

COMMENTS ON PRELIMINARY REPORT

I. INTRODUCTION

These Comments are being provided as a formality. The Petitioners' Representatives and supporters are seriously weighing the merits of amendment of the Petition; and do not want to utilize more of the scarce resources available than necessary to defend the Petition from the flawed Preliminary Report. Therefore, the Petitioners are commenting on the major issues with the Preliminary Report and giving some examples. However, there are many, many other disagreements to biased, inaccurate, incorrect and contradictory statements in the Preliminary Report, and the lack of specific comments on statements does not mean Petitioners agree to statements in the Preliminary Report.

II. MAJOR ISSUES WITH PRELIMINARY REPORT

A. Violation of Due Process, Statutes and Regulations - Flawed Methodology.

1. The Preliminary Report (PR) findings are premature and incorrectly weighted against incorporation; and the Department's method of analysis is flawed.

2. The PR finds that the **Petition** "does not meet most of the standards" (page 2), and recommends that the Local Boundary Commission reject the Petition, before the Petitioners have had their "day in court" -- their evidentiary hearing before the Commission, as required by AS 29.05.090. This is a violation of the Petitioners' due process rights to a fair and impartial hearing before the Commission.

3. The Department staff's analysis is flawed because it treats the Petition as the final product, instead of the first step, thereby negating the evidentiary hearing process and the Commission decision-making process.

4. The PR also usurps the duty of the Commission to make the ultimate decision on whether the incorporation of Nikiski (not merely the Petition) meets the standards set forth in Alaska statutes and regulations, after the evidentiary hearing before the Commission that is required by statute and regulations. See, AS 29.06.100(a), 3 AAC 110.550-.570.

5. Over and over, the PR criticizes the Petition for being insufficient in providing data or information in order to meet the standards for incorporation. By using this methodology, the PR fails to follow the statutory and regulatory process.

Example: Critique of the petition as insufficient under "existing or reasonably anticipated health, safety or general welfare conditions", pp. 41-43 (details below):

- Page 41..."The petition mentions protection of water...however, it is a task delegated to state and federal officials."¹
- Page 41: ..."There is no other mention of this task in a transition plan or in the charter."
- Page 41: "There is little discussion about water and sewer or public utilities at all..."
- Pages 41-42: "There is no indication of how the city would exercise the authority or how incorporation could offer solutions..."
- Page 42: "the department finds a disconnect between the petition's stated need for increased public safety, and a petition for incorporation of a city with no plans to provide this service."²

6. There is nothing in municipal incorporation statutes and regulations that requires the Petition or the Petitioners to prove at the outset, when the Petition is filed, that the Petition meets the standards set forth in AS 29.05.011(a) and accompanying regulations. This is a fatal flaw of the PR.

7. An objective, unbiased report, using the correct methodology, would simply note that there does not appear to be enough evidence at this stage to find that incorporation meets a particular standard, but the PR is not unbiased, and it lacks objectivity (see discussion below).

8. Even in discussing whether the Petition meets the standards, the PR is arbitrary and internally contradictory, where it states that the Petition does not meet:

- "most standards" (page 2)
- "enough of the standards" (page 3)
- "the requisite standards" (page 99)
- two specific standards: "no new services are planned,"³ and "not in the best interests of the state" (page 100)

B. Bias and Lack of Objectivity

1. Although the PR states a goal of objectivity, it is not. The findings are clearly written with an extreme bias against incorporation of the Nikiski community. Especially when compared to the liberal treatment past petitions received in their Preliminary Reports; for example, Big Lake petition.

2. The overall method in the PR is to argue with and find every fact or point against the Petition, misconstrue the statutes and regulations (see discussion below), and find against incorporation on every standard. There are very few points in the Petition that are not argued against or found against. Many of the objections are petty and argumentative, such as the discussion about water (see above). This is not an objective method.

¹ This is one example of misinformation throughout the report. While a city may be subject to state and federal water standards for a city water system, it can have additional/stricter standards.

² This statement is false. The Petition does discuss how the city plans to provide this service.

³ This is not a statutory standard or regulatory factor.

