



Local Boundary Commission

Statement of Decision

Members

Lynn Chrystal
Chair
At Large

**In the Matter of the
December 10, 2008, Petition
by the City of Fairbanks to
Annex 0.05 Square Miles**

John Harrington
Member
First Judicial District

Section I Introduction

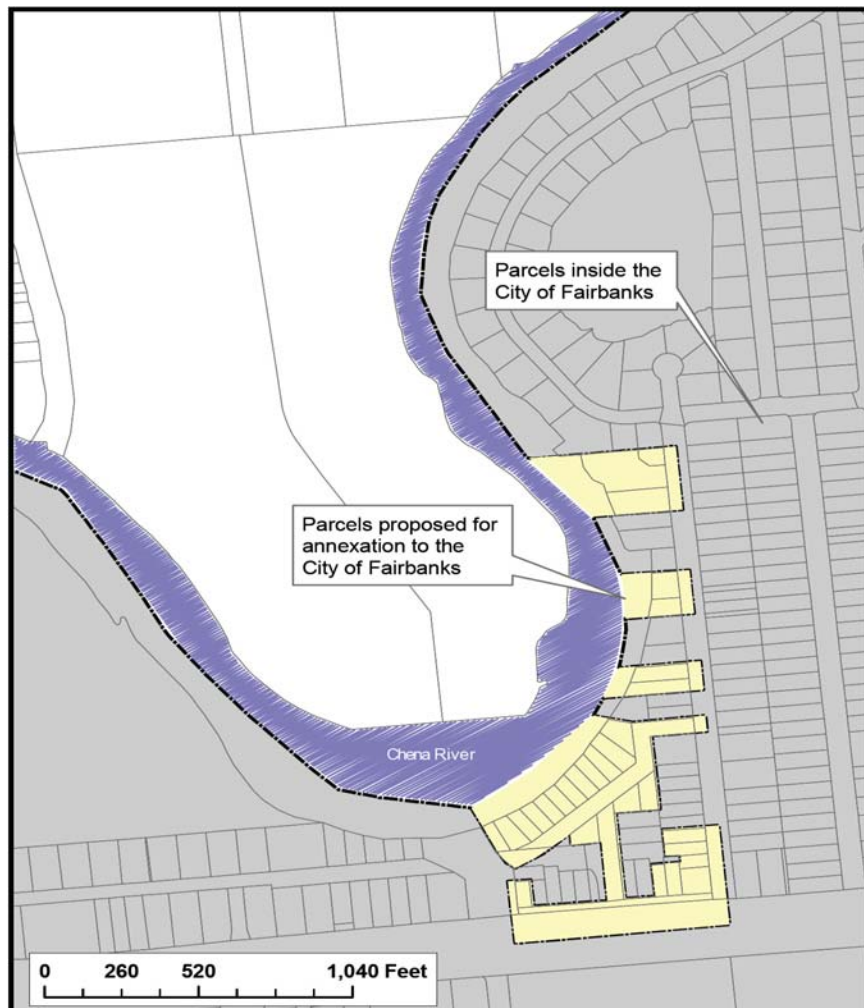
Bob Harcharek
Vice Chair
Second Judicial District

On December 10, 2008, the City of Fairbanks petitioned the Local Boundary Commission (also referred to as “LBC” or “commission”) to annex 0.05 square miles comprised of two separate territories. The territories proposed for annexation are described as follows and are shown on the maps below:

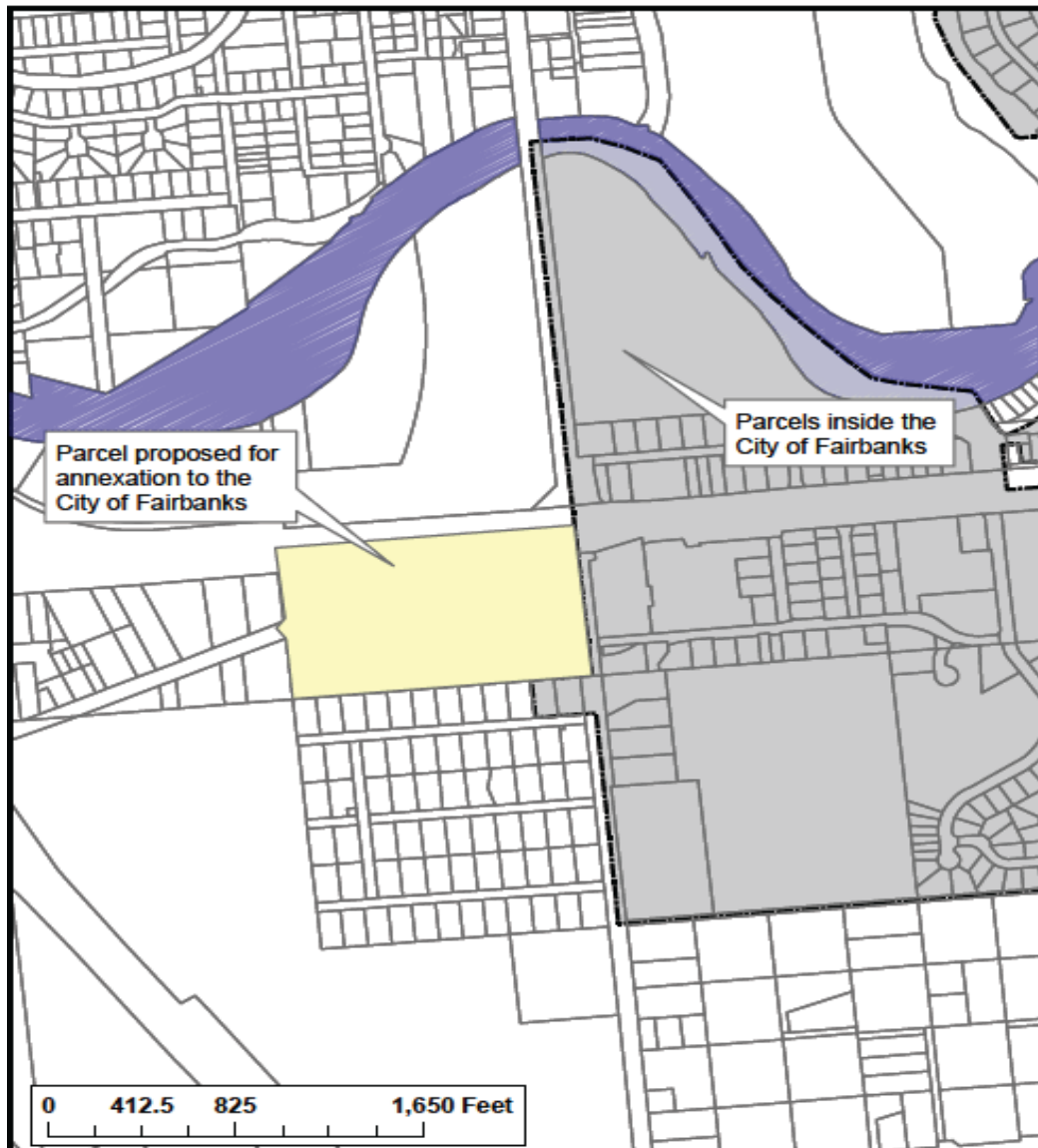
Larry Semmens
Member
Third Judicial District

