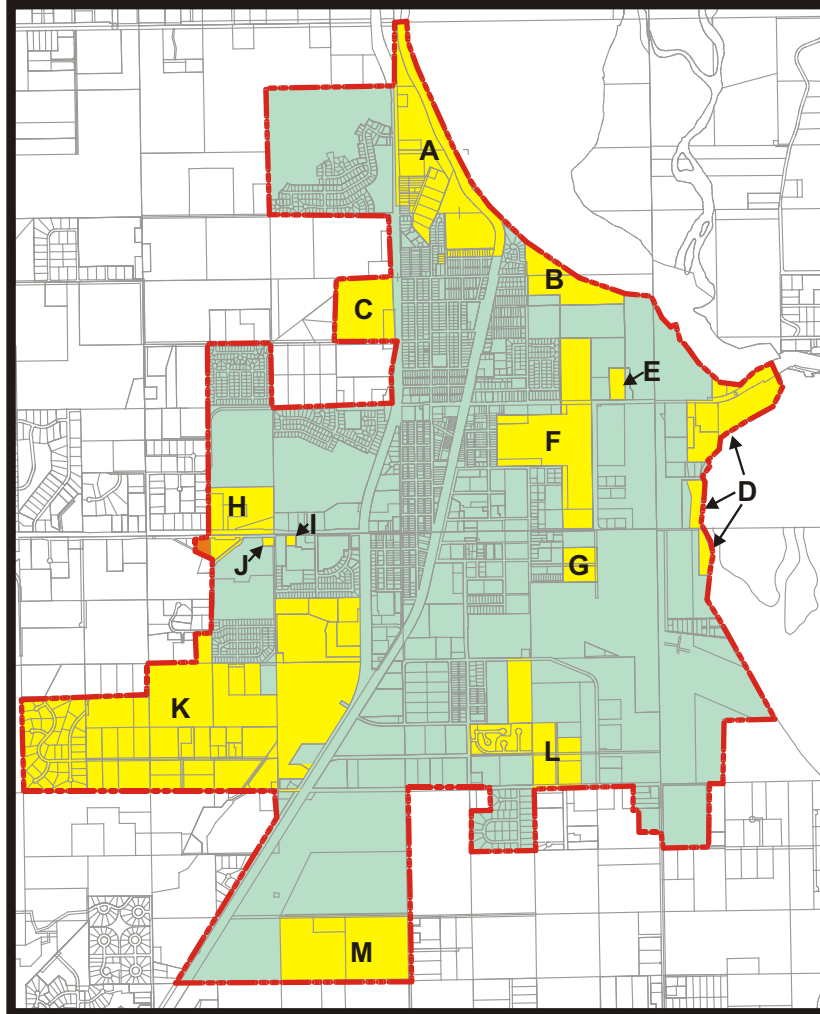


Final Report

Regarding the City of Palmer's Proposal to Annex Approximately 921.34 acres

November 2002



- Legend**
- Areas currently within the City of Palmer
 - Areas proposed for annexation in 04/25/02 Petition
 - Parcel requested to be included in annexation
 - DCED recommended post-annexation boundary for City of Palmer



PREFACE

State law requires the Alaska Department of Community and Economic Development (DCED) to prepare both a preliminary report and a final report regarding petitions for annexation to local governments in Alaska.

DCED's Preliminary Report on the pending City of Palmer annexation proposal was published in October 2002. The Preliminary Report examined details concerning the annexation proposal in the context of the relevant standards set out in law. The Preliminary Report concluded that the standards had been met.

The main focus of this Final Report is examine any timely comments received regarding DCED's preliminary report and address any relevant developments that have occurred since the Preliminary Report was published.

Documents relating to the annexation proposal have been made available for public review at the Palmer Public Library and the Palmer City Offices. Materials have also been available on the Internet at:

<http://www.dced.state.ak.us/cbd/lbc/lbc.htm>

DCED complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission staff at 907-269-4560.



This preliminary report was prepared under the policy direction of Deborah Sedwick, Commissioner, Department of Community and Economic Development, (DCED) and Patrick K. Poland, Director, Community & Business Development Division, DCED.

Others who provided information or assistance in the development of this report

- Dan Bockhorst, Local Government Specialist, Division of Community and Business Development
- Ray T. Briggs, Respondent
- Judy Hargis, Publications Technician, Division of Community and Business Development
- Tom Healy, Petitioner's Representative
- Gary D. Drasky, Alaska Rim Engineering

Page layout was performed by Jennie Morrison, Publications Technician, Division of Community and Business Development

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Introduction

The Alaska Department of Community and Economic Development (DCED) has issued its Final Report concerning the Petition by the City of Palmer for annexation of 921.34 acres and an additional 1.5 acres requested separately by property owner Rolf Dagg.

Copies of this Final Report have been mailed to all Respondents, City of Palmer officials, Matanuska-Susitna Borough officials, local media, and others. Multiple copies of the Final Report have also been sent to the Palmer Public Library and to the Palmer City Hall to be made available for the public.

The Final Report recommends an adjustment to the boundaries recommended in the Preliminary Report. Specifically DCED recommends amending the Petition to include 1.5-acre parcel requested for annexation by the owner of the parcel in the proposed annexation. The total size of the area recommended for annexation in the Final Report is 922.84 acres. (1.44 square miles)

The post-annexation City of Palmer boundaries recommended by DCED are designated on the 11-inch by 17-inch map included with this report.

