765.

Missouri. Julian v. Mayor, Councilmen & Citizens of Liberty (Mo), 391 SW2d 864; St. Peters v. Kodner Development Corp. (Mo App), 525 SW2d 97.

Nebraska. Campbell v. Lincoln, 182 Neb 459, 55 NW2d 444; Village of Niobrara v. Tichy, 158 Neb 517, 63 NW2d 867; Nickel v. School Board of Axtell, 157 Neb 813, 61 NW2d 566; Seward County Rural Fire Protection Dist. V. Seward County, 156 Neb 516, 56 NW2d 700, citing McQuillin text.

New York. Common Council of Albany v. Town Board of Town of Bethlehem, 23 App Div 2d 381, 261 NYS2d 144.

North Carolina. Abbott v. Town of Highlands, 52 NC App 69, 277 SE2d 820.

Ohio. Petition of Martins Ferry Metropolitan Housing Authority, 2 Ohio App 2d 237, 207 NE2d 672 (upholding housing authority's change of boundaries as exercise of legislative power by administrative board).

Oregon. Schmidt v. Cornelius, 211 Ore 505, 316 P2d 511, citing McQuillin text.

Tennessee. State v. Mayor & Aldermen of Town of Morrisotwn, 222 Tenn 21, 431 SW2d 827 (annexation).

Texas. West Lake Hills v. State (Tex), 466 SW2d 722; Perkins v. State, (Tex), 367 SW2d 140; Deer Park v. State, 154 Tex 174, 275 SW2d 77, citing McQuillin text; Thompson v. West Lake Hills (Tex Civ App), 457 SW2d 398 (determination by people concerned).

Utah. Freeman v. Centerville City (Utah), 600 P2d 1003, citing McQuillin Mun Corp; Bradshaw v. Beaver City, 27 Utah 2d 135, 493 P2d 643.

Virginia. Town of Stephens City v. Zea, 204 Va 88, 129 SE2d 14, citing McQuillin text.

Washington. Port of Tacoma v. Parosa, 52 Wash 2d 181, 324 P2d 438.

¹⁹ **California.** Bookout v. Local Agency Formation Commission of Tulare County, 49 Cal App 3d 383, 122 Cal Rptr 668.

Connecticut. Romanowski v. Foley, 10 Conn App 80, 521 A2d 601, citing McQuillin Mun Corp.

North Carolina. Matter of Ordinance of Annexation No. 1977-4, 295 NC 1, 249 SE2d 698.

Washington. Municipality of Metropolitan Seattle v. Seattle, 57 Wash 2d 446, 357 P2d 863.

²⁰ **California.** People v. Riverside, 70 Cal 461, 11 P 759.

Connecticut. Romanowski v. Foley, 10 Conn App 80, 521 A2d 601, citing McQuillin Mun Corp.

Kentucky. Kelley v. Dailey (Ky), 366 SW2d 181, quoting McQuillin text.

Massachusetts. Slight inequality in districts established for election of representatives does not render districting act void. Graham v. Special Com'rs of Suffolk County, 306 Mass 237, 27 NE2d 995.

Michigan. Residents of West Side of Wayburn St., Grosse Pointe v. Detroit, 109 Mich App 321, 311 NW2d 765.

Minnesota. By enforcing statute making land lying within an existing municipality ineligible to be incorporated in a proposed village, supreme court did not exercise legislative function of redefining boundaries of proposed village. State v. So-Called Village of Fridley, 233 Minn 442, 47 NW2d 204.

New Jersey. Commissioners appointed under statute to fix, determine and monument boundaries between two municipalities exercise a judicial or quasi-judicial power and nothing more; it is beyond the power of the court or its commissioners to legislate about the matter, for this the legislature does, and that power cannot be delegated. Lower Tp. V. Wildwood, 130 NJL 186, 31 A2d 807, affg 129 NJL 22, 28 A2d 74.

Tennessee. State v. Mayor & Alderman of Town of Morristown, 222 Tenn 21, 431 SW2d 827 (annexation).

Texas. The courts are without authority to redraw the boundaries of any town or village. Thompson v. West Lake Hills (Tex Civ App) 457 SW2d 398.

