


**STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS  
LOCAL BOUNDARY COMMISSION**

PETITION TO INCORPORATE NIKISKI )  
AS A HOME RULE CITY IN THE )  
KENAI PENINSULA BOROUGH USING )  
THE LOCAL OPTION METHOD )  
\_\_\_\_\_)

**REPLY BRIEF OF PETITIONER  
[KENAI PENINSULA BOROUGH RESPONSIVE BRIEF]**

  
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**PETITIONER'S REPLY BRIEF**  
**TO RESPONSIVE BRIEF OF KENAI PENINSULA BOROUGH**

In 1991, when the City of Nikiski (Nikiski) proposed to incorporate, the Kenai Peninsula Borough (Borough) Assembly supported incorporation.<sup>1</sup> The Borough Assembly has not taken a position on the current Petition. Although the Petitioners and their representatives met with the Borough Mayor before submitting the Petition, there was no formal objection raised during those meetings, or after the Petition was submitted on 10/05/2016.

On March 8, 2017, the Kenai Peninsula Borough administration submitted a lengthy Responsive Brief, which objects to incorporation of the City of Nikiski as a home rule city, mainly on two grounds:

- (1) AS 29.05.021(b) and a related regulation, 3 AAC 110.981(8); and
- (2) The definition of a "community" under AS 29.05.011(1) and related regulations - inclusion of the West Side (Tyonek and Beluga).

Neither of these concerns should prevent incorporation of Nikiski as a home rule city.

**1. AS 29.05.021(b) and 3 AAC 110.981(8).**

**a. AS 29.05.021(b).** AS 29.05.021 provides:

**Sec. 29.05.021. Limitations on incorporation of a city.** (a) A community in the unorganized 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.

(b) 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. [Emphasis added]

The Petition addresses this statute in Exhibit G, Petitioner's Brief, pp. 13-16. With respect to the Borough, the City of Nikiski can provide the proposed services more comprehensively, efficiently, inexpensively, responsively, and with more local self-government than the Kenai Peninsula Borough does or can provide.

As discussed in the Petitioner's brief, Nikiski is **overlaid with 5 different Borough service areas**:

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<sup>1</sup> Attachment K, KPB Resolution 91-78.  
1 - NIKISKI REPLY BRIEF

(1) Three (3) service areas with boundaries generally within the proposed City: Nikiski Fire Service Area, North Peninsula Recreation Service Area, and Nikiski Senior Service Area;

(2) One (1) service area , Road Service Area (formerly North Kenai Peninsula Road Maintenance Service Area), which used to have most of its boundaries within the proposed City, but which the Borough in 1991 merged with three other road service areas;<sup>2</sup>

(3) One (1) service area, Central Kenai Peninsula Hospital Service Area, which is larger than the proposed City.

Nikiski has more overlay service areas than any other unincorporated community in the Borough. The Borough is not providing service area services in the Nikiski on an areawide or nonareawide basis; therefore, incorporation of Nikiski will not violate AS 29.05.021(b).

Further, the Borough cannot realistically provide these services or any additional city services, on an areawide or nonareawide basis; certainly, not the full array of services that a home rule city can provide.<sup>3</sup> As discussed below, the Borough has taken a passive position on providing non-mandatory local government services: under the Borough practice, if an unincorporated community wants local government services, it can form a service area or taxing district; otherwise, the Borough itself will not provide such services.

The Kenai Peninsula Borough was created by the Mandatory Borough Act of 1963; Chapter 52 SLA 1963. The Borough was mandatorily incorporated as a second-class borough, effective January 1, 1964, along with the Fairbanks, Anchorage and Matanuska-Susitna boroughs. As a second-class borough, the Borough has extremely limited powers; and, in practice, has added very few powers since mandatory incorporation; unlike the other mandatory boroughs incorporated at the same time.

In the 53 years since mandatory incorporation, the Borough itself has not adopted the powers necessary to provide basic services that people living in a city expect. The Local Boundary Commission regulations at 3 AAC 110.970(d) lists municipal services the Commission may determine to be essential for a city include public safety, planning, platting and land use regulation, and other services.

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<sup>2</sup> Petition, Attachment B.

<sup>3</sup> AS 29.04.010.

The Nikiski area considers fire and emergency, recreation, road construction and maintenance, and senior services to be essential services too, as the residents voted to tax themselves to provide these services, and are obligated to provide these services.<sup>4</sup>

The Petition at pp. 18-19 proposes that Nikiski have the ability to provide other essential services, including public safety, economic development and water regulation; and, as a home rule city, Nikiski would have the power to provide any service not prohibited by law. None of these essential services is being provided by the Borough on an areawide or nonareawide basis,

**Areawide Powers.** Since the date of mandatory incorporation, the Borough itself has exercised only the barest minimum of areawide powers:

(1) the “mandatory powers” listed in AS 29.35.150-.180: education, taxation, land use regulation; and

(2) One additional areawide power added under AS 29.35.050 in 1974, 20 years after incorporation: solid waste facilities.<sup>5</sup>

(3) In 2000 the Borough authorized itself to provide transportation funding; but the Borough didn’t adopt the power to provide transportation services.<sup>6</sup>

**Nonareawide Powers.** In the 53 years since mandatory incorporation, the Borough itself has adopted and is currently exercising only three nonareawide powers: economic development, adopted in 1999; enhanced 911, adopted in 1985; and port and harbor powers, adopted in 1981.<sup>7</sup>

The Borough itself does not currently exercise or provide economic development services, but merely provides funding to the Kenai Peninsula Economic Development District (KPEDD), a private nonprofit corporation, along with other public and private sponsors.<sup>8</sup> Each year, there is a political battle about KPEDD funding at the Borough. KPEDD has no Nikiski residents on its Board of Directors, and provides no services directly to Nikiski. However, if Nikiski does incorporate, it will qualify for automatic membership on the KPEDD Board of Directors, as the rest of the cities in the Borough do.<sup>9</sup>

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<sup>4</sup> For example, KPB 16.12.080, 16.16.080, and 16.70.080.

<sup>5</sup> KPB 10.04.010-.090. The full power under AS 29.35.050 is “garbage and solid waste services.” But the Borough adopted only the limited solid waste facility powers, not solid waste or garbage services in general.

<sup>6</sup> KPB 13.10.010-060. This funding power was literally year to year for several years after it was adopted. KPB Code, “Editor’s note” under Chapter 13.10, Transportation.

<sup>7</sup> AS 29.35.210(a)(8); KPB 19.30.010; KPB 2.60; KPB Ordinance 81-47.

<sup>8</sup> The functions described in KPB 19.30.010-070, Economic Development, do not appear to be operational at this time.

<sup>9</sup> See, <http://kpedd.org>.

The enhanced 911 services are provided through a joint operational and funding venture between the State of Alaska, Borough and cities located in the Borough.<sup>10</sup>

The Borough adopted but never exercised port and harbor powers. There is currently nothing in the Borough code about these powers.

There may be other services for which the Borough provides funding, but does not currently have the power itself to provide the services.

Compare the Kenai Peninsula Borough with the Matanuska-Susitna Borough (Mat-Su Borough): the Mat-Su Borough has adopted and exercises many more areawide and nonareawide powers than the Kenai Peninsula Borough, even though it too is a very large area with several smaller unincorporated communities. Yet the fact that the Mat-Su Borough provides these many more services on an areawide and nonareawide basis did not prevent the Local Boundary Commission from granting the Big Lake petition to incorporate within the Mat-Su Borough.

In order to provide more than the minimum municipal services it currently provides, either on an areawide or nonareawide basis, the second-class Kenai Peninsula Borough would have to hold an election on each new power, as required by AS 29.35.300(b). Given the large area of the Borough, and its disparate communities, it is unlikely that the Borough will ever add new areawide or nonareawide powers. Certainly it has not tried to in many years.

Nikiski is at the point where it cannot add new services through additional service areas, without potentially violating the Alaska Constitution, Article X, Section 5, which states:

**Section 5. Service Areas.** 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. [Emphasis added]

If Nikiski wants to provide additional local government services to the Nikiski area, as stated in the Petition, the only real constitutional option is to incorporate. Home rule status would give Nikiski the maximum powers and flexibility.

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<sup>10</sup> The Soldotna Public Safety Communications Center, <http://911.kenaipeninsula.com>.  
4 - NIKISKI REPLY BRIEF

**b. Alaska Constitution, Article X, Section 1 and 3 AAC 110.981.**

The Alaska Constitution states at Article X, Section 1:

**Section 1. Purpose and Construction.** The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

A Local Boundary Commission regulation at 3 AAC 110.981 requires the Commission to consider a list of factors “in determining whether a proposed boundary change promotes maximum self-government under Article X, Sec. 1, Constitution of Alaska,” including:

(8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area.

The Borough has cited this regulation as a basis to prevent Nikiski incorporation, but this regulation does not apply to Nikiski’s Petition. The Petition would not extend local government powers to areas that are not currently being served by some local government services. However, if this regulation is determined to apply to Nikiski’s Petition, then it should not be interpreted to prevent incorporation of communities within organized boroughs, where there is an existing service area, as a general rule. Such an interpretation would conflict with the Alaska Constitution, Article X, Section 5, which prohibits establishment of new service areas in a community where it could incorporate as a city, and Article X, Section 1, which states the purpose of Article X: to promote maximum local self-government.

There has to be a point at which there is an overlay of so many services areas, that the Alaska Constitution will not allow any more to be created; but requires incorporation to provide additional services. Nikiski is at that point.

**2. The definition of a "community" in AS 29.05.011(1) and related regulations - inclusion of West Side (Tyonek and Beluga).**

In the 1963 Mandatory Borough Act, the Alaska Legislature established the Kenai Peninsula Borough boundaries to include the west side of the Cook Inlet, including the village of Tyonek. The Legislature could have, but did not put Tyonek into the Anchorage borough, even though the Anchorage Borough was established in that Act.