Area 1 – Territory known as the enclave lots. This site includes lots on Park and Riverside Drives, Bartlett Avenue, and Airport Access Road comprising approximately 0.02 square miles and was authorized for annexation by Ordinance #4335.

Lavell Wilson
Member
Fourth Judicial District
(Recused)



Area 2 – Territory known as the Fred Meyer subdivision (also referred to as “Fred Meyer”). This site includes a large Fred Meyer retail center, a Taco Bell, and Mt. McKinley Bank. This territory comprises approximately 0.03 square miles and was authorized for annexation by Ordinance #4335.



SECTION II PROCEEDINGS

- **Deposit of Petition**

On July 23, 2008, the City of Fairbanks provided a copy of the City’s prospective petition in notebooks at the following locations:

- Clerk’s Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks; and
- Clerk’s Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks.

On February 27, 2009, the City updated those notebooks to include the submitted petition, public notice, and copies of the laws establishing standards and procedures for city annexation. They have been subsequently updated.

- **Petitioners Pre-Petition Public Hearing**

On November 21, 2008, the City of Fairbanks conducted a duly noticed public hearing, as required by 3 AAC 110.425. At the hearing, 17 individuals provided oral comments regarding the proposed annexation.

- **Submission and Review of Petition**

The petition was submitted to LBC staff (also referred to as “Commerce”) on December 10, 2008, and accepted for filing on January 26, 2009.

- **Posting of Notice**

On February 2, 2009, notice was posted at the following locations within the territories proposed for annexation:

- On Riverside Drive, just north of Ping’s Laundry;
- At the intersection of Park Drive and Airport Frontage Road;
- At the north end of Park Drive, just south of the Park Drive and Kiska intersection;
- On the light pole at the northeastern entrance/exit to Fred Meyer subdivision;
- On the light pole at the northwest corner of Fred Meyer subdivision, intersection with Old Airport Way; and
- On the utility pole at the southeastern entrance/exit to Fred Meyer subdivision.

On February 2, 2009, notice of the filing of the Petition was also posted within the existing boundaries of the City:

- Clerk’s Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks;
- Clerk’s Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks;
- United States Post Office, 315 Barnette Street, Fairbanks; and
- Rabinowitz State Court House, 101 Lacey Street, Fairbanks.

- **Public Notice**

Notice of the petition was published in the *Fairbanks Daily News-Miner* on February 2, 2009, February 9, 2009, and February 16, 2009.

On February 27, 2009, a public service announcement was sent to the following radio stations to broadcast for 14 days:

KUAC-FM, KAKQ, KFBX, KIAK, KKED, KSUA, KFAR, KWLF, KTDZ, KXLR, and KCBF.

On March 6, 2009, a shortened version of the public service announcement was provided to the above radio stations to broadcast over the next 14 days.

- **Service of Petition**

On February 20, 2009, the Fairbanks North Star Borough and the City of North Pole were served, via United States Postal Service, complete copies of the petition.

On February 20, 2009, a copy of the Notice of Petition was mailed by City employee Amber Courtney to the individuals and organization whose names and addresses are listed in Exhibit No. 3, attached to the March 13, 2009, City affidavit.

- **Deadline for Initial Comments and Responsive Briefs**

The notice of filing invited written public comment concerning the proposed annexation by April 17, 2009. The Fairbanks North Star Borough submitted a timely received responsive brief on April 17, 2009, before 4:30 p.m., via an internet link. Staff received 23 public comments.

A few technical errors have occurred which the staff would like to bring attention to. First, under 3 AAC 110.480(d), LBC staff should have informed potential commenters that the commenters needed to either serve a copy of the comments upon the petitioner, and file a statement that service was made, or to notify staff of their inability to do so. Upon realizing this error, staff sent the petitioner copies of the comments.

Second, under 3 AAC 110.700(d), when notice for public comment went out it should have told each potential commenter that if he or she filed electronically, which most of them did, he or she would also need to follow up with an original. Upon realizing the omission, staff contacted each commenter to inform him or her of the error and request that he or she file an original as well, to comply with the regulation. All but four did. The four comments that did not have an original filed do not comply with the regulation.

Lastly, under 3 AAC 110.490, the reply brief must be accompanied by an affidavit of service at the time the reply brief was timely filed. The reply brief was filed on time; however, the affidavit of service was submitted later, which did not comply with the regulation.

To ensure the fairness of the process and to allow every commenter the opportunity to have his or her comments addressed, staff requested that the LBC relax the relevant regulations to allow in the four comments that were submitted on time (but without an original on file) and the reply brief. This request was part of an item on the agenda for the duly noticed June 2, 2009, LBC public meeting titled "Relax procedural regulations to allow emailed comments and reply brief affidavits to be considered." Both the Fairbanks North Star Borough and the City of Fairbanks were notified and attended the meeting telephonically. Staff and the LBC did not know the four commenters' identity or position on the proposed annexations when the LBC considered the relaxation of the regulations. Staff felt it was in the interest of justice to allow all comments to be considered regardless of its position.

Both the Borough and the City had an opportunity to comment or object before the commission voted on the issue. The borough stated it did not object to relaxing the regulations. The city chose not to comment on the issue at that time. After lengthy discussion, the LBC took the following actions: (1) relaxed 3 AAC 110.480(d), which required that comments be served on the petitioner; (2) relaxed 3 AAC 110.490 which required that the reply brief be accompanied by an affidavit of service at the time the reply brief was timely filed, and (3) relaxed 3 AAC 110.700(d) which required any comment regarding the petition filed electronically to be followed by an original document.

