

**CITY OF GUSTAVUS, ALASKA  
PETITION FOR  
ANNEXATION TO THE CITY OF GUSTAVUS  
BY  
LEGISLATIVE REVIEW**

TO: THE STATE OF ALASKA LOCAL BOUNDARY COMMISSION

The petitioner seeks annexation by legislative review of the territory described herein under the provisions of AS 29.06.040(a), AS 29.06.040(b) and AS 29.06.040(d), 3 AAC 110.090 - 3 AAC 110.135, 3 AAC 110.140, 3 AAC 110.400 – 3 AAC 110.700, and 3 AAC 110.900 - 3 AAC 110.990.

All exhibits attached to this petition are incorporated by reference.

**Section 1: PETITIONER**

The Petitioner is the City of Gustavus (hereafter “City”).

**Section 2: PETITIONER’S REPRESENTATIVE**

The City designates the following individual to serve as its representative in matters concerning this annexation proposal.

Name: Jim Mackovjak, Mayor  
Place of Residence: #1 Spruce Road  
Gustavus, AK 99826

Mailing Address: City of Gustavus  
PO Box 1  
Gustavus, AK 99826

Email: mayor@gustavus-ak.gov  
Telephone: 907-697-2451  
Fax: 907-697-2136

The City designates the following individual to serve as its alternate representative in matters concerning this annexation proposal:

Name: Lou Cacioppo, Vice Mayor

Place of Residence: 211 Sockeye Drive  
Gustavus, AK 99826

Mailing Address: City of Gustavus  
PO Box 1  
Gustavus, AK 99826

Email: lou.cacioppo@gustavus-ak.gov

Telephone: 907-697-2451

Fax: 907-697-2136

### **Section 3: NAME AND CLASS OF MUNICIPALITY FOR WHICH A CHANGE IS PROPOSED**

The name and class of the municipality for which a change is proposed follows:

Name: City of Gustavus

Class: Second Class City

### **Section 4: PROPOSED COMMISSION ACTION**

The City petitions the Local Boundary Commission to annex territory to the City of Gustavus through the legislative review method.

### **Section 5: GENERAL DESCRIPTION OF THE TERRITORY PROPOSED FOR ANNEXATION**

The territory proposed for annexation to the City of Gustavus is a single contiguous area totaling approximately 16 square miles and wrapping around the southern and eastern boundaries of the City; however, it consists of two distinct areas. One of these, an upland area, generally includes the Falls Creek drainage. The other is a tidelands and submerged lands portion of Icy Passage lying between the present City limits and Pleasant Island.

## **SECTION 6: REASONS FOR ANNEXATION**

### **An Overview of the Reasons for Annexation**

The Falls Creek and Icy Passage areas that the City proposes to annex are uninhabited; the City does not anticipate that either area will become inhabited in the foreseeable future. Nevertheless, the City believes that the relatively limited Falls Creek and Icy Passage areas proposed for annexation exhibit a reasonable need for city government as required by 3 AAC 110.090(a), and therefore annexation is appropriate at this time.

Gustavus is a stable, well- and long-established community; relatively recently the community incorporated as the City of Gustavus. The influence that Gustavus exerts on the area in which it is located does not begin or end abruptly at the City's boundaries. Gustavus, like all communities and municipalities, exerts influences beyond its legally established and described boundaries.

As Gustavus residents and businesses conduct their daily activities, they often and regularly draw upon the resources of the nearby area. In particular, the community focuses on and relies upon the limited Falls Creek and Icy Passage areas proposed for annexation for subsistence (e.g. hunting, fishing, gathering, etc.), recreation (boating, hiking, camping, etc.), and resources (source of hydroelectric power, rock, community water supply, appropriate sites for moorage, anchoring, communication facilities, etc.).

Such community use of, interaction with and reliance upon the Falls Creek and Icy Passage areas proposed for annexation impose an urban impact upon those areas. In the few short years since the City's incorporation a number of circumstances have changed, which are intensifying and adding complexity to this interaction, and which prompt the City of Gustavus to petition to annex these territories. Several of these changed circumstances are "new" in the sense that they developed quickly, unexpectedly soon, after the City's incorporation. For example:

- Construction of the Falls Creek Hydroelectric Facility and related changes in road access, land ownership and land use within the Falls Creek area;
- Recent focus on Icy Passage as a source of tidal energy to generate electrical energy and related need for greater community control and influence over balancing potentially competing uses of Icy Passage resources; and

- Construction of the new public dock (scheduled completion Fall 2010) and related changes in demand for access to the dock and limited nearby moorage.

Other changes are simply evolutions of circumstances that existed at the time of incorporation, but that recently have become more significant concerns. For example:

- A growing need for adequate safe moorage and anchoring;
- A growing need to identify and secure a community potable water supply to address a public health concern; and
- A growing concern about the need to manage community impacts on Falls Creek and Icy Passage areas proposed for annexation.

Each of these represents an aspect of the community that is increasingly exerting impacts and influences upon a limited territory immediately beyond the City's borders. These impacts will occur regardless of whether annexation is approved. Passage of time will only exacerbate this situation. These impacts on the territory proposed for annexation are appropriate responsibilities of the City of Gustavus. The community's presence and influence in the territory proposed for annexation suggests that annexation to the City of Gustavus is appropriate at this time.

### **More Specific Reasons for Annexing the Falls Creek Area**

The City proposes to annex the Falls Creek area because the area exhibits a need for city government as evidenced by the following factors:

- The Falls Creek area is the single area with sufficient water resources to meet most local hydroelectric power needs. Ensuring that Gustavus is able to meet most of the community's electrical demands with relatively inexpensive hydroelectric power is central to the community's long-term viability.
- Development of the Falls Creek Hydroelectric Facility significantly changed public access to the area, and altered area land use and ownership patterns. Given the importance of the Facility and the related Falls Creek drainage area to the community, these changes clearly suggest the need for municipal planning, regulation and services.
- The Falls Creek area is the only practical source of water to supply a municipal water utility, which may ultimately be necessary to resolve certain public health needs.
- The Falls Creek area includes rock resources adequate to meet local construction needs; and

- The Falls Creek area includes sites suitable for developing, expanding and otherwise supporting critical community communication services.

Although uninhabited, the Falls Creek area proposed for annexation also exhibits reasonable need for city government. Largely as a result of the recent completion of the Falls Creek Hydroelectric Facility, this area is experiencing increasing commercial, recreational, and other community-related activity, which demonstrates that the area is in need of city government. These activities include those associated with the day-to-day operation and maintenance of the Falls Creek Hydroelectric Facility. They also include gradually increasing public use of and interest in the Falls Creek drainage. This growing public interest and use is largely due to the fact that the Falls Creek Hydroelectric Facility project included construction of the first permanent road access into the area.

Significantly, this access road originates with a connection to the City's road system. Although intended to support the construction and operation of the hydroelectric plant, this road dramatically improved public access to the area as well. Improved access combined with project-related changes in land ownership have resulted in increased public and private activity and interest in the area; the City anticipates that public and private activity in the area will continue to increase with time.

All of these activities represent aspects of the community that are increasingly exerting impacts and influences upon a limited portion of Falls Creek immediately adjacent to the City's existing borders. These impacts will occur regardless of whether annexation is approved. Passage of time will exacerbate this situation. The nature of these impacts is essentially urban in character and reflects a need for city government. The territories proposed for annexation need city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. These conditions demonstrate that the area of Falls Creek proposed for annexation "exhibit[s] a reasonable need for city government" as required by 3 AAC 110.090(a). Therefore, annexation to the City of Gustavus, as proposed, is appropriate.

### **More Specific Reasons for Annexing the Icy Passage Area**

The City proposes to annex the Icy Passage area because the area exhibits a need for city government as evidenced by the following factors:

- Icy Passage is the sole corridor for accessing the community via water-based modes of transportation, and for residents and visitors

to access nearby natural resources, particularly Pleasant Island and nearby Icy Strait.

- Icy Passage enjoys recognized potential to be a source of hydrokinetic-generated electric power.
- Icy Passage is a rich marine habitat; the community depends upon the bounty of both for recreation and sustenance.

Importantly, the Icy Passage area proposed for annexation, though uninhabited, also exhibits reasonable need for city government. In general, community use of, interaction with and reliance upon the Icy Passage area proposed for annexation impose an urban impact upon the area. Since the City's incorporation, this area has experienced increasing commercial, recreational, and other community-related activity that demonstrates the area is in need of city government. For example, the limited portion of Icy Passage proposed for annexation

- Has recently been identified as a source for tidal generation of electrical energy, which raises issues related to the need for greater community control and influence over balancing potentially competing uses of Icy Passage resources;
- Will soon see the impact of the operation of the new public dock (construction now underway) and related changes in demand for access to the dock and limited nearby moorage;
- Is likely the only reasonable solution to a growing community need for adequate safe moorage and anchoring; and
- Faces increasing community-related development pressures that could compete or conflict with the community's interest in preserving Icy Passage's rich marine resources and habitat.

Each of these circumstances represents an aspect of the community that is increasingly exerting impacts and influences upon a limited portion of Icy Passage immediately adjacent to the City's existing borders. Passage of time will exacerbate this situation. The impacts will occur regardless of whether annexation is approved; the nature of these impacts is essentially urban in character.

The territory proposed for annexation needs city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. The identified circumstances are appropriate functions and responsibilities of city government. Therefore, annexation to the City of Gustavus, as proposed, is appropriate.

## **Summary of Need to Annex**

In summary, the territory proposed for annexation would benefit from annexation for this essential reason: Commercial and recreational uses of the territories proposed for annexation exist at the present level because of the proximity of the City of Gustavus and Glacier Bay National Park. These uses make an impact on the territories proposed for annexation; the nature of these impacts is essentially urban in character. Recent changes in the community and in the territories proposed for annexation suggest clearly that the level of these uses and related impacts will increase. The territories proposed for annexation need city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. The identified circumstances are appropriately functions and responsibilities of city government. The areas proposed for annexation have a present, continuing and increasing need for city government.

These conditions demonstrate that the area of Icy Passage proposed for annexation “exhibit[s] a reasonable need for city government,” because it exhibits the following factors that are relevant under 3 AAC 110.090(a):

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;
- Existing or reasonably anticipated health, safety, and general welfare conditions;
- Existing or reasonably anticipated economic development;
- Adequacy of existing services; and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities.

## **Section 7: Legal Description of Territory Proposed for Annexation**

- A. A written legal description of the territory proposed for annexation is presented in Exhibit 1.
- B. A written legal description of the City should the annexation be approved is provided in Exhibit 2.
- C. A map showing the current boundaries of the City and the territory proposed for annexation, and plats and other documents

necessary to demonstrate the accuracy of the written legal description of the territory proposed for annexation are presented in Exhibit 3.

## **Section 8: Size of the Territory Proposed for City Boundary Change**

The City estimates that the territory proposed for annexation contains 16 square miles, more or less, including land and water areas.

## **Section 9: Population of the Territory Proposed for City Boundary Change**

The territory proposed for annexation is uninhabited. Therefore, the City estimates the population of the territory proposed for city boundary change is zero.

## **Section 10: Information Relating to Public Notice and Service of the Petition**

Exhibit 4 offers information relevant to providing public notice of the annexation proceedings. This includes information about local media, nearby municipal governments, places for posting notice, locations where the petition may be reviewed and parties who, because of their interest in this matter, may warrant individual notice of the annexation proceedings.

## **Section 11: Tax Data for City Boundary Change**

### ***Assessed or Estimated Value of Taxable Property***

As discussed in more detail in its Supporting Brief (Exhibit 6), the City does not expect that it would require the potential revenues of a property tax to support the current or anticipated needs of the City, with or without the proposed annexation.

The City currently does not levy a property tax. Therefore, the City does not have any assessed or estimated values of taxable properties in the City. Furthermore, the City does not anticipate or propose levying a property tax in the foreseeable future. As discussed in more detail in its Supporting Brief (see Exhibit 6 “Adequate Resources” discussion), the City does not expect that it would require the potential revenues of a property tax to support the current or anticipated needs of the City, with or without the proposed annexation. Finally, almost all of the property within both the Falls Creek and Icy Passage areas proposed for annexation is publicly owned; therefore annexation of this territory will

not affect meaningfully the base of property subject to a property tax. Accordingly, the City has not attempted to estimate values of taxable property within the City or for the area proposed for annexation for this petition.

### ***Projected Taxable Sales***

The City estimates that the value of additional sales that would occur within the territory proposed for annexation and that would be subject to City sales taxes upon annexation in the near term would be \$0. At the current sales tax levy, this would generate an estimated \$0 in additional sales tax revenue.

### ***Current City Taxes***

The type and rate of each tax that the City currently levies is listed below:

<b>Tax Type</b>	<b>Tax Rate</b>
Property Tax	None
Sales Tax	2.0 %
Transient Occupancy Tax	4.0 %
Fish Box Tax	\$10.00 per box

## **Section 12: Projections of Revenue, Operating Expenditures, and Capital Expenditures**

A projection of operating income and operating expenses, which includes capital expenses (capital projects and related expenses) through the City's fiscal year 2012 is provided in Exhibit 5. Those projections include two separate estimates: one assumes that annexation is approved; the other assumes that annexation is not approved. Those estimates also project revenues and expenditures one full fiscal year beyond the reasonably anticipated effective date for the proposed annexation. This projection includes consideration for completion of the transition plan required by AS 29.05.130 - 29.05.140 or 3 AAC 110.900.

## **Section 13: Existing Long-Term Municipal Debt**

The City does not have any existing long-term municipal debt.

## Section 14: Powers and Functions

The City exercises the following powers and functions within its existing boundaries.

- Library
- Disposal and Recycling Center
- Fire and EMS Emergency Response
- Road Maintenance
- Gustavus Community Network (Internet services)
- Small Boat Harbor

The City will extend all of these services to the area proposed for annexation upon its annexation.

The following table lists other agencies providing public facilities and services within the City's existing and proposed boundaries.

Provider	Service or Function
State of Alaska	<u>Education:</u> REAA 18 – Chatham School District <u>Police Protection:</u> Alaska State Troopers <u>Fire Code enforcement:</u> State Fire Marshall <u>Airport:</u> Alaska Department of Transportation & Public Facilities <u>State highways:</u> Alaska Department of Transportation & Public Facilities
Federal Government	<u>Parks:</u> National Park Service <sup>1</sup> <u>Public Safety:</u> U.S. Coast Guard
Other Agencies	<u>Public Health:</u> Gustavus Community Clinic

<sup>1</sup> The National Park Service has a formal Memorandum of Agreement with the Alaska State Troopers to assist the NPS to meet its local law enforcement needs.

The City is within the unorganized borough; therefore, there are no borough service areas within the territory proposed for city boundary change.

## **Section 15: Transition Plan**

### ***Transition Plan***

3 AAC 110.900(a) requires that a petition for annexation include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. Toward that end, the City has developed the following transition plan.

The City intends to extend all existing City functions to the annexed territory immediately upon the effective date of the annexation. However, the City does not require an elaborate transition plan to accomplish this goal. The essential features of the City's transition plan follow.

The territory proposed for annexation is uninhabited; it does not require the City to extend or add immediately significant City services or facilities. Importantly, the territory proposed for annexation holds the key for the City to respond effectively and efficiently to reasonably anticipated needs for municipal services and facilities rather than imposing new or expanded service or facility requirements upon the City.

Further, the City already provides EMS services on an extraterritorial basis in the territory proposed for annexation. The City would continue offering existing levels of EMS service throughout the territory after annexation. The transition in this regard would be seamless and immediate.

Although the City does not anticipate any immediate or short-term need to extend other services and functions to the territory proposed for annexation, it is prepared to do so on an as-needed basis. The City would base its decisions in such cases on its ability to fund the desired service extensions or added facilities at that time.

Finally, the City would immediately integrate the territory proposed for annexation into the City's existing planning functions as the City anticipates and responds to community growth and development issues.

***Assumption of Powers, Duties, Rights and Functions  
Presently Exercised by Existing Local Government Units  
Within the Territory Proposed for Annexation***

3 AAC 110.900(b) requires that the City provide a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. 3 AAC 110.900(b) further requires that the City prepare this transition plan in consultation with the officials of each existing borough, city, and unorganized borough service area. The plan must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

However, there are no existing boroughs, cities, unorganized borough service areas or other appropriate entities currently exercising any powers, duties, rights, or functions in the territory proposed for annexation. Accordingly, the City did not prepare the plan that would otherwise be required under 3 AAC 110.990(b).

***Transfer and Integration of Assets and Liabilities from  
Existing Local Government Units Within the Territory  
Proposed for Annexation***

3 AAC 110.900(c) requires that the City's petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. 3 AAC 110.900(c) further requires that the City prepare this plan in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change, and must design the transition plan to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. Finally, 3 AAC 110.900(c) requires that the City's transition plan specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

However, there are no existing boroughs, cities, unorganized borough service areas or other appropriate entities currently exercising any powers, duties, rights, or functions in the territory proposed for annexation. As a result, there are no apparent assets or liabilities to be

transferred from any such entity. Accordingly, the City did not prepare the plan that would otherwise be required under 3 AAC 110.990(c).

### ***Consultations with Officials of Existing Local Government Units***

3 AAC 110.900(e) requires that the City's petition state the names and titles of all officials of each existing borough, city, and unorganized borough service area that the City consulted in preparing its transition plan.

There are no existing boroughs, cities, or unorganized borough service areas wholly or partially included within the boundaries proposed for change. Accordingly, the City did not consult with any official representatives of boroughs, cities, or unorganized borough service areas in preparing its transition plan.

### **Section 16: Composition and Apportionment of the Governing Body**

The Gustavus City Council is a seven-member body, elected at large. Members serve three-year terms. The Mayor is a voting member of the City Council elected by and from the City Council for a term of one year.

The composition and apportionment of the Gustavus City Council would not change as a result of the proposed annexation.

### **Section 17: Federal Voting Rights Act Information**

Information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965) follows:

#### **A. Purpose and effect of annexation as it pertains to voting.**

The territory proposed for annexation is uninhabited; therefore the proposed annexation does not have the purpose and will not have the effect of excluding minorities while including other similarly situated persons. Further, under the City's electoral system, all elected offices are at-large positions. Therefore, annexation will have no effect on voting in City elections. No redistricting will be required as a result of annexation.

- B. Extent to which the annexation excludes minorities while including other similarly situated persons.

The territory proposed for annexation is uninhabited and therefore will not exclude minorities while including other similarly situated persons.

- C. Extent to which annexation reduces the City's minority population percentage.

The territory proposed for annexation is uninhabited and therefore will not affect the City's minority population percentage.

- D. Whether the electoral system of the City fails fairly to reflect minority voting strength.

The electoral system of the City of Gustavus reflects minority strength through at large elections for all offices.

- E. Participation by minorities in the development of the annexation proposal.

Participation in the development of the annexation plan has been open to all members of the public. The proposed annexation has been discussed at several public meetings during which public comment was invited and permitted by all persons.

- F. Designation of Alaska Native for U.S. Department of Justice contact.

The City designates Martha Tatum (formerly Romero) as the Alaska Native designated for U.S. Department of Justice contact. Martha Romero's address and telephone number are:

P.O. Box 284  
Gustavus, Alaska 99826  
(907) 697-3070

- G. Statement concerning the minorities' understanding of English in written and spoken forms.

English is spoken and understood throughout Gustavus. All minority groups are familiar with English in written and spoken form.

## **Section 18: Petitioner's Supporting Brief**

A supporting brief that provides a detailed explanation of how the proposal serves the best interests of the state and satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action is attached to this petition as Exhibit 6. Specifically, the City's Supporting Brief demonstrates that:

A. Need.

1. The territory proposed for annexation exhibits a reasonable need for city government as required by 3 AAC 110.090(a).
2. The City is capable of providing "essential municipal services" more efficiently and more effectively to the territory proposed for annexation than another existing city or organized borough as required by 3 AAC 110.090(b), 3 AAC 110.970(c) and 3 AAC 110.970(d).

B. Character. The territory proposed for annexation is compatible in character with the area inside the current boundaries of the City as required by 3 AAC 110.100.

C. Resources. The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.110.

D. Population. The population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government as required by 3 AAC 110.120.

E. Boundaries.

1. The proposed post-annexation boundaries of the City include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.130(a).
2. The proposed annexation addresses the requirements of 3 AAC 110.130(b), because the territory proposed for annexation is contiguous to the City's present corporate boundaries, will not create any enclaves, and includes all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

3. The proposed post-annexation boundaries of the City are on a scale suitable for city government, and include only that area comprising the local community plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation as required by 3 AAC 110.130(c)(1).
  4. As required by 3 AAC 110.130(c)(2), the proposed post-annexation boundaries of the City exclude entire geographical regions or large unpopulated areas, except where justified by the application of the city annexation standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.
  5. The territory proposed for annexation does not overlap the boundaries of any other organized city or of any borough. Therefore, this petition for annexation meets the requirements of 3 AAC 110.130(d), which require meeting the standards and procedures for annexation of an enlarged city to or detachment from an existing organized borough, or detachment of territory from a city, merger of cities, or consolidation of cities.
- F. Best Interests of the State. The proposed annexation to the City is in the best interests of the state under AS 29.06.040(a) and as required by 3 AAC 110.135.
- G. Annexation by Legislative Review Process is Appropriate. The City's proposal to annex the described territory via the legislative review process is appropriate because it meets one or more of the conditions set forth in 3 AAC 110.140. Specifically, the City's proposed annexation satisfies
1. 3 AAC 110.140(3); because the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
  2. 3 AAC 110.140(5); because annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;
  3. 3 AAC 110.140(7); because annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981; and will promote a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;

4. 3 AAC 110.140(8); because annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042; and
5. 3 AAC 110.140(9); because annexation of the territory by the legislative review process will serve the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state.

H. No Abridgment of Civil or Political Rights, Including Voting Rights. In accordance with 3 AAC 110.910, the proposed annexation to the City will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

## **Section 19: Authorization to File Petition**

A certified copy of the resolution adopted by the City Council to authorize the filing of this petition is attached as Exhibit 7.

## **Section 20: Affidavit of Petitioner's Representative**

An affidavit of the petitioner's representative affirming that the information in the petition is true and accurate is attached as Exhibit 8.

DATED at Gustavus, Alaska, this \_\_\_\_ day of \_\_\_\_\_, 2010.

By: \_\_\_\_\_  
Jim Mackovjak Mayor  
Petitioner's Representative

## **EXHIBIT 1**

—

### **CITY OF GUSTAVUS, ALASKA PETITION FOR ANNEXATION TO THE CITY OF GUSTAVUS BY LEGISLATIVE REVIEW**

#### **Legal Description of Territory Proposed for Annexation**

The territory proposed for annexation contains 16 square miles, more or less, and is generally described as all lands and waters contained within the following metes and bounds:

Beginning at the northeast corner of Gustavus Municipal lands (NE corner Sec 3, T40S, R59E CRM);

Thence east along the north boundary of Sec 2 (T40S, R59E CRM); Thence along the west, north, and east boundaries of Sec 36 (T39S, R59E CRM), to the northwest corner of Sec 31 (T39S, R60E CRM);

Thence due south to the north shore of Icy Passage;

Thence due south across Icy Passage to the Mean High Tide (MHT) line of Pleasant Island;

Thence westerly along the MHT meander line along the north shore of Pleasant Island to the Island's westernmost tip, in Sec 31 (T40S, R59E CRM) near National Geodetic Survey Monument "Ant";

Thence approximately west-northwest to the southwest corner of the Gustavus Municipal Boundary at a point in Icy Strait;

Thence approximately east-northeast along the Gustavus Municipal Boundary through Icy Passage, to the southeast corner of the Gustavus Municipal Boundary at a point in Icy Passage;

Thence north along the Gustavus Municipal Boundary to the point of origin.

**EXHIBIT 2**  
—  
**CITY OF GUSTAVUS, ALASKA**  
**PETITION FOR**  
**ANNEXATION TO THE CITY OF GUSTAVUS**  
**BY**  
**LEGISLATIVE REVIEW**

**Legal Description of City Should Annexation Be Approved**

The territory of the City, should the proposed annexation be approved, is generally described as all lands and waters contained within the following metes and bounds:

Beginning at the northeast corner of section 3 (T40S, R59E, Copper River Meridian); as shown on USGS Quadrangle Juneau (B-5) (minor revisions 1966), the true point of beginning;

Thence east along the north boundary of Section 2 (T40S, R59E);

Thence along the west and north boundaries of Section 36 (T39S, R59E);

Thence south along the eastern boundaries of section 36 (T39S, R59E), section 1 (T40S, R59E) and section 12 ((T40S, R59E), approximately 2.75 miles to the north shore of Icy Passage;

Thence south across Icy Passage to the mean high tide line of Pleasant Island;

Thence westerly along the mean high tide meander line following the north shore of Pleasant Island to the island's westernmost tip, in Sec 31 (T40S, R59E CRM) near National Geodetic Survey Monument "Ant";

Thence approximately west-northwest across Icy Strait to a point in Icy Strait 1.2 miles south of the mean high tide line along the common boundaries of sections 20 and 21 (T40S, R58E);

Thence continuing north along said section line to the northwest corner of section 9 (T40S, R58E);

Thence east to the northeast corner of section 9 (T40S, R58E);

Thence north to the northwest corner of section 3 (T40S, R58E);

Thence west along the township line dividing T39S and T40S, to the mean high tide line of Glacier Bay;

Thence continuing west approximately 375 feet to a point in Glacier Bay;

Thence north 1 mile to a point in Bartlett Cove;

Thence east  $\frac{1}{2}$  mile to a point in Bartlett Cove;

Thence northeast (N45 degrees east) approximately  $\frac{3}{4}$  mile to a point in Bartlett Cove;

Thence east approximately  $\frac{1}{4}$  mile to a point where the line of mean high tide meets the south boundary of the northeast  $\frac{1}{4}$  of section 29 (T39S, R58E);

Thence continuing east to the protracted center of section 25 (T39S, R58E);

Thence southeast to the northwest corner of section 5 (T40S, R59E);

Thence east to the northeast corner of section 3 (T40S, R59E), the true point of beginning.

The map displays the City of Gustavus Municipal Territory. The existing territory is shaded in light blue, while the proposed annexation area is shaded in light green. The map includes a legend in the bottom right corner with the following entries:

- Existing Territory (light blue square)
- Proposed Annexation (light green square)

The map also shows various geographical features, including roads, water bodies, and land parcels. The title "City of Gustavus Municipal Territory" is prominently displayed in the upper right corner.

The map displays the City of Gustavus Municipal Territory. The existing territory is shaded in light blue, while the proposed annexation area is shaded in light green. The map includes a legend in the bottom right corner with the following entries:

- Existing Territory (light blue square)
- Proposed Annexation (light green square)

The map also shows various geographical features, including roads, water bodies, and land parcels. The title "City of Gustavus Municipal Territory" is prominently displayed in the upper right corner.

The map displays the City of Gustavus Municipal Territory. The existing territory is shaded in light blue, while the proposed annexation area is shaded in light green. The map includes a legend in the bottom right corner with the following entries:

- Existing Territory (light blue square)
- Proposed Annexation (light green square)

The map also shows various geographical features, including roads, water bodies, and land parcels. The title "City of Gustavus Municipal Territory" is prominently displayed in the upper right corner.

The map displays the City of Gustavus Municipal Territory. The existing territory is shaded in light blue, while the proposed annexation area is shaded in light green. The map includes a legend in the bottom right corner with the following entries:

- Existing Territory (light blue square)
- Proposed Annexation (light green square)

The map also shows various geographical features, including roads, water bodies, and land parcels. The title "City of Gustavus Municipal Territory" is prominently displayed in the upper right corner.