The Kenai Peninsula Borough, following suit, established all the Nikiski service areas to include the west side of Cook Inlet ("west side"), including the unincorporated village of Tyonek and settlement of Beluga.<sup>11</sup> As shown in the Petition, pp.10-12, the Nikiski service areas provide services to the west side, either directly or through contracting with other providers. The City of Nikiski proposes to continue services to the west side; and will be able to provide additional local government services to that area, which the Borough cannot, as discussed above.

The Borough's Responsive Brief at pp. 5-6 admits that these services are provided to the west side, but claims the Borough itself provides the services. However, Exhibit H to the Borough brief shows that when the Borough contracts to provide services to Tyonek, it does so on behalf of the Nikiski service areas, as it must under its second-class status.

Under AS 29.05.011(a), a community that meets the standards listed in the statute may incorporate as a first class or home rule city. See also 3 AAC 110.005. 3 AAC 110.920 provides criteria the Commission may consider in determining "whether a settlement comprises a community," including ones listed at 3 AAC 110.920(1), (2) and (3). One factor is geographic proximity, at 3 AAC 110.920(a)(2). The Borough's Responsive Brief pp. 2-3 argues that the Petition does not meet this factor, because Cook Inlet separates the west side from the "core area of Nikiski" (which is not defined).

However, this argument ignores the fact that the west side is included in, and is already receiving local government services from, the Nikiski service areas. In fact Nikiski -- on the northeast side of Cook Inlet -- is on the road system, has a port, air and water services, and is the closest (proximate) location to the west side for providing services.<sup>12</sup>

On the other hand, the Soldotna area, where the Borough stages its services, is much further away and less proximate to the West Side, and it will be more expensive and difficult to provide services to the west side if they are not staged from Nikiski.

Another factor, under 3 AAC 110.920(a)(3), is -

the permanent residents at a location are a discrete and identifiable unit as indicated by public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial or industrial establishments, community services, and service center.

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<sup>11</sup> Petition, pp. 24-30 and Exhibit C.

<sup>12</sup> Attachments L and M, which show transportation services to the west side from Nikiski.

The Borough's Responsive Brief pp. 3-4 argues that the residents of Nikiski/Salamatof and the west side are not a discrete social unit. However, the list of items in 3 AAC 110.920(a)(3) should not be the deciding factor on Nikiski incorporation, because so many of these items are controlled by other branches of government in Alaska, not the Borough or Nikiski, and are often political, rather than a true indication of social units. For example, on occasion Nikiski is included in house districts with Anchorage, for political reasons, when the two communities could not be more different.

3 AAC 110.920(b)(1) provides a presumption that a population does not constitute a community where "public access to or the right to reside at the location of the population is restricted." The term "restricted" is not defined in the regulations. The Borough's Responsive Brief, at page 4, argues that the presumption applies because Tyonek is a "closed community." However, this regulation does not apply to the Nikiski Petition. First, the regulation term is "restricted" not "closed," and the Borough has provided no evidence or authority that the population of Tyonek is "restricted." Second, there is nothing in the Petition about restricting public access or the right to reside within the proposed Nikiski boundaries.

Additional comments on specific points in the Responsive Brief are below.

**3. Need for City Government - AS 29.05.011(a)(4) and 3 AAC 110.010.**

AS 29.05.011(a) lists the standards for municipal incorporation as a first class or home rule city. One of the standards, at AS 29.05.011(a)(4) is "there is a demonstrated need for city government." 3 AAC 110.010 contains a list of factors the Commission "may consider relevant" to this standard. The Petition, Exhibit G, pp. 8-13, gave the reasons Nikiski needed to incorporate. The Borough's Responsive Brief, pp. 6-18, disputes these reasons.

**a. Local Self-Determination.**

Primarily, the proposed City of Nikiski, at almost 6,000 residents, is one of the largest unincorporated communities in Alaska; certainly the largest unincorporated community in the Borough, and Nikiski residents seek the maximum local self-government and self-rule through incorporation as a home rule city. The Kenai Peninsula Borough is very large, the size of many states in the lower 48. Most Borough services are staged from the Soldotna area, which is many road miles away from Nikiski, and unincorporated communities on the edges of the Borough boundaries, like Nikiski, suffer as a result -- like many communities that are on the outlying areas of governments with centralized services.



Although Nikiski residents have voted over and over again through the years to provide a higher level of service to their area, together with autonomy to provide those services, the Borough administration has increasingly centralized power and services in the Soldotna area. Thus, Nikiski at this time suffers from the least local self-government of any unincorporated community of its size, at least in the Borough.

Over the years Nikiski has consistently tried to achieve some form of self-government through establishment of Nikiski service areas and efforts to incorporate Nikiski. Since 1969, Nikiski residents have voted to establish or join 6 overlay Nikiski service areas: 1969 and 1982, Nikiski Fire Service; 1969, Central Kenai Peninsula Hospital Service Area; 1973, Nikishka Service Area; 1974, North Peninsula Recreation Service Area; 1981, North Kenai Peninsula Road Maintenance Service Area; 1993, Nikiski Senior Service Area; 2004 and 2015, Nikiski Law Enforcement Service Area.<sup>13</sup> The Nikiski service area boards had some degree of autonomy in the service area enabling ordinances.<sup>14</sup> In addition, in 1979, the Borough Assembly delegated authority to the Nikiski Fire Service Area and the North Peninsula Recreation Service Area through Resolutions 79-161 and 79-162.

The Nikiski area also has tried to incorporate as a city in the past. As shown above, in 1991, the Borough Assembly supported Nikiski incorporation.

On the other hand, the Borough has, over the years, decreased local community autonomy and centralized authority and local government services in the Soldotna area. These efforts have disadvantaged outlying unincorporated communities like Nikiski. Lou Oliva's Responsive Brief/Affidavit has a good discussion of the ways in which these centralization efforts have disadvantaged the Nikiski area:

- (1) Moved away from local community self-determination;
- (2) Taken back delegated authority;
- (3) Lost local representation and political power on the Borough assembly;
- (4) Imposed "administrative fees," which take away from direct services;
- (5) Lost local self-determination;
- (6) Proposed takeover of service area fund balances;
- (7) Merged service areas to centralize revenues, resulting in less funds available for direct services; particularly the Nikiski road maintenance service area.<sup>15</sup>

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<sup>13</sup> The 1973 Nikishka Service Area, and 2004 and 2015 law enforcement service area votes failed.

<sup>14</sup> For example, KPB 16.12.080, 16.16.080, and 16.70.080

<sup>15</sup> See, Lou Oliva's Responsive Brief and exhibits.

And there is evidence that the Borough's centralization efforts are continuing. Currently the Borough is looking into centralizing the existing fire and emergency service areas into one service area, as it did in 1991 to the existing road service areas. A Borough representative admitted that this option would "redistribute" taxes raised in the centralized area. The Borough Health Care Task Force is looking into carving one emergency medical service area out of the existing fire and emergency service areas, which would occur without a vote of residents.<sup>16</sup> The Borough Health Care Task force has recommended regional "alignment" of the two hospital service areas, which would result in a virtual merger of the two service areas without a vote of residents.<sup>17</sup> Given past history, for Nikiski these efforts will result in "redistributing" the substantial tax revenues generated by the Nikiski area to other areas of the Borough, and decreasing funds and services provided to Nikiski, as well as eroding Nikiski self-determination. This is what happened with the 1991 merger of the road maintenance service area.<sup>18</sup>

However, the Borough has not made any effort to openly provide additional services through areawide or nonareawide powers, or additional powers for existing service areas, through the voters. Although the Borough argues in its Responsive Brief, page 18, that it is providing services through the Nikiski service areas, and that the Petition therefore fails 3 AAC 110.010(c), the current level of services cannot be changed or enhanced, nor can additional services be provided in the Nikiski area, without violating the Alaska Constitution, Article X, Section 5. In other words, Nikiski simply cannot grow with the current legal constraints on the second-class Borough, and the current political constraints on the Nikiski community discussed above. It is surely not the intent of the Alaska Constitution, municipal statutes and regulations that communities such as Nikiski, on the fringes of an enormous but limited-power municipality like the second-class Borough, be forever locked into the status quo, with less and less local self-determination, and growth limited by the Borough's legal constraints and political whims.

**b. Nikiski Road Service Area.**

The Borough's Responsive Brief, page 8, states that the "main crux" of the Petition is the inadequate road services provided by the Borough to the Nikiski area. This is not correct as discussed above: it is local self-determination to provide all local government services that is the primary reason for the Nikiski area to incorporate.

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<sup>16</sup> Attachment N, Peninsula Clarion article 3/9/17.

<sup>17</sup> KPB Health Care Task Force Summary Report (10/27/2016), downloadable on KPB website.

<sup>18</sup> See, Lou Oliva's Responsive Brief, pp. 7-8.

The Borough then discusses at pp. 8-10 road funding for the “North region” of the Kenai Peninsula Road Service Area, which the Borough admits is within the proposed city boundaries. The Borough doesn’t dispute that revenue generated by Nikiski taxpayers for the road service area are more than expenditures for the “North region.” However, the Borough’s figures and arguments are misleading. The Borough should be able to give total property tax revenue and expenditures for the “North region” but doesn’t. Instead the Borough cherry picks figures for road repair, when that is just part of the total expenditures in the road service area; not included are figures for maintenance. The Borough gives figures for CIP projects, when those are primarily state-funded, not service area tax-funded.

The Petitioner has prepared a report on centralization of the Borough road service areas, Attachment O.

Additional comments on specific points in the Responsive Brief, pp. 8-10, are below.