The Local Boundary Commission has scheduled a hearing on the proposal to begin December 9, 2002 at 7:00 p.m., at Palmer City Hall. A copy of the hearing notice is included with this document as Appendix A.

Further information about this matter is available from:

LBC Staff
550 West 7th Avenue
Anchorage, Alaska 99501-3510
Fax: 907-269-4539
Telephone (907) 269-4557

Part 1 – Update of Procedural Activities

A. Distribution of Preliminary Report

On October 11, 2002, DCED distributed copies of its 102-page *Preliminary Report Regarding the City of Palmer's Proposal for Annexation of an Estimated 921.34 acres* (hereinafter "Executive Summary") to interested individuals and parties including the Petitioner, Respondents, correspondents, Local Boundary Commission members and the Matanuska-Susitna Borough.

B. Receipt of Timely Comments on Preliminary Report

The Chairman of the Local Boundary Commission established November 12, 2002 as the deadline for comment on the report. Timely comments regarding the Preliminary Report were received from Ray T. Briggs.

Copies of Mr. Brigg's comments have been made available for public review at the Palmer City Clerk's office. Copies of all such comments were also provided to each member of the Local Boundary Commission.

C. Notice of Local Boundary Commission Meetings and Hearing

DCED arranged for notice of the LBC meetings and hearing to be published in the *Frontiersman* on November 1, 2002, November 8, 2002, and November 15, 2002.

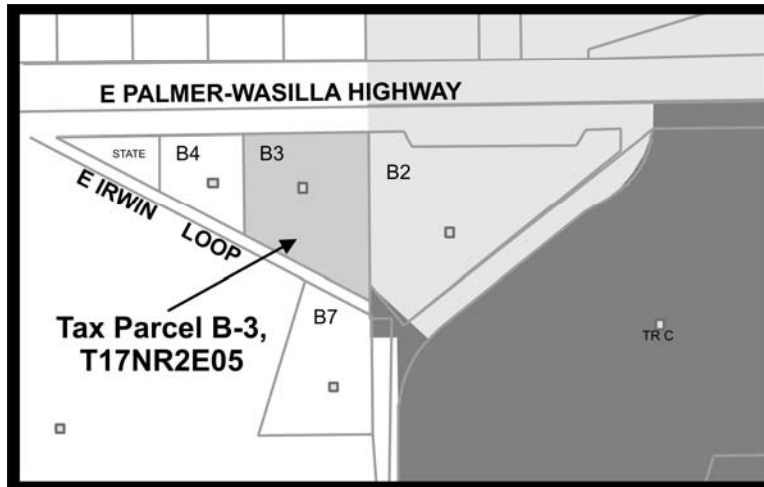
On October 29, 2002, DCED arranged for posting, by the City of Palmer, of the notice of the hearing at the following locations:

- Palmer City Hall;
- Carrs Quality Center at the Palmer Shopping Center;
- Public Palmer Library, and the Matanuska-Susitna Borough Headquarters Building.

Notice of the hearing was mailed to the Petitioner, Respondents, correspondents and other interested parties on November 6, 2002. The "Notice of Public Hearing Regarding the City of Palmer's April 25, 2002 Annexation Petition" sets forth the date, time, and location of the hearing and is provided in Appendix A of this document. Guidelines for comments at the hearing ("Make Your Comments to the LBC Count!") are provided in Appendix B of this report. The hearing and decisional session will be conducted in accordance with procedures established in State law that are provided in Appendix C. Timely comments regarding DCED's Preliminary Report are included as Appendix D.

Part 2 – Proposal to Amend Boundaries of Territory Proposed for Annexation

On September 5, 2002, Mr. Rolf Dagg requested that consideration be given to inclusion of a parcel that he owns be annexed to the City of Palmer.¹ The 1.5-acre parcel adjoins another parcel owned by Mr. Dagg that is within the 921.34-acre territory encompassed by the April 25, 2002 Petition for annexation submitted by the City.



Notice of the September 11, 2002 request by Mr. Dagg to include his parcel within the boundaries of the City was published in the *Frontiersman* on September 27, 2002, October 4, 2002, and October 11, 2002. Notice of the proposed amendment to the Petition was also posted at the following locations:

- Intersection of East Irwin Loop and the Palmer/Wasilla Highway;
- South boundary between lots B3 and B4 adjacent to East Irwin Loop road;
- Palmer City Hall;
- Carrs Quality Center at the Palmer Shopping Center;
- Palmer Library; and
- Matanuska-Susitna Borough headquarters.

¹ Lot B-3 is designated tax parcel T17N02E05B003, located in T17N, R2E, Section 5.

No comments objecting to the proposed annexation of Mr. Dagg's referenced parcel have been submitted as of November 13, 2002. The deadline for submission of such comments is November 15. Any comments regarding the proposed annexation of the referenced 1.5-acre parcel that are received by the November 15, 2002 deadline will be provided to the Local Boundary Commission and other interested parties and addressed at the Commission's December 9 public hearing.