**EXHIBIT 4**  
—  
**CITY OF GUSTAVUS, ALASKA**  
**PETITION FOR**  
**ANNEXATION TO THE CITY OF GUSTAVUS**  
**BY**  
**LEGISLATIVE REVIEW**

**Information Relating to Public Notice and Service  
of the Petition**

Information about local media, nearby municipal governments, places for posting notice, locations where the petition may be reviewed and parties who, because of their interest in this matter, may warrant individual notice of the annexation proceedings follows:

***Local Media***

Juneau Empire	3100 Channel Drive Juneau, AK 99801 907-586-3740
Capital City Weekly	134 North Franklin Street Juneau, AK 99801 907-789-4144
KTOO	360 Egan Drive Juneau, Alaska 99801-1748 907-586-1670

***Nearby Municipal Governments***

Haines Borough	P.O. Box 1209 Haines, AK 99827 907-766-2231
City of Hoonah	P.O. Box 360 Hoonah, AK 99829 907-945-3663

***Places for Posting Notices***

Gustavus City Hall Bulletin Board	PO Box 1 1/8 Mile Parker Road Gustavus, Alaska
--------------------------------------	--

Exhibit 4

Information Relating to Public Notice and Service of the Petition

U.S. Post Office Gustavus Bulletin Board	PO Box 9998 2 Mile Airport Road Gustavus, Alaska
Gustavus Dray Bulletin Board	PO Box 275 Four Corners Gustavus, Alaska
Beartrack Mercantile Bulletin Board	PO Box 10 1 Mile Dock Road Gustavus, Alaska
Gustavus Public Library Bulletin Board	PO Box 279 1.5 Mile Airport Road Gustavus, Alaska
Glacier Bay National Park Headquarters Bartlett Cove Bulletin Board	PO Box 140 7 Mile Park Road Gustavus, Alaska

***Locations for Reviewing the Petition***

<b><u>Location</u></b>	<b><u>Times</u></b>
Gustavus City Hall	1/8 Mile Parker Road Gustavus, Alaska
Gustavus Public Library	Monday 1:30-4:30, 7-9 PM Tuesday 1:30-4:30 PM Wednesday 1:30-4:30, 7-9 PM Thursday 10 AM-12PM, 1:30-4:30 PM Friday 1:30-4:30 PM Saturday 11AM-3 PM
U.S. Post Office Lobby	24 hours per day
Glacier Bay National Park Headquarters Bartlett Cove	M-F, 8:00 AM - 5:00 PM

The Petition may also be reviewed  
online at <http://cms.gustavus-ak.gov>

Exhibit 4

Information Relating to Public Notice and Service of the Petition

***Individual Notices***

Richard Levitt, President  
Gustavus Electric Company

P.O. Box 102  
Gustavus, AK 99826

Hoonah Indian Association

254 Roosevelt St  
Hoonah, AK 99829

Thomas Irwin, Commissioner  
Alaska Dept of Natural Resources

550 W. 7th. Avenue, Suite 1400  
Anchorage, AK 99501

**Exhibit 5 — Gustavus Admin Budget Forecast**  
**Assuming Annexation Approved**

	FY 2008 Actual	FY 2009 Actual	FY 2010 Current	FY 2011 Proposed	FY 2012 Forecast	FY 2013 Forecast
<b>Operating Income:</b>						
Fisheries Business Tax Payment	4,500.00	4,500.00	2,700.00	2,000.00	3,000.00	3,000.00
Payment In Lieu of Taxes	45,000.00	35,000.00	75,000.00	112,000.00	100,000.00	100,000.00
Municipal Energy Grant Reserve	1,500.00	7,660.00	7,000.00	4,000.00	2,000.00	2,000.00
Interest Income	6,000.00	10,000.00	5,000.00	1,500.00	5,000.00	6,000.00
*1 Grants	1,800.00	17,410.00	42,000.00	0.00	0.00	0.00
Lease Income	4,800.00	9,900.00	10,200.00	10,300.00	10,300.00	10,300.00
Business License Fees	0.00	0.00	0.00	2,500.00	2,500.00	2,500.00
Sales Tax Income	190,000.00	185,000.00	130,000.00	132,000.00	160,000.00	175,000.00
Tax Exempt Cards	120.00	120.00	80.00	80.00	80.00	80.00
State Revenue Sharing	0.00	100,000.00	118,000.00	118,000.00	100,000.00	100,000.00
*2 City Reserve	35,000.00	54,000.00	219,880.00	0.00	0.00	0.00
Municipal Energy Assistance (FY08)	95,700.00	0.00	0.00	0.00	0.00	0.00
<b>Total Operating Income</b>	<b>384,420.00</b>	<b>423,590.00</b>	<b>609,860.00</b>	<b>382,380.00</b>	<b>382,880.00</b>	<b>398,880.00</b>
<b>Operating Expense:</b>						
Advertising	2,000.00	1,000.00	2,000.00	2,000.00	2,000.00	1,500.00
Capital Expense (Capital projects and related expenses)	0.00	11,230.00	224,600.00	0.00	2,000.00	2,000.00
*3 City Committee Funding	138,610.00	163,110.00	160,480.00	155,360.00	160,000.00	165,000.00
Contractual Services	5,000.00	8,400.00	5,000.00	4,000.00	5,000.00	7,000.00
Donations Expense	50.00	50.00	50.00	50.00	50.00	50.00
Dues/Fees	1,300.00	1,300.00	1,750.00	1,750.00	2,000.00	2,000.00
Energy Grant Encumbered	65,000.00	0.00	0.00	0.00	0.00	0.00
Equipment	500.00	7,650.00	1,500.00	1,500.00	1,500.00	1,500.00
Freight	90.00	1,000.00	1,000.00	500.00	1,000.00	1,000.00
Gustavus Community Clinic Donation	35,000.00	54,000.00	54,000.00	27,000.00	0.00	0.00
*4 GVA	20,000.00	20,000.00	20,000.00	16,000.00	20,000.00	20,000.00
Insurance	3,000.00	3,000.00	3,500.00	3,000.00	4,000.00	4,500.00
Maintenance & Repair	0.00	3,600.00	3,600.00	3,600.00	5,000.00	5,000.00
Payroll Expense	40,960.00	58,500.00	64,680.00	73,360.00	76,000.00	79,360.00
Postage & Shipping	1,000.00	2,000.00	2,000.00	2,000.00	2,000.00	1,000.00
Professional Services	40,000.00	45,000.00	45,000.00	55,000.00	60,000.00	50,000.00
Reserve Funds	17,170.00	21,490.00	0.00	15,000.00	24,330.00	39,770.00
Supplies-General	650.00	0.00	0.00	0.00	0.00	0.00
Supplies-Office	1,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00
Telephone	2,000.00	2,000.00	2,000.00	2,500.00	2,000.00	2,200.00

**Exhibit 5 — Gustavus Admin Budget Forecast  
Assuming Annexation Approved**

	FY 2008 Actual	FY 2009 Actual	FY 2010 Current	FY 2011 Proposed	FY 2012 Forecast	FY 2013 Forecast
Training	790.00	2,100.00	1,200.00	3,260.00	1,500.00	2,000.00
Travel	8,300.00	7,000.00	7,000.00	9,000.00	6,000.00	6,500.00
Utilities	1,500.00	7,660.00	7,000.00	4,000.00	5,000.00	5,000.00
<b>Total Operating Expense</b>	<b>384,420.00</b>	<b>423,590.00</b>	<b>609,860.00</b>	<b>382,380.00</b>	<b>382,880.00</b>	<b>398,880.00</b>

**Footnotes:**

\*1 FY 2010 Grant Income and corresponding Capital Expense pertain to Gustavus Dock and Vessel Float capital project.

\*2 FY 2010 City Reserve income in the amount of 182,600 to be withdrawn from City Reserve Funds for Dock and Vessel Float project matching funds.  
As of FY 2010 Unencumbered amount of City Reserve Fund is 456,691.

**Encumbered Funds**

DRC	13,040.00
GCN	4,400.00
GCN Grant Match	20,000.00
GVFD	46,981.00
Lands Committee	10,000.00
Marine Facilities	4,609.00
Municipal Energy Grant	105,103.00
Parks & Rec	13,021.26
Roads Reserve	194,016.48
FY 2010 Dock Float	182,600.00
<b>Total Encumbered</b>	<b>593,770.74</b>

Total AMLIP Funds	956,871.35
Less Encumbered Funds	(593,770.74)
<b>Total Unencumbered AMLIP</b>	<b>363,100.61</b>

Unencumbered AMLIP	363,100.61
Merrill Lynch	93,590.78
<b>Total Unencumbered Reserve</b>	<b>456,691.39</b>

**Possible Emergency Uses**

Fill fuel tank farm to 50%	325,000.00
City operating exp for 4 months	350,000.00

\*3 Expense line item City Committee Funding pertain to committees that have budget oversight for entities such as the Library and Recycling Center.

\*4 Expense line item GVA is the Gustavus Visitors Association. The association promotes tourism in Gustavus.

**Exhibit 5 — Gustavus Admin Budget Forecast**  
**Assuming Annexation Not Approved**

	FY 2008 Actual	FY 2009 Actual	FY 2010 Current	FY 2011 Proposed	FY 2012 Forecast	FY 2013 Forecast
<b>Operating Income:</b>						
Fisheries Business Tax Payment	4,500.00	4,500.00	2,700.00	2,000.00	3,000.00	3,000.00
Payment In Lieu of Taxes	45,000.00	35,000.00	75,000.00	112,000.00	100,000.00	100,000.00
Municipal Energy Grant Reserve	1,500.00	7,660.00	7,000.00	4,000.00	2,000.00	2,000.00
Interest Income	6,000.00	10,000.00	5,000.00	1,500.00	5,000.00	6,000.00
*1 Grants	1,800.00	17,410.00	42,000.00	0.00	0.00	0.00
Lease Income	4,800.00	9,900.00	10,200.00	10,300.00	10,300.00	10,300.00
Business License Fees	0.00	0.00	0.00	2,500.00	2,500.00	2,500.00
Sales Tax Income	190,000.00	185,000.00	130,000.00	132,000.00	160,000.00	175,000.00
Tax Exempt Cards	120.00	120.00	80.00	80.00	80.00	80.00
State Revenue Sharing	0.00	100,000.00	118,000.00	118,000.00	100,000.00	100,000.00
*2 City Reserve	35,000.00	54,000.00	219,880.00	0.00	0.00	0.00
Municipal Energy Assistance (FY08)	95,700.00	0.00	0.00	0.00	0.00	0.00
<b>Total Operating Income</b>	<b>384,420.00</b>	<b>423,590.00</b>	<b>609,860.00</b>	<b>382,380.00</b>	<b>382,880.00</b>	<b>398,880.00</b>
<b>Operating Expense:</b>						
Advertising	2,000.00	1,000.00	2,000.00	2,000.00	2,000.00	1,500.00
Capital Expense (Capital projects and related expenses)	0.00	11,230.00	224,600.00	0.00	2,000.00	2,000.00
*3 City Committee Funding	138,610.00	163,110.00	160,480.00	155,360.00	160,000.00	165,000.00
Contractual Services	5,000.00	8,400.00	5,000.00	4,000.00	5,000.00	7,000.00
Donations Expense	50.00	50.00	50.00	50.00	50.00	50.00
Dues/Fees	1,300.00	1,300.00	1,750.00	1,750.00	2,000.00	2,000.00
Energy Grant Encumbered	65,000.00	0.00	0.00	0.00	0.00	0.00
Equipment	500.00	7,650.00	1,500.00	1,500.00	1,500.00	1,500.00
Freight	90.00	1,000.00	1,000.00	500.00	1,000.00	1,000.00
Gustavus Community Clinic Donation	35,000.00	54,000.00	54,000.00	27,000.00	0.00	0.00
*4 GVA	20,000.00	20,000.00	20,000.00	16,000.00	20,000.00	20,000.00
Insurance	3,000.00	3,000.00	3,500.00	3,000.00	4,000.00	4,500.00
Maintenance & Repair	0.00	3,600.00	3,600.00	3,600.00	5,000.00	5,000.00
Payroll Expense	40,960.00	58,500.00	64,680.00	73,360.00	76,000.00	79,360.00
Postage & Shipping	1,000.00	2,000.00	2,000.00	2,000.00	2,000.00	1,000.00
Professional Services	40,000.00	45,000.00	45,000.00	55,000.00	60,000.00	50,000.00
Reserve Funds	17,170.00	21,490.00	0.00	15,000.00	24,330.00	39,770.00
Supplies-General	650.00	0.00	0.00	0.00	0.00	0.00
Supplies-Office	1,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00
Telephone	2,000.00	2,000.00	2,000.00	2,500.00	2,000.00	2,200.00

**Exhibit 5 — Gustavus Admin Budget Forecast**  
**Assuming Annexation Not Approved**

	FY 2008 Actual	FY 2009 Actual	FY 2010 Current	FY 2011 Proposed	FY 2012 Forecast	FY 2013 Forecast
Training	790.00	2,100.00	1,200.00	3,260.00	1,500.00	2,000.00
Travel	8,300.00	7,000.00	7,000.00	9,000.00	6,000.00	6,500.00
Utilities	1,500.00	7,660.00	7,000.00	4,000.00	5,000.00	5,000.00
<b>Total Operating Expense</b>	<b>384,420.00</b>	<b>423,590.00</b>	<b>609,860.00</b>	<b>382,380.00</b>	<b>382,880.00</b>	<b>398,880.00</b>

**Footnotes:**

\*1 FY 2010 Grant Income and corresponding Capital Expense pertain to Gustavus Dock and Vessel Float capital project.

\*2 FY 2010 City Reserve income in the amount of 182,600 to be withdrawn from City Reserve Funds for Dock and Vessel Float project matching funds.  
As of FY 2010 Unencumbered amount of City Reserve Fund is 456,691.

**Encumbered Funds**

DRC	13,040.00
GCN	4,400.00
GCN Grant Match	20,000.00
GVFD	46,981.00
Lands Committee	10,000.00
Marine Facilities	4,609.00
Municipal Energy Grant	105,103.00
Parks & Rec	13,021.26
Roads Reserve	194,016.48
FY 2010 Dock Float	182,600.00
<b>Total Encumbered</b>	<b>593,770.74</b>

Total AMLIP Funds	956,871.35
Less Encumbered Funds	(593,770.74)
<b>Total Unencumbered AMLIP</b>	<b>363,100.61</b>

Unencumbered AMLIP	363,100.61
Merrill Lynch	93,590.78
<b>Total Unencumbered Reserve</b>	<b>456,691.39</b>

**Possible Emergency Uses**

Fill fuel tank farm to 50%	325,000.00
City operating exp for 4 months	350,000.00

\*3 Expense line item City Committee Funding pertain to committees that have budget oversight for entities such as the Library and Recycling Center.

\*4 Expense line item GVA is the Gustavus Visitors Association. The association promotes tourism in Gustavus.

**EXHIBIT 6**  
**PETITIONER'S BRIEF**

—

**City of Gustavus, Alaska**  
**Petition for**  
**Annexation to the City of Gustavus by**  
**Legislative Review**  
**September 2010**

**EXHIBIT 6**  
**PETITIONER'S BRIEF**

**City of Gustavus, Alaska**  
**Petition for**  
**Annexation to the City of Gustavus by**  
**Legislative Review**

**TABLE OF CONTENTS**

<b>General Introduction to Brief Supporting Petition for Annexation .....</b>	<b>1</b>
<b>Need for City Government.....</b>	<b>1</b>
<b>Introduction .....</b>	<b>1</b>
<b>Discussion .....</b>	<b>2</b>
Territory Proposed for Annexation Exhibits Reasonable Need for City Government.....	2
The Standard.....	2
The Territory Proposed for Annexation .....	2
An Overview of the Need for City Government .....	2
Falls Creek Area Proposed for Annexation .....	5
Introduction .....	5
Sole Source of Community Hydroelectric Power.....	6
Community Planning and Regulation .....	8
Future Source for Community Potable Water.....	10
Extraterritorial Powers Exercised in the Territory .....	13
Access to Resources .....	14
Communication Services .....	14
Summary – Annexation of Falls Creek Area .....	15
Icy Passage Area Proposed for Annexation.....	16
Introduction .....	16
Marine Access to Community .....	18
Restricted Navigable Waters .....	18
Limited Options for Small Boat Harbor.....	20
Access to Community's Sole Deep Water Dock.....	22
Potential for Hydrokinetic (Tidal) Electric Generation .....	25
Rich Marine Resource and Habitat.....	28
Summary – Annexation of Icy Passage Area.....	29
Conclusion - Territory Proposed for Annexation Exhibits Reasonable Need for City Government.....	30
Essential Municipal Services Cannot Be Provided More Efficiently or More Effectively By Another Existing City or Organized Borough.....	31
Introduction .....	31
Discussion .....	31
Summary – Essential Services Most Efficiently and Effectively Provided by City .....	32
<b>Conclusion.....</b>	<b>32</b>

<b>Compatible Character.....</b>	<b>34</b>
<b>Introduction .....</b>	<b>34</b>
<b>Discussion .....</b>	<b>34</b>
The Standard .....	34
The Territory Proposed for Annexation .....	34
Falls Creek Area .....	35
Land Use, Land Ownership and Transportation Patterns .....	35
Suitability for Community Purposes .....	36
Natural Geographic Features.....	36
Summary – Falls Creek Area .....	36
Icy Passage Area .....	37
Suitability for Community Purposes and Transportation Patterns .....	37
Natural Geographic Features.....	38
Summary – Icy Passage Area .....	38
<b>Conclusion.....</b>	<b>38</b>
<b>Adequate Resources .....</b>	<b>40</b>
<b>Introduction .....</b>	<b>40</b>
<b>Discussion .....</b>	<b>40</b>
The Standard .....	40
Demonstrated Capability .....	41
Anticipated City Functions and Expenses .....	42
Revenue .....	43
Community Revenue Sharing and PILT Payments .....	43
Sales Tax Revenues .....	43
Property Tax Revenues .....	44
Ability to Generate and Collect Revenue and Income .....	44
Economic Base of the Territory within the City After Annexation .....	46
Local Economy .....	47
An Entrepreneurial Community.....	48
Land Use of the Territory Proposed for Annexation.....	49
<b>Conclusion.....</b>	<b>50</b>
<b>Sufficiently Large and Stable Population .....</b>	<b>51</b>
<b>Introduction .....</b>	<b>51</b>
<b>Discussion .....</b>	<b>51</b>
The Standard .....	51
Census Data.....	51
Alaska Permanent Fund Application Data .....	55
<b>Conclusion.....</b>	<b>56</b>
<b>Appropriate Boundaries .....</b>	<b>57</b>
<b>Introduction .....</b>	<b>57</b>
<b>Discussion .....</b>	<b>57</b>
The Standard .....	57
Area Proposed for Annexation Includes Necessary Land and Water .....	58
Land Use and Ownership Patterns.....	59
Population Density .....	59
Existing and Reasonably Anticipated Transportation Patterns and Facilities.....	62
Natural Geographical Features and Environmental Factors .....	62
Extension of Services through Extraterritorial Powers.....	63
Summary – Proposed Annexation Includes Necessary Land and Water .....	63

Area Proposed for Annexation is Contiguous to Current City Boundaries.....	63
Summary – Contiguous to Current City Boundaries .....	63
Area Proposed for Annexation Promotes Limitation of Community.....	64
On A Scale Suitable For City Government .....	64
Anticipates Requirements During Decade Following Effective Date.....	65
Does Not Include Entire Geographic Regions or Unpopulated Areas .....	66
Territory Otherwise Suitable for City Government.....	67
Area Proposed for Annexation Does Not Overlap Other Municipal Boundaries .....	67
Summary – Area does not Overlap Other Municipal Boundaries .....	67
<b>Conclusion.....</b>	<b>67</b>
<b>Annexation Serves Best Interest of the State .....</b>	<b>69</b>
<b>Introduction .....</b>	<b>69</b>
<b>Discussion .....</b>	<b>69</b>
The Standard.....	69
Promotes Maximum Local Self-government.....	69
Promotes Minimum Number of Local Government Units.....	70
Relieves State Government of Responsibility to Provide Local Services .....	70
<b>Conclusion.....</b>	<b>71</b>
<b>Annexation Via Legislative Review Process is Appropriate .....</b>	<b>73</b>
<b>Introduction .....</b>	<b>73</b>
<b>Discussion .....</b>	<b>73</b>
The Standard.....	73
Annexation through Legislative Review Appropriate Under 3 AAC 110.140(3).....	74
Falls Creek Area Proposed for Annexation .....	75
Icy Passage Area Proposed for Annexation.....	75
Summary – Petition Meets Requirements of 3 AAC 110.140(3) .....	77
Annexation through Legislative Review Appropriate Under 3 AAC 110.140(5).....	77
Falls Creek Area Proposed for Annexation .....	78
Source of the Community’s Hydroelectric Power .....	78
Hydroelectric Project Introduced Changes to Area That Suggest Need for City Planning and Control .....	78
Future Community Water supply .....	79
Extraterritorial Powers Exercised in the Territory Proposed for Annexation.....	79
Access to Resources .....	80
Communication Services .....	80
Icy Passage Area Proposed for Annexation.....	80
Limited Options for Small Boat Harbor.....	80
Controlling Access to Community’s Sole Deep Water Dock.....	81
Facilitate Development of Potential for Hydrokinetic (Tidal) Electric Generation.....	82
Protect Rich Marine Resource and Habitat .....	82
Summary – Petition Meets Requirements of 3 AAC 110.140(5) .....	82
Annexation through Legislative Review Appropriate Under 3 AAC 110.140(7).....	82
Proposed Annexation Consistent with Alaska Constitution Article X, Section 1.....	83
Proposed Annexation Promotes Local Self Government .....	83
Proposed Annexation Promotes Minimum Number of Government Units .....	84
Summary – Petition Meets Requirements of 3 AAC 110.140(7) .....	84
Annexation through Legislative Review Appropriate Under 3 AAC 110.140(8).....	84
The Constitutional Standard for Incorporating a City.....	85
Summary re Constitutional Standard for Incorporating a City .....	86
The AS 29.05 Standards for Incorporating a City .....	86
AS 29.05.011(a)(2) — Boundaries.....	86

AS 29.05.011(a)(3) — Resources .....	87
AS 29.05.011(a)(4) — Population.....	87
AS 29.05.011(a)(5) — Need for City Government.....	87
AS 29.05.021(a) — A Limitation for Incorporation.....	88
Summary re AS 29.05 Standards for Incorporating a City .....	88
The Alaska Administrative Code Standards (3 AAC 110.005 – 3 AAC 110.042) for Incorporating a City .....	88
3 AAC 110.005 – Community.....	88
3 AAC 110.010 – Need .....	90
3 AAC 110.020 – Resources.....	91
3 AAC 110.030 – Population .....	92
3 AAC 110.040 – Boundaries Include All Land and Water Necessary.....	93
On a Scale Suitable for City Government .....	95
Unpopulated Areas Justified by Application of Standards.....	96
3 AAC 110.042 – Best Interests of the State.....	97
Summary re Alaska Administrative Code Standards for Incorporating a City .....	98
Summary – Petition Meets Requirements of 3 AAC 110.140(8) .....	98
Annexation through Legislative Review Appropriate Under 3 AAC 110.140(9).....	98
Proposed Annexation Serves Policies Set Out in the Constitution .....	98
Proposed Annexation Serves Policies of AS 29.06.....	99
Proposed Annexation is in the Best Interests of the State.....	99
Summary – Petition Meets Requirements of 3 AAC 110.140(9) .....	100
<b>Conclusion.....</b>	<b>100</b>
<b>No Abridgement of Civil or Political Rights, Including Voting Rights.....</b>	<b>102</b>
<b>Introduction .....</b>	<b>102</b>
<b>Discussion .....</b>	<b>102</b>
<b>Conclusion.....</b>	<b>102</b>

**EXHIBIT 6**  
**PETITIONER'S BRIEF**

—

**City of Gustavus, Alaska**  
**Petition for**  
**Annexation to the City of Gustavus by**  
**Legislative review**

—

**GENERAL INTRODUCTION TO BRIEF SUPPORTING PETITION  
FOR ANNEXATION**

This brief explains how the proposed annexation satisfies the standards set out in 3 AAC 110.090 - 3 AAC 110.135, 3 AAC 110.140, 3 AAC 110.400 – 3 AAC 110.700, and 3 AAC 110.900 - 3 AAC 110.990.

**NEED FOR CITY GOVERNMENT**

***Introduction***

This section will demonstrate that:

- The territory proposed for annexation exhibits a reasonable need for city government as required by 3 AAC 110.090(a); and that
- The City is capable of providing “essential municipal services” more efficiently and more effectively to the territory proposed for annexation than another existing city or organized borough as required by 3 AAC 110.090(b), 3 AAC 110.970(c) and 3 AAC 110.970(d).

## ***Discussion***

### **Territory Proposed for Annexation Exhibits Reasonable Need for City Government**

#### **The Standard**

3 AAC 110.090(a) provides that “The territory must exhibit a reasonable need for city government. In this regard, the ... [Local Boundary Commission] may consider relevant factors, including:

- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;
- (2) existing or reasonably anticipated health, safety, and general welfare conditions;
- (3) existing or reasonably anticipated economic development;
- (4) adequacy of existing services;
- (5) extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and
- (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.”

#### **The Territory Proposed for Annexation**

The territory proposed for annexation to the City of Gustavus is a single contiguous area totaling approximately 16 square miles and wrapping around the southern and eastern boundaries of the City; however, it consists of two distinct areas. One of these, an upland area, generally includes the Falls Creek drainage. The other is a tidelands and submerged lands portion of Icy Passage lying between the present City limits and Pleasant Island.

#### **An Overview of the Need for City Government**

The Falls Creek and Icy Passage areas proposed for annexation are uninhabited; the City does not anticipate that either area will become inhabited in the foreseeable future. Nevertheless, the City believes that the relatively limited Falls Creek and Icy Passage areas proposed for annexation exhibit a reasonable need for city government as required by 3 AAC 110.090(a). Specifically, the City believes that the annexation, as

proposed, meets the conditions set forth in 3 AAC 110.090(a)(1) through (5).

Gustavus is a stable, well- and long-established community; relatively recently the community incorporated as the City of Gustavus. The influence that Gustavus exerts on the area in which it is located does not begin or end abruptly at the City's boundaries. Gustavus, like all communities and municipalities, exerts influences beyond its legally established and described boundaries.

As Gustavus residents and businesses conduct their daily activities, they often and regularly draw upon the resources of the nearby area. In particular, the community focuses on and relies upon the limited Falls Creek and Icy Passage areas proposed for annexation for subsistence (e.g. hunting, fishing, gathering, etc.), recreation (boating, hiking, camping, etc.), and resources (source of hydroelectric power, rock, community water supply, appropriate sites for moorage, anchoring, communication facilities, etc.).

Such community use of, interaction with and reliance upon the Falls Creek and Icy Passage areas proposed for annexation impose an urban impact upon those areas. In the few short years since the City's incorporation a number of circumstances have changed, which are intensifying and adding complexity to this interaction, and which prompt this petition for annexation. Several of these changed circumstances are "new" in the sense that they developed quickly, unexpectedly soon, after the City's incorporation. For example:

- Construction of the Falls Creek Hydroelectric Facility and related changes in road access, land ownership and land use within the Falls Creek area;
- Recent focus on Icy Passage as a source of hydrokinetic energy and related need for greater community control and influence over balancing potentially competing uses of Icy Passage resources; and
- Construction of the new public dock (scheduled completion, Fall 2010) and related changes in demand for access to the dock and limited nearby moorage.

Others are simply evolutions of circumstances that existed at the time of incorporation, but that recently have become more significant concerns. For example:

- A growing need for adequate safe moorage and anchoring;
- A growing need to identify and secure a community potable water supply to address a public health concern; and

- A growing concern about the need to manage community impacts on Falls Creek and Icy Passage areas proposed for annexation.

Each of these represents an aspect of the community that is increasingly exerting impacts and influences upon a limited territory immediately beyond the City's borders. These impacts will occur regardless of whether annexation is approved. However, these impacts on the territory proposed for annexation are appropriate responsibilities of the City of Gustavus. In retrospect, the territory presently proposed for annexation should have been included in the boundaries established at the time of incorporation.<sup>1</sup> Passage of time will only exacerbate this situation. The community's presence and influence in the territory proposed for annexation suggests that annexation to the City of Gustavus is appropriate at this time.