**c. Integration of Service Areas - AS 29.05.130 and 3 AAC 110.900.**

AS 29.05.130 states that service areas which are “in” a newly incorporated municipality, together with their rights, powers, duties, assets and liabilities will be integrated into the municipality. The statute discusses the process for this integration. 3 AAC 110.900 also requires a transition plan and agreement to facilitate integration. The Petition provides a transition plan, at pp. 23-34, for how to integrate Nikiski service areas into the City of Nikiski.

The Borough’s Responsive Brief, at pp. 10-11, 13-14 and 17-18 discusses integration of the Nikiski service areas into the City of Nikiski. The Brief incorrectly interprets in AS 29.05.130 to have a special meaning: existing service area boundaries must be entirely within the newly incorporated municipality; otherwise, the Borough argues, Nikiski’s service areas cannot be integrated into Nikiski, and Nikiski’s only choice is to agree by ordinance or vote to be included in the Borough service areas under AS 29.35.450(a). However, the Borough’s special definition doesn’t make sense; if it were the rule, there would never be incorporation of a city unless there were always a perfect match between the city boundaries and existing service area boundaries. That cannot be the intent of the Alaska Constitution, or AS 29.35.130.

Furthermore, 3 AAC 110.900(d) clarifies the integration process by providing that entities such as service areas which are wholly or partially included within a boundary change are included in the integration process.

The Borough claims that service area fund balances do not have to be turned over to the newly incorporated Nikiski. This claim also is not supported by AS 29.05.130(a), which provides that a service area's assets go with the newly incorporated municipality.

As for the Road Service Area, the Borough admits that the "North region" is within the proposed boundaries of the City of Nikiski. Thus, assuming Nikiski incorporates, the Borough and Nikiski are required to work out an agreement for integration of the Nikiski service areas, including the Kenai Peninsula Road Service Area, into Nikiski under AS 29.05.130 and 3 AAC 110.900. The Petitioners read 3 AAC 110.900 to mean that they could submit a transition plan in their Petition (after consulting with Borough officials, which they did), but that the transition plan agreement could be worked out after the Petition was filed. The Petitioners have a meeting scheduled with the Borough in April 2017 to begin working on an agreement. If the Borough does not cooperate in integration, the Commission can prescribe how integration will work under 3 AAC 110.900(d).

The Petition does not mention the Central Kenai Peninsula Hospital Service Area, because the Petitioners assumed there would be no change with that service area. Nikiski would stay in the hospital service area, just like the cities of Kenai and Soldotna are already within that service area. AS 29.35.450(a), which requires an ordinance or vote for a city to be in a newly established service area does not apply to incorporation of a city; AS 29.05.130 and 3 AAC 110.900 apply.

Additional comments on specific points in the Responsive Brief, pp. 8-10, are below.

**4. Boundaries - AS 29.05.011(a)(2) and 3 AAC 110.040.**

AS 29.05.011(a)(2) provides that in order to incorporate, a community's boundaries must include all areas necessary to provide municipal services on an efficient scale. 3 AAC 110.040 contains a list of factors that the Commission "may" consider. One of the factors is whether the proposed boundaries include entire geographical regions or large unpopulated areas, unless those are justified by the standards in 3 AAC 005 - 3 AAC 110.042. The Petition, Exhibit G, Petitioner's Brief, page 23-24 explains that the Nikiski boundaries do contain some unpopulated areas, but that these areas are justified by the fact that the Nikiski service areas have been providing local government services within the proposed City's boundaries for the last 48 years.

The Borough's Responsive Brief, pp. 19-21, contains the Borough's boundary arguments, including the same argument raised throughout its brief: that including the west side of Cook Inlet violates the "standard" (which are actually factors) of 3 AAC 110.040. However, as repeatedly stated in this Reply Brief, the Nikiski service areas have been providing services to the west side of Cook Inlet for 48 years, since 1969, and propose to continue providing those services, plus acquire the ability to provide additional services a home rule city could provide, as opposed to the limited-power second-class Borough.

Furthermore, the west side of Cook Inlet is not unpopulated. There are several small villages, settlements and facilities in that area, which receive services from the Nikiski service areas, and from businesses that stage out of the Nikiski area. See, Exhibits L and M.

There are other arguments under the "Boundaries" section of the Borough brief, but these are not related to boundaries; so they are addressed in the "Additional Comments" below.

**5. Best Interests of the State - AS 29.05.100(a) and 3 AAC 110.042.**

Under AS 29.05.100(a), the Local Boundary Commission may accept a petition for incorporation if it meets the standards for incorporation under AS 29.05.011, and is in the best interests of the State of Alaska. Under 3 AAC 110.042, in making a determination on whether incorporation is in the best interests of the State, the Commission "may" consider relevant factors, including the incorporation promotes maximum self-government; promotes a minimum number of local government units; will relieve state government from having to provide local services; or would expose the State to a high level of risk in case of city dissolution.

The Petitioner's Brief, at pp. 25-28 explains how incorporation of Nikiski is in the best interests of the State. Home rule government is the maximum self-government under the Alaska Constitution and municipal statutes. Particularly in a huge borough the size of the Kenai Peninsula Borough, local communities -- especially those on the outer fringes like Nikiski -- should be encouraged to establish home rule governments. Home rule government allows the Borough's far flung communities to have truly local self-government, so that they do not have to be limited and tied down by legal and political constraints of the limited-power, second-class Borough. The City of Soldotna recently upgraded from first class to home rule government for this very reason.

The Borough's Responsive Brief addresses this standard at pp. 21-23. However, the brief doesn't really address the statute and regulation; but, rather, focuses on 3 AAC 110.981(8) which, as discussed above, does not apply to the Petition. The Borough doesn't say why Nikiski incorporation is not in the best interest of the State, other than there would be another tax jurisdiction in the Borough. However, there already are several cities in the Borough that have separate taxation from the Borough; but the Borough doesn't provide evidence of harm from that fact. The brief also repeats the same arguments contained in other sections of its brief, that are addressed above, including that the Borough is providing the same services. However, again, the Borough is not providing and won't provide those services through areawide or nonareawide powers, but is avoiding those powers by stacking service area on top of service area, which potentially violates the Alaska Constitution's ban on that practice, in Article X, Section 5. Nikiski now has 5 overlaid service areas. Overlay services have their own inefficiencies, as there are five different administrations trying to operate in the same area. At some point the Borough has to allow a community to decide its own future; and for Nikiski, that time has come.

The Borough brief also claims at page 23 that incorporation is not in the best interest of the Borough, but that is not a statutory or regulatory factor. The Borough's only argument in support of this claim is that if the city dissolves, the Borough "may end up" assuming the city's duties and liabilities. However, this is mere speculation. There are many cities in the Borough, some like Kenai have been around for more than 50 years; but none of them have dissolved yet.

Additional comments on specific points in the Responsive Brief, pp. 21-23 are below.

**6. Charter Residency Requirement.**

The Borough Responsive Brief at page 23 claims that the proposed Nikiski charter three-year residency requirement is unconstitutional, under *Pelosa v. Freas*, 871 P.2d 687 (Alaska 1994). The Petitioners were not aware that their proposed charter would be the document voted on in an incorporation election; they understood that there would be two votes, one on incorporation and a second on a charter; so they viewed the proposed charter submitted with the Petition as a draft. They are in the process of reviewing the proposed charter to address the Borough's concern and other issues that have been brought to their attention regarding the charter, and they expect to recommend revisions to the proposed charter.

## **7. Essential Municipal Services.**

Commission regulations at 3 AAC 110.970(c) defines essential municipal services for a city to include those that are reasonably necessary to the community, which promote maximum, local self-government, and which cannot be provided more efficiently or effectively by creation or modification of some other political subdivision. 3 AAC 110.970(d) further allows the Commission to consider a list of services that are essential. This brief discusses at Section 1(a) and 3(a) above, essential services for the Nikiski area. Nikiski residents have voted repeatedly to tax themselves and obligate themselves to provide municipal services they considered essential including fire and emergency services, hospitals and health care, roads, recreation, and senior services, and law enforcement, even though that vote did not pass. These votes were to establish service areas, because the Borough, for the legal and political reasons discussed above, cannot and will not provide these services itself.

The Borough's Responsive Brief, at pp. 24-27, contains the same argument discussed above regarding essential municipal services: the Borough is already providing these services so incorporation is not necessary. However, again, the Borough itself does not provide these services, and where these services are provided it is through stacking Borough service areas, a practice that is arguably unconstitutional. In addition, the Borough has increasingly provided service area services through centralization in Soldotna, not locally, and has increasingly restricted local control of those services, as discussed in the Petition and this brief.

Although the Borough brief claims at page 24 that Nikiski has not proved it can provide the Nikiski service area services more efficiently and less costly than the existing services, this is not the test under 3 AAC 110.970(c)(3). It is the Borough's burden to prove that Nikiski cannot provide essential city services more efficiently and effectively than "the creation of modification of some other political subdivision in the state." The Borough hasn't met that burden.

The plan in the Petition is to use the public/private partnership (PPP) government model for providing services, so that there is more money for direct services, and less expense for administration and other such costs. In addition, as stated above, multiple separate service area operations, the current situation in Nikiski, has its own inefficiencies.

The Borough brief also claims at page 26 that Nikiski has not provided evidence that incorporation is the only means by which Nikiski residence can receive municipal services. This argument relates to the Alaska Constitution's stated purpose of a minimum number of local government units, in Article X, Section 1. 3 AAC 110.982 provides factors for the Commission to consider for "a proposed boundary change," including, at sub-section (6), for city incorporation, whether incorporation is the only means for residents to receive essential municipal services. However, Nikiski has provided evidence showing that in the 53 years since incorporation, the Borough has adopted powers to, and is providing very minimal services, and then only through stacking service areas or funding outside agencies. Nikiski will never be able to provide enhanced or additional city services such as law enforcement through the limited-power second-class Borough.