Relaxation was approved by three votes yes to one vote no. This allowed comments made by Craig Compeau, Shawnee Dunham, John Havard, and Bartholomew Roberts to

be considered by the staff and the LBC, as well as the reply brief.

- **Petitioner’s Reply Brief Filed**

On May 11, 2009, the City of Fairbanks filed a 139-page reply brief.

- **LBC Meeting**

On August 4, 2009, the LBC held a public meeting. One of the items on the agenda was the rescheduling of future petition proceedings dates. The meeting was duly noticed.

- **Preliminary Report Distribution**

On August 17, 2009, Commerce distributed copies of its 204 page *Preliminary Report Regarding the Proposal to Annex Approximately 0.05 Square Miles of Territory to the City of Fairbanks by Legislative Review* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

- **Appointment of Two New Members to the Local Boundary Commission**

On September 10, 2009, Governor Sean Parnell appointed two individuals to fill vacancies on the Local Boundary Commission. John Harrington of Ketchikan and Larry Semmens of Soldotna joined previously appointed commission members Robert “Bob” Harcharek of Barrow, Lynn Chrystal of Valdez, and Lavell Wilson of Tok. That same day Governor Parnell appointed Lynn Chrystal to serve as the LBC’s chair.

- **Commerce Informational Meeting**

On September 11, 2009, Commerce conducted a duly noticed public informational meeting concerning the city of Fairbanks’ annexation proposal and future petition proceedings.

- **Receiving Timely Comments on Preliminary Report**

The public comment period for the preliminary report was from August 17, 2009, until September 16, 2009. Commerce received six timely submitted comments, including comments from the City of Fairbanks and the Fairbanks North Star Borough.

- **Final Report Distribution**

On October 13, 2009, Commerce distributed copies of its *Final Report to the Local Boundary Commission Regarding the Proposal to Annex Approximately 0.05 Square Miles of Territory to the City of Fairbanks by Legislative Review* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

- **Notice of Local Boundary Commission Public Hearing and Decisional Meeting**

After Commerce conferred with the City of Fairbanks and the Fairbanks North Star Borough, the Local Boundary Commission chair scheduled a public hearing regarding the City of Fairbanks’ annexation petition. The hearing was held on Monday, November 9, 2009, beginning at 12:00 p.m. in the Fairbanks North Star Borough School District’s board room. The decisional meeting occurred at the same place on Tuesday, November 10, 2009, at 3:00 p.m.

Formal notice of the hearing had been given by Commerce under 3 AAC 110.550. Commerce published the full notice in a display ad in the *Fairbanks Daily News-Miner* on October 5, 2009. It was also published on October 19, 2009, and November 3, 2009. The notice was also posted on the internet through the state's *Online Public Notice System*, on the Division of Community and Regional Affairs' website, and on the LBC website.

Additionally, notice of the hearing was provided to the Petitioner's representative (Mayor Terry Strle) and to the Respondent's representative (Mayor Jim Whitaker). The City posted the notice where the petition documents available for public review are (Fairbanks City Hall, Fairbanks North Star Borough Administrative Office Building, and the Noel Wien Public Library); at the United States Post Office and at the Rabinowitz State Courthouse; and at the six street locations specified on page 3 under "Posting of Notice."

- **LBC Tour of the Territories Proposed for Annexation**

On Monday, November 9, 2009, the Local Boundary Commission (all members were present except for Commissioner Wilson who is recused from proceedings) and staff conducted a tour of the territories proposed for annexation by automobile at 10 am. The tour was conducted and recorded in accordance with 3 AAC 110.550(f).

- **LBC Public Hearing Regarding the City of Fairbanks' Annexation Petition**

In accordance with 3 AAC 110.550 and 3 AAC 110.560 the Local Boundary Commission held a duly noticed public hearing on Monday, November 9, 2009, regarding the City of Fairbanks' annexation petition. The commission heard sworn testimony from witnesses for the City of Fairbanks and for the Fairbanks North Star Borough, as well as comments by numerous public members both for and against the proposed annexations.

- **LBC Decisional Meeting Regarding the City of Fairbanks' Annexation Petition**

In accordance with 3 AAC 110.570 the Local Boundary Commission held a duly noticed decisional meeting on Tuesday, November 10, 2009, regarding the City of Fairbanks' annexation petition. The commission voted 4 to 0 to vote on the two territories proposed for annexation (the enclave lots and the Fred Meyer subdivision) separately, as allowed under 3 AAC 110.570(c)(1). The commission approved by a vote of 4 to 0 the territory referred to as the enclave lots for annexation into the City of Fairbanks. The commission also approved by a vote of 3 to 1 the territory referred to as the Fred Meyer subdivision for annexation by the City of Fairbanks. Commissioner John Harrington dissented on approving the Fred Meyer subdivision for annexation.

SECTION III FINDINGS AND CONCLUSIONS

The record in this proceeding includes the City of Fairbanks' annexation petition and supporting materials, written comments received on the petition, the Fairbanks North Star Borough's responsive brief, the City of Fairbanks' reply brief, Commerce's preliminary report, comments received on Commerce's preliminary report, Commerce's final report, and testimony received at the LBC's November 9, 2009, public hearing on the petition.

Alaska law requires the Local Boundary Commission to apply the standards for annexation to cities found at 3 AAC 110.090 – 3 AAC 110.140 and 3 AAC 110.900 – 3 AAC 110.982. Section III of this decisional statement recounts such application by the commission. Based on the evidence in the record relating to the subject petition, the Local Boundary Commission has reached the findings and conclusions set out in this section.

A. 3 AAC 110.090. Need.

Two standards relate to the need for city government in the territory proposed for annexation. First, 3 AAC 110.090(a) states that a territory may be annexed to a city provided the commission determines that there is a reasonable need for city government in the territory. Second, 3 AAC 110.090(b) states that territory may not be annexed to a city if the commission determines that essential municipal 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.

1. 3 AAC 110.090(a)

Regarding the first standard, the commission finds that there is clearly a reasonable need for city government for the enclave lots. There is currently no fire service being provided to lots in the enclave located outside of the city's limits. Further, the enclave lots are in a patchwork of lots in which some homes receive fire services and some do not. This poses a danger if a house in the enclave lots catches fire and the fire spreads to a house within the city limits. Commission members expressed that there is also a need for street services and police services.