Virginia. Wade v. Richmond, 18 Gratt 583.

²¹ **Connecticut.** Romanowski v. Foley, 10 Conn App 80, 521 A2d 601, citing McQuillin Mun Corp.

Florida. Although the determination of municipal boundaries is a discretionary legislative function, the courts may restrain the legislative prerogative where the annexation in question is found to be unreasonable. State v. Tampa (Fla App), 316 So 2d 570.

Kentucky. Kelley v. Dailey (Ky), 366 SW2d 181, quoting McQuillin text.

Minnesota. Where land previously incorporated within another city was included in petition for incorporation of a village by mistake and inadvertence induced by error in official county maps, exclusion of such land from village called or exercise of a judicial, rather than legislative, function. State v. So-Called Village of Fridley, 233 Minn 442, 47 NW2d 204.

Missouri. Hannibal v. Winchester (Mo), 391 SW2d 279 (legislature as lacking power to prescribe annexation procedure conflicting with constitution); Julian v. Mayor, Councilmen & Citizens of Liberty (Mo), 391 SW2d 864; Ozier v. Sheldon (Mo App), 218 SW2d 133. Where the municipal boundaries are drawn to include

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those areas with a strong desire to be annexed, including subdivision developments and commercial developments, such function is not exercised arbitrarily. *St. Peters v. Kodner Development Corp.* (Mo App), 525 SW2d 97.

Nevada. The courts may set aside as invalid legislative acts which directly fix arbitrary and unreasonable city boundaries, or which deprive landowners of property rights protected by the constitution. *State v. Reno*, 64 Nev 127, 178 P2d 366.

North Carolina. *Abbott v. Town of Highlands*, 52 NC App 69, 277 SE2d 820.

Pennsylvania. Where legislature does not act pursuant to constitutional provisions requiring it to create uniform procedures for change of municipal boundaries, statutory provision allowing alteration of township lines to suit convenience of inhabitants is invalid. *In re Establishment of Boundary Between Collier Tp. & Robinson Tp.*, 25 Pa Cmwlth 230, 360 A2d 841.

Tennessee. *State v. Mayor & Aldermen of Town of Morristown*, 222 Tenn 21, 431 SW2d 827 (sole judge of fairly debatable annexation).

Utah. *Bradshaw v. Beaver City*, 27 Utah 2d 135, 493 P2d 643.

Virginia. *Newport News v. Elizabeth City County*, 189 Va 825, 55 SE2d 56.

²² **Arizona.** *Goodyear Farms v. City of Avondale*, 148 Ariz 216, 714 P2d 386.

California. Since no one has a vested right to be either included or excluded from a local governmental unit, the fixing of municipal boundaries does not ordinarily constitute an invasion of constitutional rights. *People v. Palm Springs*, 51 Cal 2d 38, 331 P2d 4. Because the nature of the power exercised is legislative and political rather than judicial, and because the annexation does not deprive the owners of the annexed area of property or property rights in the constitutional sense, the legislature could have totally omitted provisions for any notice or hearing and empowered a municipality to initiate and complete annexation without notice, without violating due process. *Bookout v. Local Agency Formation Commission of Tulare County*, 49 Cal App 3d 383, 122 Cal Rptr 668.

Oregon. Statute permitting municipal corporation to annex territory on grounds, inter alia, that territory to be annexed is danger to public health is not unconstitutional. *Kelly v. Silver*, 25 Ore App 393, 549 P2d 1134.

²³ **United States.** *Baldwin v. City of Winston-Salem, North Carolina*, 710 F2d 132 (CA4).

Arizona. *Goodyear Farms v. City of Avondale*, 148 Ariz 216, 714 P2d 386.

Iowa. *Cedar Rapids v. Cox*, 252 Iowa 948, 108 NW2d 253.

²⁴ **United States.** A statute working a deprivation of a citizen's right to vote, in violation of the federal constitution, is not immune to attack simply because the mechanism employed by the legislature is the redefinition of municipal boundaries. *Gomillion v. Lightfoot*, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125, revg 167 F Supp 405, affd 270 F2d 594.