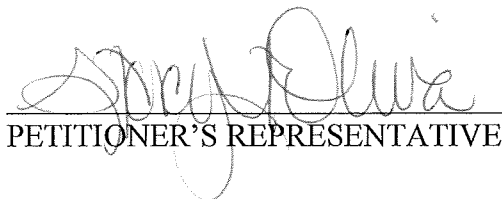
Furthermore, the Borough has a burden under this factor too, to show that Nikiski residents can receive other municipal services through the Borough. The Borough has not met this burden.

Finally, it is a common practice in this Borough and the other boroughs with very large territories in Alaska, that as communities or settlements grow, the residents pursue incorporation or upgrade of status, as cities. The Borough has other cities within it, and those cities provide an array of services the Borough cannot and does not provide to its entire territory, such as police, roads, fire and emergency, airports, harbors, recreation and senior services. Article X, Section 1 of the Alaska Constitution cannot be interpreted to prohibit a community's residents from trying to provide these essential services locally just because they are located in a limited-power, second-class Borough that provides some of these services -- but only through service areas.

Additional comments on specific points in the Responsive Brief, pp. 24-27 are below.

DATE:

29 Mar 17

  
PETITIONER'S REPRESENTATIVE



**AFFIDAVIT OF SERVICE**

STATE OF ALASKA            )  
  )     ss.  
THIRD JUDICIAL DISTRICT    )

STACY OLIVA, being first duly sworn, deposes and says that:

I caused the Petitioner's Reply Brief to Responsive Brief of Kenai Peninsula Borough, with exhibits/attachments to be served by mail on 3/29/17 on the following respondents: Lou Oliva, Kenai Peninsula Borough, Native Village of Tyonek, Tyonek Native Corporation at their addresses of records with the Local Boundary Commission.

DATED: 29 Mar 17

Stacy Oliva  
STACY OLIVA

SUBSCRIBED AND SWORN TO before me this 29 day of  
March, 2017.



Bea  
Notary Public, State of Alaska  
My Commission Expires: 12-25-18

**REPLY BRIEF**  
**TO KENAI PENINSULA BOROUGH RESPONSIVE BRIEF**  
**ADDITIONAL COMMENTS**

I. INTRODUCTION.

3 AAC 110.981(8) provides city incorporation is not appropriate where local government needs can be met by areawide or nonareawide borough powers, annexation to a city, or through an existing service area.

- **This point is addressed in the Reply Brief, Section 1.**
- **This regulation does not apply to the Nikiski Petition.**
- **The Borough quote incorrectly states the context of the regulation.**

II. DISCUSSION

A. Community Standards

Exhibit G to the Petition is Petitioner's Brief ("Brief"). At Section 1, (pgs. 4-7) of the Brief, the "community" standards required for incorporation are discussed. 3 AAC 110.005 requires that the territory proposed for incorporation as a city must encompass a community. 3 AAC 110.920 sets forth how the existence of a community is determined for purposes of approving an incorporation petition. 3 AAC 920(a)(2) sets forth that a "community" is where permanent residents live in geographical proximity that allows frequent personal contacts and interaction.

- **This point is addressed in the Reply Brief, Section 2.**
- **AAC 110.920(a)(2) is only one factor in 3 AAC 920, Determination of community.**

**The whole regulation at 3 AAC 920 states that the Commission “may” consider relevant factors, one being geographic proximity at .920(a)(2).**

Inclusion of the west side of Cook Inlet ("West Side") does not meet this standard based on the evidence presented thus far by the petitioners. Cook Inlet separates the West Side from the core area of Nikiski.

- **This point is addressed in the Reply Brief, Section 2.**

The West Side, and in particular the village of Tyonek and nearby area of Beluga, are geographically isolated which does not allow for frequent personal contact and interaction with the residents of the road-accessible community of Nikiski.

- **This point is addressed in the Reply Brief, Section 2.**
- **This is incorrect, as currently three Nikiski service areas provide direct services to Tyonek and Beluga.**
- **Nikiski is the best and most efficient geographic location to provide local government services to the West Side villages of Tyonek and Beluga.**
- **The west side of Cook Inlet are intimately related to the northeast side, as shown by the transportation routes in Attachments L and M.**

The personal contacts and interactions of the community of Nikiski are described at length at pages 4-6 of the Brief. The interactions and places those interactions occur between residents are all in Nikiski, none are on the West Side, nor do they show any connectivity between people of Tyonek and the people of Nikiski. The discussion of community events, commercial establishments, and community services largely excludes discussion of the West Side.

- **This point is addressed in the Reply Brief, Section 2.**
- **The Alaska Legislature chose for the west side to be in the Kenai Peninsula Borough; and the Borough established the Nikiski service areas boundaries to include the west side.**
- **Local government services provided to the west side, including fire and emergency services, recreation services, and senior services, are provided through the Nikiski service areas, and would continue to be provided by the City of Nikiski.**
- **It is uncertain what will happen to Tyonek and Beluga if the west side is not part of the City of Nikiski. The Borough itself has no power to provide the same services as provided by the Nikiski service areas, assuming they are integrated into the City of Nikiski. There would have to be a vote under AS 29.35.450(c) to include those Tyonek and Beluga in other existing road and fire service areas. There are no other recreation or senior service areas; and creating separate service areas for these services would be prohibited by AS 29.35.450(b).**

The commercial establishments referenced in the Petition —Carla's North Road Cafe, Treehouse Restaurant, Studio Coffee Shop, Delars, M&W Market, the Hunger Hut Bar, The Place, Forelands Bar, Charlie's Pizza, and La Casa Restaurant are all located within the boundaries defined by the Nikiski Community Council. The Nikiski Community Council restricts membership to "any one in the Salamatof and Nikiski voting districts.

- **The Nikiski Community Council is not the Petitioner.**
- **The Nikiski Community Council is a private nonprofit corporation; not a municipal government.**

The boundaries encompassing the community to be represented by the Nikiski Community Council are those boundaries which describe Nikiski One Voting District, Nikiski Two Voting District and the Salamatof Voting District". None of these voting districts extend to the West Side. [Ex.A]

- **The boundaries the private nonprofit corporation has chosen to provide its services are not relevant to the Petition.**

Additionally, of the 14 churches the petitioners' reference in their petition, only one is located on the West Side and there is no evidence that it has parishioners in attendance from the East Side.

- **The Petitioners did not question churches about where their attendees live.**

3 AAC 110.920(a)(3) further examines whether a "community" exists by reviewing whether "the permanent residents at a location are a discreet and identifiable social unit," as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the community services and service centers.

- **This is only one factor the Commission “may” consider.**
- **The hub of Nikiski is the location from which local government and commercial services are provided to Tyonek and Beluga. See Attachment L.**

The permanent residents of Tyonek and Beluga are not the same "discrete and identifiable social unit" as the permanent residents of Nikiski and Salamatof.

- **This statement is just speculation by the Borough; however, even if true, this has not prevented local government services from being provided to Tyonek and Beluga for many years by the Nikiski service areas.**
- **There are in fact relatives who live in Tyonek and Nikiski.**

The communities on the West Side of Cook Inlet (Senate District P, House District 32, Anchorage Recording District) do not share voter precincts and house and senate districts with the community of Nikiski and Salamatof (Senate District 0, House District 29, Kenai Recording District). [Ex. B]

- **Voter precincts and house and senate districts are established by the State of Alaska, according to population and politics, and change every 10 years or less; Nikiski has no control over this and never will. The Petition should not be denied because of boundaries set by another branch of government.**
- **Nikiski has been lumped into house and senate districts with Anchorage in the past, despite the two communities being separated by Cook Inlet; the two communities could not be more different.**

Nikiski, Salamatof, Tyonek and Beluga are also all separate census-designated places ("CDP"). [Ex.C]

- **“Census-designated places” is not within the State of Alaska criteria in 3 AAC 110.920(a)(3).**
- **The United States Census sets “census-designated places” according to its own criteria, which are not the same as LBC regulations.**
- **The Petition should not be denied because of boundaries set by another branch of government.**

The schools in the proposed petition area are also part of separate, distinct systems; Nikiski North Star Elementary feeds Nikiski Junior and Senior High School on the East Side while Tyonek on the West Side maintains the K-12 Tebughna School for 29-30 students.”

- **All public schools in the Kenai Peninsula Borough are operated by the Kenai Peninsula Borough School District, including Tyonek’s K-12 School, Nikiski North Star Elementary School and Nikiski Junior Senior High School.**

- **The District decides student attendance areas for its own purposes; Nikiski would have no control over that.**

- **The Petitioners are personally familiar with students from Tyonek who choose to attend the 4-year high schools in Nikiski or Kenai rather than the K-12 school in Tyonek, as there is more opportunity in the 4-year high schools.**

- **The location of the junior-senior high school in Nikiski, which is in fact the closest 4-year high school to Tyonek in the Borough, is an advantage for Tyonek students who wish to graduate from a 4-year school.**

Pursuant to 3 AAC 110.920(b)(1) there is a presumption that a community for incorporation purposes cannot be comprised of a closed community, i.e., one where "public access or the right to reside at the location of the population is restricted". As the petitioners acknowledge, Tyonek is such a closed community. [Petition, p.11]

- **This regulation doesn’t apply to the Nikiski Petition.**

- **This point is addressed in the Reply Brief, Section 2.**

Further, it appears that Tyonek does not necessarily share Nikiski's industry philosophy. [Ex.D]

- **Nikiski has many similarities with Tyonek and Beluga, including commercial fishing families that live and have their fish sites in the Nikiski area.**

- **The Tyonek Native Corporation, a major landowner in the Tyonek area, has pursued industrial development projects in Tyonek and the west side.**

The petitioners indicate that CON [Nikiski] will better serve Tyonek than the borough. There is no evidence to support this claim.