In summary, the territory proposed for annexation would benefit from annexation for this essential reason: Commercial and recreational uses of the territories proposed for annexation exist at the present level because of the proximity of the City of Gustavus and of Glacier Bay National Park. These uses make an impact on the territories proposed for annexation; the nature of these impacts is essentially urban in character. Recent changes in the community and in the territories proposed for annexation suggest clearly that the level of these uses and related impacts will increase. The territories proposed for annexation need city government to mitigate the impacts upon the area through planning, exercising city powers, and otherwise balancing the overall best interests

---

<sup>1</sup> See also the section entitled "Annexation through Legislative Review Appropriate Under 3 AAC 110.140(8)," which begins on page 113 of this Brief.

3 AAC 110.140(8) allows annexation through the legislative review procedure, the method proposed by this petition, if annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042. (Emphasis added.) As discussed in more detail beginning on page 113 of this Brief, the City's proposed annexation of both the Falls Creek and Icy Passage areas meets this standard, because it would enhance the extent to which the City meets 3 AAC 110.040, the boundary standard for incorporating a city. Some of the conditions identified in that discussion existed at the time of incorporation. Others could have been reasonably anticipated. While hindsight can easily be 20/20, it is arguable that the Falls Creek and Icy Passage territories presently proposed for annexation could have been included in the original incorporation boundaries.

of the community and the territories proposed for annexation. The identified circumstances are appropriately functions and responsibilities of city government. The areas proposed for annexation have a present, continuing and increasing need for city government. Annexation to the City of Gustavus, as proposed, is therefore appropriate.

More complete discussion of this need for annexation follows. Because the two areas are quite different in character, this discussion of the territories' need to be annexed is organized by area.

## **Falls Creek Area Proposed for Annexation**

### ***Introduction***

The City proposes to annex approximately four square miles of Falls Creek area land, which is contiguous to and generally east of current City boundaries. The Falls Creek area proposed for annexation includes the territory described in the Federal Energy Regulatory Commission (FERC) permit for construction and operation of the Falls Creek Hydroelectric Facility; a portion of the Falls Creek drainage area, which includes land within the Glacier Bay National Wilderness; approximately 850 acres of State of Alaska land; and two private Native allotment parcels (the George Allotment of approximately 250 acres and the Mills Allotment of approximately 280 acres) totaling approximately 530 acres.

The City's need to annex this Falls Creek area is based upon the following factors:

- The Falls Creek area is the single area with sufficient water resources to meet most local hydroelectric power needs. Ensuring that Gustavus is able to meet most of the community's electrical demands with relatively inexpensive hydroelectric power is central to the community's long-term viability.
- Development of the Falls Creek Hydroelectric Facility significantly changed public access to the area, and altered area land use and ownership patterns. Given the importance of the Facility and the related Falls Creek drainage area to the community, these changes clearly suggest the need for municipal planning, regulation and services.
- The Falls Creek area is the only practical source of water to supply a municipal water utility, which may ultimately be necessary to resolve certain public health needs.
- The Falls Creek area includes rock resources adequate to meet local construction needs; and

- The Falls Creek area includes sites suitable for developing, expanding and otherwise supporting critical community communication services.

Although uninhabited, the Falls Creek area proposed for annexation, also exhibits reasonable need for city government. Largely as a result of the recent completion of the Falls Creek Hydroelectric Facility, this area is experiencing increasing commercial, recreational, and other community-related activity that demonstrates the area is in need of city government. These activities include those associated with the day-to-day operation and maintenance of the Falls Creek Hydroelectric Facility. They also include gradually increasing public use of and interest in the Falls Creek drainage. This growing public interest and use is largely due to the fact that the Falls Creek Hydroelectric Facility project included construction of the first permanent road access into the area.

Significantly, this access road originates with a connection to the City's road system. Although intended to support the construction and operation of the hydroelectric plant, this road dramatically improved public access to the area as well. Improved access combined with project-related changes in land ownership have resulted in increased public and private activity and interest in the area; the City anticipates that public and private activity in the area will continue to increase with time.

All of these activities represent aspects of the community that are increasingly exerting impacts and influences upon a limited portion of Falls Creek immediately adjacent to the City's existing borders. These impacts will occur regardless of whether annexation is approved. Passage of time will exacerbate this situation. The nature of these impacts is essentially urban in character and reflects a need for city government. The territories proposed for annexation need city government to mitigate the impacts upon the area through planning, exercising city powers, and otherwise balancing the overall best interests of the community and the territories proposed for annexation. These conditions demonstrate that the area of Falls Creek proposed for annexation "exhibit[s] a reasonable need for city government" as required by 3 AAC 110.090(a). A more detailed discussion demonstrating that the Falls Creek area proposed for annexation exhibits reasonable need for city government follows.

#### ***Sole Source of Community Hydroelectric Power***

The Falls Creek area is the single area with sufficient water resources to meet most of Gustavus' electrical demands with hydroelectric power. Gustavus Electric Company (GEC), a private utility, supplies Gustavus with electric power. Prior to the Falls Creek Hydroelectric Project, GEC

relied entirely on diesel-powered generators. The high cost of diesel-generated electricity constrained economic growth and development and generally threatened the community's economy. Accordingly, Gustavus supported the Falls Creek Hydroelectric Facility project.

The Falls Creek Hydroelectric Facility will meet most of Gustavus' and Glacier Bay National Park's electrical needs, and, importantly, will help reduce and stabilize the cost of electrical power. GEC's notable success in bringing the Falls Creek Hydroelectric Facility on line is, therefore, critically important to the community's long-term survival, and to its ability to grow and develop.

Maintaining stable, low-cost electrical energy is an important community development strategy. Supporting those efforts is an appropriate role for the City to play. Annexation of the Falls Creek area will allow the City to actively support GEC's efforts to operate the hydro facility at the lowest possible cost and thereby to contribute to community economic development and diversification.

While the benefits of the Falls Creek Hydroelectric Facility to the community cannot be overstated, they do come at certain costs to the area proposed for annexation. These costs are the result of routine and regular Facility operation and maintenance activities, increased public access to the area, and other changes in levels and types of human activities resulting from altered land ownership and land use patterns.

These changes to the area call for extending city government to the area as a means of managing community impact on the Falls Creek area, of balancing increasing community-related development pressures with the community's interest in preserving Falls Creek's natural resources and habitat. The Falls Creek territory proposed for annexation will benefit from City of Gustavus community planning and regulation. Thus, the development of the Falls Creek Hydroelectric Facility within the territory proposed for annexation has altered the levels and nature of activities within the territory in ways that demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.090(a)(1));

- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.090(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.090(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.090(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.090(a)(5)).

### ***Community Planning and Regulation***

The Falls Creek area has always been an important part of the Gustavus community. However, the recently completed Falls Creek Hydroelectric Facility introduces change into the area. New and predictable activities related to construction and operation of the hydroelectric facility affect the area and the community's relationship to the area. Those changes clearly suggest the need to extend Gustavus city government to the area proposed for annexation.

The territory proposed for annexation is currently uninhabited, as it has been for as long as most locals can remember. Historic use of this area included logging and other resource gathering, and periodic but generally limited use of the two Native allotments. Typically, these activities were intermittent, temporary, and relatively short in duration.

The Falls Creek Hydroelectric Facility project changed land ownership and use patterns. While under consideration for decades, the Falls Creek potential as the sole practical source of hydro generated electric power for Gustavus only became legally possible after Congress passed the Glacier Bay National Park Boundary Adjustment Act in 1998. That Act gave GEC the right to conduct studies in Park land around Falls Creek, and to eventually plan, design and construct the Falls Creek Hydroelectric Facility under permit from FERC.

However, to ensure that the National Park System would not suffer any net loss of acreage or value if FERC issued a license for a project in the Falls Creek area, the Act also required that the State exchange about 1,100 acres with the federal government. The State designated its recently acquired Falls Creek area lands for habitat protection and watershed management. The State made provisions for possible rock extraction for community use, however. The guidelines stipulate, among many other things, that pedestrians but no private vehicles (including

ATV's) will be allowed on the FERC-permitted roads, and that GEC will maintain high aesthetic standards in design, construction, operation and maintenance.

On balance the community strongly supported the Falls Creek Hydroelectric project, because of a need for more affordable electricity, only possible at present through hydro generation. Nevertheless, during public hearings related to the land exchange, some expressed understandable concern over the immediate and long-term impact of the hydroelectric development in the Falls Creek area. (See Attachment 1.)

Construction of the Falls Creek Hydroelectric Facility had a predictable short-term impact on the area. Normal facility operation and maintenance will introduce new activities into the area that will have long-term impacts. Facility design, careful construction and GEC's investment in and commitment to Gustavus addressed and mitigated many community concerns regarding project impact on a sensitive area.

However, some project-related impact on the Falls Creek area is inevitable. For example, the project required about four miles of new road to allow facility construction, operation and maintenance. This road, the only access for operation and maintenance of the hydro facility, originates within the City of Gustavus; it connects to Rink Creek Road, an existing City street. Although the project's FERC permit and State land use regulations covering adjacent lands limit the use of that road, the project nevertheless created permanent road access where there was none before. The operation and maintenance of the Falls Creek Hydroelectric Facility also bring permanent activities and sounds to an area unlike any there before. These are inevitable and permanent effects on the area.

But the Falls Creek Hydroelectric Facility inevitably will bring other changes to the area. Improved access, even if limited by permit, will allow greater public use of the natural biotic and other resources. Improved access will impose greater pressure on the fish, wildlife and other natural resources of the area. While the exact nature of those changes and their long-term implications remain unknown for the present, the City foresees several areas of likely change. From the community's perspective, change will most likely occur in land use and increased pressure on the area's natural resources. The City does not anticipate rapid or dramatic change, but the City believes changes are inevitable.

The Falls Creek area is vitally important to the Gustavus community for many reasons in addition to its obvious role as a source of hydroelectric power. The Falls Creek area has always been an integral part of the

community and of the City. The area traditionally has provided an important backdrop to the community. It offers ready access to bountiful natural resources, including fish and wildlife, as well as timber, rock, and gravel for community use or enjoyment.

The Falls Creek Hydroelectric Facility project brought changes in land ownership and improved access to the area. These changes bind the area even more closely to the area presently included within the boundaries of the City of Gustavus. The proposed annexation will recognize the fact that the area has become more tightly integrated into the existing City of Gustavus. Importantly, annexation will allow the City to influence federal and state agencies as they make decisions and take actions affecting their holdings in the Falls Creek area. Annexation will also allow the City to exercise municipal planning, regulation and other controls over this area, so important to the community, whenever possible and appropriate.

Thus, recent changes within the territory proposed for annexation, especially those related to the development of the Falls Creek Hydroelectric Facility, have altered the levels and nature of activities within the territory in ways that demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

#### ***Future Source for Community Potable Water***

The City anticipates a future need to establish a municipal water utility. Currently, residents and businesses rely on individual wells, which,

given the local topography and soils, and prevalence of on-site residential and commercial septic systems, are subject to contamination. Nearly all homes and businesses have individual water systems (wells or rainwater systems). Many have septic systems; some have outhouses or composting toilets. Concerns have been raised about water safety, due to shallow wells and individual septic systems. The school currently purchases water from the National Park Service.

A municipal water utility could address that situation, providing the community with a reliable and safe supply of potable water. The Falls Creek drainage is the only practical source of water for such a utility. Annexation of the Falls Creek area would bring the probable source of water for a municipal water system within the City limits.

Approximately one year after incorporation, the City of Gustavus embarked upon a project to prepare a strategic plan for the community. The report was entitled *Gustavus Strategic Plan 2005 - Protecting and Planning Our Future*. That report identified the concern of some within the community with the existing individual potable water sources typical in Gustavus. Residences and businesses generally rely on individual wells for potable water. The topography of the developed area, the nature of the soils and prevalence of on-site residential and commercial septic systems creates the potential for contaminating water systems.

The *Strategic Plan* notes that residents reported a “Need [for] rudimentary land use planning — could also go along with concern for water quality and no sewage disposal.” (Emphasis added.) (Page 74) The *Strategic Plan* also reports expressed concern for “unsafe water as a result of substandard septic systems.” (Page 77) Finally, the Alaska Department of Community and Regional Affairs’ 2008 report, *City of Gustavus: Three-Year Anniversary Review*, reports (page 35) that, of those surveyed, 77% were “interested in” “city-wide water quality testing.”

As a result, the City anticipates the need to investigate the establishment of a municipal water system or a wastewater system at some point during the next decade. Given topography of the developed or developable areas within the City, the prospect of designing a reasonably affordable system to collect, treat and dispose wastewater for Gustavus is daunting. A municipal water system would be much easier and significantly more affordable to design, construct and operate. Accordingly, the City believes that the likely first step in maintaining safe and reliable public water would be to introduce a municipal water system.

Irrespective of expressed concern, the City understands that, in the short term at least, the public is not likely to support a proposal to add a water utility to the City's functions. The *Three-Year Anniversary Review* noted (page 35) that a majority (58%) of residents surveyed did not support City formation of a water utility at the time of the survey. It is very likely, however, that public opinion would change if local water quality began to deteriorate.

Although the City has not yet conducted any formal review or analysis of the Falls Creek drainage as a source of water for a municipal water system, informed local sources indicate that when a water system becomes necessary, the only reasonable water source would be the Falls Creek drainage. That drainage system could be readily tapped for the community's water needs. Falls Creek also offers the head necessary to run a water system. A municipal system would use water excess to the needs of fish and hydro.

Further, planning, design, financing, permitting, and construction of a municipal water system will take considerable time; the City anticipates a ten-year span from concept to cutting the ribbon on an operating municipal water system. The City believes it is prudent to take steps now to ensure access to and to manage the source of a critical community resource as soon as practical. Annexation of the Falls Creek area to bring the potential water resource within the City's boundaries is a reasonable and appropriate first step in this process.

Thus, the community's need to identify, protect and eventually develop a municipal water source within the territory proposed for annexation demonstrates that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby

municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

***Extraterritorial Powers Exercised in the Territory***

Gustavus has traditionally offered Emergency Medical Services (EMS) in the Falls Creek area. The City's EMS presently cover that area; this is an extraterritorial exercise of the City's powers.

While calls to this area have been limited in the past, the City anticipates increased demand for its EMS in the area as a result of the Falls Creek Hydroelectric Facility development. Some of this increased demand will relate to operation and maintenance of the newly constructed hydroelectric facility. Some of the increase undoubtedly will reflect increased use of the area by residents and visitors for recreational and subsistence purposes made possible by improved access. Accordingly, the City believes that annexation of the project area is appropriate to provide the City with a sounder basis for providing this service.

Thus, traditional provision of EMS in the area through an extraterritorial exercise of the City's powers, and the likelihood that the development of the Falls Creek Hydroelectric Facility within the territory proposed for annexation will result in increasing demand for those services demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Access to Resources***

The Falls Creek area includes rock, which at present is not locally available and has to be shipped in by barge. One of the side benefits of the development of the Falls Creek Hydroelectric Facility was a change of land ownership that would allow access to these rock resources. The State's regulations governing use of its newly acquired property within the Falls Creek area expressly permit access to and use of those resources.

Annexation of the Falls Creek area will facilitate community use of those critically important resources. But the change in circumstances that will allow this access also demonstrates that the territory proposed for annexation needs city government as required under 3 AAC 110.090(a). Specifically, these changes support the arguments that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Communication Services***

The Falls Creek area includes the primary, perhaps sole, site suitable for construction of a communication tower suitable to support future improvements to community Internet services. This is due to the fact that the Falls Creek area represents the only location that has a high enough elevation to transmit broadband and other wireless data transfer throughout the community. In addition to broadband service, this tower will handle EMS communication equipment and may expand mobile phone service. Changes in the Falls Creek drainage area, particularly

development of road access within the territory, significantly improve the prospects of developing, operating and maintaining these communication system improvement projects.

The City believes it is important to include that site within the municipality's corporate limits to properly ensure its ability to maintain these important services at levels appropriate to community needs. At the same time, the community's need to identify, protect and eventually develop a site upon which to construct, maintain and operate a communication tower suitable for the community's future Internet and other communication needs within the territory proposed for annexation also demonstrates that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Summary – Annexation of Falls Creek Area***

The City is a solid supporter of the Falls Creek Hydroelectric Facility project, which came on line during summer 2009, enabling the community to escape the high cost of diesel generation to supply its electrical requirements. This is critically important to community economic development and diversification. However, the hydro project will impact the Falls Creek area in numerous ways. Most of these impacts likely will be good for the community; some changes could be detrimental. Accordingly, the City, guided by its locally-elected representatives, desires to be a key player in decisions relating to access to and use of the land, thereby ensuring that the area's long-term development and use remain consistent with community values and needs while responding to inevitable changes over time. Further, the City

desires to include within its boundaries the watershed necessary for a future municipal water system, area for necessary enhancements to community Internet and other communication services, and rock resources. Annexation will allow the City to fulfill these responsibilities in the most effective and appropriate manner.

While there are no residents at present within the territory proposed for annexation, the potential for eventual residential development in the allotment lands is considerable. Use of the territory by Gustavus residents, visitors and allottees is substantial and sure to increase. Users will receive directly or indirectly the benefit of services and facilities provided by the City. Importantly, the territory proposed for annexation is integral to the fabric of the community, and therefore should be annexed. Finally, the territory proposed for annexation needs city government and would benefit from annexation to the City of Gustavus.

### **Icy Passage Area Proposed for Annexation**

#### ***Introduction***

The City proposes to annex an approximate 12 square mile portion of Icy Passage tidelands and submerged lands lying between the southern boundary of the City of Gustavus and the northern shore (mean high tide) of Pleasant Island. The City's interest in annexing this portion of Icy Passage is three-fold. First, Icy Passage is the sole corridor for accessing the community via water-based modes of transportation, and for residents and visitors to access nearby natural resources, particularly Pleasant Island and nearby Icy Strait. Second, Icy Passage enjoys recognized potential to be a source of hydrokinetic-generated electric power. Third, Icy Passage is a rich marine habitat; the community depends upon the bounty of both for recreation and sustenance.

Importantly, the Icy Passage area proposed for annexation, though uninhabited, also exhibits reasonable need for city government. In general, community use of, interaction with and reliance upon the Icy Passage area proposed for annexation impose an urban impact upon the area. Since the City's incorporation, this area has experienced increasing commercial, recreational, and other community-related activity that demonstrates the area is in need of city government. For example, the limited portion of Icy Passage proposed for annexation

- Has recently been identified as a source for tidal generation of electrical energy, which raises issues related to the need for greater community control and influence over balancing potentially competing uses of Icy Passage resources;

- Will soon see the impact of the operation of the new public dock (scheduled completion, Fall 2010) and related changes in demand for access to the dock and limited nearby moorage;
- Is likely the only reasonable solution to a growing community need for adequate safe moorage and anchoring; and
- Faces increasing community-related development pressures that could compete or conflict with the community's interest in preserving Icy Passage's rich marine resources and habitat.

Each of these circumstances represents an aspect of the community that is increasingly exerting impacts and influences upon a limited portion of Icy Passage immediately adjacent to the City's existing borders. Passage of time will exacerbate this situation. The impacts will occur regardless of whether annexation is approved; the nature of these impacts is essentially urban in character.

The territory proposed for annexation needs city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. The identified circumstances are appropriate functions and responsibilities of city government. Annexation to the City of Gustavus, as proposed, is therefore appropriate.

In summary, these conditions demonstrate that the area of Icy Passage proposed for annexation "exhibit[s] a reasonable need for city government," because it exhibits the following factors that are relevant under 3 AAC 110.090(a):

- existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;
- existing or reasonably anticipated health, safety, and general welfare conditions;
- existing or reasonably anticipated economic development;
- adequacy of existing services; and
- extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities.

A more detailed discussion demonstrating that the Icy Passage area proposed for annexation exhibits reasonable need for city government follows.

## ***Marine Access to Community***

### **Restricted Navigable Waters**

Icy Passage, a fairly well-protected waterway, is the marine gateway to Gustavus and Glacier Bay National Park. It is also the community's only area for safely mooring or anchoring local and transiting boats. However, only a relatively small portion of Icy Passage, so important to the day-to-day life of the community, is within the current City limits, and unfortunately, that area is largely an extensive mudflat. The United States Coast Pilot reports that "mudflats extend off the N shore [of Icy Passage] to within 0.8 mile of the N shore of Pleasant Island."<sup>2</sup> Because the mudflats are so extensive, the navigable portion of Icy Passage serving Gustavus is actually quite limited.

For the community, the consequences are clear: the portion of Icy Passage that is within the current City limits is impassable except by small boats during any but the higher stages of the tide. For all practical purposes, the generally navigable portion of Icy Passage and the only portions of Icy Passage suitable for a community anchorage are outside the current City boundaries. Accordingly, the City effectively has no control over the only marine access to the community. The City's proposed annexation will rectify that problem.

Icy Passage also offers sole access to resource-rich Pleasant Island for Gustavus residents and visitors, who routinely and regularly use the Island and adjacent waters for recreation, subsistence and resource gathering. Pleasant Island is part of the 23,151-acre Pleasant, Lemesurier and Inian Islands Wilderness area of the Tongass National Forest. Pleasant Island is fairly flat and has a mixture of old-growth forest and muskeg. The island has a couple of small lakes accessible by hiking from the shoreline. Pleasant Island has many beaches friendly to small boats or kayaks and several campsite areas. Pleasant Island also hosts the nearest huntable population of blacktailed deer, a key subsistence resource for the community.

Pleasant Island's proximity to Gustavus and Glacier Bay National Park ensures regular and extensive use for recreation and subsistence purposes. Icy Passage is the access to Pleasant Island for area residents and visitors – it is the corridor to and the harbor for Pleasant Island. The proposed annexation will allow the City to develop and manage

---

<sup>2</sup> United States Coast Pilot, Volume 8, 30<sup>th</sup> Edition, 2008, p. 372.

appropriate harbor facilities or services that will support improved access to Pleasant Island.

In essence, the community presently is using Icy Passage to supply a community need – small boat moorage. Solutions to the growing needs for harbor facilities or services will only be found in the limited area of Icy Passage proposed for annexation. (See also section entitled “Limited Options for Small Boat Harbor” below.) Those solutions will be developed regardless of whether annexation is approved. Accordingly, the Icy Passage territory proposed for annexation is already in need of city government. This need will increase with time as community demands for small boat moorage increase. Thus, the territory demonstrates that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

•

### **Limited Options for Small Boat Harbor**

Gustavus residents and visitors rely on small boats for some portion of their livelihood, subsistence or recreation. However, the extensive mudflats at the City's interface with Icy Passage impose a practical bar to small boat harbor development. The net effect of this situation is that Gustavus will probably never have the typical Southeast Alaska small boat harbor that would be adequate for community needs. This limitation does not alter the essential fact that the community needs facilities or other solutions to meet its small boat "harbor" needs; it only demands that Gustavus find suitable alternatives.

In spite of its inherent inadequacies, the Salmon River estuary has, over the years, provided a rudimentary place to beach skiffs, haul out small craft, and load or unload barges and landing craft. (See Attachment 2 - Salmon River Estuary.) Owners and operators of larger boats, unable to navigate the mudflats and the Salmon River, must rely on very limited short-term loading space at the transient vessel float attached to the deepwater dock, or on anchoring in Icy Passage wherever convenient or prudent. For more "permanent" arrangements, some boaters install and use informal (unpermitted or regulated) mooring buoys. (See Attachment 3 - Examples of Icy Passage Anchoring and Mooring Practices.) Upwards of 40 of these mooring buoys can be seen in the navigable areas of Icy Passage during the peak summer months.

All these approaches are relatively free form and somewhat haphazard; boaters anchor or install mooring buoys wherever they please as they attempt to maximize operational convenience without jeopardizing vessel safety. These arrangements have worked, more or less successfully, for many years, in part because the community's size did not generate enough traffic to cause serious conflicts or warrant other solutions. Together, these approaches offer a "meets minimum requirements," status quo "solution" at best; they do not offer any genuine potential for effectively facilitating community growth and development over the long term.

In fact, pressure is building to find better long-term solutions. The community faces increasing interest in and dependence on recreational and commercial boating in the area, and, as a result, growing pressure on the available moorage resources of Icy Passage. Part of this projected growth in demand comes from within the community itself, from its residents and its businesses. Another important component of increased demand comes from transient boaters, especially those visiting GBNP.

In partial response to this growing demand, the City expanded its powers to include small boat harbor functions in 2007, only three years following incorporation. While initially motivated by a need to improve the Salmon River boat launch and haul out, no one believed that was or could be “the” solution to the current or future small boat harbor needs of the community. It was then and remains today strictly a stopgap that addresses only a portion of the overall need.

Much more is required to provide adequate small boat facilities to support the needs of Gustavus. Sufficient moorage may be needed to host visiting boaters, allowing them to enjoy the community, and to acquire goods and services from local businesses. Clearly, the Salmon River haul out cannot meet that need. Similarly, haphazard anchoring and mooring buoy arrangements, or “taking your chances on snagging a spot” at the State dock’s transient tie-up float, also fail to provide any minimum level of community “gateway” service. That will require organization, regulation, planning and development of adequate facilities, which in turn requires city government. Unfortunately, the solutions to these problems (and the opportunities they present) all lie substantially outside the current City boundaries. Annexation of that portion of Icy Passage proposed by this petition will respond appropriately to this growing need, allowing the City to position itself to address these problems and to capitalize on the opportunities those problems offer to the community.

In essence, the community presently is using Icy Passage to supply a community need – small boat moorage. Solutions to the community’s increasing small boat harbor needs will only be found in the limited area of Icy Passage proposed for annexation. Those solutions will be developed regardless of whether annexation is approved. Therefore, the Icy Passage territory proposed for annexation is already in need of city government. This need will increase with time as community demands for small boat moorage increase. Thus, the territory demonstrates that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));

- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

#### **Access to Community's Sole Deep Water Dock**

Until recently, the community's waterborne commerce relied on a decrepit State-owned pier and dock structure built in the early 1960s and a size-restricted, tide-dependent barge landing upstream in the Salmon River. Both facilities fall far short of meeting the community's minimum needs for waterborne freight services.

Given its dated design and dilapidated condition, the old State dock severely limited marine commerce; it was an impediment to community economic development and diversification. With the release of \$7.7 million in federal economic stimulus funds, coupled with approximately \$6 million in previously appropriated National Park Service funds, and other funds, the State has begun construction of a replacement dock (scheduled completion, Fall 2010). This new dock will be a roll-on and roll-off marine transfer facility capable of mooring freighters, freight and fuel barges, transport vessels including Alaska Marine Highway (AMHS) vessels, and sightseeing vessels. As Alaska Department of Transportation & Public Facilities (ADOT&PF) Commissioner Leo von Scheben recently stated, "This project will greatly improved marine access in and out of the city and the Glacier Bay National Park." (Emphasis added.) (Capital City Weekly, March 4-10, 2009)

Further, it is important to note that the tank farm, which supports the community's daily and continuing requirements for fuel, is located immediately upland of, and supplied from fuel barges lying at, this dock. The present tank farm is inadequate to meet the community's present or future needs. To address this concern, the City now is constructing a new replacement tank farm. The Denali Commission, through the Alaska Energy Authority, is funding this project. The City will own the completed project, and will lease the new facility to Gustavus Dray for operation. The City anticipates that the new tank farm will be operational in September 2010.

The new dock will support community lifestyles, and will significantly enhance commercial opportunities for the community. First, roll on-roll

off systems are the modern approach to efficient, cost-effective handling of freight. This capability will help establish and maintain more competitive freight rates for Gustavus. This is extremely important for community economic development and diversification. Second, ADOT&PF is designing the new dock to accommodate standard AMHS vessels and related vehicle and passenger operations. Although the AMHS does not serve Gustavus, the new dock will provide the community with the option to ask State officials to establish some level of regular ferry service. The new State dock represents an important first step to making that service a reality. AMHS service is necessary for the community to enhance the local economy by adding lower-cost travel options. The new dock will therefore reduce local cost of living and facilitate community efforts to capitalize on its tourism potential.