While there are no permanent residents of Fred Meyer subdivision, thousands of borough and city residents work, shop, bank, and eat at businesses in the territory every day. Commissioners were concerned with the lack of building code enforcement in the territories proposed for annexation. Some commissioners expressed that a developed commercial area could use the services of an urban police force, the City of Fairbanks police department, compared to a traditionally rural police force, the Alaska State Troopers. The Fred Meyer subdivision is in reasonable need of an enhanced level of municipal services.

The LBC finds that the petition meets 3 AAC 110.090(a)'s criteria for both the enclave lots and the Fred Meyer subdivision.

2. 3 AAC 110.090(b)

With respect to the second standard relating to the need for city government, 3 AAC 110.090(b) provides that territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city, by an organized borough, or through a borough service area. Neither the enclave lots nor Fred Meyer are in close proximity to the City of North Pole, the only other city within the Fairbanks North Star Borough and are not suitable for annexation to that more distant city government.

The LBC finds that neither the Borough nor the University Fire Service Area (also referred to as the "UFSA") can provide essential municipal services more efficiently and more effectively than can the City because neither the borough nor the UFSA is currently providing the enclave lots with police, fire/EMS, code enforcement, or other services.

There were mixed feelings expressed as to whether the UFSA or the City provided more efficient and more effective fire and EMS services to the Fred Meyer subdivision. The UFSA's stations are closer to Fred Meyer, and it has a better ISO rating. The City's paramedics receive more training than the UFSA's EMTs.

A majority of commission members felt it necessary to consider essential municipal services in a broad sense. The Fairbanks North Star Borough cannot provide police services, or building and fire code inspection and enforcement. The City of Fairbanks provides these services within its limits and has the capability to extend essential municipal services into the territories proposed for annexation. When considering the basket of essential municipal services, the commission finds that no other city, borough, or borough service area can provide essential municipal services on a more efficient and more effective basis.

The LBC finds that the petition meets 3 AAC 110.090(b)'s criteria for both the enclave lots and the Fred Meyer subdivision.

B. 3 AAC 110.100. Character.

Alaska law allows a territory to be annexed to a city provided, in part, that the territory is compatible in character with the annexing city. (3 AAC 110.100).

The view, “if it looks like a city it is a city” was expressed in testimony and public comment. Commissioners felt that both areas looked like a city and that they were compatible in several areas. The enclave lots are part of an established neighborhood of predominately residential properties with a few commercial properties. This land use is consistent with similarly located lots within the City’s boundaries.

Fred Meyer is the only box store outside of the city limits. Similar commercial properties are found within the City of Fairbanks including the Safeway retail center directly across University Avenue.

We find that the petition satisfies 3 AAC 110.100’s requirements for both territories because both the enclave lots and the Fred Meyer subdivision are compatible in character to the City of Fairbanks.

C. 3 AAC 110.110. Resources.

Alaska law allows a territory to be annexed to a city provided, in part, that the commission determines that the economy within the proposed post-annexation boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. (3 AAC 110.110).

Commissioners expressed that the resources of the territory would be able to provide essential city services on an efficient, cost-effective level. The budget information provided shows that the revenues the City will be able to collect from the existing tax structure exceeds the projected expenses for providing city services. The commission heard testimony that there would not be a problem meeting the increased need for police or fire services. Annexation would also expand the economic base of the City of Fairbanks.

Given the above circumstances, the commission concludes that the economy within the proposed post-annexation boundaries of the City of Fairbanks has the human and financial resources necessary to provide essential city services to the territories proposed for annexation on an efficient, cost-effective level. Thus, the requirements of 3 AAC 110.110 are satisfied by the annexation petition.

D. 3 AAC 110.120. Population.

3 AAC 110.120 states that “[t]he population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government.”

The 2007 population estimate for the City of Fairbanks is 31,627 persons. The enclave lots are mainly residential, with a few businesses. The Fred Meyer subdivision is exclusively commercial with no residents. There are approximately 35 residents in the enclave lots, and no known permanent residents of the Fred Meyer subdivision. Fairbanks is Alaska's second most populous community, and is the most populous of Alaska's incorporated cities. The population density of the City of Fairbanks will not be significantly affected by this annexation petition. The commission heard testimony that the City of Fairbanks has the capability of extending police and fire services to the territories proposed for annexation.

Given the small size of the territories proposed for annexation and the stability of the City's population, the LBC concludes that the population within the proposed post-annexation boundaries of the City of Fairbanks is sufficiently large and stable to support the extension of city government. Thus, the standard set out in 3 AAC 110.120 is satisfied.

E. 3 AAC 110.130. Boundaries.

There are five standards related to boundaries that the commission must consider. We find that the petition has satisfied 3 AAC 110.130's requirements based on the rationale below.

1. 3 AAC 110.130(a)

3 AAC 110.130(a) states that the proposed expanded boundaries of the city must include the land and water necessary to promote developing essential municipal services in an efficient, cost-effective manner.

Both the enclave lots and the Fred Meyer subdivision are developed territories. There has been nothing presented to suggest the proposed expanded boundaries of the City of Fairbanks does not contain all the land and water necessary to provide development of essential municipal services on an efficient, cost-effective level.

The LBC finds that the proposed boundaries of the city include all land and water necessary to develop essential municipal services in an efficient and cost-effective manner. This applies to both territories.

2. 3 AAC 110.130(b)

3 AAC 110.130(b) states that territory that is noncontiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to develop essential municipal services in an efficient, cost-effective manner (absent a specific and persuasive contrary showing).

The enclave lots and Fred Meyer subdivision are both contiguous to the City of Fairbanks. Annexation of the enclave lots would eliminate an enclave currently within the city. As the enclave lots are contiguous to the annexing city, and because annexing them does not create an enclave, we need not address the land and water issue.

While the Fred Meyer subdivision could arguably create an enclave, the territory is already fully developed and receiving services. The expanded City of Fairbanks would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective manner.

We find that 3 AAC 110.130(b)'s requirements have been met for both territories.

3. 3 AAC 110.130(c)(1)

The expanded boundaries of the City of Fairbanks 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 ten years following the effective date of annexation.