- **Nikiski is closer to Tyonek and Beluga than Soldotna, and therefore it will be less expensive to provide local government services from Nikiski than from Soldotna, where most Borough services are staged from.**

- **There is no definitive “evidence” because Nikiski is not a city yet.**

The Charter proposes that a Nikiski City council member will be appointed as a liaison to Tyonek. However, since the council is to be elected at large, there is no requirement or rule that a council member be from Tyonek let alone the West Side.

- **For at large seats, it would be illegal (one person-one vote requirement) to require that city council members be from any specific area within the City.**

- **The Borough used to require that some Borough assembly seats be city council members from cities in the Borough, but had to change this because of legal problems.**

- **The Nikiski and Tyonek (west side) representative on the Borough Assembly is the same person, Wayne Ogle.**

None of the Petition study group members are from Tyonek. [Petition, p.42]

- **This is not a requirement under the incorporation statutes or regulations.**
- **Petitioners and their representatives had meetings with various groups from Tyonek or representing Tyonek. See Petition Attachment H.**

Additionally, of the 103 pages of signatures on the Petition none appear to be from the West Side, they all appear to have Nikiski or Kenai physical addresses. [Ex. E]

- **This is not a requirement under the incorporation statutes or regulations.**

The Petition provides for an exclusion from taxation for Tyonek. [Petition, p.12] The Tyonek area already enjoys tax exempt status for the vast majority of properties in the Tyonek CDP; 216 of 254 parcels are tax exempt. [Ex.F] Of the 38 taxable parcels in Tyonek, one-half or 19, will return to tax exempt status in 2028. [Ex.G]”

- **Nikiski proposes to give Tyonek a tax exemption for road services; and, as a home rule city, can explore other temporary tax exemptions like the one provided by the Borough.**

The Petition also asserts the inclusion of Tyonek is necessary so that the fire, senior and recreational services provided by borough contract can continue to be provided. [Ex.H] The borough already provides these services and can continue to do so for Tyonek.

- **This point is addressed in the Reply Brief, Sections 2 and 3.**
- **It is uncertain what will happen to fire, senior and recreation services for Tyonek and Beluga if the west side is not part of the City of Nikiski. The Borough itself has no power to provide the same services as provided by the Nikiski service areas, assuming they are integrated into the City of Nikiski. There would have to be a vote under AS 29.35.450(c) to include those areas in other existing fire service areas. There are no other recreation or senior service areas; and creating separate service areas for these services would be prohibited by AS 29.35.450(b).**

Senior services are provided through borough contract with the Native Village of Tyonek. [Ex.H] While there is a Boys and Girls Club of the Central Peninsula with two club houses in Nikiski, the contract services for the Tyonek Boys and Girls Club is with Southcentral Boys and Girls Club located in Anchorage, which further underscores the disconnect between Nikiski and Tyonek.

- **This point is addressed in the Reply Brief, Sections 2 and 3.**
- **By contracting out services for these Nikiski service areas, the Borough is engaging in public/private partnerships, a government model proposed by Nikiski.**
- **The Southcentral Boys and Girls Club was willing and able to provide these services to Tyonek, so were chosen to do so by the Nikiski recreation service area director as a sole source contractor.**
- **The Borough itself has no power to provide the recreation services as provided by the Nikiski recreation service area, assuming it is are integrated into the City of Nikiski. There are no other recreation service areas; and creating a separate service areas for these services would be prohibited by AS 29.35.450(b).**

The borough's Nikiski Fire Service Area currently maintains stations in Beluga and Tyonek, which are staffed by volunteers. *See*, KPB FY 2017 Annual Budget at p.153. Eleven calls were made to Tyonek in 2016 and three to Beluga. [Ex.1] The borough is equipped and prepared to continue providing these services.

- **This point is addressed in the Reply Brief, Sections 2 and 3.**
- **It is uncertain what will happen to fire services for Tyonek and Beluga if the west side is not part of the City of Nikiski. The Borough itself has no power to provide fire services as provided by the Nikiski service areas, assuming they are integrated into the City of Nikiski. There would have to be a vote under AS 29.35.450(c) to include those areas in other existing fire service areas.**

There is no demonstrated need to include Tyonek in the petition area, as no services will be provided that aren't already being provided by the borough.

- **This point is addressed in the Reply Brief, Sections 2 and 3.**
- **The Nikiski service areas provide and Nikiski residents pay for the services, not the Borough.**
- **If Tyonek is withdrawn from the Nikiski service areas before they are integrated into the City of Nikiski, the Borough does not have the power to provide the same services (fire and emergency, recreation, senior).**

#### B. Need for City Government

The population data provided by the Brief does not support the claim of a rapidly growing population in the proposed CON [Nikiski]. The Brief claims an increase of 6% in the population over five years and 8.5% since the 2000 US census. (Brief, p.19) However, this calculation inaccurately portrays the trend by using two different data sources. The population statistics for the non-census years are from Alaska Department of Labor annual estimates that use a different methodology than the census counts. Comparing population statistics from different sources to calculate population growth can show trends that are not there, or fail to show trends that are. Using the most recent US Census data, it appears there was a 3.8% population increase between the 2000 and 2010 census. Further, the estimates from the Alaska Department of Labor for 2011, 2015, and 2016, respectively are as follows: Nikiski - 4,642, 4,558, 4,616 Beluga - 19, 19, 16 Tyonek - 183, 175, 182 Salamatof: 1,052, 1,155, 1,097 Total: 5,896, 5,907, 5,911.

These numbers reflect a five year growth from 2011 to 2016 of .25% with all the growth attributable to Salamatof.

- **The population figures are discussed in the Petitioner's Brief, page 19, to support the "stable population" factor of AS 29.05.011(a)(4) and 3 AAC 110.030.**
- **The Borough admits that Nikiski has grown.**
- **The rate of growth is not a determining factor in the statutes and regulations.**

Also, when describing education rates, individuals below poverty level, and median household income for the community, Salamatof, Tyonek, and Beluga statistics are not included, rather only the statistics for the Nikiski CDP are used. (Brief, p. 17) However, when taxable value is discussed the entire region proposed for incorporation is included. The statistics for these various attributes should use a consistent methodology, population base, and geographic area in order to present accurate information. Only providing the information for the Nikiski CDP further emphasizes the disconnect between Nikiski proper and the remaining area that is subject to the incorporation petition.

- **Petitioners are not statisticians. Petitioners can provide more data.**

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 Nikiski.

- **This is incorrect. The main crux of Petitioner's brief is the Nikiski area's desire for self-determination and self-rule, as opposed to the Borough's practice of increasing centralization in Soldotna.**

- **The evolution of the Nikiski road service area, from 1981 establishment with funding dedicated to the Nikiski area, to 1991 merger over the objection of the road service area board and residents, to the current defunding of the former Nikiski road service area, is an example of how centralization doesn't provide adequate services for Nikiski.**

This position requires both factual and legal clarity. The RSA is divided into five regions—north, south, west, east, and central. The north region of the RSA is entirely within the petition area for the city of Nikiski. [Ex.J] For FY14-FY17 to date, the north region has led the RSA in cumulative road repair work with a total of \$181,522.69 in expenditures. The west region follows with \$170,685.64. The central, east, and south regions have received \$39,097.32, \$61,869.43 and \$53,914.85, respectively. [Ex.K]

- **This is misleading, and an example of cherry picking figures.**
- **Road service area funding is for repair and maintenance and capital projects. In order to be accurate, the Borough figures should include total revenue and expenses for the regions, which the Borough does not provide.**
- **The Borough does not dispute the fact that the Nikiski region of the RSA raises more revenue than is expended for roads in that region, as discussed in the Petition.**

With regards to capital improvement projects ("CIP") the north region is neither at the bottom nor at the top of the project list. From 2008 to present CIP projects on 16 miles of road, totaling \$5,765,866, were completed in the north area. By comparison, for the same time period the east region had 2.5 miles of road projects at a cost of \$1,850,340, the south region had 14.2 miles improved at a cost of \$5,148,957, the central region had 28.5 miles improved at \$9,933,791, and the west region had 29.8 miles of CIPs at a cost of \$10,350,042. [Ex. L] Further, the RSA's five year plan calls for an additional \$2,180,000, to be spent in the North Region of the borough's RSA. [Ex.N]

- **CIP projects are primarily funded by the federal government and State of Alaska.**
- **The CIP projects in the North region are the result of funding by State senators and representatives from the Nikiski area in the State of Alaska budget.**



While petitioners argue that major capital projects are constructed for the remainder of the borough, but not for Nikiski, the evidence does not support this statement. The Spur Highway extension project is a federal grant project located in Nikiski and is the largest road project ever undertaken by the RSA. It has absorbed significant borough staff time and resources. Since 1996 the assembly has adopted nine resolutions and five ordinances regarding this ongoing project. This approximate \$6,000,000 project which is in the engineering phase is located entirely within the petition area. [Ex.N]

- **The Borough has had funding for this project since the 1990s, but has not used this funding to build this road.**
- **The Borough expected a private company, Apache to build this road part way at Apache's expense, but the Apache plans fell through.**
- **There is no guarantee of project completion. See Borough Exhibit O.**

Another inaccuracy in the Petition is the statement that Nikiski residents are footing the bill for the road improvements in the remainder of the RSA. A large portion of the tax revenue in the Nikiski area is not from the residents, rather it is from the oil and gas industry (oil and gas exploration, production and transportation as identified in AS 43.56). Based on the FY17 Nikiski Fire Service Area budget, AS 43.56 oil and gas property provides about \$1,108,088,210 of the taxable value. [Ex.0] The Tesoro refinery, Agrium fertilizer plant and Conoco Phillips LNG production facility, assessed outside of AS 43.56, provide an additional \$282,866,900 in taxable value in the Nikiski Fire Service Area. [Ex.0] In comparison, Nikiski residents provide \$495,258,937 in real and personal property taxable value. The residents of Nikiski pay the same 1.4 mill for road services as do the other property owners throughout the RSA.

