

CFNI Subcommittee Report on KPB Road Service Area

Introduction

In its responsive brief to the Local Boundary Commission, the Kenai Peninsula Borough (KPB) stated that "The main crux of petitioners' Brief is that the city of Nikiski should be formed because the borough's road service area ("RSA") is providing inadequate service to the Nikiski area and that the tax base in Nikiski is supporting road services in areas of the RSA outside of Nikiski." It then goes on to state this position requires *factual* and *legal* clarity [emphasis added].

This lack of understanding of the history of Nikiski and how KPB has disenfranchised the very voters who initially approved the RSA and is just *one* of the key reasons why we are pursuing incorporation, but is not the only reason in its desire for self rule and self determination.

KPB has also stated and asserted its right to tax and show no special benefit derived from those taxes. It has indeed done that, by utilizing taxes derived from the former North Kenai Peninsula Road Maintenance Service Area elsewhere in the borough. KPB has even gone so far as to try to create the suggestion that Nikiski's pursuit of incorporation may not be right, fair, or even legal. On February 13, 2017, KSRM Radio quoted KPB's Chief of Staff, Larry Persily: "Certainly it appears, reading the incorporation application, that the supporters of it see an opportunity to tap into a substantial oil and gas property tax base out there. Whether that is right, whether it is fair, whether it meets the terms of state law for the information of a city, that'll be up to the Local Boundary Commission to decide. My understanding of the law is you can't incorporate just because you want the money. [sic]" The residents of Nikiski have chosen to embrace this industry from the very beginning; it permeates every aspect of our lives, no other area in KPB has this burden. To state Nikiski is trying "tap" into an industry demonstrates complete unfamiliarity of our past, present, and future.

KPB has subverted the will of the people in Nikiski by:

1. Consolidating the four RSA's into one RSA,
2. Removing the elected RSA Board and replacing it with a KPB appointed board,
3. Removing the voters from the process of approving the RSA taxation,
4. Taking the funds from Nikiski's former RSA and using elsewhere, and
5. Overseeing a process under which our costs have escalated.

Has KPB in its treatment of Nikiski done what is "right" and "fair"? Its actions, though legal, have not been moral and just to the citizens of Nikiski.

History

Why the Road Service Area is relevant to the Incorporation of Nikiski

1981

July 16/21, 1981:

KPB Assembly meeting, Ordinances 81-52 through 81-70 were introduced. The ordinances state:

- The Assembly finds that road construction and maintenance services were needed and that such services can best be provided by the establishment of a service area of the Borough, because such services cannot be provided by an existing service area, by annexation to a city, or by incorporation; and
- Funds are available from the State of Alaska for the maintenance and construction of service area roads not now part of the state highway system or whose construction is not contemplated by the state; and
- The Assembly finds that an acceptable level of service area road construction and maintenance can be achieved solely through the use of moneys provided by the State of Alaska without the levy of any service area mill levy; and
- The establishment of any service area must be approved by a majority of those persons voting within the proposed service area.

Additionally, the ordinances stated that the service area be established "...subject to approval by a vote of the people." and that "No mill levy shall be levied on behalf of the service area unless the initial establishment of the mill levy is approved by a majority vote of the people at an election within the service area."

Assemblymember Karen McGahan amended the ordinance to include this section:

"In the event that the State of Alaska fails to appropriate and furnish funds for the maintenance of roads within the service area, then the assembly shall provide for an election within the service area on the establishment of a mill levy sufficient to provide for the functioning of the service area. Should the imposition of a mill levy be defeated by a vote of the people, then the assembly shall by ordinance provide for the prompt dissolution of the service area and the winding up of its affairs."

The three ordinances (81-62, 63, & 70) covering voting precincts Nikiski 1, Nikiski 2, and Tyonek were combined into one ordinance. Ordinance 81-63 (substitute) "Establishing the North Kenai Peninsula Road Maintenance Service Area and Providing for an Election" encompassed those three areas.

The ordinance was put to the people by vote for the establishment of North Kenai Peninsula Road Maintenance Service Area (NKPRMSA) and also elected "a five member board of directors"

October 6, 1981:

The proposition went on the ballot and passed 706 to 245.

1982

May 18, 1982:

Ordinance 82-29 establishing the NKPBMBA upon the wishes of the voters was addressed at the regular assembly meeting, Assemblymember McGahan amended it with some word changes and by adding to the section on the budget "Public Hearings are necessary and shall be a part of the budgetary procedures before submitting the budget to the Borough Assembly." The ordinance passed with a vote of 12-2 and enacted as amended.