For both the enclave lots and the Fred Meyer subdivision, there is no reasonably anticipated future growth or anticipated public safety needs for the next ten years. As was discussed in 3 AAC 110.100, it is difficult to distinguish among the enclave lots, the Fred Meyer subdivision, and the City of Fairbanks as separate communities. These areas seem to comprise a single community, socially and economically.

For 3 AAC 110.130(c)(1) we find that the proposed expanded boundaries of the city, including both territories, are on a scale suitable for city government and only include an existing local community, plus reasonably predictable growth, development, and public safety needs during the ten years after the effective date of annexation.

4. 3 AAC 110.130(c)(2)

The proposed expanded boundaries of the City of Fairbanks may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of standards in 3 AAC 110.090 – 3 AAC 110.135 and are otherwise suitable for city government.

Both the enclave lots and Fred Meyer are small (only comprising 0.05 square miles) and are highly developed territories. They do not contain entire geographical regions or large unpopulated areas. There are approximately 35 residents in the enclave lots. While there are no permanent residents of the Fred Meyer subdivision, thousands of borough and city residents work, shop, bank, and eat in the territory.

For 3 AAC 110.130(c)(2), we find that neither the enclave lots nor the Fred Meyer subdivision includes entire geographical regions or large unpopulated areas.

5. 3 AAC 110.130(d)

3 AAC 110.130(d) states 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.”

This annexation petition does not describe boundaries overlapping the boundaries of an existing organized borough or another existing city. For that reason the petition does not need to address the standards and procedures for annexation of the enlarged city to the existing organized borough, detachment of the enlarged city from the existing organized borough, detachment of territory from an existing city, merger of cities, or consolidation of cities.

We find that the overlapping boundary standard is satisfied for both the enclave lots and the Fred Meyer subdivision.

F. 3 AAC 110.135. Best Interests of the State.

Alaska's constitution promotes maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. (Article X, §1).

The commission finds that the proposed annexation would have no effect upon the number of local government units. It is important to note that the Fairbanks North Star Borough is a second class borough, whereas the City of Fairbanks is a home rule city. Annexation of the enclave lots and Fred Meyer would promote the principles of maximum local self-government because the territories would receive the benefits of belonging to both the City and the Borough. We found in analyzing 3 AAC 110.140(7) that both annexations would meet the constitutional mandate of maximum local self-government and a minimum number of local government units.

Annexation would meet even a broader interpretation of best interests of the state than merely the impact upon the state budget. The commission finds that the proposed annexation of the enclave lots would help improve the boundaries of the City of Fairbanks and extend city police protection to territories which are now served by the Alaska State Troopers, and in the case of the enclave lots, extend fire protection where such protection is not currently provided. Also, building and fire code enforcement and inspection is currently provided by the state. The state would be relieved of the responsibility of providing building and fire code enforcement and inspecting. Even if the buildings were already built, code inspections are in the best interests of the state. The commission believes with better code enforcement comes better safety and better buildings.

While this annexation will probably not reduce the state's budget for the Alaska State Troopers, annexing Fred Meyer and the enclave lots will allow the troopers to provide better service to the other areas they are responsible for.

While it is not required that the commission review the financial impact on the Borough or the UFSA, commissioners expressed opinions on the financial impact this annexation will cause. All revenue losses cause pain to municipalities. It is a normal course of events that service areas will provide services near a city's boundaries. The fact that a service area exists should not impede a city from expanding. The financial impacts to the borough and the UFSA were not significant enough for this annexation to be viewed as not being in the best interests of the state.

We find that the petition satisfies 3 AAC 110.135's requirements for both territories.

G. 3 AAC 110.140. Legislative Review.

For territory to be annexed under the legislative review method the commission must determine that one of eight circumstances enumerated in 3 AAC 110.140 exists.

We find for the enclave lots that circumstance (1), whether "the territory is wholly or substantially surrounded by the annexing city" is met because the enclave lots are substantially surrounded by the City and the Chena River.

Circumstance (7) exists if the commission determines that "annexation 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."

The commission finds that the residents and property owners of the territories proposed for annexation would benefit from belonging to both the Fairbanks North Star Borough (second class borough) and the City of Fairbanks (home rule city). The commission finds that this

annexation will not affect the number of local government units. The commission, based on previous decisions, does not believe this standard is so stringent that it requires that the proposal reduce the number of local government units. Rather it means that no new local government unit will be created unless it is justified. We find that annexing both the enclave lots and the Fred Meyer subdivision promotes maximum local self-government and a minimum number of local government units.

As at least one circumstance has been found to exist for both the enclave lots and the Fred Meyer subdivision, we find that the petition meets 3 AAC 110.140's requirements.

H. 3 AAC 110.900. Transition.

3 AAC 110.900 concerns whether the transition plan contains all the required information, and that all required actions were undertaken to prepare for a smooth transition. There are six parts to 3 AAC 110.900 that the commission reviewed.

The commission considers the prospective transition of extending essential city services into the territories proposed for annexing to be elementary and uncomplicated. In particular, the commission notes that annexation would not involve the transfer of assets or liabilities from one local government to another. The petition states that the City will provide fire, police, and other essential municipal services to both of the territories proposed for annexation. City officials testified that the City consulted with Borough and UFSA officials concerning the proposed annexation.

The commission finds that 3 AAC 110.900's requirements have been satisfied with respect to the current annexation proposal based on the rationale below.

1. 3 AAC 110.900(a)

3 AAC 110.900(a) requires the petition to include a practical plan demonstrating the capacity of the annexing city to extend essential city services into the territories proposed for annexation in the shortest practical time after the effective date of the proposed annexation. The City of Fairbanks included the required transition plan as Exhibit E of its petition. The City of Fairbanks stated in its transition plan that it was ready to extend municipal services to the territories immediately after the effective date of the proposed annexation.

We find that the petition has met 3 AAC 110.900(a)'s requirements.

2. 3 AAC 110.900(b)

3 AAC 110.900(b) requires that the petition include 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.

The plan must be prepared in consultation with borough officials. The City stated that it is prepared to assume all relevant and appropriate powers, duties, rights, and functions to expand essential city services to the Fred Meyer subdivision and the enclave lots promptly upon the annexations' effective date.

We find that the petition has met 3 AAC 110.900(b)'s requirements.

3. 3 AAC 110.900(c)

3 AAC 110.900(c) requires that the 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 annexation. Here, a plan to transfer assets and liabilities is a moot subject because there are no assets or liabilities that would be affected by the annexations.