- **However, the property taxes raised from the Nikiski area for road service area construction, repair and maintenance are not used in their entirety for the Nikiski area, but are instead "redistributed" to other areas of the Borough, short changing Nikiski.**
- **See Lou Oliva Responsive Brief, pp. 3-4.**

While the petitioners assert that a minimal amount of money and attention is given roads in the Nikiski area the borough intervened in a lawsuit and spent significant staff and attorney time to establish road access rights to the Nikiski area beach.

- **This lawsuit had nothing to do with providing services to the Nikiski area.**

Petitioners' claims of disparate treatment in road services is not supported by any objective analysis of available information.

- **The Borough controls this information; which it has not made "available" to Petitioners, despite requests.**
- **See, Lou Oliva Responsive Brief, pp. 3-4.**

Further, tax benefit and burden are not legally required to be equal. The validity of a tax does not depend on whether a taxpayer receives a special benefit. [Quote from U.S. Supreme Court case]

- **The Petitioner is not arguing that the Borough is legally required to provide equal benefits, but that the Borough's centralization campaign has resulted in inadequate road services for Nikiski.**

The RSA encompasses a much greater area than the north Kenai Peninsula.

- **See Petitioner's Report on roads, Attachment O.**

AS 29.05.130 "Integration of special districts and service areas" provides [quote]. This statute assumes that the city being formed will have the same boundaries as a service area or that the service area will be smaller than the city that is being formed. Pursuant to AS 29.35.450(a) to be included in a service area the city needs to agree either by ordinance or a popular vote held both inside and outside the city. However, under the present statutory scheme it is not an option to allow an incorporating city to secede from a much larger service area and simply start providing the service itself.

- **This is an incorrect interpretation of AS 29.05.130.**
- **This point is addressed in the Reply Brief, Section 3(c).**

In addition to this serious legal impediment there are practical difficulties of what assets and liabilities the new city would assume. While it may be evident that the roads within the north region of the RSA would be the assets that would be assumed by the CON, the RSA is a large service area encompassing almost the entire borough outside the various city limits. Its tax revenues are to be used throughout this entire area otherwise it undermines the rule of law that the taxes in the service area are for the common good throughout that service area and not for the specific benefit of particular persons.

- **This is an incorrect interpretation of the integration process.**
- **This point is addressed in the Reply Brief, Section 3(c).**

The Charter proposes one new service in an odd way "Disaster Planning and Cooperative Response (a) Law Enforcement. The City of Nikiski will address its need or desire for local Law Enforcement as appropriate by public vote through the City Council. Currently, the City Area Law Enforcement relies on Alaska State Troopers." (underlining in original). [Charter, p.6] There is no guarantee in the Charter that CON [Nikiski] will provide law enforcement.

- **A home rule city can exercise any power not prohibited by law. AS 29.04.010.**
- **A home rule charter is not required by Alaska law to "guarantee" that the city can or will provide services.**

While law enforcement could have been established by Charter which would be voted upon by the residents the decision is being left to the city council. Elsewhere in the Petition it states the voters will decide the law enforcement issue after incorporation.) [Brief, p.28]

- **This is a misreading of Alaska law. A home rule city can exercise any power not prohibited by law. AS 29.04.010.**
- **Unlike the second-class Borough, home rule city powers do not have to be voted on by residents. Compare AS 29.04.010 with AS 29.35.300(b).**

Law enforcement is not a service currently provided and would require additional tax revenue to support.

- **This statement is speculation.**
- **The incorporation plan is to provide services with funds available under the current service area mill rates, in the expectation that Nikiski can do provide these services more cost-effectively under the public/private partnership government model (PPP), and potentially fund additional services without raising taxes. See Attachment R.**

Further, it is likely that as a home rule city, Nikiski would receive less Alaska State Trooper ("AST") support than it currently receives. Trooper stations have been closed throughout the state including posts in Girdwood, Talkeetna, McGrath, Ninilchik and Yakutat. [Ex.Q] The AST have seen a budget reduction during the past two fiscal years of over 10 million dollars. Throughout the peninsula AST has two to three troopers on duty between 11 pm and 7 am. Further, the AST has taken the position that a city should be responsible for all the policing within its boundaries. [Ex.Q]

- **This statement is speculation.**
- **Governor Walker has indicated that he is willing to enter into agreements with cities to provide contract law enforcement services with AST. See Attachment P. This would be another example of the PPP model.**

There is an understandable concern that the CON [Nikiski] voters will reject a charter containing such powers as the same voters in 2015 rejected a law enforcement service area. [Ex.R] Speculation in the Petition that the service area vote failed because Nikiski residents were concerned that the money for law enforcement would be spent elsewhere in the borough is baseless. Just as the borough cannot legally spend the money for Nikiski senior and recreation service areas elsewhere in the borough it would not be legally able to do so with a law enforcement service area encompassing only Nikiski.

- **The first sentence is speculation.**
- **Petitioners have personal knowledge and can obtain affidavits from voters showing that some voters who voted against the law enforcement service did so for reasons stated in the Petition.**

It is more likely the vote failed because Nikiski residents were unwilling to pay for the service through increased taxes and this could be true regardless of whether road service is a city function.

- **This statement is just speculation.**

An additional function of water quality regulation is suggested in the Brief, but not specifically in the Charter.

- **Again, a home rule charter is not required to list all powers intended to be exercised or services that will be provided. See, AS 29.04.010.**

The contradiction with the inclusion of water quality regulation as a justification for incorporation is that the Petition also asserts that the city of Nikiski will welcome industry better than the borough. One element that encourages industry in Nikiski is the lack of such local regulation by the borough, as industry generally is more comfortable operating under consistent statewide regulations.

- **There is no evidence to support these statements; they are speculation.**

The proposal in the Petition will require a local permitting process and Nikiski will need to provide the personnel, budget and mill levy to support that process.

- **This statement is speculation.**
- **The incorporation plan is to provide services with funds available under the current service area mill rates, in the expectation that Nikiski can do provide these services more cost-effectively under the PPP government model, and potentially fund additional services without raising taxes. See the Petition's pro forma budget.**

Central Kenai Peninsula Hospital Service Area ("CKPHSA") presents a similar concern as the RSA. CKPHSA which encompasses the proposed petition area is also much larger than the proposed petition area. The CKPHSA is incorrectly excluded from the service areas listed on page 17 of the petition. CKPHSA includes the Central Peninsula, Nikiski and the West Side areas of the borough. As with the RSA, it appears that to remain in the CKPHSA either the city council must by ordinance agree that the proposed city be included in the service area or the proposed city would have to approve this. AS 29.35.450(a).

- **This point is addressed in the Reply Brief, Section 3(c).**

This vote is problematic for at least two reasons: First, essentially it would be a vote to approve a service continuing in the exact geographical region it already encompasses rendering the vote purposeless and underscoring the point that the city of Nikiski proposal as written is inconsistent with incorporation standards that prohibit incorporation where the services are already being provided by a borough service area. Second, if the city council or voters do not approve remaining in CKPHSA, the residents of the CON [Nikiski] would no longer be paying taxes for the hospital that will continue to be the source of their primary hospital care. Therefore, if the Petition is approved by the Local Boundary Commission, it should include a condition that incorporation is contingent on the approval that the CON [Nikiski] remain in the service area. It would not be equitable to remaining residents of the CKPHSA to allow the CON [Nikiski] to secede from the service area when the CON [Nikiski] residents will continue to use the services that the remaining service area residents will continue to pay for.

- **This point is addressed in the Reply Brief, Section 3(c).**
- **This argument misreads the integration statute, AS 29.05.130 and regulation, 3 AAC 110.900.**
- **AS 29.35.450(a) does not apply to incorporation of new cities.**
- **The cities of Kenai and Soldotna are within the CKPHSA; Nikiski will be too.**

This vote is problematic...[continued]

- **The CKPHSA is another example of how Borough centralization results in inadequate services to the outlying areas.**
  - **The elected service area board has been abolished, so Nikiski lost its representation on that board.**
  - **The hospital operating company has no Nikiski residents on the board.**
  - **Services are centralized in the Soldotna area. Few services are provided to the areas outside Soldotna; and none to the Nikiski area.**
- **The Soldotna hospital has lots of patients who don't pay service area taxes; it cannot legally limit services to service area taxpayers.**

At pages 10-11 of the Brief the social and economic development discussed by the petitioners appears to be limited to their belief that the proposed Alaska LNG project in Nikiski will require attention to road maintenance and construction. They assert this scenario indicates "a significant need for the formation of local government."

- **This is misleading; the discussion of the LNG project is not the only point in the discussion of "social and economic development" in the Petition.**
- **The point of discussing the LNG plant, which has certainly spent massive sums in the Nikiski area in the last few years, is that Nikiski residents have no representation in addressing the impacts of the project, without incorporation, because the Borough has generally ignored Nikiski residents and their concerns.**
- **See, Lou Oliva Responsive Brief, page 4.**

Also, at pages 37-39 of the Petition outdated information is provided regarding the LNG project. The most recent information reflects that the project is in a significant slowdown. The industry partners, BP, ConocoPhillips, and ExxonMobil, last year declined to approve additional expenditures toward project development because the \$45 billion development, in their opinion, is not financially viable at this time. [Ex.S133 The state is in the process of taking over the project in an effort to keep it moving ahead, but the timeline for the transition and project development is uncertain. For example, the project sponsor must prepare answers to 420 pages of comments and questions from federal and state agencies in order to submit a complete project application to the Federal Energy Regulatory Commission ("FERC"). Until this work is completed and an application submitted, FERC cannot provide a timeline for its environmental review. Further, a project developer must show it has a legal right to a project site before FERC will accept an application as complete. The complication is that the state was not a party to the almost 650 acres of land purchased for the LNG plant and marine terminal in Nikiski by ExxonMobile, BP and ConocoPhillips. The state, through the Alaska Gasline Development Corporation is negotiating with the companies for a lease or option on the property to meet the FERC requirement - but no agreement had been reported as of March 7, 2017.