Part 3 – Effect of Annexation on Borough Service Areas

As noted in DCED's Preliminary Report, the entire 921.34 acres proposed for annexation is within the Matanuska-Susitna Borough Road Service Area 16 and Fire Service District 132. AS 29.35.450(c) provides as follows:

If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

DCED considers AS 29.35.450(c) inapplicable to city annexations (particularly legislative review annexations). DCED is of the opinion that annexation to the City of Palmer will effect the detachment of all annexed areas from the Matanuska-Susitna Borough Road Service Areas

The City of Palmer seeks to annex territory pursuant to Article X, Section 12 of the Constitution of the State of Alaska, which provides as follows (emphasis added):

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

The plain language of the second sentence indicates that the Local Boundary Commission may consider any proposed local government boundary change. The Matanuska-Susitna Borough has three types of jurisdictional boundaries. These are (1) corporate boundaries encompassing areawide jurisdiction, (2) boundaries encompassing nonareawide jurisdiction, and (3) boundaries encompassing service area jurisdictions.²

Moreover, *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962) seems to provide ample legal authority for the proposition that a service area will be deemed altered, as a matter of law, upon the effective date of annexation of the territory in question to a city.

In 1960, the Local Boundary Commission approved the annexation of the Fairview Public Utility District Number One to the City of Anchorage. The action was tacitly approved by the 1960 Legislature pursuant to Article X, Section 12 of the Constitution. The City of Anchorage sought a declaratory judgment asking the court to determine that the Fairview Public Utility District had been dissolved as a result of annexation.

Annexation opponents asserted that “annexation could not effect the dissolution of the District, since a dissolution could be validly effected only by the consent of the voters within the District pursuant to an election held in accordance with statute.” (at 541). The court disagreed (at 545).

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute.³ We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.⁴ When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.⁵

² In the context of Article X, § 1 of Alaska’s Constitution, the phrase “local government unit” has been construed by the Alaska Supreme Court to include borough service areas. (*See Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 [Alaska 1995].) Moreover, Vic Fischer, an expert in Alaska local government and a former Constitutional Convention delegate, also construes borough service areas to be local government units in the context of Article X, §§ 1 and 5. (See letter dated September 29, 1997 from Victor Fischer)

³ (footnote original) Section 49-2-13 ACLA Cum.Supp.1957, supra note 8.

⁴ (footnote original) *In re Annexation to City of Anchorage*, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

⁵ (footnote original) *In re Sanitary Board of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368, 370 (1910); *Dickson v. City of Carlsbad*, 119 Cal.App.2d 809, 260 P.2d 226 (1953).

Our conclusion is not refuted by a 1957 statute which provides for dissolution with consent of the voters when ‘the whole or the integral part of a district becomes annexed to an incorporated city.’⁶ This has application only where annexation takes place under the petition-election procedure⁷ which was the only means of annexation in effect prior to the time the state constitution became effective.⁸ It has no application where annexation takes place under the different method established by Article X, section 12 of the constitution.

Similar to the Court’s holding in the *Fairview* case, any assertion that the Matanuska-Susitna Borough Road Service areas cannot be altered unless voters of the service areas agree would defeat the chief purpose of annexation and foster “multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.”⁹

If AS 29.35.450(c) applies to annexations, citizens of an area proposed for annexation to a city within an organized borough could thwart annexation by initiating efforts to create a borough service area for road maintenance, fire protection, and/or parks and recreation. Doing so would contravene the intention of the Constitutional Convention delegates as discussed by the Supreme Court in the *Fairview* case (at 543):

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.¹⁰ The advantage of the method proposed, in the words of the committee –

⁶ (footnote original) SLA 1957, ch. 130 (§ 49-2-13, First, ACLA Cum.Supp.1957).

⁷ (footnote original) SLA 1957, ch. 183 (§§ 16-1-29-29n ACLA Cum.Supp.1957).

⁸ (footnote original) The state constitution went into effect on January 3, 1959.

⁹ For example, Article X, § 1 of Alaska’s Constitution discourages, if not prohibits, the exercise of an identical power in the same area simultaneously by a city and borough government. It states that the purpose of the local government article of Alaska’s Constitution is, in part, “to prevent duplication of tax-levying jurisdictions.” However, it is conceivable that conflicts will arise in cases where a city and borough attempt to exercise the identical power over the same area. AS 29.35.250 provides that “A city inside a borough may exercise any power not otherwise prohibited by law.” (AS 29.35.250(b) expressly prohibits a city from exercising an areawide power adopted by the borough, but has no similar express prohibition against service area powers.)

¹⁰ (footnote original) 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.)

* * * 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.

DCED notes further that AS 29.35.450(a) provides that a city government or its residents must expressly authorize the inclusion of a city in a service area. Specifically, AS 29.35.450(a) states: “. . . The borough may include a city in a service area if (1) the city agrees by ordinance; or (2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.” By that statute, a borough has no authority to exercise service area powers within a city without that city's approval. There are no qualifiers to suggest it matters whether the service area precedes the city in the area concerned.

Part 4 – Public Comments Regarding Preliminary Report

Timely written comment on DCED's Preliminary Report was received from Ray T. Briggs on November 12, 2002.

DCED reviewed and considered Mr. Briggs comments regarding its Preliminary Report, it is not practical to respond to each of them here. The following gives examples of the comments and responses by DCED.

A. Examples of Comments

Comment: Mr. Briggs commented that the following statement is “misleading or false.”