4. 3 AAC 110.900(d)

3 AAC 110.900(d) allows the LBC to condition approval upon executing an agreement for assuming powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

The commissioners discussed whether it was necessary to require that the City and Borough execute an agreement prescribed or approved by the commission for the City to assume the powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities from the Borough. Commissioner Harrington expressed concern that annexation of the Fred Meyer subdivision would increase response time for fire and EMS services to employees and patrons of the commercial business located there. A majority of the commission felt that it was not necessary to require such an agreement, but wished the City and Borough would continue dialogue regarding the financial impact to the Borough and the UFSA.

3 AAC 110.900(d) is optional, and the commission did not act upon it.

5. 3 AAC 110.900(e)

The transition plan did state the names and titles of all officials consulted by the petitioner as required by 3 AAC 110.900(e). While the petition did not state the dates and subjects of these meetings, all required entities were aware of the petition. There is no question from testimony given by the Borough and the City at the November 9, 2009, public hearing that consultation occurred.

The commission finds that the spirit of 3 AAC 110.900(e) has been met.

6. 3 AAC 110.900(f)

If a petitioner has requested consultation, and borough officials have declined to consult or were unavailable during reasonable times, the petitioner may ask the LBC to waive that requirement. As no such request was received, no such waiver was granted.

I. 3 AAC 110.910. Statement of Nondiscrimination

As provided by 3 AAC 110.910, an annexation proposal may not be approved by the commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

We find no evidence that 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.

J. 3 AAC 110.920. Determination of Community.

3 AAC 110.920 applies to determining whether a settlement comprises a community. Given the City's size, and that the commission sees the two territories as part of the City of Fairbanks' social and economic community, the LBC determines that this regulation was not relevant to this petition.

K. 3 AAC 110.970. Determination of Essential Municipal Services.

Essential municipal services were discussed under 3 AAC 110.090. The commission sees fire and EMS services, police services, fire and building code enforcement and inspection, and dispatch as being essential municipal services deserving highest consideration. It is important to note that the Fairbanks North Star Borough, as a second class borough, does not have its own police force. Also, it does not provide building and fire code enforcement and inspection. The state is currently responsible for providing those services. The City of Fairbanks has demonstrated its ability to provide and extend these services to the territories proposed for annexation. We find that the petition has met 3 AAC 110.970's requirements.

L. 3 AAC 110.981. Determination of Maximum Local Self-Government.

This standard has been discussed in consideration of best interests of the state and whether this annexation is appropriately sought under legislative review. The commission finds that the residents and property owners of the territories proposed for annexation would benefit from belonging to both the Fairbanks North Star Borough (second class borough) and the City of Fairbanks (home rule city) because the territories will continue to receive areawide services which only the Borough can provide. The territories would also receive additional essential municipal services which the City can provide but the Borough and the UFSA cannot, such as police enforcement, and building and fire code enforcement and inspection.

We find that annexing the enclave lots and the Fred Meyer subdivision would extend local government needs (police enforcement, building and fire code inspections and enforcement) which cannot be met by the borough on an areawide or nonareawide basis, by annexation to another existing city, or through an existing borough service area. We find that the petition has met 3 AAC 110.981's requirements.

M. 3 AAC 110.982. Minimum Number of Local Government Units.

This standard has been discussed in consideration of best interests of the state and whether this annexation is appropriately sought under legislative review. The commission finds that this annexation will not affect the number of local government units. The commission, based on previous decisions, does not believe this standard is so stringent that it requires that the proposal reduce the number of local government units. Rather it means no new local government unit will be created unless it is justified.

We find that enlargement of the city's boundaries is more appropriate than promoting the incorporation of a new city or the creation of a new borough service area. We find that the petition has met 3 AAC 110.982's requirements.

SECTION IV ORDER OF THE COMMISSION

The commission concludes that all of the relevant standards and requirements for annexation of both territories (the enclave lots and Fred Meyer) are satisfied by the City of Fairbanks' petition. Therefore, the Commission approves the December 10, 2008, petition of the City of Fairbanks for the annexation of approximately 0.05 square miles.

The LBC in the past has held the view that multiple piecemeal annexations do not necessarily serve optimum public policy. The current commission supports this view. Notwithstanding, the commission reaffirms its conclusion that both territories, while small in nature, do meet all relevant standards and requirements.

Approval of the proposed annexation by the Local Boundary Commission will result in boundaries for the City of Fairbanks described as follows:

CITY OF FAIRBANKS CORPORATE BOUNDARIES

Commencing at the south 1/4 corner of Section 36, T1N, R1W, F.B. & M. which is located on the Fairbanks Base Line, being the true point of beginning of this description; thence west along the Fairbanks Base Line to the northwesterly corner of Section 3, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line common to Sections 3 and 4, T1S, R1W, F.B. & M., to an intersection with the thread of the Noyes Slough; thence downstream along the thread of the Noyes Slough to the easterly 1/16 line of Section 4, T1S, R1W, F.B. & M.; thence in a northerly direction along said easterly 1/16 line to the southerly boundary of Johnston Subdivision, filed in the Fairbanks Recorder's Office October 4, 1954, as Instrument No. 151.674; thence in northerly, northeasterly and northerly directions, respectively, along the easterly boundary of Johnston Subdivision filed in the Fairbanks Recorder's Office on October 4, 1954, as Instrument No. 151.674, to the southernmost right of way limit of College Road, State of Alaska Project S-SG-0644(5); thence in a northwesterly direction along the southernmost right of way limit of College Road, State of Alaska Project S-SG-0644(5), to the Fairbanks Base Line; thence west along said Base Line to the thread of Noyes Slough; thence downstream along the thread of Noyes Slough to the northerly extension of the lot line common to Lots 1 and 11 of the Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a southerly direction along the westerly boundaries of Lots 1 through 6 and 9 and the southerly extension of said line to the southernmost right of way limit of Hanson Road, shown on the plat of Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a westerly direction along the southernmost right of way limit of Hanson Road to the northwesterly corner of Lot 21, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence in a southerly direction along the westerly boundary of said Lot 21 to the southwest corner of Lot 21, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office, on October 15, 1976, as Instrument No. 76-165; thence easterly and northeasterly along the southerly boundaries of Lots 21, 20 and 24 to the southeasterly corner of Lot 24, Fairbanks Industrial Park Subdivision filed in the Fairbanks Recorder's Office on October 15, 1976, as Instrument No. 76-165; thence easterly, normal to the section line, to said section line common to Sections 5 and 4, T1S, R1W, F.B. & M.; thence in a southerly direction along said section line common to Sections 4, 5, 8 and 9, T1S, R1W, F.B. & M. to an intersection with the easterly extension of the southernmost right of way limit of Phillips field Road as shown on the plat of Doyon Estates subdivision, filed in the Fairbanks Recorder's Office on October 16, 1997 as Instrument No. 97-100 ; thence in a westerly direction along said easterly extension of the southernmost right of way limit of Phillips Field Road to an intersection with the westernmost right of way limit of Mouton Street as shown on the plat of Doyon Estates subdivision, filed in the Fairbanks Recorder's Office on October 16, 1997 as Instrument No. 97-100 ; Thence southeasterly and southwesterly along said westernmost right of way limit of Mouton Street to the northern most boundary of Government Lot 10, Section 8, T1S, R1W, F.B.& M.; thence in a westerly direction along the northerly boundary of Government Lot 10, Section 8, T1S, R1W, F.B.& M. extended to intersect with the thread of the