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- North Carolina.** Abbott v. Town of Highlands, 52 NC App 69, 277 SE2d 820.
- Washington.** City of Seattle v. State of Washington, 103 Wash 2d 663, 694 P2d 641.
- ²⁵ **United States.** Baldwin v. City of Winston-Salem, North Carolina, 710 F2d 132 (CA4); Moorman v. Wood, 504 F Supp 467 (Ed Ky).
- ²⁶ **United States.** Baldwin v. City of Winston-Salem, North Carolina, 710 F2d 132 (CA4).
- ²⁷ **United States.** Cromwell-Franklin Oil Co. v. Oklahoma City, 14 F Supp 370.
- California.** Sacramento Municipal Utility Dist. V. All Parties & Persons, 6 Cal 2d 197, 57 P2d 506; Rafferty v. Covina, 133 Cal App 2d 745, 285 P2d 94 (unincorporated territory subject to being completely surrounded by annexed areas).
- Florida.** State v. Largo, 110 Fla 21, 149 So 420; State v. Avon Park, 108 Fla 641, 149 So 409; State v. Homestead, 100 FLA 354, 130 So 28.
- Georgia.** Municipal annexations which cross the boundaries of school districts are prohibited. Plantation Pipe Line Co. v. Bremen, 227 Ga 1, 178 SE2d 868.
- Illinois.** Village of Morgan Park v. Chicago, 255 Ill 190, 99 NE 388 (unincorporated area as not to be surrounded by city territory).
- Indiana.** York v. Town of Carmel, 166 Ind App 672, 337 NE2d 511.
- Kentucky.** Overstreet v. Louisville, 310 Ky 1, 219 SW2d 405 (new annexation proceeding as to same territory not allowed for two years). Statute prohibiting a municipality from annexing industrial sites where the population of the site is so low as to make any service the city could render insignificant in comparison to the revenues and taxes that it would glean from industry did not violate any constitutional rights of a city. White v. Danville (Ky), 465 SW2d 67.
- Massachusetts.** In re Opinion of the Justices, 6 Cush 578.
- Missouri.** Hislop v. Joplin, 250 Mo 588, 157 SW 625.
- North Carolina.** Huntley v. Potter, 255 NC 619, 122 SE2d 681; In re Annexation Ordinance Adopted by Jacksonville, 255 NC 633, 122 SE2d 690.
- North Dakota.** Village of North Fargo v. Fargo, 49 ND 597, 192 NW 977, 979; Waslien v. Hillsboro, 48 ND 1113, 188 NW 738.
- Ohio.** Board of Education of Muhlenberg Tp., Rural (Centralized) School Dist. V. Pickaway County Board of Education, 65 Ohio App 92 29 NE2d 233.
- Virginia.** Statute forbidding a city to annex part of a county so as to leave less than 60 square miles outside is valid as within legislature's broad discretion. Newport News v. Elizabeth City County, 189 Va 825, 55 SE2d 56.

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Wisconsin. Chicago & N.W. Ry. Co. v. Town of Oconto, 50 Wis 189, 6 NW 607 (unable to include noncontiguous area in town). Restrictions on annexation, see §7.15.

Appendix C

Make Your Comments to the LBC Count!

If you plan to offer remarks during the public comment portion of Local Boundary Commission hearings concerning the City of Homer's annexation proposal, the following tips are offered to make your comments more effective.

- 1. Come prepared and informed.** Carefully plan your comments. Prior to the hearings, you may wish to review the following materials (available at the Homer City Hall and Homer Public Library; also generally available on LBC Web site and through DCED):
 - A. the standards established in State law for annexation to cities (these are also summarized in # 2 below);
 - B. the City of Homer's annexation petition;
 - C. the fourteen Responsive Briefs along with the 168 letters commenting on the petition;
 - D. the City of Homer's Reply Brief;
 - E. the Preliminary Report and Final Report of the Alaska Department of Community and Economic Development regarding the City of Homer's annexation proposal.