“All territories proposed for annexation consist of primarily residential, minimal commercial, and vacant properties that are either under development or are anticipated to be developed in the near future. The residential Development within the areas is comparable to that within the City.”(at 1-2)

Response: DCED, of course, regrets any unintended imprecise characterization of Mr. Brigg's property. The issue is linked to the location of Mr. Brigg's property in relation to the Palmer Airport and the inclusion of his residence in an Airport Industrial Zone. However, DCED does not consider the statement in the Preliminary Report referenced by Mr. Briggs to be inaccurate.

Comment: On annexation, I am expected to pay the city taxes for their municipal services, such as “Solid Waste Disposal” or Sewage. (at 4)

Response: Mr. Briggs’ statement appears unfounded since the referenced services are not paid by taxes, but are supported by user fees.

Comment: Rather than complying with the law, and their Civil Obligations the city moves to Annex me into their borders to commit an uncompensated taking. Intended to allow the city to zone my property as part of their Airport Industrial District to deprive me of any residential use of my property, and ensure that I have no voice or rights at all, so the city can continue to use my property in trespass. (at 4)

Response: DCED does not construe the proposed annexation to be an “uncompensated taking” because annexation merely extends the City’s jurisdiction and does not involve the transfer of ownership of any private property. The City has never zoned Mr. Brigg’s property.

DCED considers most of the elements of Mr. Briggs’ letter to concern matters outside the jurisdiction of the Local Boundary Commission or the purview of DCED.

Part 5 – DCED Conclusions and Recommendations

In its May 24, 2000 Statement of Decision regarding the most recent annexation by the City of Palmer, the Local Boundary Commission stated:¹¹

. . . the Local Boundary Commission strongly reiterates its long-standing encouragement to the City of Palmer to approach annexation in a more comprehensive manner rather than pursuing boundary changes piecemeal, in small increments. The Commission noted that the City of Palmer has issued a request for proposals for the development of a comprehensive annexation plan. It is hoped that the City of Palmer approaches annexation in a more proactive manner in the future, rather than repeatedly reacting to requests for utility extension to areas that are so modest in scope.

DCED considers the pending annexation Petition to comport with the approach to annexation encouraged by that May 24, 2000 decisional statement.

¹¹ The May 24, 2000 Statement of Decision was issued upon approval by the LBC of a petition by the City of Palmer to annex 64.9 acres.

Based on the record of this annexation proceeding as reflected in the analysis, findings and conclusions set forth in DCED's Preliminary Report and this Final Report, DCED concludes that all of the relevant standards and requirements for annexation are satisfied by the City of Palmer's Petition.

One of the goals stated in the City of Palmer's June, 1999 comprehensive plan is to, "Establish annexation conceptual boundaries to take place within the next twenty years." An annexation study undertaken by the City concluded that those conceptual boundaries encompass about 13.3 square miles. Relative to the long-term goal stated in the comprehensive plan, annexation of 921.34 acres to the 3.93 square miles currently within the City of Palmer's jurisdiction would be an incremental but significant improvement to the current constricted boundaries of the City of Palmer. The proposed post-annexation boundaries of the City of Palmer encompass 5.36 square miles. DCED recognizes that the size of the proposed annexation is larger than the most recent annexation by the City, which favorably reflects on the City's efforts to submit annexation petitions of larger scope.

DCED considers the proposed boundaries of the City of Palmer to be a notable improvement over the City's existing boundaries. The proposed boundary change would eliminate all enclaves within the City's boundaries and would facilitate more efficient delivery of the City of Palmer's services and promote orderly development in the territory proposed for annexation.

Recommendation #1

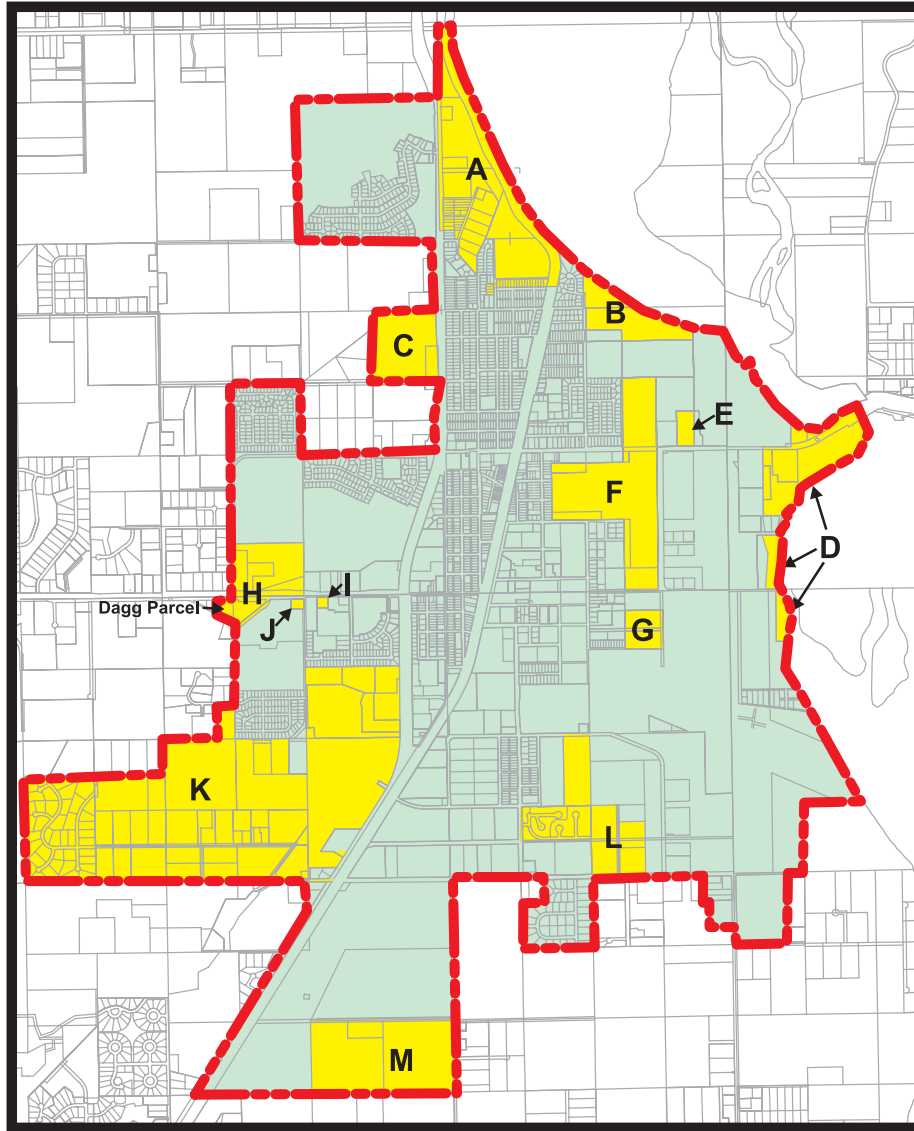
DCED recommends that the Petition be amended to provide for concurrent annexation of a 1.5-acre uninhabited parcel adjacent to the 921.34 acres identified in the City of Palmer's Petition. DCED considers the annexation of the 1.5-acre parcel to be non-controversial and characteristic of annexations proposed under provisions of AS 29.06.040(c)(3).