Of particular note, is that the service area consisted of the Nikiski precincts on the east side and "...*all* land on the west side of Cook Inlet bounded by the Kenai Peninsula Borough boundary and the mean high waterline of Cook Inlet." (emphasis added)

1985

July 2, 1985:

Growth in the Kenai Peninsula, increased traffic on the roads causing deterioration, and funding from the state was barely adequate. To offset this, KPB needed to take action to explore funding and repair. As KPB is a second-class borough, it can only exercise that power in a service area with voter approval. Consequently Ordinance 85-52, " Providing for the acquisition of municipal power necessary to provide for improvements to (and maintenance on) roads maintained or qualified to be maintained by the Kenai Peninsula Borough" was introduced and approved for hearing by a vote of 11-1. It is interesting that Assemblymember McGahan from Nikiski, was the lone dissenting vote.

August 6, 1985:

At the KPB Assembly meeting, Ordinance 85-52 was addressed and then postponed to the next meeting. Resolution 85-140, "Providing for Ballot Propositions to Acquire Road Improvement Powers Within the Borough Road Maintenance Service Areas" was introduced and also postponed until the next meeting.

August 20, 1985:

At the KPB Assembly meeting, Ord. 85-52 was amended and passed 10-4 and enacted as amended. Res. 85-140 was discussed and an amendment providing for a maximum 1/2 mill rate be voted on for each of the RMSAs. Assemblymember Moore said "...the Local Affairs Committee throughout its discussion had wrestled with the problem of how to explain to the voters whether or not there would be a tax to support the acquisition of power, how much tax, and would the power do anything positive if there is no provision for a tax. The Committee's best compromise was if in any of the individual service areas the people through the service area board and subsequent Assembly action, levy a tax it was not to exceed

1/2 mill. This provides an opportunity for residents of the service area to decide whether they want a tax." The amendment and the amended resolution both passed 12-2 and the resolution was adopted.

Resolution 85-140 stated:

- KPB is eligible to participate in State funded programs for road improvement projects; and
- The state has notified KPB that it is eligible to receive a grant of \$603K for road improvement projects subject to KPB possessing road improvement powers and meeting other statutory requirements; and
- In order to adopt road improvement powers to be exercised within KPB RMSAs, the exercise of the power must be approved by a majority vote at a regular or special election held within each of the four road maintenance service areas (RMSA), as provided by AS 29.63.090(e).

It proposed ballot propositions for each of the RMSAs. The propositions pertinent to NKPRMSA were:

- Shall the KPB acquire road improvement power and exercise it within the NKPRMSA in accordance with Alaska Statutes?
- Except for special assessments within an improvement district, shall the NKPRMSA be limited to a maximum tax of 1/2 mill for road improvements?

October 1, 1985:

Both propositions were voted upon and both easily passed in the NKPRMSA.

1991

June 4, 1991:

At the KPB Assembly meeting, Ordinance 91-18, "Consolidation of the Existing Four Road Maintenance Service Areas into a Single Road Service Area" was introduced. Assemblymember Nash wrote a memo placing a point of order before the assembly. That memo is not available to quote, but its subject matter can be inferred by KPBs Attorney Schmidt's response "...that the point of order referred to by Mr. Nash in his memorandum does not apply to the establishment, alteration, or abolishment of service areas by the Assembly, but rather to the petition process that is initiated by voters."

Also during this meeting, the KPB Assembly was addressing Resolution 91-72: "Selecting Reapportionment Plan Options to be Prepared for Assembly Consideration and Submission to the Voters." This resolution was changing the composition and representation of the Assembly. It eventually resulted in a ballot proposition (Ordinance 91-34) that asked voters to select either a 8 district, 2 member each district or 9 single member districts. At the October 1, 1991 election, the voters selected the 9 single member districts 3248 to 2644. Nikiski area voters however voted for the 8 district, 2 member option 343 to 191. As a result of this election the ratio of Nikiski representation dropped from a 1:4 ratio to a 1:9 ratio.

June 18, 1991:

At the KPB Assembly meeting, during the public comment on Consent Agenda portion, William McGahan of Nikiski, urged assemblymembers to oppose Ordinance 91-18. Discussion on Ordinance 91-18 was continued from prior agenda. During the public comment period, 6 Nikiski residents spoke out against the ordinance. Assemblymember Nash spoke against the introduction of Ordinance 91-18. Assemblymember Superman asked to amend out the NKPRMSA and it was ruled that an amendment at that time was out of order; He then spoke against the introduction of Ordinance 91-18. Ordinance 91-18 was set for hearing on July 23, 1991 by a vote of 11-4. The four no votes were by all of the Assemblymembers that were from Nikiski.