Of equal importance, however, is the fact that the new dock signifies the growing role Gustavus plays as a port community. GBNP invested a significant sum to facilitate the development of the new State dock, because the Park desires to shift its supply barge shipments out of the Park's protected wilderness environment into the more appropriate community environment. The new dock makes this possible. GBNP's decision to contribute funds to the dock project reflects the healthy symbiotic relationship that is developing between the Park and the community. Residents and businesses derive much of their livelihoods from the community's position as gateway to GBNP. GBNP employees and related salaries constitute a significant share of the local economy. GBNP's economic activity helps to support an expanding and maturing community. At the same time, an evolving and expanding community infrastructure, which includes GEC's electrical utility, City-managed Gustavus Community Network, housing and retail services, port facilities serving air and marine transportation needs, supports GBNP operations in many critical ways. GBNP's contribution to the dock project is just one example of solid community-building collaboration between the Park and Gustavus.

However, simply building a new, more capable dock is not a complete solution. Its limited tie-up facilities will not reduce the need for anchorage space in Icy Passage. Without some system for managing the dock and the associated anchorage, the new facility will not deliver its full potential for supporting community economic development and diversification. Though similar in appearance to the existing facility, the new dock will be configured slightly differently, and will extend nearly to the present southern boundary of the City of Gustavus. This compounds an age-old problem in Gustavus. Because of a lack of a suitable small boat harbor or approved anchoring or mooring areas, there have been numerous examples of use conflicts arising because local and transient

boaters tend to anchor or set mooring buoys wherever convenient. This approach occasionally interferes with access to or use of the dock. The City anticipates increased use of this new dock, especially due to GBNP's decision to shift its supply barge shipments to the new State dock; therefore, the City anticipates an increasing potential for these use conflicts over time.

It is very important to the GBNP and the community that the new dock can function as it is designed. The City anticipates that the new facility will see notably increased usage. Soon the dock and its approach areas will require management to ensure that the community derives maximum possible benefit from the facility. This would be an appropriate responsibility of city government. The City anticipates that it ultimately will need to expand its harbor department functions to address these issues. Annexation, as proposed, will allow the City to play such a role.

Finally, the increasing demand for access to the new public dock for shipment of goods, an important factor in the community's economic development and diversification, will impose increasing pressure on an area immediately outside the current City limits for vessel moorage. The limited area of Icy Passage proposed for annexation will bear the brunt of this increasing pressure. That area will benefit from annexation; the area needs the city government that annexation would provide. Finally, the operation of the new public dock, which directly affects the territory proposed for annexation, has altered the levels and nature of activities within the territory in ways that demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Potential for Hydrokinetic (Tidal) Electric Generation***

Icy Passage also enjoys recognized potential to be a viable source of hydrokinetic- generated electric power. While of considerable interest and possible long-term benefit to the community, the City also recognizes that Icy Passage plays many important roles in the well-being and day-to-day life of the community. Maximizing the benefits derived from one use could result in reduction or elimination of benefits derived from another use. Careful balancing of these potentially conflicting uses of Icy Passage is critically important to Gustavus. The City could and should be a key player in decisions affecting the uses of Icy Passage. This need supports the City's desire to annex the portion of Icy Passage described in this petition.

Until the startup of the Falls Creek Hydroelectric Facility, Gustavus had been severely impacted by the debilitating effects of high cost diesel-powered electrical generation. Accordingly, the community was pleased to learn that on June 15, 2006, Alaska Tidal Energy Company (AKTidal) submitted an application to the FERC for a Preliminary Permit for a proposed Icy Passage Tidal Energy Project (Docket Number 12695-000). According to its Preliminary Permit application, AKTidal proposed "installation of numerous Tidal In-Stream Energy Conversion (TISEC) devices in the tidal flows of Icy Passage (navigable waters of the United States) for the purpose of producing electricity from the current and providing the electricity to a service or substation onshore." As then envisioned, "each TISEC would consist of: (1) rotating propeller blades, approximately twenty (20) to fifty (50) feet in diameter, (2) an integrated generator, (3) anchoring systems supporting the TISEC devices at varying underwater depths, (4) mooring umbilical cord to an anchor on the seabed, and (5) interconnection transmission lines to shore, and appurtenant facilities. Each TISEC would have a generating capacity of 0.5 to 2.0 MW." The area of Icy Passage covered by AKTidal's Preliminary Permit application is shown in Attachment 4. FERC granted AKTidal's application for this Preliminary Permit.

AKTidal had previously determined that the tidal energy available in Icy Passage could be the basis for a commercially viable project. The FERC Preliminary Permit allowed AKTidal to conduct various detailed generation and market feasibility studies in Icy Passage, and by applying for further FERC permits, eventually to construct and install an electric generation facility and related onshore interconnection facilities. However, by letter dated February 28, 2009, AKTidal advised FERC that, based upon its "detailed review of the development potential" of Icy Passage, AKTidal had determined that the site "has sufficient tidal energy resources"; however, "the serviceable markets and interconnection

options do not satisfy Alaska Tidal's development criteria at this time." (Emphasis added.) Accordingly, it surrendered its Preliminary Permit for the Icy Passage Tidal Energy Project.

Important for Gustavus, though, is the fact that AKTidal's efforts concluded that Icy Passage does indeed offer the potential for a commercially viable tidal energy facility, and that the only present limitations are the available market and distribution opportunities. Admittedly, these are not small hurdles to overcome. But, given the fact that Icy Passage is immediately adjacent to Icy Strait, known nationally for its potential to supply significant amounts of hydrokinetic energy, it is reasonable to believe that a future Icy Passage tidal generator is plausible. AKTidal's conclusions effectively shifted the question from "if" to "when" Icy Passage will see developed hydrokinetic electric generation, and offered Gustavus a reasonable basis to believe the community has shed forever its former, costly and stifling dependence on diesel generation. Should a regional electrical intertie eventually link Gustavus to other parts of SE Alaska, Icy Passage tidal generation potential would become a very significant regional resource.<sup>3</sup>

But, the picture is not completely rosy. While pleased with the active interest in the hydrokinetic energy potential of Icy Passage and nearby Icy Strait, and with the attendant potential for significant economic benefit to the community, the City recognizes that the relatively small portion of Icy Passage fronting the City of Gustavus and proposed for

---

<sup>3</sup> In this regard, it is important to note that other areas of Alaska are actively pursuing the concept of tidal energy at this time. For example, the February 25, 2009 Homer Tribune included the following news story regarding Homer's efforts to study and develop local tidal energy sources:

Homer also has submitted an application to the Alaska Energy Authority for \$482,387 to study the feasibility of harnessing tidal energy in Kachemak Bay, Wrede said. Already, the city has received \$671,954 for the project from the National Oceanic and Atmospheric Administration. Seldovia Village Tribe and Port Graham Village Council have agreed to participate in first phases of the feasibility project with Homer. This project is liked by the Energy Authority, with support also from Sen. Lisa Murkowski. The city is hoping stimulus money may help it progress, Wrede said.

annexation is the site for several potentially conflicting uses that are all highly important to the community. Hydrokinetic generation of electricity is just one of those potential uses; it competes with various other recreational, subsistence and commercial activities that also require some portion of Icy Passage resources. The community's long-term interests can only be served properly through careful balancing of competing and potentially conflicting uses of Icy Passage. The City could and should be a key player in all decisions affecting these uses. Annexation, as proposed, will allow the City to play those roles appropriately and effectively.

At the same time, the territory proposed for annexation exhibits a reasonable need for city government and would benefit from annexation. Increasing recreational, subsistence and commercial activity within and relying upon Icy Passage raise legitimate concerns about ensuring an appropriate balance among the various competing and sometimes conflicting demands. The recent interest surrounding the potential for hydrokinetic generation of electricity in Icy Passage added some urgency to those concerns. In that light, the Icy Passage territory proposed for annexation demonstrates a need for and will benefit from City of Gustavus community planning and regulation. Area developments have altered the levels and nature of activities within the territory proposed for annexation in ways that demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Rich Marine Resource and Habitat***

Finally, Icy Passage is a rich marine habitat; the community depends upon its bounty for recreation and sustenance. Again, Icy Passage offers considerable benefit to the community. But, the demand for other competing uses of Icy Passage, also important to the community, suggest that the City needs to annex the area to ensure that decisions affecting Icy Passage reflect a balance appropriate to Gustavus.

The State of Alaska has determined that the waters of Icy Passage are important for the spawning, rearing, or migration of anadromous fishes, including Chinook salmon, sockeye salmon, chum salmon, Coho salmon, pink salmon, eulachon, halibut, and Dolly Varden char. Additionally, Icy Passage supports large numbers of birds, including bald eagles, scoters, mallards, gulls, murrelets (candidate species for listing), Canada geese, shorebirds, and passerines. A number of marine mammals, including sea otters, steller sea lions, harbor seals, porpoises, and humpback whales, utilize the waters of Icy Passage. Finally, important invertebrate species found in Icy Passage waters include Dungeness and tanner crab, and shrimp.

All uses of Icy Passage important to Gustavus have the potential to adversely affect these fish, bird and wildlife populations and other natural resources. The affects of a hydrokinetic energy generation facility, for example, could have detrimental impacts to recreational and subsistence users and fish and wildlife resources through alteration in natural communication, navigation, migration, breeding, and feeding behaviors; to tides and sound waves, to energy hydrodynamics, sediments; contamination from fossil fuels and degradation of water quality. (US Department of the Interior, Notice of Intervention before the Federal Energy Regulatory Commission, Alaska Tidal Energy Company Filing under FERC Permit No. 12695-000, submitted September 8, 2006.) These effects can be generalized, to some degree, and applied to almost any proposed use or change of use of Icy Passage. Over time, community growth and development will impose some, perhaps all, of these impacts on the Icy Passage environment.

To play an effective role in the decisions affecting Icy Passage, the City desires to annex a limited portion of Icy Passage that most directly affects and is affected by community uses. At the same time, the territory proposed for annexation exhibits a reasonable need for city government and would benefit from annexation. Increasing recreational, subsistence and commercial activity within and relying upon Icy Passage raise legitimate concerns about ensuring an appropriate balance among the various competing and sometimes conflicting demands.

In that light, the Icy Passage territory proposed for annexation demonstrates a need for and will benefit from City of Gustavus community planning and regulation. Area developments have altered the levels and nature of activities within the territory proposed for annexation in ways that demonstrate that annexation is appropriate because

- Existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation, call for city government in the area (3 AAC 110.0909(a)(1));
- Existing or reasonably anticipated health, safety, and general welfare conditions call for city government in the area (3 AAC 110.0909(a)(2));
- Existing or reasonably anticipated economic development call for city government in the area (3 AAC 110.0909(a)(3));
- Adequacy of existing services call for city government in the area (3 AAC 110.0909(a)(4)); and
- Extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities call for city government in the area (3 AAC 110.0909(a)(5)).

### ***Summary – Annexation of Icy Passage Area***

The City's interest in annexing a portion of Icy Passage is three-fold. First, Icy Passage is the sole corridor for accessing the community via water-based modes of transportation, or for residents and visitors to access nearby natural resources, particularly Pleasant Island and nearby Icy Strait. Second, Icy Passage enjoys recognized potential to be a source of hydrokinetic-generated electric power. Third, Icy Passage is a rich marine habitat and the community depends upon its bounty. The limited portion of Icy Passage proposed for annexation is the area where these different interests intersect and are most likely to conflict.

While there are no residents within the territory proposed for annexation; the entire territory proposed for annexation will receive directly or indirectly the benefit of services and facilities provided by the City. Importantly, the territory proposed for annexation is integral to the fabric of the community. Broad community interest in the Icy Passage area supports the need to extend city government into the area proposed for annexation to the City of Gustavus. The community views the territory proposed for annexation as an inextricable *part* of Gustavus. It includes

essential resources that are part of the community's daily life. Therefore, annexation of these areas is critically important to the City's ability to continue providing adequately for its residents and businesses.

At the same time, present and reasonably anticipated community uses of the limited portion of Icy Passage proposed for annexation demonstrate that the territory exhibits a reasonable need for city government. Accordingly, the Icy Passage territory proposed for annexation will benefit from City of Gustavus community planning and regulation.

**Conclusion - Territory Proposed for Annexation Exhibits Reasonable Need for City Government**

The relatively limited Falls Creek and Icy Passage areas proposed for annexation exhibit a reasonable need for city government as required by 3 AAC 110.090(a). More specifically construction of the Falls Creek Hydroelectric Facility and related changes in road access, land ownership and land use within the Falls Creek area, recent focus on Icy Passage as a source of hydrokinetic energy and related need for greater community control and influence over balancing potentially competing uses of Icy Passage resources, operation of the new public dock (scheduled completion, Fall 2010) and related changes in demand for access to the dock and limited nearby moorage, a growing need for adequate safe moorage and anchoring, a growing need to identify and secure a community potable water supply to address a public health concern, and a growing concern about the need to manage community impact on Falls Creek and Icy Passage areas proposed for annexation demonstrate a need for city government in the territory proposed for annexation under 3 AAC 110.090(a)(1) through (5).

Each of these represents an aspect of the community that is increasingly exerting impacts and influences upon a limited territory immediately beyond the City's borders. Passage of time will only exacerbate these situations. The territory would benefit from annexation. The territory needs city government to mitigate the impacts upon the area through planning, exercising its powers, and otherwise to balance the overall best interests of the community and the territories proposed for annexation. The identified circumstances are appropriately functions and responsibilities of the City of Gustavus. Annexation to the City of Gustavus, as proposed, is therefore appropriate at this time.

## **Essential Municipal Services Cannot Be Provided More Efficiently or More Effectively By Another Existing City or Organized Borough**

### **Introduction**

3 AAC 110.090(b) requires that "territory may not be annexed to a city if essential services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the ... [Local Boundary Commission], was established in accordance with art. X, sec. 5, Constitution of the State of Alaska." The proposed annexation satisfies the requirements of 3 AAC 110.090(b).

### **Discussion**

The City of Gustavus is located within the Unorganized Borough. The area proposed for annexation is contiguous to the current boundaries of the City of Gustavus. Further, the boundaries of the area proposed for annexation are not contiguous to or near the boundaries of an existing organized borough or city.

Gustavus is almost alone on the north side of Icy Strait except for a small, unorganized community in Excursion Inlet, presently part of the Haines Borough. Gustavus is not linked to any of the other communities in Icy Strait by ferry service, making even casual contact an expensive proposition. Hoonah, a First Class City on Chichagof Island, is 25 miles south of Gustavus across Icy Strait. The Alaska Local Boundary Commission's 1997 "Statement of Decision in the Matter of the Petition for Incorporation of the City of Gustavus" (see page 9, Findings and Conclusions) states, "The prospect that local service needs in Gustavus could be satisfied by any existing city government is clearly implausible. Hoonah is the nearest city government to Gustavus. Even so, Hoonah and Gustavus are relatively distant and inaccessible to one another."

The City of Hoonah recently studied the feasibility of forming a borough, which could include the City of Gustavus as one of the included communities. The City of Gustavus has actively participated in discussions and studies related to that proposal. However, the City of Gustavus contends that the proposed annexation addresses community-specific needs, which are independent of and unrelated to any future borough formation. Further, the needs that are at the heart of this annexation proposal are immediate – waiting on the outcome of some as of yet uninitiated future borough formation is not an acceptable option. This is especially true since possible borough powers and service areas

do not seem to offer appropriate tools to address the issues, which are at the heart of this petition, in any event. The LBC's 1997 Statement of Decision argues this very point – "even a borough would not fill adequate local community service needs, since Gustavus would possibly be too far removed from any borough seat of government to adequately address local needs and concerns."

Accordingly, the City of Gustavus contends that this petition meets the requirements of 3 AAC 110.090(b), because essential municipal services cannot be provided more efficiently or more effectively by another existing city or organized borough. Further, the City of Gustavus contends that this petition meets the requirements of 3 AAC 110.090(b), because the City is now and probably always will be the only municipality appropriately situated or able to provide municipal services in the territory proposed for annexation.

Finally, because the territory proposed for annexation is relatively small, and because it is immediately accessible to existing city services, the City of Gustavus is capable of efficiently and effectively providing all required services within the area proposed for annexation. The City also notes this important fact: The proposed annexation is essential to enable the City to continue to provide properly for the immediate and the long-term social, cultural and economic well being of community residents and businesses.

#### **Summary – Essential Services Most Efficiently and Effectively Provided by City**

The proposed annexation satisfies the requirements of 3 AAC 110.090(b); because essential services cannot "be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the ... [Local Boundary Commission], was established in accordance with art. X, sec. 5, Constitution of the State of Alaska."

#### **Conclusion**

The territory proposed for annexation exhibits a reasonable need for city government as required by 3 AAC 110.090(a). Further, the City is capable of providing "essential municipal services" more efficiently and more effectively to the territory proposed for annexation than another

existing city or organized borough as required by 3 AAC 110.090(b), 3 AAC 110.970(c) and 3 AAC 110.970(d).

## **COMPATIBLE CHARACTER**

### ***Introduction***

This section will demonstrate that the territory proposed for annexation is compatible in character with the area inside the current boundaries of the City as required by 3 AAC 110.100.

### ***Discussion***

#### **The Standard**

3 AAC 110.100 provides that the “territory [proposed for annexation] must be compatible with the annexing city.” 3 AAC 110.100 then provides that, in this regard, the Local Boundary Commission may consider relevant factors, including the following:

- (1) Land use, subdivision platting, and ownership patterns;
- (2) Salability of land for residential, commercial, or industrial purposes;
- (3) Population density;
- (4) Cause of recent population changes;
- (5) Suitability of the territory for reasonably anticipated community purposes;
- (6) Existing and reasonably anticipated transportation patterns and facilities; and
- (7) Natural geographical features and environmental factors.”

#### **The Territory Proposed for Annexation**

Although a single contiguous area, the territory proposed for annexation consists of two distinct areas. One of these is the Falls Creek area to the east of the current City boundaries. The other is a tidelands and submerged lands portion of Icy Passage lying between the present City limits and Pleasant Island to the south. Both areas are compatible in character with the area inside the current municipal boundaries. However, because the areas are distinct, the following discussion is organized by area.

## **Falls Creek Area**

### ***Land Use, Land Ownership and Transportation Patterns***

The catalyst for proposing annexation of the Falls Creek area is the recent development of the Falls Creek Hydroelectric Facility. To allow development of this important addition to the community's infrastructure, the federal and State governments engaged in a series of land exchanges to extract the hydroelectric project site from the Glacier Bay National Park and Preserve properties. Through that exchange, the State of Alaska acquired new property holdings in the Falls Creek area. To construct, operate and maintain this electric generation facility, Gustavus Electric Company built approximately four miles of limited access road. This road enjoys a direct connection to the City's road network via Rink Creek Road. The terms of existing project permits allow restricted public access from the City's road system to the farther reaches of the area proposed for annexation. Even with those limitations in place, the project road dramatically improves community access to and use of the resources (fish, wildlife, plant life, rock, etc.) of the area. As a result, the Falls Creek area is becoming increasingly integrated into the community.

Importantly, too, the hydro project road provides potential access to the two native allotments (totaling approximately 530 acres) lying within the area proposed for annexation. These allotments represent the only land with potential for future development lying near, but not already within, the City of Gustavus. This is especially significant because, except for the Falls Creek area, Glacier Bay National Park limits community growth on three sides and Icy Passage limits growth on the fourth side. To date, current allotment owners and their representatives have not expressed interest in developing either parcel. However, circumstances can, and often do, change with time. The City anticipates that increased access to and use of the surrounding areas, now possible as a result of the Falls Creek Hydroelectric Facility project, will gradually reveal potential uses of these allotments, and that these properties will eventually see development as the community grows and develops. Any such development would access the existing City road system by modification to the FERC permit or by pioneering a new access road. In this way, too, the Falls Creek area will become increasingly integrated into the existing community of Gustavus. Regardless of future development activity, if any, the fact that the Falls Creek area includes the only developable area immediately adjacent to the present City boundary speaks to the fact that the area proposed for annexation is compatible with territory inside the City.

### ***Suitability for Community Purposes***

The Falls Creek area proposed for annexation is clearly suitable for community purposes. For example:

- The Falls Creek area is the single area with sufficient water resources to meet most of Gustavus' electrical demands with hydroelectric power. GEC has developed and is operating a hydroelectric plant that now meets most of the electrical demand of Gustavus.
- Falls Creek drainage is the only practical source of water for development of a municipal water supply, which the City anticipates could be required to address potential contamination of individual domestic water wells resulting from local topography and soil conditions.
- The City provides EMS services throughout the area proposed for annexation.
- The Falls Creek area includes rock, which is suitable for local construction purposes and which is now available for community use as a result of changes in land ownership related to the development of the Falls Creek Hydroelectric Facility.
- The Falls Creek area includes the primary, perhaps sole, site suitable for construction of a communication tower suitable to support future improvements to community Internet and other vital communication services.

### ***Natural Geographic Features***

Further, the area proposed for annexation integrates compatible natural geographical area and features into the City. The area rises gradually to form the Falls Creek watershed, and as such, it forms a natural eastern backdrop to the community. The portion of the Falls Creek area upland of Icy Passage is similar in character and development potential to some other areas within the City; in addition it adds resources such as rock and old-growth timber that are scarce within present city boundaries.

### ***Summary – Falls Creek Area***

Changes in land use and ownership patterns related to the Falls Creek Hydroelectric Facility triggered a series of changes that are gradually integrating the area into the community and the City of Gustavus. These present and potential changes in the use of area land for residential, commercial or industrial purposes represent simple and natural extensions of the City of Gustavus. Accordingly, the Falls Creek area

proposed for annexation is similar to and fully compatible with the area within the City.

### **Icy Passage Area**

#### ***Suitability for Community Purposes and Transportation Patterns***

Several recent developments affect the use of Icy Passage area, integrate the area more completely within the community, and, in consequence, increase the area's compatibility with the character of the community. Upon incorporation, the City offered five primary services and facilities including library, recycling and refuse disposal, emergency response, road maintenance, and Internet service. In 2007, the City added small boat facilities and services as its sixth primary municipal service. This addition responded to growing community interest in and need for these services and facilities. However, given the unique topography of Gustavus, the only area for developing these services and facilities lies beyond the City's current Icy Passage boundary.

Similarly, the new public dock will extend farther into Icy Passage than the current facility; the replacement dock's working face will lie almost at the current City boundary. This new dock will see a marked increase in use. In part, increased use will be simply a function of community growth and development. However, the dock's modern design and dramatically improved capabilities to handle freight, vehicles and passengers will invite significantly more use. Glacier Bay National Park's decision to shift its water-borne freight shipment functions to this community facility will notably increase use of the new dock as well. Given other nearby activities in Icy Passage, appropriate management and use of this increasingly important facility requires city services beyond the City's current boundary. Thus, with completion and use of this new public dock, a larger portion of Icy Passage effectively becomes an integral part of the community.

In addition, Icy Passage offers a rich marine habitat. It offers many subsistence and recreational opportunities for the community; residents and visitors enjoy and rely upon these resources. But, community use of Icy Passage does not stop at the City limit. The near waters of Icy Passage between the Gustavus mainland and Pleasant Island are essentially one area in character and use from a community perspective.

Finally, Alaska Tidal Energy's recent exploration demonstrated the commercial potential for tidal generation of electricity in Icy Passage. AKTidal's initial plans called for installing generation apparatus on the seabed immediately offshore of the current City boundary, and for

placing the requisite onshore power transfer facilities within the current City boundary. Even though it eventually dropped its Icy Passage FERC permit due to market constraints, AKTidal's work nevertheless demonstrated the potential for future tidal energy production within Icy Passage, and further demonstrated that the area between the Gustavus mainland and Pleasant Island is highly suitable for community purposes, and, because of local transportation systems, is an essential and integral part of the Gustavus community in terms of its character and uses.

### ***Natural Geographic Features***

The Icy Passage area proposed for annexation includes only submerged lands between the present southern City boundary and Pleasant Island. Therefore, it is similar to and fully compatible with the character of the immediately adjacent tidelands and marine channel area within the City's boundary.

### ***Summary – Icy Passage Area***

All of these uses of Icy Passage, present and potential, represent simple and natural extensions of the community beyond the current boundaries of the City of Gustavus. Accordingly, the area of Icy Passage proposed for annexation is similar to and fully compatible with the area within the City.

### ***Conclusion***

Recent changes in land use and ownership patterns, and in existing and reasonably anticipated transportation patterns in the Falls Creek area proposed for annexation support the conclusion that this territory meets the standards imposed by 3 AAC 110.100(1) and (6) respectively. The key role that the Falls creek area proposed for annexation plays as the site of the community's hydroelectric power plant, and as the future sites of the community's potable water supply, communication facilities and rock resources support the conclusion that this territory meets the standards imposed by 3 AAC 110.100(5) and (7).

Recent changes in land use patterns, and in existing and reasonably anticipated transportation patterns in the Icy Passage area proposed for annexation support the conclusion that this territory meets the standards imposed by 3 AAC 110.100(1) and (6) respectively. The key role that the Icy Passage area proposed for annexation plays as the site for development and managing the community's small boat harbor needs, as a focus of a considerable portion of the community's water-based recreational and subsistence activities, and as a potential site for

development of tidal power generation facilities support the conclusion that this territory meets the standards imposed by 3 AAC 110.100(5) and (7).

Accordingly, the Falls Creek and the Icy Passage territories proposed for annexation are compatible in character with the City of Gustavus as required by 3 AAC 110.100.

## **ADEQUATE RESOURCES**

### ***Introduction***

This section will demonstrate that the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. Therefore, the proposed annexation meets the requirements of 3 AAC 110.110

### ***Discussion***

#### **The Standard**

3 AAC 110.110 requires that the “economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.” 3 AAC 110.100 then provides that, in this regard, the Local Boundary Commission may consider relevant factors, including the following:

- (1) Reasonably anticipated functions of the city in the territory being annexed;
- (2) Reasonably anticipated new expenses of the city that would result from annexation;
- (3) Actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;
- (4) Feasibility and plausibility of those aspects of the city’s anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;
- (5) Economic base of the territory within the city after annexation;
- (6) Valuations of taxable property in the territory proposed for annexation;
- (7) Land use in the territory proposed for annexation;
- (8) Existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;
- (9) Personal income of residents in the territory and in the city; and
- (10) Need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.

## **Demonstrated Capability**

During its relatively brief history as an incorporated city, Gustavus has demonstrated that it includes and is adept at managing the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. Gustavus has proved that it is capable of supporting city government.

The Alaska DCRA recently conducted an independent assessment of the City's financial management as part of its *Three-year Anniversary Review*. (pp 17-20, 26) As part of its review, the State analyzed the City's certified financial statements for "4.25 [City] fiscal years (FY) including 4th quarter FY 04, FY 05, FY 06, FY 07, and FY 08." The department's analysis led with this important observation: "One of the most critical elements of city management and administration is financial planning, budgeting, and reporting." It concluded "the City has generated enough revenue to cover costs and generate substantial surpluses during each of the prior four years." (Emphasis added.) The report noted, "surplus figures may be misleading considering the inclusion of revenue and expenditures for multiple capital projects;" however, the Department aggregated City revenue and expenses "where appropriate ... to more effectively differentiate between operating and capital project revenue and expenses."

Further, the DCRA compared Gustavus to other Southeast second class cities. Again, Gustavus proved that it is a competent manager of the community's finances, generating "more than average" revenues while incurring "significantly less than average" expenditures.

During FY 05, the most recent year of complete financial data, Southeast second class cities generated a wide range of total revenue ranging from \$36,020 (Kupreanof) to \$957,636 (Thorne Bay) including both locally- and externally-generated revenue .... On average, cities generated approximately \$516,462 per city. Compared to other Southeast second class cities, the City of Gustavus generated the third highest revenue total at \$668,077, or 29% more than the average. During FY 05, Southeast second class cities also experienced a wide range of total expenditures ranging from \$38,519 (Kupreanof) to \$1,475,828 (Thorne Bay) including both operating and capital expenditures. On average, Southeast second class cities expended approximately \$569,392 per city. Compared to other Southeast second class cities, the

City of Gustavus had significantly less expenditures at \$354,034, or 38% less than the average. (p. 26)

The *Three-year Anniversary Review* also offered an important clue to one of the key components to the success the City has enjoyed to date. Specifically, that *Review* identifies, in summary fashion, the contribution community members make on a volunteer basis to ensure that the City provides needed and desired services in the most cost-effective manner possible.