3. Example Page 38: "the entire territory proposed for incorporation does not meet the standard for community." This finding is flawed because it is backwards from the regulation cited, 3 AAC 110.005. This regulation states that "the territory proposed for incorporation must encompass a community." "Encompass" means enclose or form a circle around. Merriam-Webster Dictionary. Thus, the regulation means that there must be a community within the territory proposed, and Nikiski meets that standard, because the community of Nikiski, that has existed since before Alaska statehood, is within the territory proposed.⁴

An unbiased report would either find that the Petition doesn't have enough information or data to prove Nikiski is a community; or that Nikiski is a community and therefore meets the "community" standard, but that the boundaries are too large, and refer to the discussion on the standard for boundaries.

4. Another example is the recommendation that the Petition be completely rejected on two easily amendable grounds: (1) the proposed city boundaries are too large, and (2) the charter isn't specific enough as to proposed services.

An objective report would note that AS 29.05.100(a) allows the Commission to amend the Petition to fix these two problems; but the biased PR recommends flat out rejection of the Petition, which would result in the Petitioner's hard work arbitrarily being thrown aside and a three year waiting period before they could start again.

C. Application of Incorrect Legal Standards; Ignoring Standards/Factors That Apply.

1. Incorrect Hierarchy of Laws.

a. The PR applies an incorrect "bottom up" hierarchy of law, starting with the Commission regulations, which are rules of the Commission; the proper hierarchy of Alaska law starts with the Alaska Constitution, then Alaska statutes, which provide the substantive law governing the Commission's regulations, proceedings and practices. Regulations are last.

b. AS 44.33.812(a)(2) specifically states that all Commission regulations dealing with municipal incorporation are subject to Alaska Statutes 29.04 -- 29.10. The LBC regulations are also subject to the Alaska Constitution, particularly Article X.

c. The PR pages 2, 3, 4, 7, and 99 incorrectly refers to the Commission's regulations as "law." In Alaska, the Constitution and Alaska statutes are laws. The LBC's regulations, at 3 AAC 110, cited in the PR, are administrative rules.

⁴ Even the PR admits that "a small territory meets the standard for community."
PAGE 3 - COMMENTS ON PRELIMINARY REPORT

2. "Disconnect" Between AS 29.05.011(a) and AS 29.05.011.

a. AS 29.05.011(a) contain the standards that a community must meet to incorporate as a home rule city. These standards govern over Commission regulations. Where the regulations conflict with the statute, the regulations are not valid. AS 44.62.030.

b. AS 29.05.060 contains a list of information that must be included in a municipal incorporation petition.

c. Department staff incorrectly conflate AS 29.05.011(a) and AS 29.05.060, presuming in the PR that the **Petition** must meet the standards listed in AS 29.05.011(a), when that is not required by AS 29.05.060.

3. Misapplication of AS 29.05.021(b) to the Petition.

a. In the conclusion, page 100, the PR states:

"The law in AS 29.05.021 does not allow for the creation of a new city within an organized borough if essential municipal services can be provided more efficiently or more effectively by an existing organized borough on an areawide basis, nonareawide basis, or through an existing borough service area."

However, this statement is incorrect because AS 29.05.021 does not contain any language about "through an existing borough service area." The language "through an existing borough service area" was added by a regulation, 3 AAC 110.010(c). For the record, this regulation directly conflicts with AS 29.05.021(b), and is likely to be found invalid under AS 44.62.030.

b. The Alaska Supreme Court has held that AS 29.05.021(b) does not apply to incorporation of a home rule municipality; and therefore this statute does not apply to the Nikiski petition. *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 n. 3 (Alaska 1995); AS 29.10.200. So it is incorrect to apply this statute to the Nikiski petition for a home rule city.

4. Incorrect Application of Limitation of Community Doctrine.

a. The Department's misapplication of the "limitation of community" doctrine colors the entire PR, and results in the Petition being failed when there is no legal basis to apply this doctrine to the Petition.

b. In the PR, page 4, it states: "City governments are subject to the "limitation of community" doctrine" citing *Mobil Oil v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974). In the PR, pp. 79-80 contains a discussion of the "limitation of community" regulation, 3 AAC 110.040(b).

c. However, the Alaska Supreme Court in the *Mobil Oil* case held that the "limitation of community" DOES NOT APPLY in Alaska. The Court stated at page 100:

The result in these [limitation of community] cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1.