- **There is no evidence for these statements.**
- **The project participant representatives have been holding meetings and recently had huge reception for this project, where they gave out information contradictory to the Borough's statements above.**
  - **If true, these facts are unknown to Nikiski residents, because the Borough does not keep them informed. As a city, Nikiski could better inform, lobby for and represent its residents than the Borough has done or will do.**
- **The Petition is not dependent on this project coming online.**

LNG project...[continued]

- **It is understood that if this project goes forward, it will take years to complete.**
- **The focus in the Petition is on the impact of the project on Nikiski residents, the need for local representation, and the inadequacy of Borough representation.**

Any transition to state ownership would make the property tax exempt, diluting the tax base in Nikiski. A negotiated payment in Lieu of taxes by the state could replace property tax revenues, but that is unknown at this time.

- **As stated, these are unknowns.**
- **The incorporation is not dependent on this project coming online. It is understood that if this project goes forward, it will be constructed years from now. The focus in the Petition is on the impact of the project on Nikiski residents, the need for local representation, and the inadequacy of Borough representation.**

Additionally, the Alaska Gasline Port Authority, a municipal endeavor of the City of Valdez and the Fairbanks North Star Borough, recently filed a 210 page report with FERC urging that the LNG facility and marine terminal be located in Valdez instead of Nikiski. [Ex.S] While borough does not believe or agree the project should be moved, this filing represents another potential delay and more uncertainty.

- **As stated, these are unknowns.**
- **As a city, Nikiski could better inform, lobby for and represent its residents than the Borough.**

In general, the economic health of Nikiski is exaggerated in the examples given in the Petition. Page 8 discusses the history of the Chevron refinery but does not acknowledge that it has been shut down and dismantled though its storage tanks remain. The petition discusses the fertilizer plant owned by Agrium, but doesn't mention it has been closed since 2007, though the company is evaluating whether to reopen the plant in the future. Page 8 of the Petition reports the long history of the existing LNG plant in Nikiski (now owned by ConocoPhillips) but neglects to mention that the plant did not export any LNG in 2016, was sporadic in its exports in the previous few years, is now for sale, and will lose its federal export authority 12 months from now. The BP gas-to-liquids pilot project closed down in 2009.

- **Page 8 is a general historical discussion, not intended to reflect current events.**
- **The Nikiski area has been through economic booms and downturns before. The PPP government model is designed to better adapt to changed economic conditions.**
- **Nikiski is a very desirable area for industrial and residential development. There is still land available for relatively reasonable prices, as opposed to the Kenai River communities of Kenai and Soldotna, where there was big tourism boom based on Kenai River sport fishing, which drove up land prices.**
- **See Attachment Q, article on Furie drilling plans in the Nikiski area.**

At pages 20-21 (Section 6) of the Brief, petitioners claim they meet the criteria of 3 AAC 110.040(a) and AS 29.05.011(a)(2) for determining a proposed city's boundaries. The Brief does not set forth the standard in 3 AAC 110.040(a) which reads as follows [quote].

- **The Borough-established Nikiski service areas boundaries include the west side.**
- **The Nikiski service areas have been providing local government services since 1969, and have grown to include boundaries similar to the proposed City of Nikiski.**
- **The Petition presumes that the Nikiski service area boundaries should be similar to the proposed City of Nikiski boundaries, in order to provide continuity of services.**

The Brief at p. 20 makes some general statements about the status of land ownership in Nikiski without any supporting documentation. The Brief further states CON [Nikiski] will welcome industry and as a result property values will rise providing a solid financial support for city government without an increase to taxpayers' mill rate. This is conjecture with no supporting documentation.

- **The Nikiski service areas have been providing local government services since 1969, and have grown to include boundaries similar to the proposed City of Nikiski.**
- **The Petition presumes that the Nikiski service area boundaries should be similar to the proposed City of Nikiski boundaries, in order to provide continuity of services.**
- **The Petitioners have no way to access Borough data about land ownership; the Borough has not made that data available.**

When the applicable standard is reviewed the Brief by and large does not address that standard. Most notably there is no justification for why the West Side is needed to provide essential services (the standard presented in 3 AAC 110.040(a). Factors such as population density, the geographical separation of the West Side, and existing and reasonable anticipated transportation patterns and facilities do not support inclusion of the West Side.

- **The Borough-established Nikiski service area boundaries include the west side.**
- **The Nikiski service areas have been providing local government services since 1969, and have grown to include boundaries similar to the proposed City of Nikiski.**
- **The Petition presumes that continuity of services to the west side are preferable.**
- **The northeast side and west side of Cook Inlet are very connected. The transportation patterns show this. See, Attachment L, map showing transportation routes between the Nikiski area and the west side.**

In Section 7 at pages 21-23 of the Brief the petitioners allege that the CON [Nikiski] must encompass the entire area of the current Nikiski Fire Service Area because the service area has been effectively managed for 46 years and therefore a city encompassing the same area would be also. This largely ignores that the success of the service area is an entity of the borough, supported by the general government of the borough which will no longer provide human resources, purchasing, municipal, clerk functions such as elections, official training, finance and payroll, legal, land management and capital project support that the service area currently enjoys from the borough's general government.

- **The Nikiski service areas provide services within their boundaries.**
- **The City of Nikiski can provide the same general government services.**
- **The incorporation plan is to provide services with the expectation that Nikiski can provide these services more cost-effectively under the PPP government model.**

At page 17, the Petition also projects a two million dollar subsidy or as a start-up fund from the borough's Nikiski service area taxes. To the extent it involves fund balances from service areas that are not entirely embraced by the city those funds were generated to support services throughout the service area not to provide start-up for a new city. The petitioners also inaccurately point to the service areas having fund balances as evidence that tax revenue generated by Nikiski is not being spent in Nikiski. [Petition, pg.17] First, the borough will not and legally cannot spend these funds elsewhere. Second, the fund balance is a savings account for those Nikiski services which demonstrates the borough has planned well financially and is a good steward of these service area funds.

- **This point is addressed in the Reply Brief, Section 3(c).**
- **The elected Nikiski service area boards are the reason for healthy fund balances.**

**The Borough Administration has not in general supported fund balances for Nikiski service areas. See, Responsive Brief of Lou Oliva, page 3.**

- **Under AS 29.35.130 and 3 AAC 110.900, assets of service areas in a newly incorporated municipality are transferred to the municipality.**

The certain services listed in the Charter (parks and recreation, senior services, and road and emergency services) are already provided by the borough, therefore the CON [Nikiski] does not overcome the statutory standard disallowing incorporation where the services to be provided can be provided by the borough, because they are already provided by the borough.

- **This point is addressed in the Reply Brief, sections 1 and 2.**
- **The Borough does not provide these services on an areawide or nonareawide basis, therefore, AS 29.05.021 does not apply.**

#### C. Boundaries

The Brief in Section 8 (p.23-24) briefly addresses the standard which requires the boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by application of the standards and otherwise suitable for city government. 3AAC 110.040(b)(2). The Brief does not address the obvious inclusion of an entire geographical region or large unpopulated area that is the West Side in violation of the standard found at 3 AAC 110.040. As discussed above, the West Side has little in common with Nikiski proper.

- **This point is addressed in the Reply Brief, section 4.**
- **The west side of Cook Inlet in the Borough is not unpopulated.**



Again the Brief in Section 8 proclaims that the Nikiski area's welcoming attitude toward industry, its abundance of energy, water resources and "access to the land area" will ensure industrial growth. The Brief does not say exactly how it will welcome industry; however, the borough without zoning regulations or building permits, little land use regulation, an economic development tax exemption and a low mill levy on real property couldn't be much more welcoming. Further, there is no evidence demonstrating how forming a city will entice more industry to set down roots in Nikiski. The "abundance of energy and water resources" touted as forming a basis for industry already exist, incorporation of a city will not change that. Formation of a city alone will not encourage industry. Economics, oil and gas prices, federal and state laws and regulations, supply and demand among other factors more strongly influence industrial growth. Incorporation of a city would be a much lower factor in corporate decision making.

- **These statements (other than repeat of Nikiski brief) are speculation.**
- **Borough officials have stated publicly that Nikiski is the industrial base of the Borough.**

Pages 24 and 25 of the Brief (Section 9) is meant to address the standard set forth in 3 MC 110.040(d). This standard provides [quote] The Brief repeats the claims made in the Petition that the CON [Nikiski] will respect Tyonek's status as a sovereign tribe. [Brief, p.24] This standard actually requires the overlapping territory to be removed and requires the LBC to consider the petition for incorporation as a petition to alter the boundaries of the existing city. If anything, this requirement would be offensive to Tyonek's sovereignty. However, since neither Tyonek nor Beluga are organized cities under Alaska law, it appears this standard is not applicable to this petition.

- **The Borough admits the standard in 3 AAC 110.040(d) does not apply to the Petition.**
- **Statements about Tyonek taking offense are speculation.**

The Petition also states that, with only one-ninth of the voting power on the assembly, the Nikiski assembly representative is historically outvoted on Nikiski issues. There are no resolutions or ordinances provided as exhibits to the brief that support this contention of regular 8-1 votes on issues impacting Nikiski. The assembly has nine members apportioned according to law. [Ex.U] The 2011 apportionment map reflects that the large area encompassed by Assembly District 3 which in part includes Nikiski has a similar population to the other eight assembly districts. The fact that it is a large area geographically underscores that the proposed CON [Nikiski] contains large unpopulated areas in violation of the incorporation standard at 3 AAC 110.040(b)(2).

