

STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

**UPON REMAND: *IN THE MATTER OF
THE MARCH 20, 2000, PETITION BY
THE CITY OF HOMER FOR
ANNEXATION OF APPROXIMATELY
25.64 SQUARE MILES***

ORDER RELATING TO PROCEDURES FOR CONSIDERATION OF THE AMENDED CITY OF HOMER ANNEXATION PETITION UPON REMAND

On March 20, 2000, the City of Homer petitioned the Local Boundary Commission (hereinafter "Commission") for annexation of an estimated 25.64 square miles. On December 26, 2001, following proceedings set out in 3 AAC 110.400 – 3 AAC 110.660, the Commission amended the petition to reduce the territory from 25.64 square miles to 4.58 square miles (hereinafter "amended petition"). At that meeting, the Commission also approved the amended petition.

(05-13-04)

On January 17, 2002, the Commission denied six requests for reconsideration of its decision. On January 23, 2002, the Commission presented to the Second Session of the Twenty-Second Alaska Legislature, a proposal under Article X, § 12 of the Constitution of the State of Alaska, for annexation to the City of Homer of the 4.58 square miles identified in the amended petition. The Legislature tacitly approved the Commission’s proposed boundary change on March 9, 2002, by not rejecting the proposal within the time allowed under Article X, § 12. Annexation took effect on March 20, 2002, pursuant to 3 AAC 110.630, upon receipt by DCED of notification of compliance by the City of Homer with regard to 42 U.S.C. 1973c (Voting Rights Act of 1965).

The Commission’s decision was subsequently appealed to superior court. The Court affirmed all aspects of the Commission’s decision except one. The Court concluded that, “the LBC erred when it failed to consider the impact annexation would have on [the Kachemak Emergency Service Area (KESA)].” *Kachemak Area Coalition v. City of Homer*, 3 AN-02-0426 CI (Alaska, December 4, 2003), p. 22. The Court remanded the City of Homer’s amended annexation petition to the Commission to discuss the impact of the March 20, 2002, annexation on KESA.

(05-13-04)

The basis for the Court’s opinion that the LBC erred when it failed to consider the impact annexation would have on KESA is outlined on pages 19 – 23 of the Court’s December 4, 2003, order. The Court noted at 19:

[The appellants (Kachemak Area Coalition, Inc.,¹ *et al.*)] contend that Homer essentially “cherry-picked” KESA. The annexation took a large percentage of KESA’s population but left a majority of its territory – over 175 square miles. Thus, KESA was left in a predicament in which it had a greatly reduced tax-base yet remained almost the same size as before the annexation.

Further, the court observed at 20:

Appellees in the present case [Commission and the City of Homer] admit to essentially dismissing any impact the Homer annexation would have on KESA, yet at the same time they claim the issue was discussed as much as the situation warranted. The stated reason for the inattention is that the LBC and Homer maintain that KESA was formed illegally and thus did not deserve serious consideration. Regardless of the motives of those who petitioned to form KESA, KESA was created and will continue to exist even if

Homer annexes a portion of it. This court must assume that the remaining service area is legitimate and will be responsible after annexation for providing services within its new boundaries (citations omitted).

The Court stated further at 21-22:

This Court accepts as true that Homer and the Kenai Peninsula Borough agreed to an amicable transfer of assets. However, given the amount of attention focused on KESA from even before its inception, this Court finds the lack of consideration given to the effect annexation would have on KESA troubling. Mentioning KESA in passing, or in connection with the additional burdens the City planned to take on is not the same as a discussion about the impact annexation would have in view of whether the annexation was in the best interests of the state. Clearly, annexation of the entire service area was not in the state's best interests, as the LBC did not approve even the entire 25+ square miles for which Homer originally petitioned.

(05-13-04)

¹The full name of this respondent/appellant is "Kachemak Area Coalition Inc., d/b/a Citizens Concerned about Annexation" but referred to hereafter as "Kachemak Area Coalition Inc."