In total, six primary city government services are delivered via seven paid staff, 32 appointed volunteer committee members, and approximately 76 additional volunteers. A total workforce of approximately 115 people (i.e., paid and unpaid) participate in planning, managing, and delivering six municipal services to a local population of over 400 residents. Of noteworthy importance, there are 15 unpaid citizen volunteers for every one paid city employee. Notably, the citizen volunteer workforce is a valuable community resource that is not easily quantified, but city employees provide the consistency needed to effectively deliver municipal services. (p. 30)

That summary reflects positively upon the strengths and resources of the community. It also clearly highlights the careful, prudent manner in which the community and its city government conducts the public's business. Thus it is clear that Gustavus has adequate human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level, and that the City has managed those resources in a sound and prudent manner. In this way, too, the City has demonstrated the capacity of those resources and its own capability to support the proposed extension of city government into the area proposed for annexation.

### **Anticipated City Functions and Expenses**

The territory proposed for annexation is uninhabited presently; therefore, the initial demands on the City to provide services, beyond those it presently offers through extraterritorial powers, will be minimal. The City is not proposing to add new functions as a result of this annexation. The proposed annexation will only extend existing functions into the new territory. For all practical purposes, this extension of existing functions represents a minimal increase in city responsibility.

As a consequence, the City anticipates that the initial expenses related to the proposed annexation also will be minimal. The City anticipates that demands for facilities and services in the community, including the territory to be annexed, will increase gradually over time. However, the nature of the proposed annexation and of the City's current and anticipated mix of services readily allows the City to scale its services to meet defined needs with the revenues or other resources then available to the City. Accordingly, the City is confident that it can manage the requirements for municipal facilities and services, which the proposed annexation will impose, relying only on currently available financial and other resources.

## **Revenue**

The City does not anticipate that it would receive any significant adjustments to its revenues as a result of the proposed annexation. Brief discussions of the effects that the City estimates annexation will have on its revenues follow.

### **Community Revenue Sharing and PILT Payments**

The City does not anticipate any change in Community Revenue Sharing and PILT payments as a result of the proposed annexation. Community Revenue Sharing and PILT payments are based upon the number of full-time residents within the municipality.<sup>4</sup> The area proposed for annexation is uninhabited. Further, the City anticipates that the territory proposed for annexation will not become inhabited during the decade following approval of the annexation (the planning horizon established under 3 AAC 110.130(c)(1)). Therefore, inclusion of the territory proposed for annexation will not increase available payment-in-lieu-of-taxes and other shared revenues available to the City. Importantly, however, the City does not require any increase in revenue to support the present operations of the City or the proposed annexation.

### **Sales Tax Revenues**

The City anticipates that future private commercial uses of the territory proposed for annexation might generate small amounts of sales tax revenues. The City also may generate small additional amounts of sales tax revenue from commercial sales of commodities extracted from these

---

<sup>4</sup> Confirmed with Bill Rolfzen, Local Government Specialist IV, Division of Community & Regional Affairs by Email correspondence, September 23, 2009.

lands. The City anticipates that all these sources of additional sales tax revenue would be small and insignificant. The City also anticipates that the potential for such additional revenue is highly speculative; therefore, the City is not projecting any additional revenue from such sources at this time. Again, the City does not anticipate nor require increases in any of those sources to support the present operations of the City or the proposed annexation.

### **Property Tax Revenues**

Finally, because a property tax levy is a viable option for the City to consider, the City recognizes the possibility that it may generate property tax revenue in the future. However, the City now does not levy a property tax; it does not foresee a time when it might consider levying a property tax. Further, if the City ever felt compelled to consider such a tax, it is noteworthy that, unless ownership of the properties within the annexation area changed, the annexed territory would not generate property tax. Lands proposed for annexation are either public property, owned by the State of Alaska or the federal government, or part of non-taxable native allotments. Therefore, the City believes the prospect of generating property tax from the territory is extremely unlikely. As with other revenues possible as a result of the proposed annexation, the City would not depend on property tax revenues to support the proposed annexation. (See also following discussion under heading "Ability to Generate and Collect Revenue.")

### **Ability to Generate and Collect Revenue and Income**

The City of Gustavus has demonstrated an ability to generate and collect revenue sufficient to provide needed services and to provide adequate contingencies for unforeseen expenses. The DCRA *Three-year Anniversary Review* offers the following independent assessment of the City's track record for generating and collecting locally- and externally-generated revenues necessary to sustain its operations.

During FY 07, the most recently adopted ... [certified financial statement] at the time of report printing, the City of Gustavus generated \$970,966 via 22 various revenue sources including taxes, grants, user fees, interest gains, sales, and miscellaneous fees. Total city revenue is relatively equally split between locally- and externally-generated revenue. Specifically, locally-generated revenue accounts for 54% of all revenue and includes sales tax, bed tax, Endowment Fund unrealized gain, DRC income, GCN income, and other fees .... Local taxation and Endowment

Fund unrealized gain account for nearly half (41%) of all city revenue; taxation accounts for nearly one-quarter (22%). Furthermore, local taxation and Endowment fund unrealized gain account for 74% of locally generated revenue; taxation accounts for 40%. (pp. 17-18) (Emphasis added.)

Again, this independent assessment demonstrates that the City of Gustavus has the ability to generate and collect revenue sufficient to provide needed services, and to provide reasonable contingencies for unforeseen expenses.

The Alaska Department of Commerce and Community Economic Development publication *2008 Alaska Taxable* offers another perspective on this capability. It reports that Gustavus, with a population of 441, generated \$187,737 from its two-percent sales tax and \$52,097 from its four-percent bed tax. The combined revenue from these two taxes represents a per-capita tax effort of \$544 for the City of Gustavus. This compares favorably with the statewide<sup>5</sup> median per-capita tax effort of \$487. It is also a respectable 48 percent of the statewide<sup>6</sup> average per capita tax effort of \$1,125. (Volume XLVIII, Table 3A.)<sup>7</sup>

To date, the City has managed to meet its financial obligations without levying a property tax. The City does not foresee a need for and does not plan to levy such a tax anytime in the foreseeable future, with or without the proposed annexation. However, for purposes of assessing the City's ability to address the added responsibilities attendant to the proposed annexation or other future community requirements, the City notes that a property tax is one option that it could consider if needed to generate required revenue.

In its review of the community's 2003 petition for incorporation, DCED observed that a property tax levy would be a "viable option" for the City if ever necessary. The community had estimated that the total value for all real and personal property not exempt from taxation under State law was

---

<sup>5</sup> Excludes revenues of the North Slope Borough.

<sup>6</sup> Excludes revenues of the North Slope Borough.

<sup>7</sup> The City relied upon *2008 Alaska Taxable* in preparing this Petitioner's Brief rather than the more recent *2009 Alaska Taxable* for the following reasons: The City did not report that data to DCCED for *2009 Alaska Taxable*. The *2009 Alaska Taxable* lists only 81 municipalities, while the *2008 Alaska Taxable* lists 110 municipalities. Together, these factors make appropriate comparisons difficult.

then \$107,055,000. In its August 2003 *Preliminary Report*, DCED offered the following evaluation of that estimate:

Based upon the above estimates, the proposed City of Gustavus would have a per-capita property value of \$254,287, which would place it with the second highest per-capita property value in the state ranking only behind the North Slope Borough. Within Southeast Alaska, this per-capita value compares with \$93,319 for Juneau; \$42,824 for Hoonah; \$70,937 for Pelican; and \$229,020 for Skagway.

DCED's State Assessor expressed some reservations concerning the estimate of value. Because the Petitioner does not propose that the prospective City of Gustavus will rely on property taxes to fund the operations, no effort was made to refine the estimate of taxable property. However, it appears that the levy of a local property tax would obviously be a viable option for the City. (p. 66) (Emphasis added.)

However, while a property tax levy may be a viable option for the City to consider, if ever necessary, it is noteworthy that, without further changes in land ownership, the territory proposed for annexation would not be subject to local property taxation. Those lands are either public property, owned by the State of Alaska or the federal government, or part of non-taxable native allotments. Nevertheless, a property tax levy remains a potential revenue source for the City should necessity dictate that the City considers that option.

In summary, the proposed annexation is well within the City's ability to generate and collect revenue sufficient to provide needed services and to provide adequate contingencies for unforeseen expenses. The City enjoys a solid track record with a proven ability to generate and collect revenue sufficient to meet its needs. The City could also consider a property tax, if it required the additional revenue. Finally, the additional requirements that the City will face initially as a result of the proposed annexation will be minimal, and will be well within the City's proven ability to support.

### **Economic Base of the Territory within the City After Annexation**

Gustavus currently enjoys a sound economic base, which is adequate to support municipal government. The proposed annexation will improve that economic base and the community's ability to support necessary municipal government.

## **Local Economy**

Approximately 448 people call Gustavus their home.<sup>8</sup> Gustavus is also the gateway to Glacier Bay National Park and Preserve. The Park attracts a large number of tourists and recreation enthusiasts during the summer months. Approximately 60,000 tourists visit or transit this small community annually. The number of residents during the summer approximately doubles from the current population estimates of year-round residents. This dual personality – permanent home to a few, seasonal home or travel destination for many – creates an economy that is generally characterized as “seasonal.” Partly in spite of and partly because of the local economy’s seasonal nature, the local commercial sector is reasonably diversified and well developed, mature, and healthy. Some illustrative highlights of the local economy follow.

The community population consists largely of skilled and professional people. The Park Service employs over 50 percent of the local workforce. The Glacier Bay National Park and Preserve employs 55 full time personnel, adding 50 seasonal workers from May through September. The Park also contracts with a private concessionaire to operate the Glacier Bay Lodge. The concessionaire, Aramark/Gold Belt, Inc., employs one year-round and approximately 150 seasonal workers in the Glacier Bay area

The Chatham School District employs four teachers and a number of teacher aides at its Gustavus K-12 school. The community has a post office, a library, and a clinic, all of which require professional staffing. The Alaska Department of Transportation and Public Facilities maintains permanent year-round staff in Gustavus.

As of 2009, the local business community included ten service oriented businesses, nine professional services, six contractors, three retail stores, two construction contractors, and five transport businesses. Among those businesses are three art galleries and numerous independent artists. Most of these businesses operate throughout the year.

As of 2009, Gustavus was home to 14 lodges or B&Bs that provide a full range of accommodations. Eighteen Gustavus-based charter businesses

---

<sup>8</sup> DCCED Community Database Online, accessed at [http://www.commerce.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm) on April 13, 2010, reports the “2008 DCCED Certified Population” for Gustavus at 448.

provide various tour activities. Most of these businesses operate primarily during the summer months, May through September. Gustavus has three kayaking companies and a nine-hole golf course. Some commercial fishers operate out of Gustavus.

Three commuter airlines offer daily year-round scheduled service to Juneau and on-demand charter flights. Alaska Airlines and two smaller commuter airlines offer daily seasonal service to accommodate the volumes of tourist traffic.

The DCRA's *2003 Preliminary Report* concludes that

Although somewhat seasonal in nature, the economic base of the community of Gustavus is best classified as expanding and sound. With the neighboring Glacier National Park as the foundation, the tourist industry and associated business opportunities should continue to grow and develop. Government jobs, whether State or federal, should remain steady. The community enjoys a relatively high level of property valuation and business activity. (p. 65) (Emphasis added.)

The City believes that assessment is as appropriate today as it was in 2003.

### **An Entrepreneurial Community**

Furthermore, Gustavus is recognized for its entrepreneurial spirit. The DCRA's recent *Three-year Anniversary Review* provides a capsule review of this entrepreneurial activity.

... Gustavus' economy has a thriving entrepreneurial segment as indicated by a large quantity of active business licenses spanning seven federally designated industry sectors. There are currently 108 active business licenses<sup>9</sup> encompassing various accommodations, service industry, professional services, construction, and transport businesses serving Gustavus visitors and residents. The largest quantity (20%) of licenses represent the arts, entertainment, and recreation industry, which includes businesses such as

---

<sup>9</sup> DCCED Community Database Online, accessed at [http://www.commerce.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm) on April 13, 2010, reported "100 current business licenses in Gustavus."

artists and writers, kayak rentals, sport fishing charters, and wilderness adventure providers. Thirteen percent of business licenses represent trade-related businesses including retail or other service sector enterprises. Another 13% include accommodation and food service businesses such as bed and breakfasts, cafes, lodges, and restaurants. Other business licenses are for construction (10%), transportation and warehousing (8%), services (8%), and professional, scientific, and technical service businesses (7%). (p. 15-16) (Emphasis added.)

That DCRA report also shows that Gustavus is decidedly more entrepreneurial than other Southeast Alaska second class cities.

Active business licenses issued to Southeast second class city residents range from seven (Kasaan) to 108 (Gustavus)<sup>10</sup>; average quantity of business licenses is 39 (Figure 10). Gustavus is one of the most entrepreneurial second class cities in Southeast Alaska with 108 active business licenses, or one business license for every four residents. With nearly equal populations, Thorne Bay and Angoon have 25% and 85% less business licenses respectively than Gustavus. (p. 22) (Emphasis added.)

The Alaska Department of Commerce, Community and Economic Development's Community Database Online currently reports 100 active licenses,<sup>11</sup> which is slightly fewer than the number reported in the DCRA's *Three-year Anniversary Review*. However, the distribution of those 100 licenses among business lines remains fairly consistent with earlier data, which indicates that the local economy remains much as it was described in the *Three-year Anniversary Review*.

### **Land Use of the Territory Proposed for Annexation**

Finally, the land use in the territory proposed for annexation is tightly integrated with the economy of the community. Annexation of the Falls Creek and Icy Passage areas, as proposed, will ensure that the City has

---

<sup>10</sup> DCCED Community Database Online, accessed at [http://www.commerce.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm) on April 13, 2010, reported "100 current business licenses in Gustavus."

<sup>11</sup> DCCED Community Database Online, accessed at [http://www.commerce.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm) on April 13, 2010, reported "100 current business licenses in Gustavus."

*all* the land and water necessary to provide essential municipal services on an efficient, cost-effective level.

City services, appropriately managed through the proposed annexation of the Falls Creek area, will facilitate and support the Falls Creek Hydroelectric Facility. Reliable and affordable hydroelectric power is critically important to maintain and develop the local economy. City services in the Falls Creek area will also assist the community gain access to area resources, including immediately useful rock and old-growth timber, a source for a future community water system, the only remaining developable private lands near the current City boundary, and a site for a community communication tower. All these are necessary resources for the City to maintain and develop the local economy.

Similarly, City services, appropriately managed through the proposed annexation of the Icy Passage area, will enhance use of the new public dock, improve small boat moorage and generally facilitate and support Gustavus' role as a gateway community. It will also support the community's quest for reliable and sustainable sources of electric energy necessary to maintain an affordable economic base. Finally, it will support the community's role in maintaining the portion of Icy Passage immediately fronting Gustavus for community subsistence and recreational uses. These, too, are necessary resources for the City to maintain and develop the local economy.

In summary, the proposed annexation will ensure that the City has *all* the land and water necessary to provide essential municipal services on an efficient, cost-effective level.

### ***Conclusion***

The economy within the proposed expanded boundaries of the City of Gustavus includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. Therefore, the proposed annexation meets the standard set forth in 3 AAC 110.110.

## **SUFFICIENTLY LARGE AND STABLE POPULATION**

### ***Introduction***

This section will demonstrate that the population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government as required by 3 AAC 110.120.

### ***Discussion***

#### **The Standard**

3 AAC 110.120 requires that the “population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. 3 AAC 110.120 then provides that, in this regard, the Local Boundary Commission may consider relevant factors, including the following:

- (1) Census enumerations;
- (2) Duration of residency;
- (3) Historical populations patterns;
- (4) Seasonal population changes;
- (5) Age distributions;
- (6) Contemporary and historic public school enrollment data; and
- (7) Nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.

#### **Census Data**

In its August 2003 *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus*, the DCED noted (p. 75) that

Based on the above analysis, the DCED concludes that the community of Gustavus clearly has a population that is sufficiently large and stable enough to support the proposed Gustavus city government. (Emphasis added.)

In reaching its conclusion, DCED took note (p. 72-74) of total census enumerations, duration of residency, historical population patterns, seasonal variations, and age distributions. DCED also compared Gustavus with other second class cities within the unorganized borough. In that review (*Preliminary Report*, Chart 3-2, p. 72) DCED found that Gustavus, with 421 people, was then well above the median population

of 293 and nearly equal to the mean population of 415 for the 38 listed cities. Essentially, DCCED concluded that Gustavus, which had its beginnings nearly 100 years ago with homesteading in 1914, was a well-established, stable community with a “sufficiently large and stable” population to support city government.

Gustavus continues to see modest growth since its incorporation. Based upon the DCCED certified estimate of 448 residents in 2008,<sup>12</sup> Gustavus grew approximately four percent since it filed its incorporation petition. Updating the DCCED’s analysis (*Preliminary Report*, Chart 3-2, p. 72) using DCCED’s 2007 certified estimated populations for cities in the unorganized borough reveals that Gustavus, with an estimated 448 people, remains well above the median population of 272, and near the mean population of 470 for the 40 listed cities.<sup>13</sup> Further, Gustavus is now the 12<sup>th</sup> largest city in that list of 40 cities; the community of Gustavus would have been 14<sup>th</sup> in that list in 2000. Finally, Gustavus is one of only 13 listed cities showing positive population growth since 2000. (See Table 1 below.)

**Table 1**

Rank	City	2008 DCCED Certified Population Estimate	2000 Federal Census	Percent Change
1	Bethel	5,665	5,471	4%
2	Hooper Bay	1,160	1,014	14%
3	Togiak	802	809	-1%
4	Akutan	796	713	12%
5	Point Hope	713	757	- 6%
6	Noorvik	642	634	1%
7	Kotlik	610	591	3%
8	Pilot Station	587	550	7%
9	Fort Yukon	587	595	-1%

<sup>12</sup> DCCED Community Database Online, accessed at [http://www.commerce.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm) on April 13, 2010, reports the “2008 DCCED Certified Population” for Gustavus at 448.

<sup>13</sup> The 2003 DCCED analysis included 38 cities. It did not include Gustavus, because the report pre-dated the incorporation of Gustavus. Curiously, however, that analysis did not include Coffman Cove, which met the criteria used in the report because it was then a second class city in the unorganized borough. Including Gustavus and Coffman Cove for this update increases the number of cities from 38 to 40.

Rank	City	2008 DCCED		
		Certified Population Estimate	2000 Federal Census	Percent Change
10	Aniak	494	572	-14%
11	Chefornak	470	394	19%
<b>12</b>	<b>Gustavus</b>	<b>448</b>	<b>429</b>	<b>4%</b>
13	Thorne Bay	440	557	-21%
14	Nuiqsut	424383	433	-2%
15	Saxman	420	431	-3%
16	Marshall	417	349	19%
17	Akiak	341	309	10%
18	Koyuk	333	297	12%
19	McGrath	317	401	-21%
20	Shungnak	272	256	6%
21	Eek	272	280	-3%
22	Kaktovik	272	293	-7%
23	Goodnews Bay	225	230	-2%
24	White Mountain	191	203	-6%
25	Kaltag	188	230	-18%
26	Old Harbor	184	237	-22%
27	Adak CDP	178	316	-44%
28	Whittier	161	182	-12%
29	Ruby	160	188	-15%
30	Coffman Cove	141	199	-29%
31	Wales	138	152	-9%
32	Diomedes	128	146	-12%
33	Ekwok	121	130	-7%
34	Shageluk	102	129	-21%
35	Koyukuk	88	101	-13%
36	Pilot Point	72	100	-28%
37	Larsen Bay	67	115	-42%
38	Egegik	62	116	-47%
39	Clark's Point	54	75	-28%
40	Platinum	47	41	15%

In July 2008, the Alaska Division of Community & Regional Affairs published a "Three-year Anniversary Review" to "provide the City of Gustavus with an objective review of the new municipality's post-incorporation evolution." The Division offered (p. 4) the following description of the community's population:

2000 U.S. Census Bureau figures indicate Gustavus' total population is 429. DCCED's 2007 certified population estimate similarly reports 448 residents. U.S. Census

Bureau figures indicate steady population growth from 98 to 429 residents during the past 30 years (Figure 1). In recent years, Gustavus has experienced less robust population growth fluctuating between 418 and 459 residents (Figure 2). Long-term projections indicate Gustavus' local population will grow to nearly 725 residents by 2020 (Figure 1).<sup>14</sup>

The time period of largest population growth (1980 – 1990, 163% increase) likely occurred due to the establishment of a centralized electric utility, upturn in commercial fishing, and transition of Glacier Bay from monument status to a national park (Gustavus Strategic Plan, 2005). As long-term projections indicate, Gustavus will likely experience moderate future population growth. The establishment of a hydro power facility and subsequent lower power rates, new dock, and potential Alaska Marine Highway System (AMHS) service will all likely support long-term future population growth.

Gustavus' population is highly seasonal – peaking during the summer months. While exact monthly population counts are unavailable, it is estimated Gustavus' population may fluctuate up to 50% depending on the season (McDowell Group, 2008). (Emphasis added.)<sup>15</sup>

This 2008 assessment is consistent with the DCED's 2003 conclusion that "Gustavus clearly has a population that is sufficiently large and stable enough to support ... Gustavus city government."

Finally, the territory proposed for annexation is presently uninhabited. The City does not anticipate that development or other demand for city

---

<sup>14</sup> Figures 1 and 2 not included with this Brief.

<sup>15</sup> It is important to note, however, that the City may experience upwards of 100 percent increase in population during the summer months. The "Economy" section for Gustavus included in DCRA's online "Alaska Community Database" describes of the seasonal variations in the local population as follows:

Gustavus has a seasonal economy.... The number of residents during the summer approximately doubles from the current population estimates of year-round residents. Approximately 60,000 tourists visit or transit this small community annually. (Emphasis added.)  
([http://www.dced.state.ak.us/dca/commdb/CF\\_BLOCK.cfm](http://www.dced.state.ak.us/dca/commdb/CF_BLOCK.cfm))

services within in the territory proposed for annexation in the near term would require expenditures of City resources beyond the community's ability to support. As DCRA's 2008 report shows (pp 26-27), the City has been frugal to date in managing its resources.

During FY 05, the most recent year of complete financial data, Southeast second class cities generated a wide range of total revenue ranging from \$36,020 (Kupreanof ) to \$957,636 (Thorne Bay) including both locally- and externally generated revenue .... On average, cities generated approximately \$516,462 per city. Compared to other Southeast second class cities, the City of Gustavus generated the third highest revenue total at \$668,077, or 29% more than the average.

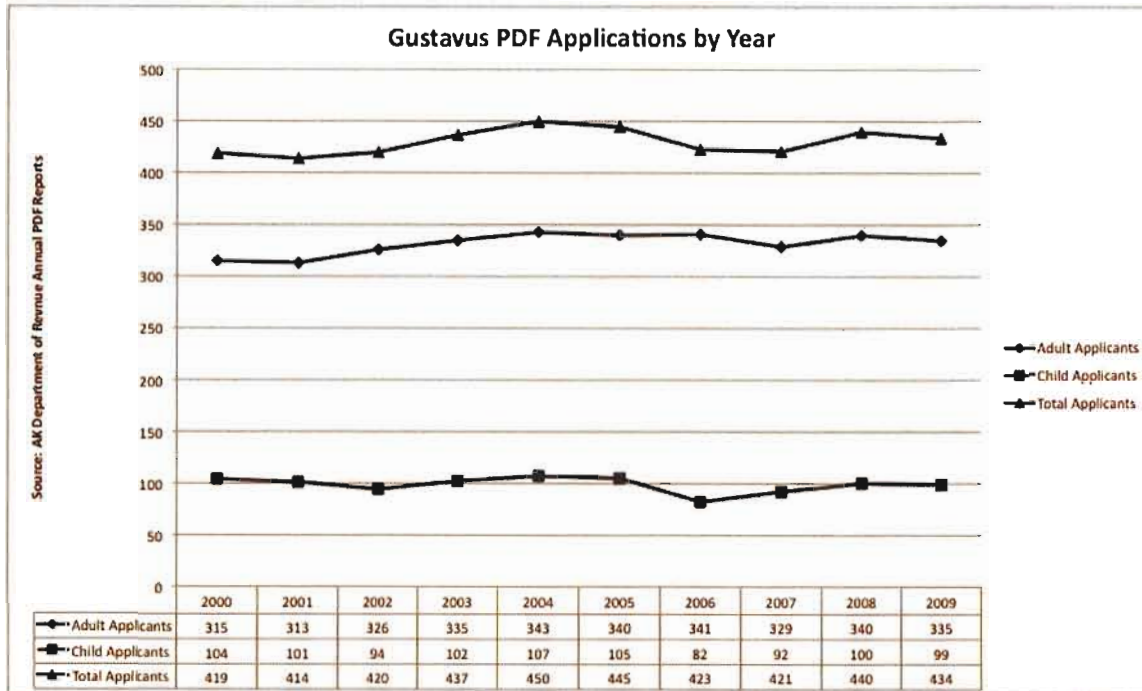
During FY 05, Southeast second class cities also experienced a wide range of total expenditures ranging from \$38,519 (Kupreanof ) to \$1,475,828 (Thorne Bay) including both operating and capital expenditures. On average, Southeast second class cities expended approximately \$569,392 per city. Compared to other Southeast second class cities, the City of Gustavus had significantly less expenditures at \$354,034, or 38% less than the average.

In sum, the City of Gustavus generates significantly more revenue and spends substantially less than the average Southeast second class city. Compared to cities of similar size including Angoon, Saxman, and Thorne Bay, Gustavus generates an average amount of revenue and spends significantly less. Of noteworthy importance, Gustavus is only one of three communities recording a net income surplus at the close of FY 05. (Emphasis added.)

This demonstrates that the existing population has been fully capable of supporting city services since incorporation.

### **Alaska Permanent Fund Application Data**

Another gauge of the size and stability of the community's population can be found in nonconfidential data from the Alaska Department of Revenue regarding applications under AS 43.23 for permanent fund dividends. The following chart displays PFD application data from the Permanent Fund Dividend Division's Annual Reports from 2000 through 2009.



This chart offers another clear indication that Gustavus enjoys a very stable population.

## ***Conclusion***

The City believes that immediate and near term demands for its services within the proposed expanded boundaries of the City will continue to be modest. The City further believes that the nature of these anticipated demands would allow for scalable solutions. Thus, the City is confident it will be able to develop appropriate solutions to anticipated challenges that would remain well within the population's ability to support.

Therefore, the population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government as required by 3 AAC 110.120.

## **APPROPRIATE BOUNDARIES**

### ***Introduction***

This section will demonstrate that

1. The proposed post-annexation boundaries of the City include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. [3 AAC 110.130(a)]
2. The territory proposed for annexation is contiguous to the City's present corporate boundaries. [3 AAC 110.130(b)]
3. The proposed annexation supports the limitation of community standard because it
  - a. Is on a scale suitable for city government;
  - b. Does not including entire geographic regions;
  - c. Includes only those unpopulated areas, which are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135, and which are otherwise suitable for city government; and
  - d. Includes only that area that the City believes is necessary to meet reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. [3 AAC 110.130(c)]
4. The proposed post-annexation boundaries of the City exclude entire geographical regions or large unpopulated areas, except where justified by the application of the city annexation standards in 3 AAC 110.090 - 3 AAC 110.130. [3 AAC 110.130(d)]
5. The territory proposed for annexation does not overlap the boundaries of any other organized municipality. [3 AAC 110.130(e)]

### ***Discussion***

#### **The Standard**

3 AAC 110.130(a) requires that the "proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the ... [Local Boundary Commission] may consider relevant factors, including

- (1) Land use and ownership patterns;
- (2) Population density;
- (3) Existing and reasonably anticipated transportation patterns and facilities;
- (4) Natural geographical features and environmental factors; and
- (5) Extraterritorial powers of cities.