July 23, 1991:

At the KPB Assembly meeting, the hearing of Ordinance 91-18 began. Assemblymember Superman moved to amend the Ordinance deleting the NKPRMSA. That amendment failed 5-8. All five yes votes were by the entire Assembly District 3 which represented the Kenai/Nikiski area. Assemblymember Brown spoke in opposition. The ordinance was then postponed to the next meeting.

August 6, 1991:

The KPB Assembly meeting resumed hearing Ordinance 91-18. Assemblymember Hodgins moved to amend by substitution Ordinance 91-18. That amendment failed 6-8, with all four of the Assemblymembers from Nikiski voting yes. After another amendment passed changing the composition of the proposed board, the vote for Ordinance 91-18 as amended was taken and enacted 10-4. All four no votes were Assemblymembers from Nikiski. Assemblymember Superman gave notice of reconsideration of the Ordinance.

Ordinance 91-18 stated:

- In 1982 the voters approved the creation of the current four road service areas within the Kenai Peninsula Borough, each having its own Board of Directors; and
- Three of these boards have expressed the desire for consolidation of all four service areas into one service area, with one board; and
- AS 29.35.450 provides that service areas may be established, operated, altered or abolished by ordinance; and
- A single road service area would provide for more consistent road service throughout the Borough; and
- A single road service area would utilize financial resources more efficiently;

It furthermore removed the voter elected representation on the RSAs and replaced it with Mayoral appointees.

August 20, 1991:

KPB Assembly meeting, the Nikiski Community Council representative Alan Bute addressed the assembly on behalf of the Council and in opposition to the adoption of Ordinance 91-18. Mr. Bute is also

a member of the North Peninsula Road Service Area Board. In summary, he reported that the council objects to the procedures followed to enact the ordinance and contends that service area voters have been deprived of their rights under the State and Federal constitutions' due process clause. The adopted ordinance violates the prerequisites for change to the current structure of service areas which the Council asserts can only be altered or amended following approval by the qualified service area voters. Mr. Bute cited several court findings pertaining to service areas. Assemblyman Nash requested that the Community Council's written comments, summarized by Mr. Bute, become a part of the minutes. There were no objections heard. Assemblymember Glick moved to reconsider Ordinance 91-18. During the public period, Bill McGahan, North Peninsula Road Service Area Board, introduced John Strachan, attorney for the Community Council. Mr. Strachan suggests several options to address the Community Council's opposition to the service area consolidation. Legal action is eminent and could proceed in one of several ways. The simple solution is tabling the consolidation which ends the dispute. Absent tabling, the Assembly could choose to postpone to a certain time following a declaratory judgement action. By this method, the Borough Attorney, Attorneys Hahn and Strachan would create a statement of facts to be presented to the court requesting a ruling on the applicable laws. Lastly, the Assembly can ignore the arguments presented regarding the legality of this situation compelling the Council to move the court for a restraining order from the consolidation action. Mr. Strachan encouraged the Assembly not to choose the last alternative. The motion to reconsider enactment of the Ordinance failed 6-8, with the entire representation from District 3 plus one other voting for it.

Mr. McGahan subsequently did file suit against KPB and pursued it all the way to the Supreme Court of the State of Alaska, where he was denied because the court found that Ordinance 91-18 was valid without voter approval.

1992

July 21, 1992:

Resolution 92-70: Providing for a Ballot Proposition to Authorize the Levy of Taxes to a Maximum of 0.5 Mills for Road Maintenance Within the Kenai Peninsula Road Service Area was adopted.

October 6, 1992:

The ballot proposition authorized in Resolution 92-70 was approved by voters 2115-1885.

1998

August 4, 1998:

At the KPB Assembly Meeting, Resolution 98-062: Placing a Question on the October 1998 Ballot Regarding a One-Half Mill Increase in the Road Service Area Mill Levy to Improve Maintenance Service and Increase Capital Improvements, was adopted. During discussion of the resolution, it was brought up "...as to whether or not voter approval of a tax cap on a service area was considered binding or advisory, as the borough's taxing power was vested in the assembly by state statute. Borough Attorney Thompson

said the legal question was whether or not the funding cap set for a service area could be changed by anything other than a binding vote of the people."

October 6, 1998:

The ballot proposition authorized in Resolution 98-062 was **defeated** by voters 2491-1670.