Chena River; thence downstream along the thread of the Chena River to the section line common to Sections 7 and 8, T1S, R1W, F.B. & M.; thence in a southerly direction along said section line to the easterly extension of the northerly boundary of Fred Meyer Subdivision as filed in the Fairbanks Recorder's Office as Plat No. 91-55; thence westerly, southerly and easterly along the boundary of said Fred Meyer Subdivision to the northwesternmost corner of Lot 2, Block 1, Fairwest Subdivision West Addition filed in the Fairbanks Recorder's Office January 24, 1964, as Instrument No. 64-486; thence in a southerly direction along the westerly lot line of said Lot 2, Block 1, to the northernmost right of way limit of Mitchell Avenue as shown on said plat of Fairwest Subdivision West Addition; thence in an easterly direction along the northernmost right of way limit of Mitchell Avenue as shown on said plat of Fairwest Subdivision West Addition extended to the section line common to Sections 17 and 18, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line common to Sections 17 and 18, T1S, R1W, F.B. & M. to the northernmost 1/16 corner common to Sections 17 and 18, T1S, R1W, F.B. & M.; thence in an easterly direction along the northernmost east-west 1/16 line to the northerly 1/16 corner on the centerline (north-south) of Section 17, T1S, R1W, F.B. & M.; thence in a southerly direction along the centerline (north-south) of Section 17, T1S, R1W, F.B. & M. to the center 1/4 corner of Section 17, T1S, R1W, F.B. & M.; thence in a easterly direction along the centerline (east-west) of Section 17, T1S, R1W, F.B. & M. to an intersection with the westernmost right of way limit of Peger Road, State of Alaska Project S-0665(2); thence in a southerly direction along the westernmost right of way limit of Peger Road, State of Alaska Project S-0665(2), to a point on the extended southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), to the easternmost limit of Schacht Street as shown on the plat of Metro Industrial Airpark subdivision filed in the Fairbanks Recorder's Office on December 12, 1969, as instrument No. 69-12194; thence in a southerly direction along the easternmost limit of said Schacht Street to the southwest corner of Lot 1-A as shown on the replat of Lot 1, Block 7, Metro Industrial Air Park filed in the Fairbanks Recorder's Office on June 18, 1985, as Instrument No. 85-96; thence in a easterly direction along the southerly boundary of said Lot 1-A to the southeasterly corner of said Lot 1-A at the westerly boundary of the Subdivision of the Arvo A. Joki Property in the SE 1/4 of Section 21, T.1S. R.1 W. F.M., filed in the Fairbanks Recorder's Office on May 31, 1973, as instrument No. 73-34; thence in southerly easterly and northerly directions around the perimeter of the Avro A. Joki Property encompassing Tract A and Tract B to the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2); thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2) to the easternmost limit of South Lathrop Street, a 66 foot section line easement centered on the section line common to Sections 21 and 22, T1S, R1W, F.B. & M.; thence in a southerly direction along the easternmost limit of South Lathrop Street, a 66 foot section line easement centered on the section line common to Sections 21 and 22, T1S, R1W, F.B. & M. to the northwesterly corner of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160; thence in an easterly direction along the northerly boundary of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160; thence in a southerly direction along the easterly boundary of Lot 1, as shown on the Amended Plat of D-5 Subdivision filed in the Fairbanks Recorder's Office on September 19, 1980, as Instrument No. 80-160 common to the westerly boundary of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southwest corner of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in an easterly direction along the southerly boundary of Lot 6, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the westernmost right of way limit of Royal Road, as shown on the plat of King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in a northerly direction along the westernmost right of way limit of Royal Road, as shown on the plat of King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the northeasterly corner of Lot 7, Block 1, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114; thence in an easterly direction along the westerly extension of and continuing along the southerly boundary of Lot 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southeasterly corner of Lot 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114;