- **The Petition refers to the fact that the Borough reduced Nikiski's representation on the Borough Assembly from 5 members out of 16 to 1 out of 9; this is a reduction. See, Lou Oliva's Responsive Brief, pp. 3-4.**

• **In 1991, the Borough Assembly voted to merge the Nikiski road service area into the other three road service areas, over the objections of all Nikiski representatives, which resulted in "redistributing" Nikiski service area taxes for road to other communities in the Borough, and other harm. See, Oliva Responsive Brief, 3-4.**

- **The west side of Cook Inlet is not unpopulated.**

D. Best Interest of the State

At pages 25-27 (Section 10) of the Brief, petitioners contend that the Petition meets the "best interests of the state" standard [quotes]. All of the services the CON [Nikiski] will provide in accordance with the Petition are already provided by "existing borough service areas" which provide road, senior services, recreational services, and fire and emergency services. The borough also provides economic development services on a nonareawide basis which includes Nikiski. KPB 19.30. Therefore, the standard set forth in 3 AAC 110.981(8) is not met.

- **This point (made repeatedly) is addressed in Sections 1 and 3 of the Reply Brief.**

There is no commitment in the Charter to provide law enforcement services; rather this decision will be left to the city council or voters after incorporation. Therefore, there is no relief for the state from its current provision of trooper services to the Nikiski area.

- **A home rule charter is not required to make a commitment to provide services.**
- **The Petition does not state that it will relieve the State from providing services.**

There is also an indication in the Petition that a permitting system will protect groundwater because "new industry" will abide by "standards written into contracts, operating agreements, and permits to engage industry". [Petition, p.13] It is unlikely these water quality protections will be adopted unless new industry is established in Nikiski as this function is not mentioned in the charter.

- **A home rule charter is not required to list all services the municipality will provide, it has the power to provide any service not prohibited by law. AS 29.04.010.**
- **The second sentence is speculation.**

The Petition assumes new industry will locate in CON [Nikiski] merely because a city has been incorporated. As discussed above there is no evidence to support this theory. If CON [Nikiski] wishes to develop a law enforcement and groundwater protection program it will have to pay for it. It is unlikely CON [Nikiski] can do this without an increased mill levy to support the general government services the borough will no longer provide, despite petitioners' projection otherwise at page 20 of the Brief.

- **The Borough has provided no evidence to support these statements; they are speculative.**
- **The incorporation plan is to provide services with funds available under the current service area mill rates, in the expectation that Nikiski can do provide these services more cost-effectively under the PPP government model, and potentially fund additional services without raising taxes. See the Petition's pro forma budget.**

Every city in the borough has its own mill levy to support its services. [Ex ] Many of these cities are also served by borough service areas with additional mill levies for those services.

- **It is correct that every city in the borough has a levy, and that residents of cities which are within service areas pay an additional mill levy.**

Adding a new taxing jurisdiction to provide essentially the same services that are already being provided by an existing borough service area with the assistance of the borough's general fund and general government services does not meet the standards for incorporation as it creates a duplicative tax jurisdiction to support local government.

- **The Nikiski service areas have been and are charged for Borough administrative services.**

- **This point is addressed in the Reply Brief, Section 5.**

- **Incorporation statutes and regulations do not prohibit duplicate tax jurisdiction, such as cities within boroughs. The municipal statutory scheme permits cities within boroughs. The Borough has other cities within it.**

Whether or not the formation of CON [Nikiski] is in the best interests of the state, it is not in the best interest of the borough. It appears that under AS 29.06.470, 3 AAC 110.280 and 23 AAC 110.300, that if it becomes necessary in the future to dissolve a city within a borough, that borough may end up assuming the city's duties and liabilities.

- **This point is addressed in the Reply Brief, Section 5.**

- **The Nikiski service areas have proved that services can be provided in the Nikiski area without dissolution.**

- **The PPP government format proposed in the Petition is designed to weather ups and downs in economic resources for a city.**

E. Charter Residency Requirements

- **This point is addressed in the Reply Brief, Section 6.**

F. Essential Municipal Services

Section 12 at page 27-28 of the Brief contends that essential services are 1) are reasonably necessary to the community; 2) promote maximum, local, self-government; and, 3) cannot be provided more efficiently and effectively by another political subdivision of state as stated in 3 MC 110.970. Here again the Brief states it is "reasonably necessary" and "unquestionably logical" for CON [Nikiski] to provide fire and emergency services, parks and recreation services, senior service, and road services—all of which are already provided through borough service areas.

- **This point (made repeatedly) is addressed in the Reply Brief, Section 7.**

The Brief states "the proposed city would also be empowered to provide local city administration, capable of capital improvement projects, economic development, community development projects, voter approved law enforcement improvements and accessibility to the residents of the territory—all functional components to maximize local self-government." The Brief is absent any evidence of how it will be more efficient and less costly for CON [Nikiski] to provide these services.

- **This point is addressed in the Reply Brief, Section 7.**

- **The PPP government model proposed in the Petition is designed to minimize or lower administrative costs and provide more funds for direct services than the traditional government model the Borough operates under.**

Without the borough's centralized payroll, human resources, insurance policies, legal, land management and capital project services it can only be more costly for the new city to provide these services.

- **This statement is speculation.**
- **The PPP government model proposed in the Petition is designed to minimize such administrative costs.**

The reference to "voter approved law enforcement" indicates that another vote of the people rather than the council will be the basis for providing these services. This ignores that Nikiski has recently rejected law enforcement at the polls. The proposal of having either the council or voters consider law enforcement after incorporation indicates law enforcement is not an essential service for CON [Nikiski].

- **Public safety (law enforcement) is defined as an essential city service in 3 AAC 110.970(d)(5).**

• **There is evidence that Nikiski voters rejected a law enforcement service area because of Borough involvement, not because they did not want this service.**

The Petition alleges that a public-private partnership ("PPP") approach similar to Sandy Springs, Georgia will be a cost-effective way of delivering municipal services. Sandy Springs uses major contract companies to provide a number of city services. [Ex.48 The CON [Nikiski] will need to explore whether these types of companies work in Alaska. If the approach to PPP is to hire people directly, rather than contracting with companies to provide the services, those individuals will likely still be considered employees of the CON [Nikiski] rather than independent contractors and the associated costs such as salaries, PERS, workers compensation, medical and other employee benefits would need to be provided by CON [Nikiski].

- **The Nikiski service areas have both employees and contractors. The Petition likewise presumes there will be a mix.**

• **The Borough uses contractors to provide many services. See for example, Responsive Brief Exhibit H.**

• **The Borough uses a large company to operate the Borough solid waste facilities (CH2M Hill).**

A comparison between Sandy Springs and the proposed CON [Nikiski] reveals they are not very analogous communities. Sandy Springs has more than 100,000 residents, general fund revenues of more than \$100,000,000 and a total budget of more than \$400,000,000 for FY17. In addition to almost 5 mills in property taxes, Sandy Springs also had a bed tax, a 911 fee, a car rental tax, a sales tax, an alcohol tax, a real estate transfer tax a motor vehicle registration fee, building permit fees, business tax and insurance premium tax, and electricity and natural gas, cable TV and telephone franchise fees—that all in total provide about half of the city's general fund revenues. This is a very diversified revenue stream.

- **As a home rule city, Nikiski could also diversify its revenue stream from the property taxes that currently fund the Nikiski service areas.**

The Petition at page 9 also states formation of a city is necessary because other communities in the borough "have consistently voted down the opportunity to host big industry presence in their areas knowing the borough authorities will provide for them with Nikiski taxes." Little evidence is provided to support this statement and the borough is unaware of what big industry the voters have rejected.

**• Residents of other cities in the Borough have expressed opposition to large industrial or commercial projects in their cities (for example, Fred Meyer in Homer); Petitioners believe Nikiski residents will be more accepting of industrial and commercial projects because many are already located in Nikiski.**

Another "essential service" CON fails to consider is a 911 emergency service communications system. Currently the borough provides call-receiving and dispatch services in the petition area. If a city is formed it will need to finance its own call and dispatch system or contract with the borough for those services. [Ex.X]

**• Nikiski's fire service area already pays into the 911 system.**  
**• The 911 system is not run solely by the Borough, but is a jointly operated and funded by the State, Borough (service areas) and cities. As a city, Nikiski would join this operation just like the other cities.**

Section 13 of petitioners' Brief contends that incorporation is the only means by which residents of the territory can receive essential municipal services as described in 3 AAC 110.982(6). Again, this section of the brief argues without evidence that Nikiski is neglected and ignored by the borough and states that incorporation is the only viable solution. At page 10, the petitioners compare Nikiski to other municipalities within the borough that have incorporated to ensure maximum local self-government. However, of the six incorporated cities in the borough only one, Soldotna, incorporated after the borough was established. The cities did not incorporate to separate from the borough in pursuit of self-determination; rather their existence predated the borough.

**• This is incorrect; Homer also incorporated after the Borough.**  
**• Soldotna recently upgraded from first class city to home rule city to have more autonomy, particularly from the Borough sales tax structure.**  
**• Many other cities in the State of Alaska have incorporated within boroughs since 1963.**

According to the Final Report on Borough Government at page 17, as quoted on the Local Boundary Commission's website, "local government principles in Alaska's Constitution view a borough with no city governments as the ideal structure for the delivery of local services. The drafters of the Local Government Article of Alaska's Constitution 'viewed the long-term relationships between the borough and the city as a gradual evolution to unified government."

**• This point is addressed in the Reply Brief, Section 7.**  
**• Unified government may work for boroughs with areas that are compact, such as Juneau or Anchorage, but may not work for boroughs with large land masses such as the Kenai Peninsula, Matanuska-Susitna and Fairbanks.**  
**• None of the large mass boroughs created with the Kenai Peninsula Borough have pursued unification.**  
**• Many boroughs have cities within their boundaries.**