d. Similarly, aside from the standards of incorporation for cities under AS 29.05.011, there are no limitations on the organization of city governments, that restrict them to a certain size. The same Alaska Constitution Article X Section 1 encourages creation of cities as well as boroughs.

e. The Alaska Supreme Court in the *Mobil Oil* case DID NOT hold that the limitation of community doctrine applies to cities in Alaska. Therefore, this case cannot be used to reject City of Nikiski incorporation through the limitation of community doctrine.

f. For the record, the "limitation of community" regulation, 3 AAC 110.040(b) conflicts with the Alaska Constitution, Article X, Section 1 and Alaska statutes that do not restrict city incorporation to any particular size; and it is therefore likely to be found invalid under AS 44.62.030 and AS 44.33.812(a)(2).

5. Regulations Incorrectly Applied.

a. Many of what the PR calls "standards" are not statutory standards, but are FACTORS the Commission "may consider" in determining whether the incorporation meets the statutory standards. Thus, it is the Commission's responsibility to consider these factors; not the Petition's burden to meet these standards.

b. The standards for municipal incorporation are found in AS 29.05.011(a):

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support city government;
- (5) there is a demonstrated need for city government.

c. The Petition to incorporate Nikiski meets these relatively simple standards. It is the incorrect and unfounded barriers set up in the PR that prevent Nikiski from moving forward towards incorporation as a home rule city.

d. The PR page 99 states that the incorporation proposal (in the Petition) There are regulations that provide a list of factors the Commission "may consider" in making a determination on whether the proposed incorporation meets the statutory standards. For example, for the AS 29.05.011(a)(2) boundaries standard, there is a list of factors the commission "may consider" regulation in 3 AAC 110.040(a)(1)-(7). But these regulations cannot create new standards beyond the statutory standards. AS 44.33.812(a)(2). To the extent that the Department considers the factors in the regulations to be additional standards that the Petition must meet (and not the whole case for incorporation), the Department is incorrect as a matter of law.

6. Overlooked Regulations That Do Apply: Home Rule Incorporation.

a. 3 AAC 110.981 states that, in determining whether a proposed boundary change "promotes maximum self-government" the Commission will consider "whether the petition proposes incorporation of a home rule municipality." This "maximum self-government" phrase comes from the Alaska Constitution, Article X, Section 1, which states that the purpose of Article X on local government is to "provide for maximum **local** self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions." [Emphasis added]

b. 3 AAC 110.981(14) means that a proposed home rule incorporation should weigh in favor of a positive finding under this standard, because home rule status provides the maximum self-government under Alaska law.

c. However, the PR at page 84-85 cites this regulation but then does not apply it to the Petition; instead, it finds that the Petition does not meet this" standard."

d. The PR summary at page 3 also states that the Petition does not maximize local self-government, but fails to apply the home rule city preference in 3 AAC 110.981(14) in stating this conclusion.

e. The home rule city preference found in 3 AAC 110.981(14) is supported by the minutes of the Alaska Constitutional Convention (quoted below):

1. Self-government— The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D. C. The proposed article allows some degree of self determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.” Constitutional Convention XII/Local Government December 19, 1955 ALASKA CONSTITUTIONAL CONVENTION GENERAL DISCUSSION OF LOCAL GOVERNMENT UNDER PROPOSED ARTICLE Folder 410.10)

7. Misinterpretation of Boundaries Standard.

a. The PR incorrectly interprets the boundaries standard, AS 29.05.011(a)(2), getting it backwards. The standard requires the proposed boundaries to include “all areas necessary to provide municipal services on an efficient scale.” This is a positive requirement: if the boundaries include these areas, it meets the standard.

b. However, the PR incorrectly applies this standard in the negative for Nikiski: the Department finds that Nikiski has more territory in its boundaries than are strictly necessary to provide the municipal services listed in the Petition, so incorporation is a fail. Pages 83-84.

c. The Department's application is incorrect because:

i. It is not the “liberal construction” of this statute required by the Alaska Constitution, Article X, Section 1, and AS 29.35.400.

ii. The boundary standard sets a minimum (“all areas necessary to provide municipal services...”) but not a maximum.

d. Another incorrect application is in the PR Page 4, which states: “Current law restricts the inclusion of large geographical regions or large unpopulated areas in cities,” citing 3 AAC 110.040(b)-(c). However, these are not standards that the Petition must meet, because they are not included in AS 29.05.011(a).