2000

June 6, 2000:

The KPB Assembly adopted Resolution 2000-040: Setting the Rate of Levy for Real and Personal Property Taxes for the Kenai Peninsula Borough for the Tax Year 2000. This resolution increased the levy of the KPB RSA from .50 mill to 1.00 mill without **any** voter approval.

June 11, 2000

The Peninsula Clarion reported under the headline: **Borough tax changes bail out Road Service Area**, "What drew opposition from Kasilof assembly member Paul Fischer was Borough Mayor Dale Bagley's proposal to raise the Road Service Area tax from .5 mills to 1 mill. Road Service Area voters rejected raising the tax by up to .5 mills in a ballot proposition a year and a half ago, he said. The vote was 60 percent against hiking the tax. "It may be needed. I'm not arguing that, but the point is, the people did vote no, decisively," he said. He suggested putting the proposed road tax increase on the ballot in October."

2002

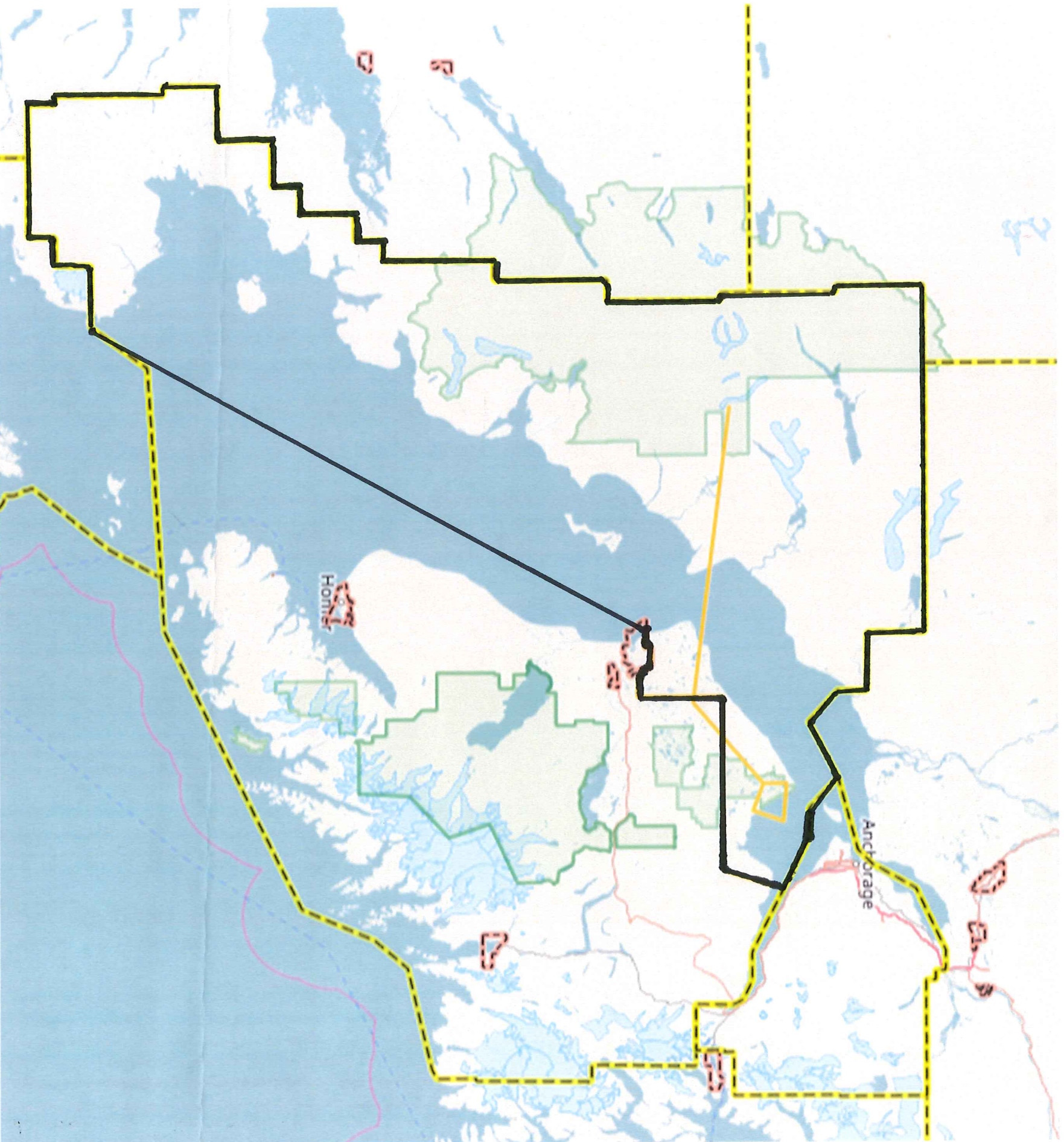
June 4, 2002:

At the KPB Borough Assembly Meeting, Resolution 2002-075: Setting the Rate of Levy for Real and Personal Property Taxes for the Kenai Peninsula Borough and for Service Areas Within the Borough for the Tax Year 2002; was adopted as amended. During the meeting the Resolution was amended to raise the RSA rate of levy of taxes from 1.00 mill rate to 1.50 mill rate. Just 2 years later, the mill rate was raised again **without** voter approval.