However, in the interests of avoiding theoretical procedural complications, DCED recommends that annexation of the 1.5-acre parcel be:

- (1) conducted by a separate motion;
- (2) made contingent upon approval of the separate Petition for annexation 921.34-acres to the City of Palmer. In the event that the City of Palmer's Petition for annexation is amended in a manner that would result in the 1.5-acre parcel non-contiguous to the post annexation boundaries of the City, the request for annexation of the 1.5 acre Dagg parcel should be denied.
- (3) Submit the Local Boundary Commission's recommendations for the annexation of the referenced areas as separate actions.

Recommendation #2

DCED recommends that the Commission approve the April 25, 2002 Petition of the City of Palmer for the annexation of approximately 921.34 acres.



- Legend**
- Areas currently within the City of Palmer
 - Areas proposed for annexation
 - Proposed post-annexation boundary for City of Palmer

Appendix A

State of Alaska Local Boundary Commission

NOTICE OF PUBLIC HEARING REGARDING THE CITY OF PALMER'S APRIL 25, 2002 ANNEXATION PETITION

On Monday, December 9, 2002, the Local Boundary Commission (LBC) will meet in Palmer to conduct a public hearing regarding the City of Palmer's April 25, 2002 Petition to annex 921.34 acres and a request by a property owner for annexation of an additional 1.5-acre parcel. Prior to the hearing, the LBC may tour the territory proposed for annexation by automobile.

The LBC will convene the public hearing on the annexation proposal at the time and place designated below:

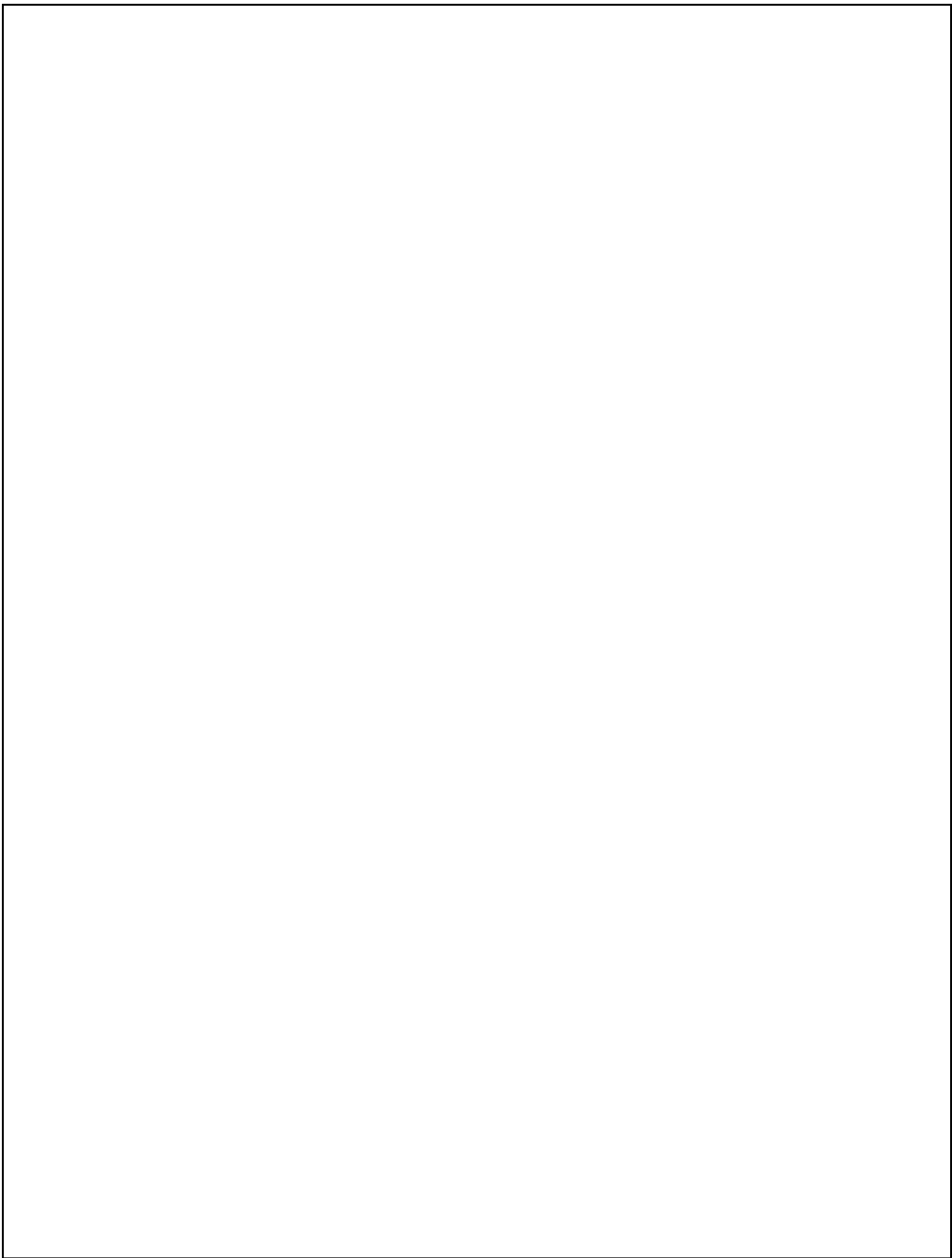
TIME: 7:00 P.M., MONDAY, DECEMBER 9, 2002
PLACE: PALMER CITY COUNCIL CHAMBERS, PALMER CITY HALL
231 WEST EVERGREEN AVE., PALMER
(Access the City Council Chambers through the South Cobb entrance.)