- 2. Provide relevant comments.** The LBC's decision on the annexation proposal will be guided by standards established in law that are applied to the facts of the City of Homer's proposal. Comments that address those standards and facts will be most helpful to the LBC. In summary, the standards require a determination by the LBC that in this case:
 1. the territory is compatible in character with the City of Homer;
 2. the territory does not overlap the boundaries of another local government (if it does, the proposal must also satisfy detachment standards).
 3. the territory is contiguous to the City of Homer (absent a compelling reason for annexation of non-contiguous territory);
 4. annexation will not deny any civil or political right to any individual because of race, color, creed, sex or national origin;
 5. the proposed boundaries do not include large unpopulated areas (except when justified by the application of other annexation standards);
 6. the combined population of the City of Homer and the territory is sufficiently large and stable to support the extension of city government;

7. together, the City of Homer and the territory have the human and financial resources to provide essential city services on an efficient, cost-effective level;
8. the City of Homer has provided a practical plan for the extension of services into the territory;
9. the proposed expanded City of Homer boundaries include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level;
10. the proposed expanded boundaries include only the existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years following annexation;
11. the City of Homer is best able to provide essential city services to the territory;
12. a reasonable need for city government exists in the territory proposed for annexation;
13. annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation; and
14. annexation is in the best interests of the state.

Even if the Petition meets all of the standards, the LBC has discretion to approve or deny the proposal. Additionally, the LBC may amend the proposal or impose conditions. Therefore, comments may address public policy arguments that advocate a particular action on the Petition by the LBC, including approval, denial, amendment, or imposition of conditions.

3. Observe the rules.

- New written materials may not be filed at the hearing unless allowed by the LBC Chairman upon the showing of good cause.
- To ensure that everyone who wishes to speak during the public comment phase of the hearing will have an opportunity to do so, individuals should plan to limit their comments to three minutes each. Different time limits will apply to the Petitioner and Respondents.

- 4. Avoid repetition.** If another speaker has addressed points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and spend your allotted time on relevant topics that have not yet been addressed.

Appendix D

Estimated Population in 25.64 Square Miles Petitioned for Annexation

Blocks in Homer Annexation Area	Total Pop	Total Housing	% in Annex Area	Est Pop	Est Housing
Block 4013, Block Group 4, Census Tract 8	166	57	25%	42	14
Block 1000, Block Group 1, Census Tract 9	145	67	90%	131	60
Block 1001, Block Group 1, Census Tract 9	4	2	100%	4	2
Block 1003, Block Group 1, Census Tract 9	101	51	50%	51	26
Block 1004, Block Group 1, Census Tract 9	79	33	100%	79	33
Block 1005, Block Group 1, Census Tract 9	11	3	100%	11	3
Block 1006, Block Group 1, Census Tract 9	17	7	100%	17	7
Block 1007, Block Group 1, Census Tract 9	27	14	100%	27	14
Block 1008, Block Group 1, Census Tract 9	16	5	100%	16	5
Block 1009, Block Group 1, Census Tract 9	139	70	100%	139	70
Block 1010, Block Group 1, Census Tract 9	0	0	100%	0	0
Block 1011, Block Group 1, Census Tract 9	24	11	100%	24	11
Block 1012, Block Group 1, Census Tract 9	108	53	100%	108	53
Block 1013, Block Group 1, Census Tract 9	126	58	100%	126	58
Block 1014, Block Group 1, Census Tract 9	9	5	100%	9	5
Block 1015, Block Group 1, Census Tract 9	9	3	100%	9	3
Block 1016, Block Group 1, Census Tract 9	133	49	100%	133	49
Block 1017, Block Group 1, Census Tract 9	0	0	100%	0	0
Block 1018, Block Group 1, Census Tract 9	8	2	100%	8	2
Block 1019, Block Group 1, Census Tract 9	0	0	100%	0	0
Block 1020, Block Group 1, Census Tract 9	15	9	100%	15	9
Block 1021, Block Group 1, Census Tract 9	9	3	100%	9	3
Block 1022, Block Group 1, Census Tract 9	23	12	100%	23	12
Block 1023, Block Group 1, Census Tract 9	10	4	100%	10	4
Block 1024, Block Group 1, Census Tract 9	13	7	100%	13	7
Block 2010, Block Group 2, Census Tract 9	110	70	100%	110	70
Block 2011, Block Group 2, Census Tract 9	0	0	100%	0	0
Block 2012, Block Group 2, Census Tract 9	0	0	100%	0	0
Block 2013, Block Group 2, Census Tract 9	63	34	100%	63	34
Block 2014, Block Group 2, Census Tract 9	0	0	100%	0	0
Block 2015, Block Group 2, Census Tract 9	1	1	100%	1	1
Block 2016, Block Group 2, Census Tract 9	22	14	100%	22	14
Block 2017, Block Group 2, Census Tract 9	256	126	100%	256	126
Block 2018, Block Group 2, Census Tract 9	67	12	100%	67	12
Block 2019, Block Group 2, Census Tract 9	35	16	100%	35	16
Block 2020, Block Group 2, Census Tract 9	5	2	100%	5	2
Block 2021, Block Group 2, Census Tract 9	8	3	100%	8	3
Block 2022, Block Group 2, Census Tract 9	88	43	100%	88	43
Block 2023, Block Group 2, Census Tract 9	77	34	50%	39	17
Block 2024, Block Group 2, Census Tract 9	7	2	100%	7	2
Block 2009, Block Group 2, Census Tract 11	190	117	100%	190	117
Block 3000, Block Group 3, Census Tract 11	390	227	25%	98	57
Block 3002, Block Group 3, Census Tract 11	127	57	30%	38	17
Block 3003, Block Group 3, Census Tract 11	14	7	50%	7	4
Block 3004, Block Group 3, Census Tract 11	61	30	100%	61	30
Block 3005, Block Group 3, Census Tract 11	5	1	100%	5	1
Block 3006, Block Group 3, Census Tract 11	28	12	100%	28	12
Miller Landing CDP	74	35	100%	74	35
	2,820	1,368		2,204	1,062
partially within Homer annexation area	1,020	500		404	194
wholly within Homer annexation area	1,800	868		1,800	868
	2,820	1,368		2,204	1,062