2004

June 14, 2004:

At the KPB Borough Assembly Meeting, Resolution 2004-055: Setting the Rate of Levy for Real and Personal Property Taxes for the Kenai Peninsula Borough and for Service Areas Within the Borough for the Tax Year 2004; was adopted. The Resolution dropped the RSA rate of levy of taxes from 1.50 mill rate to 1.40 mill rate.



NORTH KENAI
PENINSULA ROAD
MAINTENANCE SERVICE
AREA
1982 - 1991









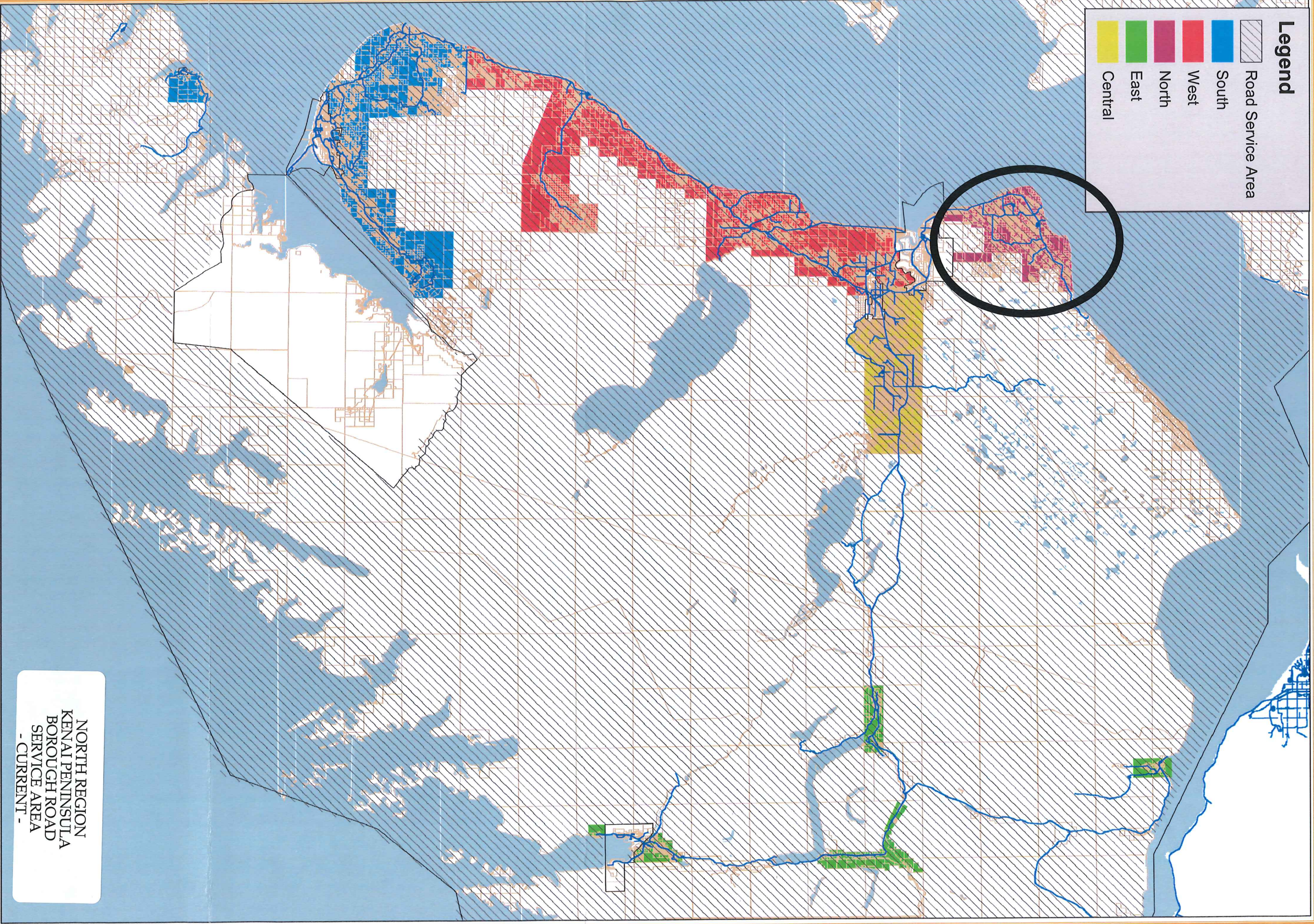
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