Please direct questions regarding this matter to:

LBC Staff
Department of Community and Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, Alaska, 99501-3510
Telephone: (907) 269-4557
Fax: (907) 269-4539
e-mail: Gene_Kane@dced.state.ak.us

Following the public hearing, at the same meeting, the LBC may convene a decisional meeting. At such decisional meeting, the Commission may approve, with or without amendments, the April 25, 2002 City of Palmer annexation petition, or may deny the petition.

Individuals with disabilities who need reasonable accommodations to participate at the hearing should contact LBC staff at (907) 269-4557 by December 4, 2002.



Appendix B

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 Palmer'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 Palmer City Hall; also available through DCED):
 - A. the standards established in State law for annexation to cities (these are also summarized in # 2 below);
 - B. the City of Palmer's annexation petition;
 - C. the three Responsive Briefs along with the letters commenting on the petition;
 - D. the City of Palmer's Reply Brief;
 - E. the Preliminary and Final Reports of the Alaska Department of Community and Economic Development regarding the City of Palmer'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 Palmer'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 Palmer;
 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 Palmer (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 Palmer and the territory is sufficiently large and stable to support the extension of city government;
 7. together, the City of Palmer and the territory have the human and financial resources to provide essential city services on an efficient, cost-effective level;

8. the City of Palmer has provided a practical plan for the extension of services into the territory;
9. the proposed expanded City of Palmer 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 Palmer 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 C

Local Boundary Commission Regulations

Hearing Procedures (3 AAC 110.560)

3 AAC 110.560. Commission hearing procedures

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (5) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by each respondent;
- (6) sworn responsive testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (7) a period of public comment by interested persons, not to exceed three minutes for each person;
- (8) a closing statement by the petitioner, not to exceed 10 minutes;
- (9) a closing statement by each respondent, not to exceed 10 minutes; and
- (10) a reply by the petitioner, not to exceed five minutes.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.

(f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.820; AS 44.33.826

Decisional Meeting (3 AAC 110.570)

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition AS altered. If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file AS a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.818; AS 44.33.820; AS 44.33.822; AS 44.33.826

Appendix D

Timely comments received regarding DCED's Preliminary Report

To: The Department of Community and Economic Development
Local Boundary Commission
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99501-3501

RECEIVED

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November 12, 2002

From: Ray T. Briggs
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Palmer, Ak., 99645

Local Boundary Commission

Re: Respondents Comments to
DCED Preliminary Report
City of Palmer, Petition for Annexation

Respondent, Ray T. Briggs, hereby submits comment to the DCED Preliminary Report for the City of Palmers Proposed Annexation of 921.34 Acres, and would depose and state as follows:

The Annexation of my property fails the requirements for Legislative Annexation. It serves only to deny me my rights and allow the city to assert Industrial Zoning over my borough Residence, to relieve the City of accountability for the "Fraud" they committed against me, the State of Alaska, and the United States.

I directly oppose being annexed to the city.

The city acknowledges in their brief at **Page 3, Section 3** in their response to me, that on Annexation the city will not provide me with city services, even essential services such as water.

There is no benefit to me or my property.

As the city identifies in their brief, the issues involving my property go beyond annexation, it is an Airports Issue.

As an Airports Issue the annexation of my property should be severed from the petition, it is superseded by federal law.

The city is under contract with the F.A.A. to purchase property such as mine for public use, not annex me to "Take my property, or rights" in violation of Constitutional Mandates..