i. It appears that 3 AAC 110.040(b)(1), (2) and (c) attempt to create additional municipal incorporation standards that are not included in AS 29.05.011(a); and therefore, these regulations are likely invalid under AS 44.33.812(a)(2) and AS 44.62.030.

ii. 3 AAC 110.040(b), which incorporates the "limitation of community" doctrine is incorrect. See discussion above

e. The Petitioners were advised by Department staff that using the Nikiski service area boundaries was a reasonable place to start, and therefore included those boundaries for the City, because a multitude of services are currently being provided and received in that area.

i. In particular, Tyonek was included because it is already part of the Nikiski community, receiving substantial services from the Nikiski Service Areas.

ii. The Petitioners also expected that keeping the same boundaries for the City of Nikiski as for the Nikiski service areas would allow the same level of services to be provided as are being provided now, but more cost-effectively, allowing additional services to be brought on line gradually, as the other cities in the Kenai Peninsula have done. For example, of all the existing cities incorporated in the Kenai Peninsula Borough, most did not provide police protection until some years after they incorporated.

iii. However, the PR finds the service area boundaries are too large under the regulations (not the statutes); which is a “fail” in the PR.

iv. But gutting the proposed territory to limit the City of Nikiski to just the most heavily populated areas would result in the proposed territory failing to meet the standard in AS 29.05.011(a)(2): all areas necessary to provide municipal services on an efficient scale.

f. The PR also creates arbitrary new standards in order to find that the size of the proposed territory is too big.

i. Example Page 37: “While the territory as a whole exceeds the 400 residents required for incorporation, about 95 percent of the residents live on the permanent east side of Cook Inlet while approximately 95 percent of the land and water sought has no population at all. The department finds that the standard for community in section (a)(1) is met, but must note the unbalanced nature of the proposed boundaries.”

ii. Here the department is imposing an arbitrary standard. Neither statute nor code require any particular “balance.” Nor have past incorporations such as Edna Bay, Whale Pass, Egegik, Pilot Point, etc. Those communities, which were approved by the LBC for an incorporation election, have populations that occupy smalls area compared to the much larger city boundaries.

8. Made Up Standards or Factors.

a. Throughout the document, the PR applies an unwritten standard of “additional services,” but there is no such standard in the statutes, and no such factor in the regulations.

b. For example, page 87 states:

Incorporation as proposed by Nikiski does not meet the standard of promoting a minimum number of units because incorporation is not the only means by which residents can receive essential municipal services. If Nikiski residents were proposing additional services, this standard would be of greater relevance. Incorporation of a city and dissolution of the borough service areas would minimize local government units; however, because no new services are proposed there can be no argument that incorporation is the only means by which residents can receive the same set of services.

c. However, the Alaska Supreme Court in the *Keane* case negates this analysis, finding that there is a preference for incorporation of a city over a multitude of overlapping service areas; and that forming a city in such circumstances would in fact minimize the number of government units. 893 P.2d at 1243-1244.

D. Restrictive Application of Statutes and Regulations Against Petition.

1. The PR imposes an almost impossible, unwritten burden of proof -- on the Petition alone -- to meet the standards for incorporation. There is no statute or regulation that imposes a very high burden of proof on the Petition alone to meet the statutory standards for municipal incorporation.

2. The burden of proof for a municipal incorporation petition process is not defined in statutes or regulations, but Department staff uses an extremely strict or high burden of proof in the PR, making what is in effect an unwritten regulation, without following the Administrative Procedures Act, and with no other legal authority.

3. The Alaska Constitution, Article X, Section 1, requires a "liberal construction" of local government powers. See also AS 29.35.400. Local government powers include the power to incorporate. Alaska Constitution, Article X, Section 5.

4. The PR claims there is a higher standard to incorporate for cities in boroughs, but there is no legal or regulatory authority for this claim:

Example Page 2: "The standards for incorporation within an organized borough are higher than those for a city forming in the unorganized borough."

Example Page 3: "While there are indeed higher barriers to incorporation of cities within organized boroughs..."

5. There are no "higher" standards for incorporation of a city within an organized borough. The only difference is AS 29.05.021(b), which states:

A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or non-areawide basis by the borough in which the proposed city is located.