Appendix F

PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

28 CRF 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

- (a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.
- (b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.
- (c) If the change affecting voting either is not readily apparent on the face of the documents, provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.
- (d) The name, title, address, and telephone number of the person making the submission.
- (e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.
- (f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.
- (g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).
- (h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

- (i) The date of adoption of the change affecting voting.
- (j) The date on which the change is to take effect.
- (k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.
- (l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.
- (m) A statement of the reasons for the change.
- (n) A statement of the anticipated effect of the change on members of racial or language minority groups.
- (o) A statement identifying any past or pending litigation concerning the change or related voting practices.
- (p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.
- (q) For redistrictings and annexations: the items listed under S 51.28 (a)(1) and (b)(1); for annexations only: the items listed under S 51.28©(3).
- (r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in S 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in S 51.37.

28 CRF 51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by S 51.27.

- (a) **Demographic information.**
- (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.
 - (2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.
 - (3) Any estimates of population, by race and language group, made in connection with the adoption of the change.
 - (4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94-171 file unique block identity code of state, county, tract, and block.
 - (5) Demographic data on magnetic media that are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

PL 94-171			
Field	reference name	Length	Data type
State	STATEFP	2	Numeric.
county	CNTY	3	Numeric.
tract	TRACT/BNA	6	Alpha/Numeric.
block	BLCK	4	Alpha/Numeric.
plan 1 District	User supplied	4	Alpha/Numeric.
plan 2 District	User supplied	4	Alpha/Numeric.
plan 3 District	etc	
plan n District	User supplied	4	Alpha/Numeric.

- (i) Each census block record (including those with zero population) will be followed by one or more additional fields indicating the district assignment for the census block in one or more plans.
- (ii) All district assignments in the plan fields shall be right justified and blank filled if the assignment is less than four characters.
- (iii) The file structure shall be as follows:
- (iv) State and county shall be identified using the Federal Information Processing Standards (FIPS-55) code.

- (v) Census tracts shall be left justified, and census blocks shall be left justified and blank filled if less than four characters.
- (vi) Unused plan fields shall be blank filled.
- (vii) In addition to the information identified in S 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:
 - (A) The file structure.
 - (B) The total number of plans.
 - (C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).
 - (D) The number of districts in each plan field.
 - (E) Whether the plan field contains a complete or partial plan.
 - (F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc., and a listing of any modifications the submitting authority has made that alter the structure of the TIGER/line geographic file.