The City claims I do not identify how their actions are "Directly intended to deprive me of my rights to the full use and enjoyment of my property and/or steal my property outright".

The attempted annexation of my property is direct evidence that the city lacks any authority over my property, and their actions are a fraud, and a taking, in violation of my civil rights.

The "**Industrial**" classification of my property goes beyond the property uses identified in the city's brief, or the DCED Preliminary Report. The A-I or Airport Industrial Area **is my property** and "**Residence**". It is shown on city maps as inside of the City's Airport Industrial Zone, which the city admits is their only active "Zoning". (**Respondents Brief Exhibit 2, page 2**)

"The city of Palmer has implemented city zoning, but only provides zoning for an Airport Commercial (A-C) and Airport Industrial District (A-I). . . . [B]oth districts restrict certain uses such as: **residential**".

At section 3.1 (B) the DCED Preliminary Report City of Palmer, Petition for Annexation states;

"All territories proposed for annexation consist of primarily residential, minimal commercial, and vacant properties that are either under development currently or are anticipated to be developed in the near future. The residential Development with in the areas is comparable to those within the city."

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That statement is misleading or false.

As I addressed in my **brief at page 2**, the city of Palmer, to obtain Federal Grants and Funds, continually file documentation and Sworn Statements to the Federal Aviation Administration, and others that my Borough property and residence is part of the City's Airport **Industrial District**, that there is no residence on my property, **"I do not exist"**.

The City at **Page 2 of their Reply Brief** state "This was simply an over site on behalf of the consultant who prepared the airport master plan".

It was not an oversight. As I identified at **Exhibit 15**, I submitted a letter to that consultant identifying his **"Oversight"** and demanding correction. On April 2001 the consultant submitted an airport master plan which denied the existence of my residence.

The Phase I Environmental Assessment attached to the airport master plan identifies the consultant was informed by city personal Mr. Ron Boehm, and Mr. Mike Krieber, **"not to talk to me in connection with the report"** this is a violation of **F.A.A. Regulations, and too me proof it was no oversight.**

According to the Airport Master Plan of April 2001, **"Residential"** use of my property is **"NOT CONSISTENT"** with the airport operations, or development. (**Respondents Brief Exhibit 2, page 2**)

The city asserts in their brief "Briggs' claim that the City has zoned his property as an Airport Industrial Area, and that the City has no right to do this is misinformed. The "Land Use" map he includes (Exhibit 6, page 3) is a copy of a map from the Palmer Airport Master Plan (April 2001) that includes land use, not zoning. Briggs' property was at one time in industrial use and it was probably at that time that the land use was noted for purposes of producing the map"

Instead of identifying current land use and actual operating conditions of the Airport as required by law and their contract with the F.A.A., the city admits they submit to the F.A.A., and others false or misleading records, reports, and Maps, which do not represent current airport operations or conditions. Whether intentionally or negligently done, such actions are in violation of the city's contract with the F.A.A., **18 USC 1001, 31 USC 3730**. Such records reports and maps concern my property and rights, and I will defend them.

I bought my residence in **1989**, and I have never run an Industrial establishment on my property.

I am not involved in development of any industrial facility now, and do not expect to develop any Industrial Facility in the near future.

It is my understanding the **House or Residence** on my property, has been in existence "for more than 20 years".

The city admits in their brief the Borough, does not, and has not zoned my property. It is prohibited from identifying specified "Land Use" of borough citizens private properties.

Being outside the city boundaries, the city has no authority or power to zone, restrict or identify any specific purpose, use, or requirement for **"MY"** borough private property, and residence. Yet the city has done so, in sworn federal records.

The city lacking any authority over my property, which is outside their municipal borders, has been informing the FAA for over 12 years that my residence does not exist, that my property is an "Industrial" complex, as such Airport Safety Regulations do not apply.

The city states that "there is no avigation easement, building restriction zone, or other limitation or encumbrance on Briggs property stemming from the location of his property adjacent to the Palmer Airport. There is no land use or condition in existence or required for the operation of the Palmer Airport that affects Briggs' property."

There was. Until I found my borough property and residence, listed on the City's Airport Maps as a prohibited structure **"Inside the Building Restriction Line"** for runway 15, and alledged as part of the City's Airport Industrial District. As such the city is required to "Own Good Title" to my property. They do not.

On my discovery of such, the city changed this FAA "Safety Requirement" moving the "**Building Restriction Line**" off my property. However they refused to change the "Industrial" Classification applied to my property, and immediately moved to annex me.

While the city claims they can alter safety requirements at will, the Building Restriction Line remains at 750 feet over any city property, yet denies me the same safety consideration, making the separation distance for Runway 15, 500 feet for my house, which the city **Forgot** was there.

The city admits at **page 2 of their brief** that their air traffic does inundate my property with smoke and vapors, subjects my residence to unacceptable noise levels, and cause damage from vibrations.

The city in their brief then directly deny the Laws of the United States, the Constitution of the State of Alaska, and the 5th and 14th Amendments to Constitution of The United States. They admit they do allow "their" air traffic to regularly **trespass** through the airspace of my residence, but claim that "[P]roperty owners do not own rights to the air above their property, so Briggs can not claim that aircraft "Trespass" across his property if they fly over his property".

The city then asserts that they have no control over air traffic using their airport.