6. However, AS 29.10.200 does not state that this AS 29.05.021 applies to a Home Rule City; therefore AS 29.05.021(b) does not apply to the Petition. *Keane v. Boundary Commission*, 893 P.2d at 1243 n. 3.

7. Contrary to the PR page 87, according to interpretations of the Alaska Constitution, there is a "higher" purpose to incorporate as a city in a borough for an area that has multiple overlapping service areas. This higher purpose is ignored in the PR.

a. According to the framers of the Alaska Constitution:

Through establishment of service areas and assumption of administrative or advisory responsibility, the citizens of small communities or rural areas will be preparing themselves for full self-government... Alaska Constitutional Convention XII/Local Government December 19, 1955.

b. According to the Alaska Supreme Court:

It is reasonable to interpret AS 29.35.450(b) and Article X, Section 5 as preferring incorporation of a city over the creation of new service areas. This interpretation is supported by legislative history and is not inconsistent with Article X, Section 1 of the Alaska Constitution. Constructing a barrier to approving an excessive number of government units does not prohibit the creation of them when they are necessary. Whether a service area or a city is established, another government unit is created. If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, once a city is established, it can provide many services, and other communities can annex to the city in the future. *Keane v. Local Boundary Commission*, 893 P.2d at 1243-1244.

8. The PR applies the statutes and regulations as "barriers" to incorporation (page 3); however, this is another incorrect negative application.

a. The Alaska Supreme Court has stated that the Alaska Constitution, Article X, Section 1 encourages the creation of boroughs; the same citation applies to cities. *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d at 101. Thus, the standards should have been interpreted for the Nikiski petition to encourage incorporation, instead of the negative or "barrier" approach in the PR.

b. The constitutional convention did not authorize the local boundary commission to create barriers to municipal incorporation. Alaska Constitution, Article X, Sec. 12. As stated above, the Alaska Supreme Court has interpreted the Alaska Constitution, Article X, Section 1 to encourage creation of boroughs and cities.

c. Had the constitutional convention intended such a negative view, they would not have stated this about Article X of the Constitution (quote below:

[T]he Committee on Local Government is proposing this Article with the purpose of enabling the people in any part of Alaska to achieve a maximum amount of home rule for themselves...The provisions of this article are intended to be self executing so far as possible. The plan is designed to accomodate [sic] today's needs and tomorrow's growth, and provides flexibility to meet the need for local government in all parts of Alaska. We have not tried to detail the mechanics of setting up units of Local Government, but have tried to prepare a framework within which the Legislature of the State of Alaska can provide by law for local government and home rule. Section 1. This section states the purpose and intent of this Article; to promote democratic self-government below the state level, guarding the interests and welfare of all concerned in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities. Constitutional Convention XII/Local Government January 16, 1956 ALASKA CONSTITUTIONAL CONVENTION COMMENTARY ON LOCAL GOVERNMENT ARTICLE

9. The PR finds on page 3 that the Petition is “not in the best interest of the State” because it “proposes simply transferring powers and revenues from the borough service areas to a municipal government without increasing services or representation.” This is an unduly narrow application, with false statements of fact.

a. As the Alaska Supreme Court acknowledged in the *Keane* case, there is a preference for establishing a city over an “inefficient proliferation of service areas.” *Keane v. Local Boundary Commission*, 893 P.2d at 1243-1244.

b. Nikiski is now covered by multiple service areas, each with their own administration, which is inefficient and duplicative.

c. A home rule city would increase representation for Nikiski, including Tyonek, as these areas would gain nine (9) city council members in addition to the existing one (1) Borough Assembly member, and local government services would be provided by city staff who would be more accountable to residents than the Borough Administration.

E. Failure to Follow 3 AAC 110.440(c).

Reference our letter to the Commission chair dated August 10, 2017:
https://www.commerce.alaska.gov/web/Portals/4/pub/8_10_17%20Letter%20From%20Nikiski%20Requesting%20Suspension%20of%20Current%20Process.pdf

F. Disregard of Home Rule Powers.

1. Throughout the PR, the Petition is criticized because the proposed charter does not specifically list every single municipal power that the city will or might provide. This is also another example of the unduly restricted application of AS 29.05.011(a) standards to the Petition, and to the Department's incorrect made up “additional services” standard (discussed above).