- (b) Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

- (1) The prior and new boundaries of the voting unit or units.
- (2) The prior and new boundaries of voting precincts.
- (3) The location of racial and language minority groups.
- (4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.
- (5) The location of prior and new polling places.
- (6) The location of prior and new voter registration sites.

- (c) **Annexations.** For annexations, in addition to that information specified elsewhere, the following information:
- (1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).
 - (2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.
 - (3) A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. see S 51.61(b).
- (d) **Election returns.** Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:
- (1) The name of each candidate.
 - (2) The race or language group of each candidate, if known.
 - (3) The position sought by each candidate.
 - (4) The number of votes received by each candidate, by voting precinct.
 - (5) The outcome of each contest.
 - (6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.
 - (7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of S 51.20 (b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

- (e) **Language usage.** Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.
- (f) **Publicity and participation.** For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:
- (1) Copies of newspaper articles discussion the proposed change.
 - (2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).
 - (3) Minutes or accounts of public hearings concerning the proposed change.
 - (4) Statements, speeches, and other public communications concerning the proposed change.
 - (5) Copies of comments from the general public.
 - (6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.
- (g) **Availability of the submission.**
- (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney general and statements regarding where such public notices appeared.

- (2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.
- (h) Minority group contacts. For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process. [56 FR 51836, Oct. 16, 1991]

51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

- (a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.
- (b) The communications should be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035- 6128. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.
- (c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.
- (d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided

information regarding a change affecting voting “would constitute a clearly unwarranted invasion of personal privacy” under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

- (e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information. [52 FR 33409, Sept. 3, 1987]

Appendix G

Estimated Population in the 3.3 Square Miles Recommended by DCED for Annexation to the City of Homer

Blocks in Homer Annexation Area	Total Pop	Total Housing	Est % in Annex Area	Est Pop	Est Housing
Block 1001, Block Group 1, Census Tract 9	4	2	100%	4	2
Block 1009, Block Group 1, Census Tract 9	139	70	25%	35	18
Block 1011, Block Group 1, Census Tract 9	24	11	100%	24	11
Block 1012, Block Group 1, Census Tract 9	108	53	50%	54	27
Block 1013, Block Group 1, Census Tract 9	126	58	75%	95	44
Block 1014, Block Group 1, Census Tract 9	9	5	100%	9	5
Block 1015, Block Group 1, Census Tract 9	9	3	100%	9	3
Block 1016, Block Group 1, Census Tract 9	133	49	50%	67	25
Block 1017, Block Group 1, Census Tract 9	0	0	100%	0	0
Block 1018, Block Group 1, Census Tract 9	8	2	100%	8	2
Block 1019, Block Group 1, Census Tract 9	0	0	100%	0	0
Block 1020, Block Group 1, Census Tract 9	15	9	100%	15	9
Block 1021, Block Group 1, Census Tract 9	9	3	100%	9	3
Block 1022, Block Group 1, Census Tract 9	23	12	100%	23	12
Block 1023, Block Group 1, Census Tract 9	10	4	100%	10	4
Block 2010, Block Group 2, Census Tract 9	110	70	25%	28	18
Block 2013, Block Group 2, Census Tract 9	63	34	100%	63	34
Block 2014, Block Group 2, Census Tract 9	0	0	100%	0	0
Block 2015, Block Group 2, Census Tract 9	1	1	100%	1	1
Block 2016, Block Group 2, Census Tract 9	22	14	100%	22	14
Block 2017, Block Group 2, Census Tract 9	256	126	75%	192	95
Block 2018, Block Group 2, Census Tract 9	67	12	100%	67	12
Block 2019, Block Group 2, Census Tract 9	35	16	100%	35	16
Block 2020, Block Group 2, Census Tract 9	5	2	100%	5	2
Block 2021, Block Group 2, Census Tract 9	8	3	100%	8	3
Block 2023, Block Group 2, Census Tract 9	77	34	25%	19	9
Miller Landing CDP	74	35	100%	74	35
	1,335	628		875	399