This assertion is in error. As an **uncontrolled "Municipal"** airport, the city at all times is absolutely responsible for any air traffic using **their facility**. Especially when their air traffic violates airport flight corridors, and FAA Regulations.

The City's Airport has specified flight corridors which my residence is outside of. Any air traffic using the city's airport is required by Federal Aviation Regulations to maintain a minimum separation distance of 500 feet above any dwelling or structure, not fly over my house at any height they so desire, to access a runway in violation of its established flight corridors.

The city further claims any Airport Expansion took place over 20 years ago, again this is false or misleading.

As identified in the parties briefs, the recent construction of the State of Alaska Department of Forestry's Fire Facilities behind my home started approximately 3 years ago, not 20.

The city allowed no public comment of this state facility, instead combined the issue with their regular city counsel meetings, informing me that "as a borough resident I have no say in City Matters".

The public comment sought at their city counsel meetings, was for construction of the facility at another location at the south end of the Airport. Construction was begun at the south end, then with out notice changed to the north end behind my home.

This new facility is in continuing construction and development, which has resulted in alteration of the airports Heavy Traffic patterns, moving the heavy traffic and helicopter operations from the south end of the airport, to the north end behind my home. This alteration of Traffic Patterns was finalized during the summer of 2002.

The state now engages in active training sessions involving repeated landings and take off procedures at all hours of the day or night.

The new Helicopter operations at the north end of the airport has even resulted in a prohibited practice of low level flights transporting unsecured "open sling loads" directly over my residence.

The city not only denies me, my rights and residence, they identify a "**Gravel Pit**" at the south end of "**Section D**". The city informs the **F.A.A.** that this alleged "Gravel Pit" is "**Undeveloped Vacant Land**". The alleged "Gravel Pit" is a small gravel stock pile, left over from what is now prohibited River Excavations. The residence there, like my property is inside the Building Restriction Line of Runway 15, and a prohibited "Residence" inside the city's "Airport Industrial Area". Like me, the city denies this residence exists.

The Annexation becomes an outrage where the city admits that it will not provide me with city services such as water, services I will be Taxed for.

While the city asserts that I lost an argument against the city for operating an unpermitted dumpsite in wetland waters behind my house. The city, the state, and God know the truth, I did not loose,

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I was victimized. The citizens of this state and country, and the body itself lost.

My law suit against the city was restricted to one discreet location.

City agents and Officers of ADEC testified that, the City has 4 of these "Open Dump Sites" just in relation to the airport itself, none of which are permitted facilities. Only one of is subject to the decision of the court.

According to the evidence obtained during that legal proceeding the waters of my property are contaminated. Whether by the city or not. On annexation I will be taxed for municipal water services, essential to my residence which the city will not provide me.

Where the city indicated in state and federal records the Airport dump site they started in 1986, was an inherited historical facility started by the **Military during World War II, the city has violated, 31 USC 3730.**

The evidence proved the City's Unpermitted Dump exists. The city was cited by ADEC for operating the dump, and by the Army Corp. of Engineers for violations of the Clean Water Act.

ADEC and the Army Corp. of Engineers required the City to Close and Clean up the site.

The state declared "Diligent Prosecution of Clean Up" was allowing the city to bury illegally dumped unidentified barrels of waste pollutants in place in the waters shared with my property.

The city has never identified any dump sites in connection with the airport, to the FAA as required by their contract. The city's contractual agreements with the FAA prohibits them from operating open dumps on the airport especially in wetlands or waters on the airport. Where the city fails to list such ecological features as wetlands on the airport, and use those airport wetlands as an open dump the city has violated **their contract with the Federal Government, and would tax me to support such actions.**

The city then uses the color and cover of their Municipal Authority to allow commercial dischargers to connect to the city sewage system to discharge 10's of thousands of gallons of toxic compounds such as PCB's, into the Matanuska River in violation of the Clean Water Act. The toxicity of these discharges kills the bacteria in the sewage lagoons which on numerous occasions has caused them to have to be drained, cleaned and re-established afterwards, at tax payers expense.

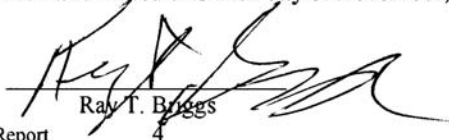
On annexation I am expected to pay the city taxes for their municipal services, such as "Solid Waste Disposal", or Sewage. Services which the city conducts in violation of state and federal law, Criminal conduct I refuse to support.

Rather than complying with the law, and their Civil Obligations the city moves to Annex me into their borders to commit an uncompensated taking. Intended to allow the city to zone my property as part of their Airport Industrial District to deprive me of any residential use of my property, and ensure that I have no voice or rights at all, so the city can continue to use my property in trespass.

It is not my intent to obstruct the proper annexation of those who want annexation, or will benefit from annexation. But, as the city and I point out, there are "**Legal Issues**" concerning me and my property which need to be addressed before annexation of my property is considered. I would therefore request that the issue of the Annexation of **my property** be severed from the petition.

Under **Article 1 Section 18 of the Alaska Constitution** the City has taken and/or damaged my property, I demand compensation, now so I can get on with my life and heal. If I do not receive notice of such severance before the close of business on November the 22nd 2002, the acceptance of the city's petition, and continuation of annexation proceedings against my property will be taken as a conspiracy against me and my civil and property rights, and I will be forced to institute legal proceedings.

Subscribed and Dated this 12th day of November, 2002.


Ray T. Briggs

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