3 AAC 110.130(b) provides that “absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.”

3 AAC 110.130(c) provides that, “to promote the limitations of community, the proposed boundaries of the city

- (1) Must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and
- (2) May not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 – 3 AAC 110.135 and are otherwise suitable for city government.”

3 AAC 110.130(d) provides that “if a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.”

### **Area Proposed for Annexation Includes Necessary Land and Water**

The proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level as 3 AAC 110.130(a) requires. In this regard, the City notes the following:

## **Land Use and Ownership Patterns**

The Falls Creek area, which the City proposes to annex, experienced significant changes in ownership and land use during the period following the City's incorporation in 2004. These changes, described in more detail in the "Need for City Government" section of this Brief, were the direct result of the development of the Falls Creek Hydroelectric Facility. The City anticipates that improved access to and increased community use of the Falls Creek area will have continuing and long-term effects requiring annexation to extend necessary city government services.

The City also notes the beginnings of significant changes in the type and intensity of community and other uses affecting Icy Passage, particularly that portion of Icy Passage immediately fronting the City. These changes, discussed in more detail in the "Need for City Government" section of this Brief, require city government responses. As with the Falls Creek area, the City anticipates that Icy Passage will see continuing changes over the long term, and that those changes will require extension of city services. For example, solving the community's need for adequate small boat moorage will require the City to extend its harbor functions beyond the City's current Icy Passage boundary. Facilitating access to and use of the new public dock will also require extension of City services into Icy Passage beyond current City boundaries. Possible use of Icy Passage tidal energy to generate electric power, while of considerable community interest, also suggests the obvious potential for conflict among the various uses of Icy Passage. The City desires to extend its boundaries to ensure its ability to effectively participate in agency management decisions affecting vital community interests.

All these changes in land use and ownership patterns require the extension of city government into the areas proposed for annexation. The City is positioned and poised to extend municipal services into the areas proposed for annexation as required on an efficient, cost-effective level.

## **Population Density**

The community's 2003 petition for incorporation reported that Gustavus then had a population of 429 residents (federal 2000 census data). In its 2003 *Preliminary Report to the Local Boundary Commission Regarding the Proposal to Incorporate the City of Gustavus*, the Alaska Department of Community and Economic Development remarked (pp 43-44) that Gustavus, if incorporated, would be a relatively low-density city. DCED's analysis of the community's population density at that time follows:

The 29.23 square miles of land included within the Petitioner's proposed boundaries are inhabited by an average of 14.4 persons per square mile. Existing cities in Alaska have population densities ranging from a high of 2,307 people per square mile of land (City of Ketchikan) to a low of 0.8 residents per square mile of land (City of Platinum).

Seventy-eight percent of existing cities in Alaska have greater population densities than the proposed City of Gustavus. The average population density of all 145 cities in Alaska is 53.1 residents per square mile of land; the median figure is 46.5 persons per square mile. The population density of the proposed City of Gustavus is 27 percent of the average of all cities and 31 percent of the median figure.

The population density of the land within the proposed City of Gustavus is relatively low due, in part, to the inclusion of the Dude Creek Critical Habitat Area and the adjoining State lands in Section 16, T40S, R58E that were designated many years ago for "schools" (the latter having no relation to the current school facilities at Gustavus). Those uninhabited lands comprise approximately 7 square miles. If those lands were excluded from consideration, the population density of the proposed City of Gustavus would increase by more than 30 percent to 18.9 persons per square mile of land. That would still be less than most existing cities (69 percent) in Alaska.<sup>16</sup>

<sup>16</sup> The referenced DCED population density analysis was based upon early, provisional estimates of the areas included within the Dude Creek Critical Habitat and other uninhabitable territory within the boundaries of the City of Gustavus. More recent data is now available, which shows that the uninhabitable area within the City is actually approximately 12.1 square miles, or approximately 73 percent greater than assumed in the 2003 analysis. Specifically,

Territory	Acres	Square Miles
• Dude Creek Critical Habitat Area	3760	5.9
• The Nature Conservancy Lands	2,900	4.5
• State lands deeded over from TNC, now de facto part of the Critical Habitat Area	1,100	1.7
Totals:	7,760	12.1

Footnote continues ...

Other than the south side, which borders the waters of Icy Passage, Gustavus is virtually surrounded by national park lands. Consequently, future population growth will likely occur within the locality proposed for incorporation resulting in a continued increase in its population density. Coupled with the fact that most of the locality's residents are connected by a broad network of public roads, this settlement is at least minimally characteristic of neighborhood living which promotes frequent personal contacts.

DCED certified Gustavus' 2008 population at 448 residents, which represents an increase slightly more than four percent since the community filed its 2003 petition for incorporation. Such an increase does not have a significant impact on community density. Further, the City is proposing to annex approximately four square miles of unpopulated land; therefore, the post-annexation density likely will be less than it was at the time of the City's incorporation. The proposed annexation will not change the fact that Gustavus is and will remain a low-density community for some time.

Nevertheless, the 2003 DCED population density analysis seems equally appropriate for the current petition. The expected reduction in population density should not materially affect the City's density relative to other cities in Alaska. Although the area proposed for annexation is unpopulated, it represents a natural and limited expansion of the City's current boundaries, and provides additional private lands into which residential and other uses could expand. As discussed in the "Need for City Government" section of this Brief, the community accesses and uses these areas on a routine and regular basis much as if they were already part of the City of Gustavus. Importantly, the area proposed for annexation is a limited, well-defined and compact area that requires city government services at this time.

Footnote Continued \_\_\_\_\_

If those revised areas for uninhabitable lands were excluded from consideration, the population density of the proposed City of Gustavus would increase by more than 70 percent to 24.5 persons per square mile of land.

### **Existing and Reasonably Anticipated Transportation Patterns and Facilities**

As described in more detail in the “Need for City Government” section of this Brief, existing and reasonably anticipated transportation patterns and facilities speak clearly to the need for annexation. The Falls Creek Hydroelectric Facility service road supported facility construction; it now and for the foreseeable future will provide the sole access to operate and maintain that electric generation facility, which is vitally important to community economic development and diversification. This service road, which has utility only because it is connected to a City road, also provides improved, albeit limited, public access to federal, state and private lands and to the natural resources of the Falls Creek area through that same connection. Recently established and reasonably anticipated transportation patterns and facilities directly related to development and operation of the Falls Creek Hydroelectric project now require the annexation of the Falls Creek area as proposed.

Icy Passage is also experiencing changes in transportation patterns and facilities. The community has very limited small boat harbor facilities. Icy Passage offers the only feasible “solution” to address that facility need, given the community’s unique location and topography. The City anticipates significant changes in waterborne freight and other commercial transportation patterns with the completion of the community’s new deepwater dock. Community interest requires the City to extend its services over time to properly respond to growing and changing needs. Again, existing and reasonably anticipated transportation patterns and facilities support the annexation of the Icy Passage area as proposed.

### **Natural Geographical Features and Environmental Factors**

The boundaries of the area proposed for annexation are simple extensions of the City’s existing boundaries, which generally follow section lines, natural drainages in the Falls Creek area, the Mean High Tide (MHT) line along the north shore of Pleasant Island, and other geographic features. The territory so described forms a single contiguous area, which totals approximately 16 square miles, and which wraps around the southern and eastern sides of the City. The territory proposed for annexation is limited to include only that area necessary to allow the City to develop and provide essential municipal services on an effective and cost-effective level.

### **Extension of Services through Extraterritorial Powers**

The City currently provides its Fire and EMT services within the entire area proposed for annexation through the exercise of its extraterritorial powers. The City also provides road services within the Falls Creek area proposed for annexation, through its extraterritorial powers. Annexation will allow the City to provide these necessary services without resorting to the exercise of extraterritorial powers.

### **Summary – Proposed Annexation Includes Necessary Land and Water**

The proposed annexation meets the requirements established in 3 AAC 110.130(a); because the projected boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

### **Area Proposed for Annexation is Contiguous to Current City Boundaries**

3 AAC 110.130(b) requires that “absent a specific and persuasive showing to the contrary, the ... [Local Boundary Commission] will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level” Inspection of the map showing the boundaries of the proposed annexation (Exhibit 3) clearly demonstrates that this petition meets the requirements of 3 AAC 110.130(b).

The boundaries of the area proposed for annexation are simple extensions of the City’s existing boundaries. These extensions generally follow section lines, natural drainages and other geographic features. The territory so described forms a single contiguous area, which totals approximately 16 square miles, and which wraps around the southern and eastern sides of the City. The proposed boundaries do not include or create enclaves in the annexing city.

### **Summary – Contiguous to Current City Boundaries**

Accordingly, the proposed annexation meets the requirements of 3 AAC 110.130(b).

## **Area Proposed for Annexation Promotes Limitation of Community**

3 AAC 110.130(c) requires that the proposed annexation

(1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and

(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

The proposed expanded boundaries of the City of Gustavus promote the limitation of community in accordance with 3 AAC 110.130(c). Discussion of each criterion follows.

### **On A Scale Suitable For City Government**

The territory, which the City proposes to annex, is a modest, compact and contiguous addition to the area currently within the boundaries of the City of Gustavus. This territory is not regional in scope; it is directly related to and limited to existing City services, and to present and long-term community needs.

The territory proposed for annexation is comprised of two distinct areas – a portion of the Falls Creek drainage and a portion of Icy Passage. As discussed in the “Need for City Government” portion of this Brief, both areas are integral parts of Gustavus, and they exhibit a need for city government at this time. Also as discussed earlier, the City anticipates that this need will increase with time. Thus the purpose of this proposed annexation is to address immediate and longer-term needs for *city* services in those areas by extending *city* services into the areas as soon as possible.

In the Falls Creek area, the proposed annexation includes the recently completed Falls Creek Hydroelectric Facility project site and its access road corridors. The Falls Creek project’s FERC permit restricts, but does not prohibit, public use of the hydro facility access roads. However, the only road access to the hydro facility connects to Rink Creek Road, which is a City road. The City proposes to extend its road maintenance service, and to continue its traditional fire and EMT services in the area. Because

the hydro project provides improved, if limited, public access to the area's federal, state and private lands and the area's natural resources, the City anticipates increasing long-term demands for these services. The City also anticipates possible development of a municipal water utility tapping Falls Creek resources, siting new City-managed Internet service and emergency services communication facilities, and accessing construction rock as permitted by the State in the area within the next ten years.

The City also proposes annexation of a limited portion of Icy Passage, which is in immediate need of city services. The portion of Icy Passage proposed for annexation is the marine gateway to Gustavus and GBNP. It also serves, in a limited way, as the community's only area for small boat moorage. Recent studies indicate that Icy Passage tidal energy could be tapped as a commercially viable source of electricity. Finally, Icy Passage is a rich marine habitat and resource. As discussed under the "Need for City Services" section of this Brief, the portion of Icy Passage proposed for annexation requires city government services at this time. Most immediately, the City must begin soon to extend its port and harbor functions into this area. Further, the City is mindful of the fact that the most likely uses and developments in Icy Passage within the upcoming decade would likely affect and could possibly conflict with other uses equally important to the community. Therefore, community interest dictates that the City position itself as an effective player to guide and influence federal and state agencies as they consider decisions affecting Icy Passage and Gustavus.

The community and the City of Gustavus have a direct interest in all these issues. The City currently offers some services in the Falls Creek and Icy Passage areas on an extraterritorial basis. It anticipates that the community will gradually require additional services in these areas over time. The City's ability to deal effectively with reasonably predictable community growth, development, and public safety needs requires that the City extend its services into these areas. Accordingly, the post-annexation City of Gustavus will be on a scale suitable for city government.

#### **Anticipates Requirements During Decade Following Effective Date**

3 AAC 110.130(c) requires that the post-annexation boundaries of the City include only that area comprising the local community plus area to support reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. The post-annexation boundaries that this petition proposes meet that requirement.

The City's petition can reasonably be considered a relatively minor adjustment of the City's existing boundaries, which is necessary to complete land and water areas already substantially within municipal boundaries and to add a recently constructed major energy source. It directly relates to the current operations, functions and responsibilities of the City of Gustavus. In that regard, it represents a modest response to changes in Gustavus and the immediate vicinity, which have occurred since the incorporation of the City of Gustavus in 2004. These changes and some of the possible solutions to problems developing as a result of these changes are described more fully in "Need for City Government" section of this Brief. Some of those solutions will require considerable time to plan, finance and implement. Accordingly, for purposes of this annexation petition, the City considered community and area needs from a ten-year planning and implementation perspective. Thus, the proposed annexation meets the requirements imposed by 3 AAC 110.130(c).

#### **Does Not Include Entire Geographic Regions or Unpopulated Areas**

The City's proposal does not include entire geographic regions. Rather, the boundaries of the area proposed for annexation represent extensions of existing boundaries that generally follow section lines, natural drainages and other geographic features, and that facilitate extension of city services into territory requiring those services. The City's proposal judiciously seeks annexation of only territory that the City requires to address known and reasonably anticipated community, not regional, needs. The City tailored the proposed annexation to include the minimum territory required by the City of Gustavus to provide appropriately for the long-term social, cultural and economic well being of community residents and businesses, and to include only that territory that demonstrates a reasonable need for city government.

The territory proposed for annexation is unpopulated. However, the entire territory proposed for annexation will receive directly or indirectly the benefit of city services and facilities. Importantly, as discussed in more detail in the section of this Brief entitled "Territory Proposed for Annexation Exhibits Reasonable Need for City Government" beginning on page 2, the territory proposed for annexation exhibits a reasonable need for city government and is an integral part of the fabric of the community. Accordingly, the City's proposal to annex this unpopulated territory is justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135.

### **Territory Otherwise Suitable for City Government**

Finally, the section of this Brief entitled “Territory Proposed for Annexation Exhibits Reasonable Need for City Government” beginning on page 2, also demonstrates that, because the territory proposed for annexation exhibits a reasonable need for city government and is an integral part of the fabric of the community, it is “otherwise suitable for city government.” Summary – Promotes Limitation of Community

Accordingly, the City of Gustavus’ proposal to expanded its boundaries promotes the “limitation of community” standard as required under 3 AAC 110.130(c).

### **Area Proposed for Annexation Does Not Overlap Other Municipal Boundaries**

3 AAC 110.130(d) provides that “If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.” The proposed annexation meets the requirements of 3 AAC 110.130(d).

The City of Gustavus is located within the Unorganized Borough. The area proposed for annexation is contiguous to the current boundaries of the City of Gustavus. Further, the boundaries of the area proposed for annexation are not contiguous to, and do not overlap, the boundaries of an existing organized borough or city. Finally, this petition does not propose an annexation that involves detachment of territory from an existing municipality.

### **Summary – Area does not Overlap Other Municipal Boundaries**

Accordingly, the annexation, as proposed, and this petition meets the requirements of 3 AAC 110.130(d).

### **Conclusion**

The City’s petition to annex limited portions of the Falls Creek and Icy Passage territory meet the requirements of 3 AAC 110.130. Specifically,

- The proposed post-annexation boundaries of the City include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. [3 AAC 110.130(a)]
- The territory proposed for annexation is contiguous to the City's present corporate boundaries. [3 AAC 110.130(b)]
- The proposed annexation supports the limitation of community standard because it
  - Is on a scale suitable for city government;
  - Does not including entire geographic regions;
  - Includes only those unpopulated areas, which are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135, and which are suitable for city government; and
  - Includes only that area that the City believes is necessary to meet reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. [3 AAC 110.130(c)]
- The proposed post-annexation boundaries of the City exclude entire geographical regions or large unpopulated areas, except where justified by the application of the city annexation standards in 3 AAC 110.090 - 3 AAC 110.130. [3 AAC 110.130(d)]
- The territory proposed for annexation does not overlap the boundaries of any other organized municipality. [3 AAC 110.130(e)]

# **ANNEXATION SERVES BEST INTEREST OF THE STATE**

## ***Introduction***

This section will demonstrate that the proposed annexation to the City is in the best interests of the state as required by AS 29.06.040(a) and 3 AAC 110.135, 3 AAC 110.981, and 3 AAC 110.982, and in accordance with Article X, Section 1, Constitution of the State of Alaska. Specifically, this section will demonstrate that the proposed annexation promotes maximum local self-government, promotes a minimum number of local government units, and relieves the state government of responsibility to provide local services.

## ***Discussion***

### **The Standard**

3 AAC 110.135 provides that “in determining whether annexation to a city is in the best interest of the state under AS 29.06.040(a), the ... [Local Boundary Commission] may consider relevant factors, including whether annexation

- (1) Promotes maximum local self-government, as determined under 3 AAC 110.981;
- (2) Promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X sec. 1, Constitution of the State of Alaska; and
- (3) Will relieve the state government of the responsibility of providing local services.

### **Promotes Maximum Local Self-government**

3 AAC 110.135(1) requires a petition of annexation to a city must promote “maximum local self-government as determined under 3 AAC 110.981. 3 AAC 110.981(7) requires that, “for city incorporation or annexation in the unorganized borough ... the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.”

The City of Gustavus is located in the unorganized borough. The proposed annexation would extend local government to territory of the unorganized borough where no local government currently exists. Importantly, as discussed throughout this Brief, the proposed annexation will enhance the City’s ability to remain a viable local

government, and thereby will bolster its ability to continue its strong, active role representing the interests of Gustavus, and meeting the community's service and facility needs. Therefore, the proposed annexation promotes maximum local self-government as required by 3 AAC 110.135(1) and 3 AAC 110.981(7).

### **Promotes Minimum Number of Local Government Units**

3 AAC 110.135(2) provides that, in determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the Local Boundary Commission may consider relevant factors, including whether annexation "promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X sec. 1, Constitution of the State of Alaska." 3 AAC 110.982(7) requires that, for city annexation, "the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area."

The proposed annexation will enlarge the jurisdictional boundaries of the existing City of Gustavus. Again, the City is located in the unorganized borough; it is well outside the possible territorial reach of any other city. Further, while there has been some interest in forming a borough in the Glacier Bay area, that prospect probably is not viable in the near term. Regardless of future efforts to that effect, the needs to be addressed through the proposed annexation are strictly local matters that clearly fall more appropriately within the purview of the existing City rather than a borough. In proposing this annexation, the City is specifically responding to issues that are of immediate and long-term concern to Gustavus, and that directly relate to existing City functions. The need for this annexation is independent of the outcome of any future effort to form a borough that might someday include Gustavus.

Finally, the proposed annexation does not and will not promote the incorporation of a new city or creation of a new borough service area.

Therefore, the proposed annexation promotes a minimum number of local government units, as determined under 3 AAC 110.982(7) and in accordance with Article X, Section 1, Constitution of the State of Alaska.

### **Relieves State Government of Responsibility to Provide Local Services**

3 AAC 110.135(3) requires that a proposal for annexation to a city "will relieve the state government of the responsibility of providing local services."

The proposed annexation will enhance the City's ability to relieve the state government of the responsibility of providing local services. When Gustavus petitioned to incorporate as a second class city, the community argued that

The incorporation of the city of Gustavus will provide an entity with whom the State government agencies may contact and with whom those agencies may enter into contractual agreements. The city of Gustavus will take ownership of and provide maintenance for those facilities that support the community as rapidly as the city can assume that responsibility.

In its 2003 *Preliminary Report*, the DCED offered the following assessment of that element of the community's petition:

Gustavus is a relatively populous unincorporated community. The community is located adjacent to Glacier Bay National Park, which attracts thousands of visitors each year. The community is expected to see continued growth and development at the same time it is faced with a decline in State funding for local services. The population of Gustavus is sufficiently large and stable to support the proposed city government, the costs of which will, in significant part, be paid for through local taxes. Incorporation of the City of Gustavus will, to paraphrase the LBC Report, allow the community "to assume and exercise local self determination and provide municipal services that are funded and provided at the local level," thereby reducing the State's responsibility to provide such services in Gustavus. (p. 93) (Emphasis added.)

As discussed earlier in this Brief, the City has performed in a manner wholly consistent with that expectation since its incorporation. The proposed annexation will enhance the City's ability to remain a viable local government, and thereby will strengthen its ability to continue playing a strong, active role in addressing the service and facility needs of Gustavus. Accordingly, the proposed annexation will relieve the state government of the responsibility of providing local services as required by 3 AAC 110.135(3).

## **Conclusion**

The annexation of territory to the City of Gustavus, as proposed in this Petition, meets the requirements of AS 29.06.040(a), 3 AAC 110.135,

3 AAC 110.981, and 3 AAC 110.982, and it is in accordance with art. X, sec. 1, Constitution of the State of Alaska. Therefore, the proposed annexation is in the best interests of the state.

## **ANNEXATION VIA LEGISLATIVE REVIEW PROCESS IS APPROPRIATE**

### ***Introduction***

Because the Falls Creek and Icy Passage territory proposed for annexation is uninhabited and is almost completely owned and controlled by federal and state governments, the City of Gustavus is effectively precluded from pursuing annexation of this territory by any means other than through the legislative review procedure.<sup>17</sup> Accordingly, the City is seeking annexation of certain limited portions of the Falls Creek area and of Icy Passage through the legislative review process as provided by 3 AAC 110.140.

3 AAC 110.140 identifies eight circumstances under which a proposal to annex territory by the legislative review process can be considered appropriate. 3 AAC 110.140 requires that a petition meet at least one of those eight circumstances to be considered “appropriate” for consideration under the legislative review process. This section will demonstrate that the City’s proposal to annex the described territory via the legislative review process is appropriate, because it meets five of those circumstances.

### ***Discussion***

#### **The Standard**

3 AAC 110.140 provides that “Territory that meets the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.135 may be annexed to a city by the legislative review process if the ... [Local Boundary Commission] also determines that any one of the following circumstances exists:

- (1) The territory is wholly or substantially surrounded by the annexing city;
- (2) The health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

---

<sup>17</sup> See also discussion under the section entitled “Proposed Annexation Serves Policies of AS 29.06 of this Brief.

- (3) The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- (4) Residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (5) Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;
- (6) Repealed 5/19/2002;
- (7) Annexation of the territory will promote
  - (a) Maximum local self-government, as determined under 3 AAC 110.981; and
  - (b) A minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
- (8) Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042, and is in the best interests of the state;
- (9) The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.

### **Annexation through Legislative Review Appropriate Under 3 AAC 110.140(3)**

3 AAC 110.140(3) provides that annexation through the legislative review process may be considered appropriate if “the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city.” The following discussion highlights issues discussed previously in this Brief from the perspective of the two distinct areas, the Falls Creek area and the Icy Passage area, proposed for

annexation, to demonstrate that the City's petition satisfies 3 AAC 110.140(3).

### **Falls Creek Area Proposed for Annexation**

Adequate and reliable supply of potable water is a critically important community issues for any municipality. Gustavus faces some rather unique challenges in these areas. This Brief discusses these challenges in more detail in the section entitled "Future Source for Community Potable Water " beginning on page 10.

In summary, however, the City anticipates a future need to form a municipal water utility. Currently, residents and businesses rely on individual wells, which, given the local topography and soils, and prevalence of on-site residential and commercial septic systems, are subject to contamination. Nearly all homes and businesses have individual water systems (wells or rainwater systems). Many have septic systems; some have outhouses or composting toilets. Concerns have been raised about water safety, due to shallow wells and individual septic systems. The school currently purchases water from the National Park Service.

A municipal water utility could address that situation, providing the community with a reliable and safe supply of potable water. The Falls Creek drainage is the only practical source of water for such a utility. Annexation of the Falls Creek area would bring the probable source of water for a municipal water system within the City limits.

Therefore, the annexation of the Falls Creek area through the legislative review process, as proposed, satisfies 3 AAC 110.140(3); because the extension of city services or facilities into the territory proposed for annexation is necessary to enable the city to provide adequate potable water services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city.

### **Icy Passage Area Proposed for Annexation**

As discussed in more detail in the section of this Brief entitled "Territory Proposed for Annexation Exhibits Reasonable Need for City Government" beginning on page 16, the City's interest in annexing a portion of Icy Passage is three-fold. However, Icy Passage's role as the sole corridor for accessing the community via water-based modes of transportation, and for residents and visitors to access nearby natural resources, particularly Pleasant Island and nearby Icy Strait, is significant when assessing the

criterion imposed by 3 AAC 110.140(3). In this regard, in particular, “the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city.”

Icy Passage, a protected waterway, is the marine gateway to Gustavus and Glacier Bay National Park. Icy Passage is also the community’s only area for safely mooring or anchoring local and transiting boats.

Accordingly, Gustavus residents and visitors, who rely heavily on small boats for some portion of their livelihood, subsistence or recreation, also rely heavily on Icy Passage for safe passage and moorage.

However, only a relatively small portion of Icy Passage is within the current City limits. Unfortunately, that portion of Icy Passage lying within the City limits is largely an extensive mudflat at all but high tides. Those extensive mudflats impose a practical bar to developing adequate small boat harbor facilities for Gustavus’ present or long-term needs.

Pressure is building to find suitable long-term solutions to the community’s small boat moorage problems. Because the only portions of Icy Passage suitable for developing a community anchorage lie outside the current City boundaries, the City effectively has no control over the only marine access to the community. The City’s proposed annexation will rectify that problem.

The City faces a similar problem with regard to its role in ensuring adequate access to and use of the community’s only deep-water dock. The community relies on a State-owned pier and dock structure (originally constructed in the 1960s) and on a size-restricted, tide-dependent barge landing upstream in the Salmon River for its waterborne commerce. The State, with the financial assistance of GBNP, is constructing a new dock (scheduled completion, Fall 2010), capable of modern roll-on-roll-off systems, which will replace the original structure and will significantly enhance commercial opportunities for the community. The new dock, especially in light of the partnership with GBNP, signifies the growing role Gustavus plays as a port community.

However, the simple fact that a new, more capable dock exists is not a complete solution. The new dock will offer only very limited tie-up facilities; therefore it will not reduce the need for anchorage space in Icy Passage. Further, the working face of the new dock lies near the present southern boundary of the City of Gustavus.

Thus, this important improvement to community infrastructure will also compound the age-old moorage problem in Gustavus. Because of a lack of a suitable small boat harbor or approved anchoring or mooring areas, there have been numerous examples of use conflicts arising because local and transient boaters tend to anchor or set mooring buoys wherever convenient. This has, in the past, interfered with access to or use of the dock. The City anticipates increased use of this new dock, especially due to the GBNP's decision to shift its supply barge shipments to the new State dock; therefore, the City anticipates an increasing potential for these use conflicts with the construction of the much-needed new dock.

Without some systems for managing the new dock and the associated nearby anchorage, the community cannot achieve its full potential for local economic development and diversification. This would be an appropriate role for and responsibility of city government. The City anticipates that it ultimately will need to expand its harbor department functions to address these issues. Annexation, as proposed, will allow the City to play such a role.

Therefore, the annexation of the Icy Passage area through the legislative review process, as proposed, satisfies 3 AAC 110.140(3); because the extension of city services or facilities into that territory is necessary to enable the City to provide adequate small boat harbor services and facilities to City residents, and it is impossible or impractical for the City to extend those facilities or services unless the territory is within the boundaries of the City.

#### **Summary – Petition Meets Requirements of 3 AAC 110.140(3)**

The annexation of the Falls Creek and Icy Passage areas through the legislative review process, as proposed, satisfies 3 AAC 110.140(3); because the extension of City services or facilities into the territories is necessary to enable the City to provide adequate services to City residents, and it is impossible or impractical for the city to extend the facilities or services unless the territories are within the boundaries of the City.

#### **Annexation through Legislative Review Appropriate Under 3 AAC 110.140(5)**

3 AAC 110.140(5) provides that annexation through the legislative review process may be considered appropriate if “annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city.” The following highlights of issues discussed previously and more

fully in this Brief<sup>18</sup> demonstrate that the City's petition satisfies 3 AAC 110.140(5).

### **Falls Creek Area Proposed for Annexation**

#### ***Source of the Community's Hydroelectric Power***

The Falls Creek area is the single area with sufficient water resources to meet most of Gustavus' electrical demands with hydroelectric power. GEC recently completed construction of the Falls Creek Hydroelectric Facility project. This hydroelectric facility will meet most of Gustavus' and the Glacier Bay National Park's electrical needs at significantly lower cost than diesel generation, which previously supplied electrical power to the community.