Because it was impossible for the City to include a transition plan for KESA at the time of its petition (since it did not yet exist), a discussion of the effect annexation would have on surrounding services [sic] areas, was warranted to ensure that the annexation was indeed in the best interests of the state. There is no evidence that any such discussion ever occurred. Thus, a remand is appropriate to ensure that the LBC considers this issue (citations omitted).

No member of the Commission as currently constituted was a member of the Commission when the original petition came before it. On December 8, 2003, the current Commission Chair was notified by Bob Hicks, a current member of the Commission, that he had potential conflicts of interest with respect to the remanded amended Homer annexation petition. After consulting with the State Attorney General's office, the Commission Chair concurred with Commissioner Hicks that the potential conflicts raised warranted recusal of Commissioner Hicks with respect to matters pertaining to the Homer annexation remand.

The procedures outlined in Sections 1 – 10 of this Order, developed under authority of 3 AAC 110.660, will be used in consideration by the Commission with regard to the amended petition upon remand, based on evidence dated or events occurring on or before January 17, 2002 (the date on which the Commission

denied requests for reconsideration of its December 26, 2001, decision). The provisions of 3 AAC 110.500 prohibiting ex parte contact with the Commission apply to this remand proceeding.

Section 1 – Public Notice

The Alaska Department of Community and Economic Development (hereinafter “DCED”) shall:

(a) publish the attached *Notice of Opportunity to Comment Regarding KESA and Homer Annexation Remand* (hereinafter “notice of remand”) in a display ad format in the Homer Tribune no later than May 26, 2004, and in the Homer News no later than May 27, 2004;

(b) arrange for the City of Homer to post no later than May 26, 2004, the notice of remand in at least three prominent locations readily accessible to the public and within the boundaries of the City of Homer;

(c) arrange for the City of Homer to ensure that notices posted under (b) of this section remain posted through June 24, 2004, the deadline for receipt by DCED of written comments as outlined in Section 3 of this Order;

(d) hand-deliver or mail² no later than May 26, 2004, the notice of remand to the City of Homer; each of the respondents³ in the original Homer annexation

²For mailing purposes, a list of the addresses of record is attached hereto. The addresses have been updated to the extent such information is available to Commission staff.

³There were 14 respondents in the original Homer annexation proceeding, one of whom was Abigail Fuller. She was also a *pro se* appellant in the Homer annexation appeal and, thus,

proceeding (hereinafter “respondents”); the former Commission members who participated in the original Homer annexation proceeding; and the respective legal counsel for: the Commission; City of Homer; Alaskan’s [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller;

(e) submit no later than May 26, 2004, the attached *Request for PSA Regarding Opportunity to Comment Regarding KESA and Homer Annexation* to radio stations listed in *Alaska Media Directory – 03* as serving the Kenai Peninsula (i.e., KBBI-AM; KDLL-FM; KGTL-AM; KKIS-FM; KPEN-FM; KSLD-AM; KSRM-AM; KWHQ-FM; KWVV-FM; and KXBA-FM) and request that it be announced for 14 days following receipt of the request;

(f) arrange for the notice of remand to be posted on the Alaska Online Public Notice System (AS 44.62.175); and

(g) arrange for the notice of remand to be posted on the Commission’s Web site at <http://www.dced.state.ak.us/dca/lbc/lbc.htm> under “Homer Annexation Remand” to be listed in the “Quick Links” directory.

Section 2 – Service of the Record on Appeal and Other Materials for Purposes of Remand

(a) At the same time that it provides the notice of remand, DCED shall provide the materials listed below to each participating member of the Commission; the former Commission members who participated in the original

where appropriate, is included in the list of "counsel" to receive service of records in this remand proceeding.

Homer annexation proceeding; City of Homer; Homer City Clerk (15 copies); Homer Public Library (15 copies); each of the respondents; and the respective legal counsel for: the City of Homer; Alaskan's [sic] Opposed to Annexation, *et al*; Kachemak Area Coalition, Inc.: and Abigail Fuller.