NORTH REGION
KENAI PENINSULA
BOROUGH ROAD
SERVICE AREA
- CURRENT -

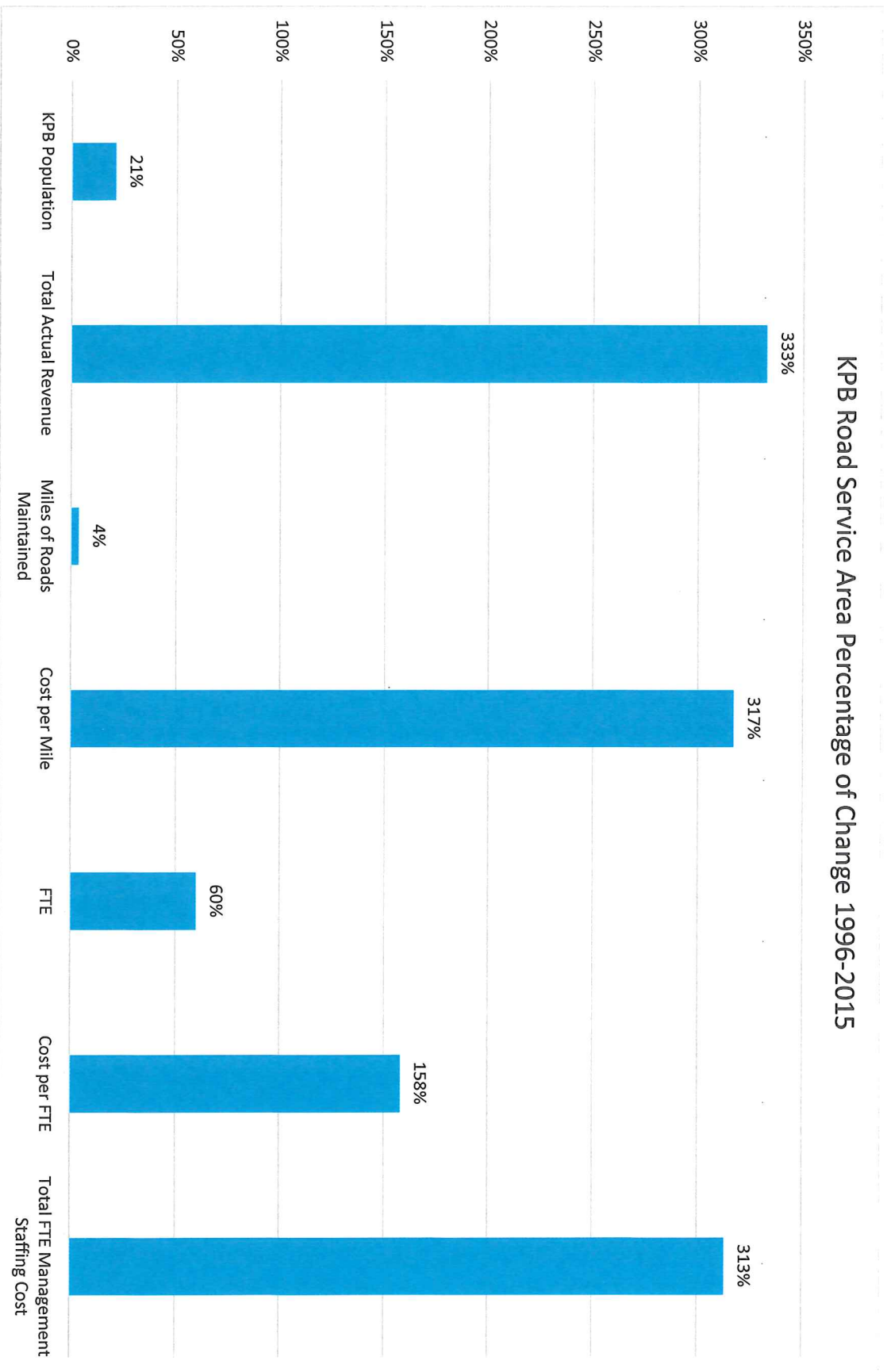
Legend

-  Road Service Area
-  South
-  West
-  North
-  East
-  Central