thence northerly along the easterly boundary of Lots 1 and 2, Block 2, King Industrial Park Subdivision filed in the Fairbanks Recorder's Office on July 22, 1981, as Instrument No. 81-114 to the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2); thence in an easterly direction along the southernmost right of way limit of Van Horn Road, State of Alaska Project S-0665(2), to an intersection with the westernmost right of way limit of South Cushman Street; thence in a southerly direction along the westernmost right of way limit of South Cushman Street as shown on the plat of Tennessee Miller Industrial Park recorded in the Fairbanks District Recorders Office on March 14, 1986 as instrument number 86-35; thence continuing along the southerly extension of said westernmost right of way limit of South Cushman Street to the section line common to Sections 22 and 27, T1S, R1W, F. B. & M.; thence in an easterly direction along the section line common to Sections 22, 27, 23 and 26, to the ¼ common to Sections 23 and 26, T1S, R1W, F.B. & M.; thence in a northerly direction along the north-south centerline of Section 23, to the northernmost 1/16 corner on said north-south centerline of Section 23, T1S, R1W, F.B. & M.; thence in an easterly direction along the northernmost eastwest 1/16 line of said Section 23 to the northernmost 1/16 corner common to Sections 23 and 24, T1S, R1W, F.B. & M.; thence in a southerly direction along the section line common to Sections 23 and 24 to the southerly limit of Parcel B of Exhibit A to the Special Warranty Deed recorded in the Fairbanks Recorder's Office on February 27, 1985, in Book 414, Pages 331 through 337, as Instrument Number 85-4616; thence North 8959'52" East along the southerly boundary of said Parcel B a distance of 330.14 feet; thence North 002'05" West a distance of 330.22 feet to a point on the southerly boundary of said Parcel B; thence North 8959'59" East a distance of 690.39 feet to a point on the southerly boundary of said Parcel B; thence South 000'01" East a distance of 660.40 feet to a point on the southerly limit of said Parcel B; thence North 8959'46" East a distance of 300.44 feet to the southeasternmost corner of said Parcel B which lies on the westerly 1/16 line of Section 24, T1S, R1W, F.B. M.; thence in a southerly direction along the westerly 1/16 line of Sections 24 and 25, T1S, R1W, F.B. & M., to the meander of the north bank of the Tanana River; thence in northeasterly and southeasterly directions along the meanders of the north bank of the Tanana River to an intersection with the section line common to Sections 32 and 33, T1S, R1E, F.B. & M.; thence in a northerly direction along the section line common to Sections 33, 28, 29 and 32, T1S, R1E, F.B. & M., to the section corner common to Sections 21, 28, 29 and 20, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 28 and 21, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 28 and 21, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M., to the southernmost right of way limit of the Old Richardson Highway, FAP 62-4; thence in a northwesterly direction along the southernmost right of way limit of the Old Richardson Highway, FAP 62-4, extended to the westernmost right of way limit of Badger Road, State of Alaska Project S-0620(2); thence in a northerly direction along the westernmost right of way limit of Badger Road State of Alaska Project S-0620(2) to an intersection with the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line of Section 21, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 21 and 16, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 21 and 16, T1S, R1E, F.B. & M. to the centerline of Badger Road State of Alaska Project RS-0622(6); thence in a northerly direction along the centerline of Badger Road State of Alaska Project No. RS-0622(6) to the centerline of Holms Road State of Alaska Project RS-0622(1) /63872; thence in a southeasterly direction along the centerline of Holms Road to a point of tangent at centerline station 24+59.63; thence South 02°32' 10" West (basis of bearing for this call is Holms Road State of Alaska Project RS-0622(1) /63872) to the section line common to Sections 21 and 16, T1S, R1E, F.B. & M.; thence in an easterly direction along said section line to the section corner common to Sections 22, 21, 16 and 15, T1S, R1E, F.B. & M.; thence in a northerly direction along the section line common to Sections 15 and 16, T1S, R1E, F.B. & M., to the section corner common to Sections 10, 15, 16 and 9, T1S, R1E, F.B. & M.; thence in a westerly direction along the section line common to Sections 9 and 16, T1S, R1E, F.B. & M., to the 1/4 corner common to Sections 9 and 16, T1S, R1E, F.B. & M.; thence in a northerly direction along the centerline (north-south) of Section 9, T1S, R1E, F.B. & M., to the 1/4 corner common to Sections 9 and 4, T1S, R1E, F.B. & M.; thence in an easterly direction along the section line common to Sections 9, 4, 3 and 10, T1S, R1E, F.B. & M., to the westerly 1/16 corner common to Sections 10 and 3, T1S, R1E, F.B. & M.; thence in a northerly direction along the westerly 1/16 line to the mid 1/16 corner located in the SW 1/4 of Section 3, T1S, R1E, F.B. & M.; thence in an easterly direction along the southerly 1/16 line to the southerly 1/16 corner on the centerline (north-south) of Section 3, T1S, R1E, F.B. & M.; thence in a northerly direction


along the centerline (north-south) of Section 3, T1S, R1E, F.B. & M., to the 1/4 corner of Section 3, T1S, R1E, F.B. & M., located on the Fairbanks Base Line; thence east along the Fairbanks Base Line to the southerly 1/4 corner of Section 34, T1N, R1E, F.B. & M.; thence in a northerly direction along the centerline (north-south) of Section 34, T1N, R1E, F.B. & M., to the 1/4 corner common to Sections 34 and 27, T1N, R1E, F.B. & M.; thence in a westerly direction along the section line common to Sections 27, 34, 33 and 28, T1N, R1E, F.B. & M., to the section corner common to Sections 29, 28, 33 and 32, T1N, R1E, F.B. & M.; thence in a southerly direction along the section line common to Sections 32 and 33, T1N, R1E, F.B. & M., to the 1/4 corner common to Sections 32 and 33, T1N, R1E, F.B. & M.; thence in a westerly direction along the centerlines (east-west) of Sections 32 and 31, T1N, R1E, F.B. & M., to the 1/4 corner of Section 31, T1N, R1E, F.B. & M., located on the Fairbanks Meridian; thence north along the Fairbanks Meridian to the northernmost 1/16 corner of Section 36, T1N, R1W, F.B. & M., thence in a westerly direction along the northerly 1/16 line of Section 36, T1N, R1W, F.B. & M., to the mid 1/16 corner located in the NE 1/4 of Section 36, T1N, R1W, F.B. & M.; thence in a southerly direction along the easterly 1/16 line to the easterly 1/16 corner on the centerline (east-west) of Section 36, T1N, R1W, F.B. & M.; thence in a westerly direction to the interior 1/4 corner of Section 36, T1N, R1W, F.B. & M.; thence in a southerly direction along the centerline (north-south) of Section 36, T1N, R1W, F.B. & M., to the 1/4 corner common to Section 36, T1N, R1W, F.B. & M., and located on the Fairbanks Base Line, the true point of beginning of this description. This description encompasses an area of 33.85 square miles.

Approved in writing this 2nd day of December, 2009.

LOCAL BOUNDARY COMMISSION

By:  x
Lynn Chrystal, Chair

Attest:

By:  x
Brent Williams, Staff

RECONSIDERATION BY THE COMMISSION

Per 3 AAC 110.580(a) “within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of the decision, describing in detail the facts and analyses that support the request for reconsideration.”

Per 3 AAC 110.580(e) “the commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law;
- or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.”

Additionally, per 3 AAC 110.580(f) “if the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied.”

Also, per 3 AAC 110.580(f) “if the commission orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered.”

JUDICIAL APPEAL

Per 3 AAC 110.620, “a final decision of the commission made under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).” Please note that AS 44.62.560 requires that “the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding.”