2. However, under Alaska law, a home rule city can exercise any power not prohibited by law or charter. Alaska Constitution, Article X, Section 11, AS 29.04.040. AS 29.05.011(a) does not require that the Petition list or prove every municipal service that WILL be provided; just “anticipated functions.” AS 29.05.011(a)(3). The Petition does list anticipated functions; therefore it has satisfied this standard.

G. Incorrect Information or No Sources.

There are numerous places in the PR that are simply wrong or false; and other places where there are no sources for the data or information described, so the Petitioners have no way of fact-checking the data or information. Just a few examples are described below.

1. Borough Road Service Area Powers. The PR states frequently (pages 3, 29, 44, 46, 51, 61, 66, and 93) that the Kenai Peninsula Borough has nonareawide road service powers, in support of its determination to fail the Nikiski Petition, without citing a source for this claim. However, this is simply false. The Borough does not have nonareawide road service area powers. As a second class Borough, in order to obtain nonareawide powers, the Borough would have to hold an election in the entire area of the Borough outside cities, but this never happened. AS 29.35.210(c). If necessary, the Petitioners will provide more evidence at the hearing.

2. Law Enforcement Service Area. The PR page 42, finds a “disconnect” between the Petition’s “stated need for law enforcement...with no plans to provide this service.”

a. However, the Petition and Reply Brief both provide information about the plans to provide law enforcement.

b. The fact that a law enforcement service area was on the ballot shows Nikiski residents trying to obtain additional municipal services. The latest law enforcement service area proposal is also an example of the “disconnect” between the Kenai Peninsula Borough putting yet another overlapping Nikiski service area on the ballot (which violates the Alaska Constitution Article X, Section 5), and then a few years later objecting to incorporation of Nikiski, when incorporation is the proper method to add law enforcement in the circumstances.

3. Services Provided by Nikiski to Cook Inlet or West Side.

a. The Petition states that Nikiski firefighters fly to the west side of Cook Inlet for weekly training, and many residents work in the oil fields and platforms within the territory proposed for incorporation (page 76). In Exhibit L, the reply brief provides information on the transportation patterns across the inlet, which it contends demonstrate strong connections between the communities on either side of Cook Inlet (page 76). Yet the PR attempts to discredit or ignores these connections.

b. For example, the PR, page 2, concludes that the Petition does not demonstrate a reasonable need for city government because oil platforms in Cook Inlet are serviced by private industry “despite the Petition’s reasoning.” However, this is not “reasoning,” it is fact. The Department requested and obtained a letter from the Nikiski Fire Service Area Chief Baisden, dated March 9, 2017, which states that “The [Nikiski Fire] department provides emergency medical, fire protection, and rescue capabilities to the oil platforms, ships, docks, and industrial areas,” with a detailed description about these actual services.

4. Lack of Knowledge of Alaska Conditions. The PR contains many incorrect statements which show the lack of knowledge of Alaska conditions, but which are used to support the PR’s conclusion to reject incorporation. A few of the many examples:

a. Pages 54, 76: Travel in Alaska is only via roadways or public airports. This is false because it ignores many other methods of transportation, such as air charters or other air transportation (not to and from public airports), transportation via water, and transportation across land, but not on roadways.

b. Page 77: “As stated previously, Cook Inlet is a major body of water. Cook Inlet represents a physical and geographic barrier to community connections that are not bridged by any transportation patterns examined by the department.” This is also false, because the Reply Brief contained Exhibit L, a document proving water traffic to and from Nikiski and the West Side. In addition, there are numerous pipelines crossing Cook Inlet between Nikiski and the West Side; the Petitioners will provide proof of this fact as needed.

IV. CONCLUSION.

The Preliminary Report concludes that incorporation of Nikiski should be rejected, based on faults found in the Petition, but this conclusion is premature and in violation of due process, particularly, the Petitioners’ right to a fair hearing on their Petition under AS 29.05.100(a). The Preliminary Report is gravely flawed, both in its incorrect application of law and regulation, and its incorrect facts and argument. The Petitioner believes that these errors need to be corrected, and should not be duplicated, in the Final Report.

DATE: 9/23/2017

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