Percent Increases in Cost vs Population Growth/Mileage Added

KPB Road Service Area Percentage of Change 1996-2015

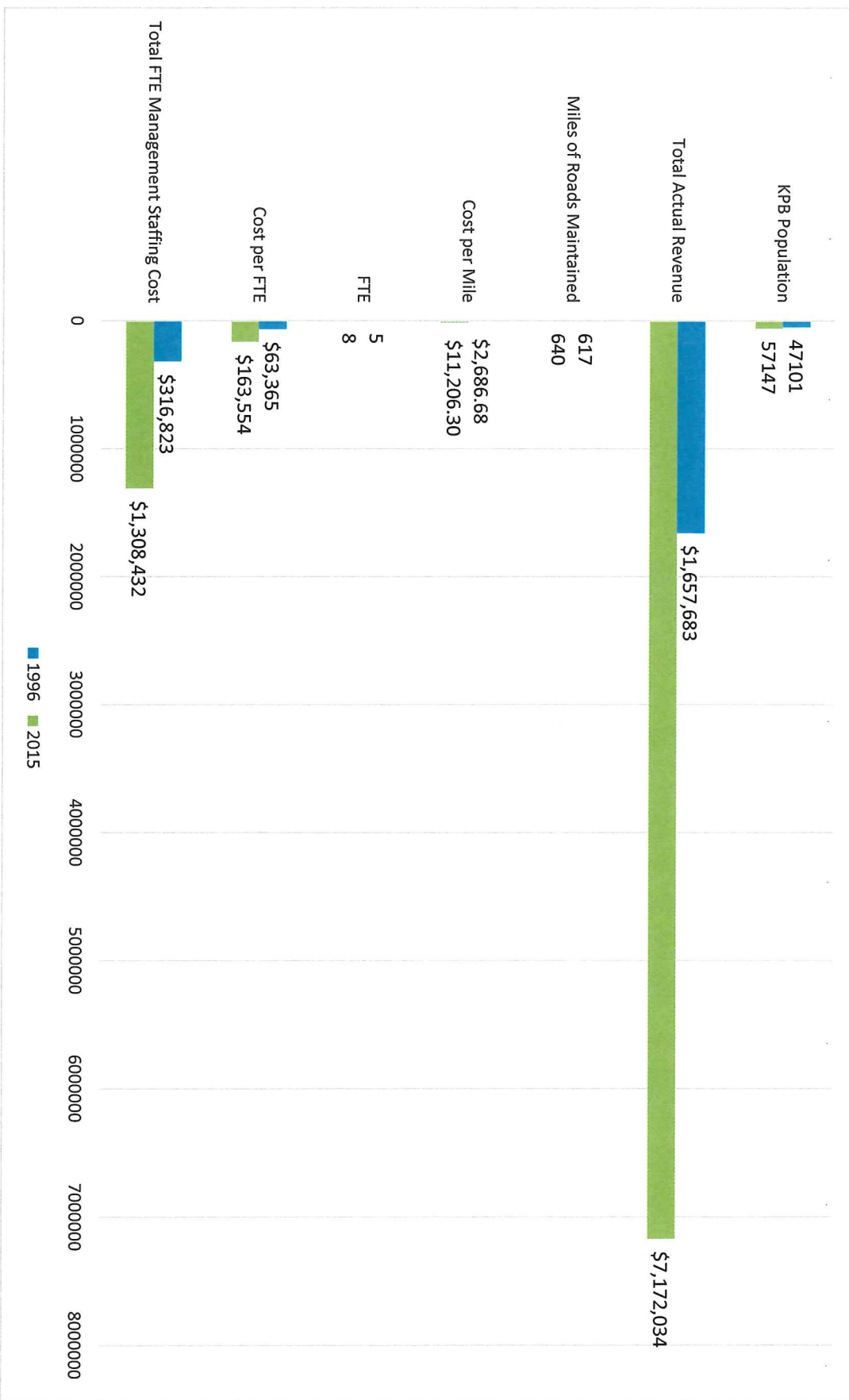


Showing low population and low mileage increases compared to large expenditures.