Avoiding the adverse impacts of high cost diesel generated electric power and maintaining stable, low-cost hydroelectric power are critically important elements for the community's strategy for long-term survival, and for fostering community growth and development. Supporting those efforts is an appropriate role and responsibility for the City. Annexation of the Falls Creek area will allow the City, by planning, controlling and otherwise exercising its powers, to actively support GEC's efforts to operate the hydro facility at the lowest possible cost and thereby to contribute to community economic development and diversification.

#### ***Hydroelectric Project Introduced Changes to Area That Suggest Need for City Planning and Control***

The recently completed Falls Creek Hydroelectric Facility project changed land ownership and use patterns in the Falls Creek area. For example, the project extended the first road into the area to allow facility construction, operation and maintenance. The new Falls Creek Hydroelectric Facility road connects to a City road. Although the project's FERC permit and State land use regulations covering adjacent lands limit the use of that road, the project nevertheless created permanent road access where there was none before. The operation and maintenance of the Falls Creek Hydroelectric Facility also brings permanent activities and sounds to an area unlike any there before. These are inevitable and permanent effects on the area.

---

<sup>18</sup> See the section entitled "Territory Proposed for Annexation Exhibits Reasonable Need for City Government" beginning on page 2 of this Brief for more complete discussions of these issues.

The Falls Creek Hydroelectric Facility inevitably will bring other changes to the area as well. Improved access, even if limited by permit, will allow greater public use of the natural biotic and other resources. Improved access will impose greater pressure on the fish, wildlife and other natural resources of the area.

The Falls Creek area has always been an important part of the Gustavus community. The recently completed Falls Creek Hydroelectric Facility introduces new and predictable activities related to construction and operation of the hydroelectric facility; these activities will affect the area and the community's interrelationship with the area. It also introduces an element of uncertainty about cumulative and long-term effects. Those changes, known and unknown, in an immediately adjacent and integral part of the Gustavus community clearly demonstrate the need to extend city government planning and control into the area proposed for annexation.

#### ***Future Community Water supply***

Adequate and reliable supply of potable water is a critically important issues for any municipality. Gustavus faces some rather unique challenges in these areas. Currently, residents and businesses rely on individual wells, which, given the local topography and soils, and prevalence of on-site residential and commercial septic systems, are subject to contamination. Nearly all homes and businesses have individual water systems (wells or rainwater systems). Many have septic systems; some have outhouses or composting toilets. Concerns have been raised about water safety due to the potential interactions of shallow wells and individual septic systems. The school currently purchases water from the National Park Service.

A municipal water utility could be the only practical solution to those challenges; a municipal water utility could provide the community with a reliable and safe supply of potable water. The Falls Creek drainage is the only practical source of water for such a utility. Annexation of the Falls Creek area would bring the probable source of water for a municipal water system within the City limits and best enable the City to plan, provide and regulate adequate potable water services for City residents.

#### ***Extraterritorial Powers Exercised in the Territory Proposed for Annexation***

Gustavus has traditionally offered EMS in the Falls Creek area as an extraterritorial exercise of the City's powers. The City anticipates increased demand for its EMS in the Falls Creek area that will result

from the development of the Hydroelectric Facility. Some of this increased demand will relate to the operation and maintenance of the facility. Some of the increase undoubtedly will reflect increased use of the area by residents and visitors for recreational and subsistence purposes made possible by improved access. Accordingly, the City believes that annexation of the project area is appropriate to provide the City with a more solid basis for planning, controlling and providing this important EMS service.

### ***Access to Resources***

The Falls Creek area includes rock, which at present is not locally available for local construction purposes and has to be shipped in by barge. The State's regulations governing use of its property within the Falls Creek area expressly permit access to and use of those resources. Annexation of the Falls Creek area will facilitate community planning, access to, control, and use of those resources, which are critically important for economical community development.

### ***Communication Services***

The Falls Creek area includes the primary, perhaps sole, site suitable for construction of a communication tower to support future improvements to community Internet services, EMS communication, and possibly mobile phone service. The City believes it is important to include that site within the municipality's corporate limits to properly ensure its ability to maintain these important services at levels appropriate to community needs. Again, annexation of the Falls Creek area will facilitate local planning, development, and control of sites necessary for vital community communication services.

### ***Icy Passage Area Proposed for Annexation***

#### ***Limited Options for Small Boat Harbor***

Icy Passage is the community's only area for safely mooring or anchoring local and transiting boats. However, only a relatively small portion of Icy Passage, so important to the day-to-day life of the community, is within the current City limits, and unfortunately, that area is largely an extensive mudflat. Therefore, for all practical purposes, the only portions of Icy Passage suitable for a community anchorage lie outside the current City boundaries. Accordingly, the City effectively has no ability to effectively plan, manage, regulate or control the only marine access to the community.

The City is facing increasing pressure to develop safe moorage and anchoring solutions to meet community needs; however options for solving those problems are limited to locations that lie outside the current City boundaries. The City's proposed annexation will address that problem.

Further, the portion of Icy Passage proposed for annexation, also offers sole access to resource-rich Pleasant Island, which is part of the Pleasant, Lemesurier and Inian Islands Wilderness Area of the Tongass National Forest. Gustavus residents and visitors, including many visiting GBNP, routinely and regularly use Pleasant Island and adjacent waters for recreation, subsistence and resource gathering. The proposed annexation will allow the City to develop, manage and control appropriate harbor facilities or services that will support improved resident and visitor access to Pleasant Island.

### ***Controlling Access to Community's Sole Deep Water Dock***

The City also faces a significant and growing problem of ensuring adequate access to and use of the community's only deep-water dock. The State, with the financial assistance of GBNP, is constructing a new replacement dock (scheduled completion, Fall 2010), capable of modern roll-on-roll-off systems, which will significantly enhance commercial opportunities for the community. However, the new dock will offer only very limited tie-up facilities; therefore it will not reduce the need for nearby anchorage or other moorage. Further, the working face of the new dock lies near the present southern boundary of the City of Gustavus.

Thus, this important improvement to community infrastructure will compound the age-old moorage problem in Gustavus. Because of a lack of a suitable small boat harbor or approved anchoring or mooring areas, there have been numerous examples of anchoring and mooring interfering with access to or use of the dock. The City anticipates increased use of this new dock, especially due to the GBNP's decision to shift its supply barge shipments to the new State dock; therefore, the City anticipates increasing occurrences of these use conflicts over time.

Without some systems for managing the new dock and the associated nearby anchorage, the community cannot achieve its full potential for local economic development and diversification. This would be an appropriate role for and responsibility of city government. The City anticipates that it ultimately will need to expand its harbor department functions to address these issues. Annexation, as proposed, will allow the City to regulate and control harbor use for the overall benefit of the community.

### ***Facilitate Development of Potential for Hydrokinetic (Tidal) Electric Generation***

Icy Passage enjoys recognized potential to be a source of hydrokinetic-generated electric power. While of considerable interest and possible long-term benefit to the community, the City also recognizes that hydrokinetic generation of electricity is just one of several uses of Icy Passage, all playing or potentially playing important roles for the well-being of the community. Other uses include vessel transit, moorage and anchoring, subsistence, and recreation. Maximizing the benefits derived from one use could result in reduction or elimination of benefits derived from another use. The community's long-term interests can only be served properly through careful balancing of potentially conflicting uses of Icy Passage. The City could and should be a key player in all decisions affecting these uses. Annexation, as proposed, will allow the City to play those roles, including planning, control and regulation, appropriately and effectively.

### ***Protect Rich Marine Resource and Habitat***

Finally, Icy Passage is a rich marine habitat; the community depends upon its bounty for recreation and sustenance. Again, Icy Passage offers considerable benefit to the community. But, the demand for other competing uses of Icy Passage, including requirements for vessel transit, moorage and anchoring, hydrokinetic power generation, subsistence and recreation, all important but potentially competing interests, demonstrate that the City needs to annex the area to ensure that decisions affecting Icy Passage reflect a balance appropriate to Gustavus.

### **Summary – Petition Meets Requirements of 3 AAC 110.140(5)**

The annexation of the Falls Creek and Icy Passage areas through the legislative review process, as proposed, satisfies 3 AAC 110.140(5); because annexation of the territories will enable the City to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the territory proposed for annexation and the City.

### **Annexation through Legislative Review Appropriate Under 3 AAC 110.140(7)**

3 AAC 110.140(7) provides that a petition for annexing territory that promotes maximum local self-government, as determined under 3 AAC 110.981, and that promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art.

X, sec. 1, Constitution of the State of Alaska, will be appropriate for the legislative review procedure. As discussed below, the City's proposed annexation of both the Falls Creek and Icy Passage areas clearly meets these standards.

**Proposed Annexation Consistent with Alaska Constitution Article X, Section 1**

Article X of the Constitution of the State of Alaska addresses local government in Alaska. Section 1 of Article X provides, in part, that

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.

The proposed annexation is fully consistent with Article X, Section 1 of the Alaska Constitution.

The City of Gustavus is in the unorganized borough. The territory proposed for annexation, including both the Falls Creek area and the Icy Passage area, lies immediately adjacent to the City of Gustavus and wholly within the unorganized borough. No local governments, except for the City of Gustavus, currently exist within or near the territory proposed for annexation. Therefore, if approved, the annexation of territory to the City of Gustavus would extend an existing local government to include territory and population of the unorganized borough where no local government current exists. This would remove territory from the unorganized borough and increase the territory and responsibilities of an existing local government, thereby providing for maximum local self-government without creating a new or additional local government unit. Further, including the territory proposed for annexation within the boundaries of the City of Gustavus would also effectively prevent duplication of local government units in the area. Accordingly, the proposed annexation is fully consistent with Article X, Section 1 of the Alaska Constitution.

**Proposed Annexation Promotes Local Self Government**

3 AAC 110.981(7) provides that in determining whether a proposal to annex territory to a city in the unorganized borough promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the Local Boundary Commission will consider "whether the proposal would extend local government to territory and population of the unorganized borough where no local government current exists."

The City of Gustavus is in the unorganized borough. The territory proposed for annexation, including both the Falls Creek area and the Icy Passage area, lies wholly within the unorganized borough. Further, no local governments currently exist within the territory proposed for annexation. Therefore, if approved, the annexation of territory to the City of Gustavus "would extend local government to territory and population of the unorganized borough where no local government current exists." The City's annexation proposal meets the condition established under 3 AAC 110.981(7).

#### **Proposed Annexation Promotes Minimum Number of Government Units**

3 AAC 110.982(7) provides that in determining whether a proposal to annex territory to a city promotes a minimum number of government units the Local Boundary Commission will consider "whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area."

The City of Gustavus is an existing incorporated municipality. By this petition, the City is proposing to enlarge its jurisdictional boundaries. The effect of the City's proposed annexation would be to enlarge the jurisdictional boundaries of an existing local government rather than to promote the incorporation of a new city or creation of a new borough service area. Therefore, the City's annexation proposal meets the condition established under 3 AAC 110.982(7).

#### **Summary – Petition Meets Requirements of 3 AAC 110.140(7)**

The annexation of the Falls Creek and Icy Passage areas through the legislative review process, as proposed, satisfies 3 AAC 110.140(5); because annexation of the territories promotes maximum local self-government, as determined under 3 AAC 110.981, and promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with Article X, Section 1 of the Alaska Constitution.

#### **Annexation through Legislative Review Appropriate Under 3 AAC 110.140(8)**

3 AAC 110.140(8) allows annexation through the legislative review procedure if annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042. The following discussion demonstrates that the City's

proposed annexation of both the Falls Creek and Icy Passage areas meets this standard, because it would enhance the extent to which the City of Gustavus meets the standards for incorporating a city.

### **The Constitutional Standard for Incorporating a City**

Article X, of the Alaska Constitution establishes the basic foundation for local government in Alaska. Sections 1 and 7 of that Article provide constitutional elaboration on cities, one of the two local government units authorized in Section 2.

Section 1 establishes a general parameter for the formation of a city government. It provides, in part, that the incorporation of a city should “provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.”

The City of Gustavus is in the unorganized borough. All the territory proposed for annexation lies immediately adjacent to the current boundaries of the City of Gustavus and wholly within the unorganized borough. No local governments, except for the City of Gustavus, currently exist within or near the territory proposed for annexation. Therefore, if approved, the annexation of territory to the City of Gustavus would extend an existing local government to include territory and population of the unorganized borough where no local government current exists. This would remove territory from the unorganized borough and increase the territory and responsibilities of an existing local government, thereby providing for maximum local self-government without creating a new or additional local government unit. Further, including the territory proposed for annexation within the boundaries of the City of Gustavus would also effectively prevent duplication of local government units in the area. Accordingly, the proposed annexation would enhance the extent to which the City of Gustavus meets the standard expressed in Article X, Section 1 of the Alaska Constitution.

Section 7, dealing specifically with city government in Alaska, states

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

It only requires that cities be part of a surrounding borough if one exists and gives broad power to the legislature to build a statutory framework for the creation and operation of cities.

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” The City met the constitutional standards for incorporation at the time of incorporation. As discussed throughout this Petitioner’s Brief, the proposed annexation is necessary and appropriate to enable the City to continue providing the services required and desired by the community’s residents and businesses in an efficient and cost-effective manner. Therefore, the proposed annexation will enhance the extent to which the City of Gustavus meets the standard for incorporation of a city articulated in Article X, Section 7 of the Alaska Constitution.

### ***Summary re Constitutional Standard for Incorporating a City***

Annexation of the territory, as proposed, will enhance the extent to which the City of Gustavus meets the standards for incorporation of cities as set out in Article X, Sections 1 and 7, of the Constitution of the State of Alaska.

### **The AS 29.05 Standards for Incorporating a City**

Title 29 of Alaska Statutes (AS) establishes the essential framework for municipal government formation and operation. AS 29.05 articulates certain standards for the incorporation of an Alaskan city within the guidelines established by the Constitution. AS 29.05.011(a)(2) through 29.05.011(a)(5) and AS 29.05.11(b) applied to the incorporation of the City of Gustavus. The proposed annexation of certain Falls Creek and Icy Passage territory will enhance the degree to which the City of Gustavus would meet those standards for incorporating a city.

### ***AS 29.05.011(a)(2) — Boundaries***

AS 29.05.011(a)(2) provides that “the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale.”

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” The City met the statutory standards for incorporation at the time of incorporation. However, the discussion of existing and proposed boundaries for the City of Gustavus in the section of this Brief entitled “Appropriate Boundaries” beginning on page 57, and the discussion under the heading “3 AAC 110.040 – Boundaries”

beginning on page 93, which highlight changes in the community since incorporation, demonstrate that the proposed annexation would enhance the extent to which the City of Gustavus meets the standard articulated in AS 29.05.011(a)(2).

***AS 29.05.011(a)(3) — Resources***

AS 29.05.011(a)(3) provides that “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.”

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” The City met the statutory standards for incorporation at the time of incorporation. However, discussion of “Adequate Resources” beginning on page 40 demonstrates that the proposed annexation would enhance the extent to which the City of Gustavus meets the standard articulated in AS 29.05.011(a)(3).

***AS 29.05.011(a)(4) — Population***

AS 29.05.011(a)(4) provides that “the population of the community is stable enough to support city government.”

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” The City met the statutory standards for incorporation at the time of incorporation. However, discussion in the section of this Brief entitled “Sufficiently Large and Stable Population” beginning on page 51 demonstrates that the proposed annexation would enhance the extent to which the City of Gustavus meets the standard articulated in AS 29.05.011(a)(4).

***AS 29.05.011(a)(5) — Need for City Government***

AS 29.05.011(a)(5) provides that “there is a demonstrated need for city government.”

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” The City met the statutory standards for incorporation at the time of incorporation. However, the discussion in the section of this Brief entitled “Need for City Government” beginning on page 1 demonstrates that the proposed annexation would enhance the

extent to which the City of Gustavus meets the standard articulated in AS 29.05.011(a)(5).

***AS 29.05.021(a) — A Limitation for Incorporation***

AS 29.05.021(a) imposes a specific limitation on city incorporation. It requires that 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.” AS 29.05.021(a) appears intended to “provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.”

The City of Gustavus is in the unorganized borough. All the territory proposed for annexation lies immediately adjacent to the current boundaries of the City of Gustavus and wholly within the unorganized borough. No local governments, except for the City of Gustavus, currently exist within or near the territory proposed for annexation. Therefore, the City’s proposed annexation is consistent with this requirement. Further, annexation would enhance the extent to which the City of Gustavus meets the standard articulated in AS 29.05.021(a).

***Summary re AS 29.05 Standards for Incorporating a City***

In summary, annexation of the territory, as proposed, will enhance the extent to which the City of Gustavus meets the standards for incorporation of cities as set out in Alaska Statutes Section 29.05.

***The Alaska Administrative Code Standards (3 AAC 110.005 – 3 AAC 110.042) for Incorporating a City***

Alaska Administrative Code (AAC) sections 3 AAC 110.005 – 3 AAC 110.042 articulate the specific standards, more broadly defined in Article X of the Alaska Constitution and Section 29.05 of Alaska Statutes, that must be met in order to incorporate a city in Alaska. The proposed annexation of certain Falls Creek and Icy Passage territory will enhance the degree to which the City of Gustavus would meet those standards for incorporating a city.

***3 AAC 110.005 – Community***

The standards articulated in 3 AAC 110.005 – 3 AAC 110.042 begin quite simply with the requirement that “Territory proposed for incorporation as a city must encompass a community.” (3 AAC 110.005) 3 AAC 110.990(5) defines a “community” to mean “a social unit comprised of 25 or more

permanent residents as determined under 3 AAC 110.920. 3 AAC 110.920 provides that

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 permanent residents;

(2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and

(3) the permanent residents at a location are a discrete 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 number of commercial or industrial establishments, community services, and service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted; or

(2) repealed 1/9/2008;

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

(c) A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.

The City of Gustavus incorporated as a second-class city in 2004 in the "manner prescribed by law." Accordingly, Gustavus then met the community standard for incorporation as set forth in 3 AAC 110.005, 3 AAC 110.990(5) and 3 AAC 110.920.

Considered as a whole, this Petitioner's Brief demonstrates that the proposed annexation would enhance the degree to which Gustavus would meet the community standard for incorporation. In this regard, as one example, particular note should be made of changing relationship between Glacier Bay National Park and the community, and of improvements to local transportation infrastructure with completion of the new public dock. Together, these changes reflect the fact that Gustavus is gradually solidifying its status as a community especially in

light of 3 AAC 110.920(2) and 3 AAC 110.920(3). The discussion in the section of this Brief entitled "Access to Community's Sole Deep Water Dock" beginning on page 22 is pertinent in this regard. Annexation of certain Falls Creek and Icy Passage territory, as proposed, will enhance the degree to which the City of Gustavus would meet the community standard (3 AAC 110.005) for incorporating a city.

### **3 AAC 110.010 – Need**

3 AAC 110.010(a) provides that, "in accordance with AS 29.05.011(a)(5), a community must demonstrate a reasonable need for city government." 3 AAC 110.010 further provides that, in this regard, the Local Boundary Commission may consider relevant factors, including

- (1) existing or reasonably anticipated social or economic conditions;
- (2) existing or reasonably anticipated health, safety, and general welfare conditions;
- (3) existing or reasonably anticipated economic development;
- and
- (4) adequacy of existing services.

The City of Gustavus incorporated as a second-class city in 2004 in the "manner prescribed by law." Accordingly, Gustavus then met the community standard for incorporation as set forth in 3 AAC 110.010(a). However, the discussion under the heading entitled "Territory Proposed for Annexation Exhibits Reasonable Need for City Government" beginning on page 2 demonstrates that the proposed annexation, considered as a whole, will enhance the degree to which the City of Gustavus would meet the standards set forth in 3 AAC 110.010(a) for incorporating a city.

3 AAC 110.010 continues:

- (b) In accordance with AS 29.05.021(a), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a community in the unorganized borough may not incorporate as a city if essential municipal services can be provided more efficiently or more effectively by annexation to an existing city.
- (c) In accordance with AS 29.05.021(b), and to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a community within an organized borough may not

incorporate as a city if essential municipal services can be provided more efficiently or more effectively

- (1) by annexation to an existing city;
- (2) by an existing organized borough on an areawide or nonareawide basis; or
- (3) through an existing borough service area.

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” Accordingly, Gustavus then met the community standard for incorporation as set forth in 3 AAC 110.010(b) and 3 AAC 110.010(c).

3 AAC 110.010(b) and 3 AAC 110.010(c) reference Article X, Section 1, of the Constitution of the State of Alaska and AS 29.05.021(a) and (b). The clear aim of these provisions of law is to ensure “maximum local self-government with a minimum of local government units,” and aim “to prevent duplication of tax-levying jurisdictions.”

The City of Gustavus is in the unorganized borough. All the territory proposed for annexation lies immediately adjacent to the current boundaries of the City of Gustavus and wholly within the unorganized borough. No local governments, except for the City of Gustavus, currently exist within or near the territory proposed for annexation. Therefore, if approved, the annexation of territory to the City of Gustavus would extend an existing local government to include territory and population of the unorganized borough where no local government current exists. This would remove territory from the unorganized borough and increase the territory and responsibilities of an existing local government, thereby providing for maximum local self-government without creating a new or additional local government unit. Further, including the territory proposed for annexation within the boundaries of the City of Gustavus would also effectively prevent duplication of local government units in the area.

Accordingly, the proposed annexation would enhance the extent to which the City of Gustavus meets the standard expressed in 3 AAC 110.010(b) and 3 AAC 110.010(c).

### **3 AAC 110.020 – Resources**

3 AAC 110.020 requires that, “in accordance with AS 29.05.011(a)(3), the economy of a proposed city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.” 3 AAC 110.020 provides that, “in this regard, the ... [Local Boundary Commission]

- (1) will consider
  - (A) the reasonably anticipated functions of the proposed city;
  - (B) the reasonably anticipated expenses of the proposed city;
  - (C) the ability of the proposed city to generate and collect revenue at the local level;
  - (D) the reasonably anticipated income of the proposed city;
  - (E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date
  - (i) for receipt of the final organization grant under AS 29.05.180;
  - (ii) for completion of the transition set out in AS 29.05.130 - 29.05.140 and 3; and
  - (iii) on which the proposed city will make its first full local contribution required under AS 14.17.410(b)(2) if the proposal seeks to incorporate a home rule or first class city in the unorganized borough;
  - (F) the economic base within the proposed city;
  - (G) valuations of taxable property within the proposed city;
  - (H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city; and
  - (I) personal income of residents of the proposed city; and
- (2) may consider other relevant factors, including
  - (A) land use within the proposed city;
  - (B) the need for and availability of employable skilled and unskilled persons to serve the proposed city government; and
  - (C) the reasonably predictable level of commitment and interest of the residents in sustaining a city government.

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” Accordingly, Gustavus then met the community standard for incorporation as set forth in 3 AAC 110.020. However, the discussion of “Adequate Resources” beginning on page 40 demonstrates that the proposed annexation would enhance the extent to which the City of Gustavus meets the standard articulated in 3 AAC 110.020.

### **3 AAC 110.030 – Population**

3 AAC 110.030 provides that

- (a) In accordance with AS 29.05.011(a)(4), the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including
- (1) census enumerations;
  - (2) durations of residency;
  - (3) historical population patterns;
  - (4) seasonal population changes;
  - (5) age distributions;
  - (6) contemporary and historical public school enrollment data; and
  - (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.
- (b) To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” Accordingly, Gustavus then met the community standard for incorporation as set forth in 3 AAC 110.030. However, the discussion in the section of this Brief entitled “Sufficiently Large and Stable Population” beginning on page 51 demonstrates that the proposed annexation would enhance the extent to which the City of Gustavus meets the standard articulated in 3 AAC 110.030.

### **3 AAC 110.040 – Boundaries Include All Land and Water Necessary**

3 AAC 110.040(a) provides that “the boundaries of a proposed city must include *all* land and water *necessary* to provide the development of essential municipal services on an efficient, cost-effective level.” (Emphasis added.) Changes in and around Gustavus subsequent to its incorporation, discussed in more detail elsewhere in this Brief, now call for annexation of limited areas of the Falls Creek drainage and of Icy Passage in order to now include “*all* land and water *necessary* to provide the development of essential municipal services on an efficient, cost-effective level.” (Emphasis added.)

3 AAC 110.040(a) lists several “relevant factors” that may be used to assess the degree to which the City’s petition meets the requirements for incorporation of a city. From among the listed “relevant factors,” the following are particularly appropriate for consideration in evaluating this petition for annexation:

- 3 AAC 110.040(a)(1) allows consideration of “land use, subdivision platting, and ownership patterns.” This factor is similar to the “land use and ownership patterns” factor, which is set forth at 3 AAC 110.130(a)(1) for consideration with regard to petitions for annexation. Beginning on page 59 in the section entitled “Land Use and Ownership Patterns,” this Brief demonstrates that the City’s petition is appropriate in this regard.
- 3 AAC 110.040(a)(3) allows consideration of “existing and reasonably anticipated transportation patterns and facilities.” This factor is similar to the “existing and reasonably anticipated transportation patterns and facilities” factor, which is set forth at 3 AAC 110.130(a)(3) for consideration with regard to petitions for annexation. Beginning on page 62 in the section entitled “Existing and Reasonably Anticipated Transportation Patterns and Facilities,” this Brief demonstrates that the City’s petition is appropriate in this regard.
- 3 AAC 110.040(a)(4) allows consideration of “natural geographical features and environmental factors.” This factor is similar to the “natural geographical features and environmental factors” factor, which is set forth at 3 AAC 110.130(a)(4) for consideration with regard to petitions for annexation. Beginning on page 62 in the section entitled “Natural Geographical Features and Environmental Factors,” this Brief demonstrates that the City’s petition is appropriate in this regard.
- 3 AAC 110.040(a)(5) allows consideration of “extraterritorial powers of cities.” This factor is similar to the “extraterritorial powers of cities” factor, which is set forth at 3 AAC 110.130(a)(5) for consideration with regard to petitions for annexation. Beginning on page 63 in the section entitled “Extension of Services through Extraterritorial Powers,” this Brief demonstrates that the City’s petition is appropriate in this regard.
- 3 AAC 110.040(a)(7) allows consideration of “suitability of the territory for reasonably anticipated community purposes.” The Falls Creek and Icy Passage territories proposed for annexation are clearly suitable for “reasonably anticipated community purposes.” The following references highlight several of the more significant community purposes that will be enhanced through annexation:
  - The Falls Creek area proposed for annexation is suitable for “reasonably anticipated community purposes,” because it
    - Includes the Falls Creek Hydroelectric Facility, which supplies Gustavus with most of its electrical power requirement. See further discussions beginning on page 6 under the heading “Sole Source of Community Hydroelectric Power,” and beginning on page 8 under the heading “Community Planning and Regulation.”

- Offers the only likely source of potable water suitable for a municipal water utility. See further discussion beginning on page 6 under the heading “Future Source for Community Potable Water.”
- The City already provides EMS services within the territory proposed for annexation. See further discussion beginning on page 13 under the heading “Extraterritorial Powers Exercised in the Territory.”
- Includes rock resources useful for community construction. See further discussion beginning on page 14 under the heading “Access to Resources.”
- Includes sites suitable to facilitate development, operation and maintenance of important community communication services. See further discussion beginning on page 14 under the heading “Communication Services.”
- The Icy Passage area proposed for annexation
  - Includes the only area suitable for development of community small boat moorage facilities. See further discussion beginning on page 18 under the heading “Restricted Navigable Waters,” and beginning on page 20 under the heading “Limited Options for Small Boat Harbor.”
  - Includes areas required for adequate use and control of the new public dock. See further discussion beginning on page 22 under the heading “Access to Community’s Sole Deep Water Dock.”

As demonstrated, the proposed annexation of the Falls Creek and Icy Passage territories will enhance the degree to which the existing City of Gustavus includes “all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.” Therefore, this petition satisfies the requirements of 3 AAC 110.040(a).

**On a Scale Suitable for City Government**

3 AAC 110.040(b) requires that

To promote the limitation of community, the boundaries of the proposed city

(1) must be on a scale suitable for city government and may include only that territory comprising a present local community, plus reasonably predictable growth,

development, and public safety needs during the 10 years following the anticipated date of incorporation; and

(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042 and are otherwise suitable for city government.