Compare KPB Ordinance 91-18, CONSOLIDATION OF THE EXISTING FOUR ROAD MAINTENANCE SERVICE AREAS INTO A SINGLE ROAD SERVICE AREA, states: " WHEREAS, a single road service area would utilize financial resources more efficiently. "

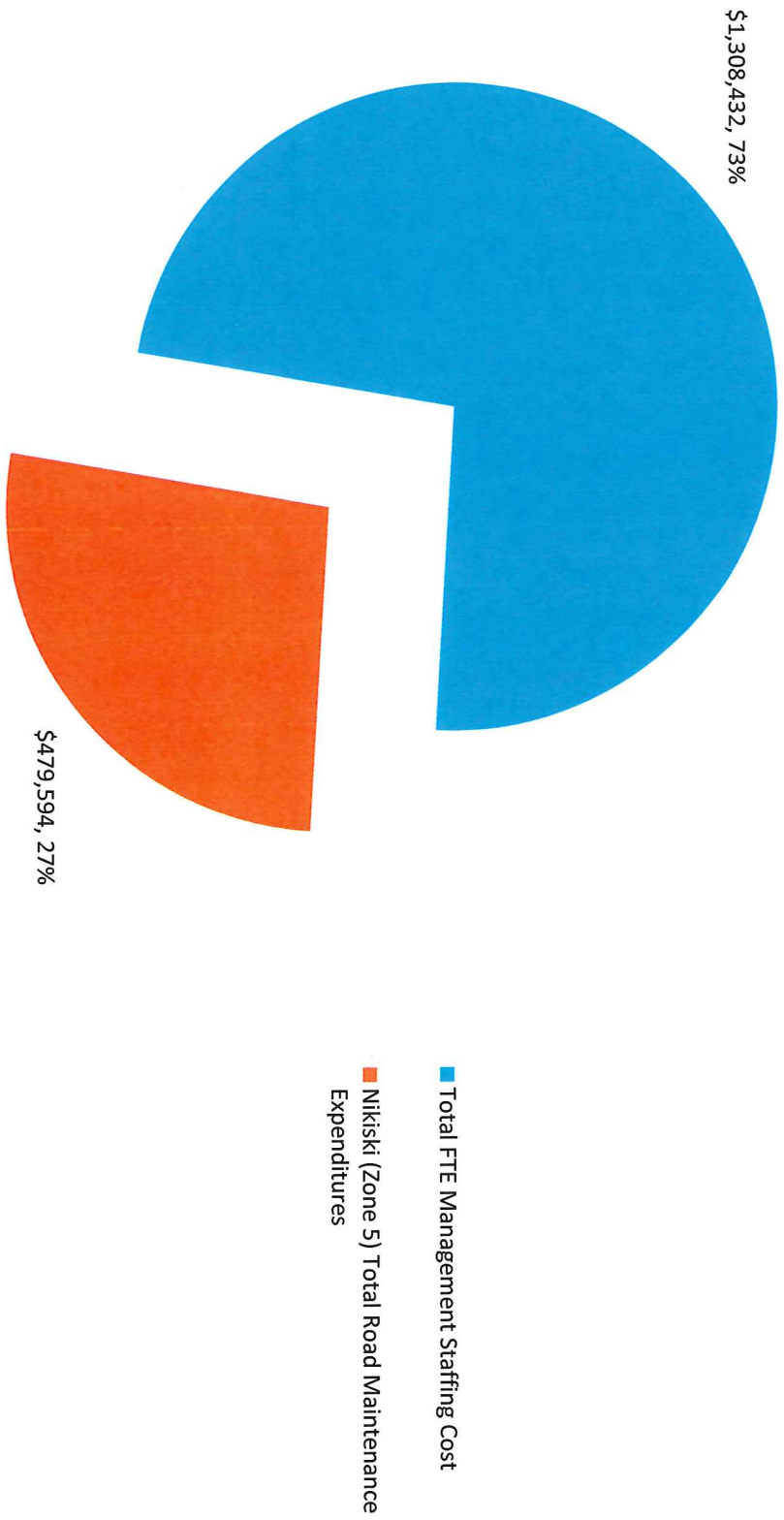
Revenue & Expenditures vs Population Growth/Mileage Added

KPB Road Service Area 1996-2015



Compare KPB Ordinance 91-18, CONSOLIDATION OF THE EXISTING FOUR ROAD MAINTENANCE SERVICE AREAS INTO A SINGLE ROAD SERVICE AREA, states: " **WHEREAS**, a single road service area would utilize financial resources more efficiently."

2015 KPB RSA Management Costs vs 2015 Nikiski Road Maintenance Expenditures



Compare KPB Ordinance 91-18, CONSOLIDATION OF THE EXISTING FOUR ROAD MAINTENANCE SERVICE AREAS INTO A SINGLE ROAD SERVICE AREA, states: " **WHEREAS**, a single road service area would utilize financial resources more efficiently. "

Percentage of Increase from 1996-2015 of Streets/Roads Expenditures and Community Population Comparisons