This standard is essentially the same as that required for annexation set forth at 3 AAC 110.130(c).

With regard to 3 AAC 110.040(b)(1) the City's petition can reasonably be considered a relatively minor adjustment of the City's existing boundaries, which is necessary to complete land and water areas already substantially within municipal boundaries and to add a recently constructed major energy source. It directly relates to the current operations, functions and responsibilities of the City of Gustavus. In that regard, it represents a modest response to changes in Gustavus and the immediate vicinity, which have occurred since the incorporation of the City of Gustavus in 2004. These changes and some of the possible solutions to problems developing as a result of these changes are described more fully in "Need for City Government" section of this Brief. Some of those solutions will require considerable time to plan, finance and implement. Accordingly, for purposes of this annexation petition, the City considered community and area needs from a ten-year planning and implementation perspective.

Thus, the proposed annexation meets the requirements imposed by 3 AAC 110.040(b)(1). The section of this Brief entitled "On A Scale Suitable For City Government" beginning on page 64 and the section entitled "Anticipates Requirements During Decade Following Effective Date" beginning on page 65 further demonstrate that the City's petition meets this standard. It also demonstrates that the proposed annexation of the Falls Creek and Icy Passage territories will enhance the degree to which the City is "on a scale suitable for city government," and "includes only that territory comprising a present local community, plus reasonably predicted growth, development, and public safety needs during the 10 years following the anticipated date of incorporation."

#### **Unpopulated Areas Justified by Application of Standards**

3 AAC 110.040(b)(2) is essentially the same as that required for annexation, which is set forth at 3 AAC 110.130(c)(2). The section of this Brief entitled "Does Not Include Entire Geographic Regions or Unpopulated Areas" beginning on page 66 and the section entitled

“Territory Otherwise Suitable for City Government” beginning on page 67 demonstrate that the City’s petition meets this standard

and would also enhance the degree to which the City of Gustavus would meet this standard for incorporating a city

### **3 AAC 110.042 – *Best Interests of the State***

3 AAC 110.042 provides that “in determining whether incorporation of a city is in the best interests of the state under AS 29.05.100(a), the ... [Local Boundary Commission] may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.

The City of Gustavus incorporated as a second-class city in 2004 in the “manner prescribed by law.” Accordingly, incorporation of the City of Gustavus then satisfied 3 AAC 110.042 as being in the best interests of the state.

Annexation of certain Falls Creek and Icy Passage territory, as proposed, is central to the City’s ability to meet changing community needs and expectations over time. The discussion in the section of this Brief entitled “Annexation Serves Best Interest of the State” beginning on page 44 concludes that the proposed annexation of territory to the City of Gustavus meets the requirements of AS 29.06.040(a), 3 AAC 110.135, 3 AAC 110.981, and 3 AAC 110.982, and that it is in accordance with art. X, sec. 1, Constitution of the State of Alaska. It also demonstrates that the proposed annexation would enhance the degree to which the City of Gustavus would meet the best interests of the State standard for incorporating a city.

### ***Summary re Alaska Administrative Code Standards for Incorporating a City***

In summary, annexation of the territory, as proposed, will enhance the extent to which the City of Gustavus meets the standards for incorporation of cities as set out in 3 AAC 110.005 – 3 AAC 110.042.

### **Summary – Petition Meets Requirements of 3 AAC 110.140(8)**

The annexation of the Falls Creek and Icy Passage areas through the legislative review process, as proposed, satisfies 3 AAC 110.140(8) because it would enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042. Significantly, it would reflect changes in the community since its incorporation by adjusting existing City of Gustavus boundaries to a degree necessary and sufficient to include all “land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level,” to be “on a scale suitable for city government,” to include “only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the anticipated date of incorporation,” and to include only unpopulated areas, that “are justified by the application of the standards in 3 AAC 110.005 – 3 AAC 110.042 and are otherwise suitable for city government.”

### **Annexation through Legislative Review Appropriate Under 3 AAC 110.140(9)**

3 AAC 110.140(9) requires that a proposal to annex territory by the legislative review process serves the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state. As discussed below, the City’s proposed annexation clearly meets these standards.

### **Proposed Annexation Serves Policies Set Out in the Constitution**

The proposed annexation serves policies expressed in art. X, sec. 1 of the Constitution, which provides in part that 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.” This policy is echoed in 3 AAC 110.140(7). As discussed in more detail in this brief (see section entitled “Annexation through Legislative Review Appropriate Under 3 AAC 110.140(7)” beginning on page 82), the City’s petition promotes maximum local self-government

and a minimum number of government units. Therefore, the City's petition serves the policies expressed in art. X, sec. 1 of the Constitution.

### **Proposed Annexation Serves Policies of AS 29.06**

The proposed annexation serves the policies of AS 29.06. Under AS 29.06, local proponents of annexation have essentially two routes to follow: They can pursue a local action annexation, or they can pursue a legislative review annexation.

Local action annexations require meeting conditions outlined in AS 29.06.040(c). The provisions of AS 29.06.040(c)(2) through 29.06.040(c)(4) are pertinent to the City's petition for annexation. Specifically:

- AS 29.06.040(c)(2) requires "a proposed annexation or detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached." Because the territory to be annexed is uninhabited, the City cannot pursue a local action annexation of the proposed territory, because it cannot meet the requirements of AS 29.06.040(c)(2).
- AS 29.06.040(c)(3) allows a municipality to annex "municipally owned property adjoining the municipality without voter approval." The City of Gustavus cannot meet the requirements of AS 29.06.040(c)(3), because it does not own any property adjoining the municipality. Therefore, the City cannot pursue a local action annexation under AS 29.06.040(c)(3).
- AS 29.06.040(c)(4) allows a municipality to annex an area adjoining the municipality "by ordinance without an election if all property owners and voters in the area petition the governing body." AS 29.06.040(c)(4) poses a bar to local action annexation of the territory proposed for annexation by this petition similar to that imposed by AS 29.06.040(c)(2).

Accordingly, the City does not have an option to address legitimate area, community and City needs for annexation through local action options. A petition for annexation through the legislative review process is, effectively, the only option for the City to pursue. Consequently, the City's proposal to pursue the subject annexation through the legislative review process serves the policies of AS 29.06.

### **Proposed Annexation is in the Best Interests of the State**

Finally, the proposed annexation is in the best interests of the State. A full discussion of how the proposed annexation is in the best interests of

the state can be found in the section of this Brief entitled “Annexation Serves Best Interest of the State” beginning on page 44.

That discussion concludes that the annexation of territory to the City of Gustavus, as proposed in this Petition, meets the requirements of AS 29.06.040(a), 3 AAC 110.135, 3 AAC 110.981, and 3 AAC 110.982, and it is in accordance with art. X, sec. 1, Constitution of the State of Alaska. Therefore, the proposed annexation is in the best interests of the state.

### **Summary – Petition Meets Requirements of 3 AAC 110.140(9)**

3 AAC 110.140(9) requires that a proposal to annex territory by the legislative review process serves the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state. As discussed above, the City’s proposed annexation clearly meets these standards; seeking a legislative review annexation is an appropriate course of action.

### **Conclusion**

3 AAC 110.140 identifies eight circumstances under which a proposal to annex territory by the legislative review process can be considered appropriate, and requires that a petition meet at least one of those eight circumstances to be considered “appropriate” for consideration under the legislative review process. The City’s proposal to annex the described territory via the legislative review process is appropriate under 3 AAC 110.140 because it meets five of those circumstances. Specifically,

- The City’s proposed annexation satisfies 3 AAC 110.140(3); because the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- The City’s proposed annexation satisfies 3 AAC 110.140(5); because annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;
- The City’s proposed annexation satisfies 3 AAC 110.140(7); because annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981; and will promote a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;

- The City's proposed annexation satisfies 3 AAC 110.140(8); because annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042; and
- The City's proposed annexation satisfies 3 AAC 110.140(9); because annexation of the territory by the legislative review process will serve the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state.

## **NO ABRIDGEMENT OF CIVIL OR POLITICAL RIGHTS, INCLUDING VOTING RIGHTS**

### ***Introduction***

This Section will demonstrate, as 3 AAC 110.910 requires, that the proposed annexation to the City will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

### ***Discussion***

3 AAC 110.910 requires that a “petition will not be approved by the Local Boundary Commission] ... if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.”

The area to be annexed is uninhabited. Further, the City of Gustavus conducts its municipal elections on an at-large basis. The proposed annexation would not alter the basis for municipal elections. Therefore, there are no voting districts that could create the potential for gerrymandering or other manipulation that could deny any person enjoyment of any civil or political rights.

### ***Conclusion***

Accordingly, the annexation will not deny any person the enjoyment of any civil or political right, including voting right, because of race, color, creed, sex or national origin; and therefore the City’s petition satisfies the requirements of 3 AAC 110.910.

# **Exhibit 7**

## **CITY OF GUSTAVUS, ALASKA**

### **RESOLUTION 2010-25**

#### **A RESOLUTION OF THE CITY COUNCIL OF GUSTAVUS, ALASKA ADOPTING MINOR REVISIONS TO THE CITY OF GUSTAVUS PETITION TO ANNEX CERTAIN FALLS CREEK AND ICY PASSAGE TERRITORY TO THE CITY OF GUSTAVUS, AND AUTHORIZING SUBMISSION OF THE REVISED PETITION TO THE ALASKA LOCAL BOUNDARY COMMISSION**

WHEREAS, by Resolution 2008-23 adopted December 11, 2008, the Gustavus City Council authorized its Special Borough Committee to prepare a proposal to annex certain Falls Creek and Icy Passage territory in the form of a draft petition for submission to the Alaska Local Boundary Commission (LBC); and

WHEREAS, by Resolution 2009-17 adopted June 11, 2009, the Gustavus City Council authorized the Mayor to submit a petition for annexation of certain Falls Creek and Icy Passage territory to the LBC; and

WHEREAS, by letter dated September 15, 2009, the Alaska Department of Commerce and Community Economic Development (DCCED), as staff for the Local Boundary Commission, advised the City of certain technical deficiencies in that petition; and

WHEREAS, the City's Borough Committee subsequently revised the proposed petition to address the deficiencies that DCCED identified; and

WHEREAS, the City of Gustavus made the prospective petition, as revised, available to the public for public review in accordance with 3 AAC 110.425(c); and

WHEREAS, the City Council conducted a public hearing on May 27, 2010, and took public testimony regarding the prospective annexation in accordance with 3 AAC 110.425(d); and

WHEREAS, based upon its review of the Special Borough Committee's draft petition, and in consideration of public testimony taken during its May 27, 2010 public hearing regarding the proposed annexation, the City Council adopted Resolution 2010 -16, which authorized submission of that petition to the Alaska Local Boundary Commission; and

WHEREAS, by letter dated September 10, 2010, the Alaska Department of Commerce and Community Economic Development (DCCED), as staff for the Local Boundary Commission, reported that it had identified twenty-four deficiencies as a result of its technical review of the City's petition for annexation; and

WHEREAS certain of those identified deficiencies, specifically Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21, portions

of Item 22, and Item 24 required minor revisions to the petition and some of its supporting exhibits; and

WHEREAS, the City's Special Borough Committee prepared the following revisions to the petition and its exhibits to address those deficiencies, listed below in the order identified in DCCED's Technical Review:

1. Amended Section 2 of the Petition for Annexation to include residence and email addresses for Petitioner's representative and alternate in accordance with 3 AAC 110.420(b)(2).
2. Amended Exhibit 4 to the Petition for Annexation to include the name of the Commissioner of the Alaska Department of Natural Resources.
3. Amended
  - a. Section 12 of the Petition for Annexation to include reference to the City's capital expenditures.
  - b. Exhibit 5 to the Petition for Annexation to include reference to the City's capital expenditures.
4. Amended Exhibit 5 to the Petition for Annexation to include a label identifying it as Exhibit 5.
5. Amended Exhibit 5 to the Petition for Annexation to include zeros for all blank items, because the amounts are zero or the City estimates the amounts to be zero.
6. Amended Section 18(E)(2) of the Petition for Annexation to clarify that "the proposed annexation territory proposed for annexation addresses the requirements of 3 AAC 110.130(b), because the territory proposed for annexation is contiguous to the City's present corporate boundaries, will not create any enclaves, and includes all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level."
7. Amended Section 18(E)(3) of the Petition for Annexation to include mention that the proposed expanded boundaries of the City are on a scale suitable for city government.
8. Amended Section 18(E)(3) of the Petition for Annexation to correct the citation of a section of the Alaska Administrative Code from 3 AAC 110.130(c) to 3 AAC 110.130(c)(1).
9. Amended Section 18(E)(4) of the Petition for Annexation as follows:
  - a. Changed 3 AAC 110.130(d) to 3 AAC 110.130(c)(2).
  - b. Changed the city annexation standards reference from 3 AAC 110.090 – 3 AAC 110.130 to 3 AAC 110.090 – 110.135.

(DCCED Technical Review incorrectly referenced 3 AAC 110.090 – 110.150, which was addressed and resolved during the September 22, 2010, teleconference with Mr. Brent Williams, State of Alaska Department of Commerce Community and Economic Development.)

- c. Included reference to the requirement of 3 AAC 110.130(c)(2) that the proposed boundaries “are otherwise suitable for city government.” (Included under item 10 of the DCCED Technical Review.)
10. Amended Section 18(E)(5) of the Petition for Annexation to clarify that the proposed annexation meets the requirements of 3 AAC 110.130(d), which requires meeting the standards *and* procedures for annexation of an enlarged city to or detachment from an existing organized borough, or detachment of territory from a city, merger of cities, or consolidation of cities.
11. Amended Section 18(E)(5) of the Petition for Annexation to clarify that the proposed annexation does not overlap the boundaries of any other organized city or of any borough.
12. Amended Section 19 of the Petition for Annexation to document that, as required by 3 AAC 110.420(b)(20), the City Council authorized the filing of this petition under 3 AAC 110.410.
14. Amended Section 20 of the Petition for Annexation by deleting the signature lines for the City Council members.
15. Amended Exhibit 6 to the Petition for Annexation, pp. 7-8, to change 3 AAC 110.0909 to 3 AAC 110.090.
16. Amended Exhibit 6 to the Petition for Annexation, p 34, to clarify that the LBC may consider other character factors in addition to those listed in 3 AAC 110.100.
17. Amended Exhibit 6 to the Petition for Annexation, p 40, to clarify that the LBC may consider other resource factors in addition to those listed in 3 AAC 110.110.
18. Amended Exhibit 6 to the Petition for Annexation, p 51, to clarify that the LBC may consider other population factors in addition to those listed in 3 AAC 110.120.
19. Amended Exhibit 6 to the Petition for Annexation, p. 71 to clarify that 3 AAC 110.135(2) states that a minimum number of local government units is a factor that the LBC may consider.
20. Amended Exhibit 6 to the Petition for Annexation, p. 84, to include an analysis of Article X, Section 1, of the Constitution of the State of Alaska in the City’s analysis of the application of 3 AAC 110.140(7) to the City’s petition.

21. Amended Exhibit 6 to the Petition for Annexation, pp. 85-99, to include analysis of the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042 to demonstrate that “annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities” and is in the best interest of the state.
22. Amended the “Summary of City of Gustavus, Alaska, Petition for Annexation by Legislative Review” to include, as required by 3 AAC 110.425, an abstract of the transition plan required under 3 AAC 110.900, which transition plan is, in essence, a continuation of ongoing City services, and which was explained in detail at the May 27, 2010 public hearing.
24. Amended Exhibit 1 and Exhibit 2 in accordance with DCCED suggestions giving more precise descriptions of, but not otherwise changing, the boundaries of the territory proposed for annexation and of the City should the annexation be approved.

WHEREAS, the above listed items are of a relatively minor, technical nature and do not change the nature, scope or impact of the proposed annexation; and

WHEREAS, Item 12, Item 13, portions of Item 22 identified in DCCED’s September 10, 2010, Technical Review were clerical oversights in assembling the petition documents for filing with the LBC, do not require revisions to the Petition for Annexation or its supporting Exhibits, and will be addressed as follows:

1. Item 12: A copy of this resolution will be attached as Exhibit 7 to the City’s Petition for Annexation when filed with the LBC.
2. Item 13: Exhibit 8 to the City’s Petition for Annexation, the Affidavit of Petitioner’s Representative, will be included with both the original “hard copy” and the electronic document copy of the Petition when filed with the LBC.
3. Item 22: When filed with the LBC, the Affidavit of Petitioner’s Representative will clarify that the City Council did not receive any materials from the public relative to the May 27, 2010, public hearing regarding the proposed annexation.
4. Item 22: When filed with the LBC, the City will produce and will submit a complete written transcript of the May 27, 2010, public hearing regarding the proposed annexation; and
5. Item 22: When filed with the LBC, the Affidavit of Petitioner’s Representative will attest to the fact that the “Summary of City of Gustavus, Alaska, Petition for Annexation by Legislative Review” included “a map of the ... territory proposed for city

annexation" as required by 3 AAC 110.425(b) when it was available to the public; and

6. Item 22: When filed with the LBC and in further response to the requirements of 3 AAC 110.425(b) as requested during a September 22, 2010, teleconference with Mr. Brent Williams, State of Alaska Department of Commerce Community and Economic Development, the City will provide an affidavit attesting to the fact that the City of Gustavus requested KTOO radio, Juneau, to air a Public Service Announcement providing notice of the May 27, 2010, public hearing regarding the proposed annexation as required by 3 AAC 110.425(e) and 3 AAC 110.425(g); and

WHEREAS, Item 23 from DCCED's September 10, 2010, Technical Review cited the "incomplete summary and the incomplete evidence mentioned in #22, and on the fact that the petition will be revised," advised (but did not require) that another public hearing be held; and

WHEREAS, the City Council's Special Borough Committee, after thorough discussions with the DCCED staff and the Committee's consultant,

1. Determined that the changes to the annexation petition documents, as proposed by the Committee in response to DCCED's Technical Review, are all of a minor nature and in no way change the nature, scope, substance or anticipated impact of the proposed annexation from that provided to the public prior to and at the May 27, 2010, public hearing on this matter; and
2. Determined that the City's proposal to annex certain Falls Creek and Icy Passage territory thus far, despite thorough advertising to all potentially interested parties in Gustavus and elsewhere, has generated absolutely no adverse reaction; and
3. Therefore, unanimously voted to recommend that the City Council not conduct an additional public hearing on the proposed annexation prior to filing this revised petition for annexation with the LBC; and

WHEREAS, the Special Borough Committee has reviewed the entire response to DCCED's September 10, 2010, Technical Review and vouched for its completeness and accuracy; and

WHEREAS, based upon its review of the proposed petition to annex certain Falls Creek and Icy Passage territory, including the Special Borough Committee's proposed revisions to that petition and its supporting Exhibits, the City Council has determined as follows:

1. The territory proposed for annexation exhibits a reasonable need for city government as required by 3 AAC 110.090(a).
2. The City is capable of providing “essential municipal services” more efficiently and more effectively to the territory proposed for annexation than another existing city or organized borough as required by 3 AAC 110.090(b), 3 AAC 110.970(c) and 3 AAC 110.970(d).
3. The territory proposed for annexation is compatible in character with the area inside the current boundaries of the City as required by 3 AAC 110.100.
4. The economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.110.
5. The population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government as required by 3 AAC 110.120.
6. The proposed post-annexation boundaries of the City include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.130(a).
7. The territory proposed for annexation is contiguous to the City’s present corporate boundaries as presumed by 3 AAC 110.130(b).
8. The proposed post-annexation boundaries of the City include only that area comprising the local community plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation as required by 3 AAC 110.130(c).
9. As required by 3 AAC 110.130(d), the proposed post-annexation boundaries of the City exclude entire geographical regions or large unpopulated areas, except where justified by the application of the city annexation standards in 3 AAC 110.090 - 3 AAC 110.130.
10. The territory proposed for annexation does not overlap the boundaries of any other existing borough or city as required by 3 AAC 110.130(d).
11. The proposed annexation to the City is in the best interests of the state under AS 29.06.040(a) and as required by 3 AAC 110.135.

12. The City's proposal to annex the described territory via the legislative review process is appropriate because it meets the following conditions established, and set forth in 3 AAC 110.140:
- a. The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city. [3 AAC 110.140(3)]
  - b. Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city. [3 AAC 110.140(5)]
  - c. Annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981; and will promote a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska. [3 AAC 110.140(7)]
  - d. Annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042. [3 AAC 110.140(8)]
  - e. Annexation of the territory by the legislative review process will serve the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state. [3 AAC 110.140(9)]
13. As required by 3 AAC 110.910, the City's proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GUSTAVUS, as follows:

Section 1. Adopt Revisions to the Proposed Petition for Annexation Proposed by Special Borough Committee. The City Council of the City of Gustavus hereby accepts, approves and adopts the revisions to the City's proposed petition for annexation of certain Falls Creek and Icy Passage territory proposed by its Special Borough Committee.

Section 2. Decision to not Conduct an Additional Public Hearing. The City Council of the City of Gustavus hereby accepts, approves and adopts the recommendation of the Special Borough Committee to not hold an

additional public hearing on the proposed annexation for the following reasons:

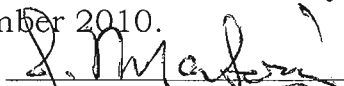
1. The changes to the annexation petition documents, as proposed by the Committee in response to DCCED's Technical Review, are all of a relatively minor nature and in no way change the nature, scope or substance of the proposed annexation from that provided to the public prior to and at the formal May 27, 2010, public hearing conducted under 3 AAC 110.425 on this matter.
2. The City's proposal to annex certain Falls Creek and Icy Passage territory, which the City advertised to all potentially interested parties in Gustavus and elsewhere and provided ample opportunity for public review and comment, has generated absolutely no adverse reaction to date.

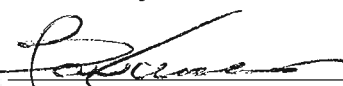
Section 3. Authorization to File Petition for Annexation. In accordance with 3 AAC 110.420(b)(20), the Mayor of the City of Gustavus is authorized to file the petition for annexation, as revised, by legislative review with the Alaska Local Boundary Commission. The petition shall propose the annexation of a single contiguous area totaling approximately 16 square miles, which is comprised of approximately 4 square miles of Falls Creek drainage uplands, and approximately 12 square miles of Icy Passage tidelands and submerged lands between present City limits and Pleasant Island.

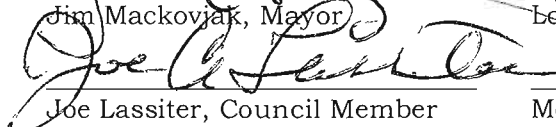
Section 4. Designation of Petitioner's Representative. The Mayor or the Mayor's designee is designated as the representative of the City for all matters relating to the annexation proceeding.

Section 5. Effective Date. This resolution shall become effective immediately.

PASSED AND ADOPTED by the Gustavus City Council this 28th day of November 2010.

  
Jim Mackovjak, Mayor

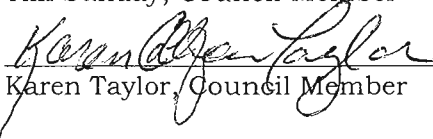
  
Lou Cacioppo, Vice Mayor

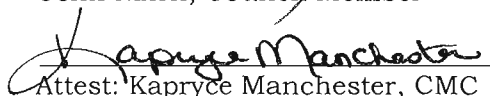
  
Joe Lassiter, Council Member

  
Melanie Lesh, Council Member

Via teleconference  
Tim Sunday, Council Member

  
John Nixon, Council Member

  
Karen Taylor, Council Member

  
Attest: Kapryce Manchester, CMC  
City Clerk

**AFFIDAVIT OF PETITIONER'S REPRESENTATIVE CONCERNING THE  
SOURCE, ACCURACY AND TRUTH OF THE INFORMATION IN THE  
PETITION FOR ANNEXATION TO THE CITY OF GUSTAVUS BY  
LEGISLATIVE REVIEW**

I, Jim Mackovjak, Mayor of the City of Gustavus, and designated representative of the petitioner for annexation, being sworn, state the following in response to the requirements of 3 AAC 110.420(22):

1. The City of Gustavus' petition for annexation of certain territory was prepared primarily by the City's Special Borough Committee, which included Greg Streveler (Chair), Joe Lassiter (City Council liaison), Mike Taylor, Karen Colligan-Taylor, Sean Neilson, and Bruce Tedtsen. The City Council assigned primary responsibility for drafting the annexation petition to this Committee.
2. The City's Special Borough Committee sought and received assistance from various other local government committees as it prepared this petition. Specifically, the Special Borough Committee received assistance from the City's Finance Committee, its Gustavus Volunteer Fire Department Committee, its Marine Facilities Committee, its Road Committee and its Planning Committee.
3. Further,
  - a. The metes and bounds description of the territory proposed for annexation presented in Exhibit 1 of the petition was prepared by members of the Special Borough Committee for the City of Gustavus.
  - b. The written legal description of the proposed post-annexation boundaries presented in Exhibit 2 of the petition was prepared by members of the Special Borough Committee for the City of Gustavus, who relied in part on the Municipal Certificate of Incorporation of the City of Gustavus issued by the Alaska Department of Community and Economic Development on April 1, 2004.

- c. The map showing the current boundaries of the City and the territory proposed for annexation was prepared by members of the Special Borough Committee for the City of Gustavus.
- d. The size of the territory proposed for annexation stated in the petition was estimated by members of the Special Borough Committee for the City of Gustavus.
- e. The enumeration of the population within the current boundaries of the City and the territory proposed for annexation stated in the petition was provided by the State of Alaska Department of Commerce, Community and Economic Development Online Community Database, which includes 2008 DCCED Certified Population statistics.
- f. The statement of City taxes provided in the petition was based on information provided by the City of Gustavus Finance Committee.
- g. The statement of the value of taxable real and personal property in the City and the territory proposed to be annexed provided in the petition was based on information provided by the City of Gustavus Finance Committee.
- h. The statement of the value of taxable sales in the territory proposed to be annexed provided in the petition was based on information provided by the City of Gustavus Finance Committee.
- i. The statement of other revenues that may accrue to the City as a result of annexation provided in the petition was based on information provided by the City of Gustavus Finance Committee.
- j. The statement of expenses the City may incur as a result of annexation provided in the petition was based on information provided by the City's Finance Committee.
- k. The statement of City bonded indebtedness provided in the petition was based on information provided by the City of Gustavus Finance Committee.
- l. The transition plan presented in the petition was prepared by the City's Finance Committee and its Special Borough Committee.
- m. The federal Voting Rights information was prepared by the City's Special Borough Committee.
- n. On May 27, 2010, the City Council of the City of Gustavus held a Public Hearing on its annexation petition in accordance with 3 AAC 110.425. At that hearing, members of the Special Borough Committee presented an overview of the proposed petition for annexation in accordance with 3

AAC 110.425(d). The City Council did not receive any comments that suggested or required modification of the proposed annexation petition or supporting documents.

- o. Subsequent to that Public Hearing on the proposed annexation, the City Council's Special Borough Committee assembled and the Mayor submitted the annexation petition and supporting documents to DCCED for the required Technical Review.
  - p. By letter dated September 10, 2010, DCCED advised the City of Gustavus that the DCCED Technical Review had identified 24 deficiencies in the proposed annexation petition.
  - q. The City's Special Borough Committee prepared responses to those 24 identified deficiencies, including recommended revisions to the proposed annexation petition or its supporting documents, for the City Council's public review and consideration.
  - r. On October 28, 2010, the City Council approved Resolution 2010-25 (see Exhibit 7), which, in addition to authorizing submittal of the proposed annexation petition, also approved the recommended modifications to the proposed petition for annexation and its supporting documents.
4. The information contained in the petition for annexation is true and accurate to the best of my knowledge, information and belief.

DATED this \_\_\_\_ day of November, 2010.

---

Jim Mackovjak, Mayor, City of Gustavus

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2010.

Notary Public in and for the State of Alaska

My commission expires:\_\_\_\_\_