(1) the complete record on appeal to the superior court in electronic format (Adobe Acrobat pdf on CD);

(2) "Order on Appeal of Local Boundary Commission Decision," *Kachemak Area Coalition v. City of Homer*, 3 AN-02-0426 CI (Alaska December 4, 2003), p. 23, in electronic format (Adobe Acrobat pdf on CD); and

(3) a printed copy of this Order (with attachments).

(b) Upon request, DCED shall provide the materials listed above to any interested person or entity.

Section 3 – Written comments

(a) An interested person or entity⁴ may file with DCED written comments concerning KESA and the effect on KESA of the annexation of 4.58 square miles to the City of Homer based on evidence dated or events occurring on or before January 17, 2002 (the date on which the Commission denied requests for

⁴This may include the City of Homer; any of the respondents; and the respective legal counsel for: the City of Homer; Alaskan's [sic] Opposed to Annexation, *et al*; Kachemak Area Coalition, Inc.: and Abigail Fuller.

reconsideration of its December 26, 2001, decision). Written comments based on evidence dated or events occurring after January 17, 2002, will be rejected.

To be considered, the written comments must be received by DCED no later than 4:30 p.m., June 24, 2004.

(b) After June 24, 2004, DCED shall

(1) promptly provide a copy of the written comments to the City Clerk of the City of Homer; and legal counsel for: the City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller by hand-delivery, electronic mail, facsimile, or postage-prepaid mail;

(2) promptly post a copy of the written comments on the Commission's Web site as noted in Section 1 of this Order; and

(3) provide a copy to each participating member of the Commission.

(c) Upon receipt of a copy of the written comments, the City Clerk of the City of Homer shall make the comments available for public review in the Office of the City Clerk.

(05-13-04)

Section 4 – Reply comments

(a) By July 15, 2004, the City of Homer may file with DCED a reply in response to all timely-filed written comments. The City Clerk of the City of Homer shall make a copy of the City of Homer's reply comments available for public review in the Office of the City Clerk.

(b) Upon receiving the City of Homer's reply comments, DCED shall

(1) promptly provide a copy of the reply comments to the legal counsel for: the City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller by hand-delivery, electronic mail, facsimile, or postage-prepaid mail;

(2) promptly post a copy of the comments on the Commission's Web site as noted in Section 1 of this Order; and

(3) provide a copy to each participating member of the Commission.

Section 5 – Departmental reports

(a) Following its investigation and analysis of the KESA issues and relevant written comments, DCED shall submit a written report of its findings with recommendations regarding the matter.

(b) By August 12, 2004, DCED shall mail its preliminary report with recommendations to each participating member of the Commission; City of Homer; Homer City Clerk (15 copies); Homer Public Library (15 copies); each of

the respondents; the respective legal counsel for: the Commission; City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller; the former Commission members who participated in the original Homer annexation proceeding; and any interested person or entity who requests a copy.

(c) Promptly following the mailing of its preliminary report, DCED shall post a copy of the preliminary report on the Commission's Web site as noted in Section 1 of this Order.

(d) The City of Homer, each of the respondents, and other interested persons or entities may submit to DCED written comments pertaining to the preliminary report with recommendations. To be considered, the written comments must be received by DCED by 4:30 p.m., September 2, 2004.

(e) Upon receiving written comments pertaining to the preliminary report, DCED shall promptly post a copy of the comments on the Commission's Web site as noted in Section 1 of this Order.

(f) In its final report, DCED shall consider timely submitted written comments addressing the preliminary report with recommendations.

(g) By September 23, 2004, DCED shall mail its final written report with recommendations to each participating member of the Commission; City of Homer; Homer City Clerk (15 copies); Homer Public Library (15 copies); each of the respondents; the respective legal counsel for: the Commission; City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition,

Inc.; and Abigail Fuller; the former Commission members who participated in the original Homer annexation proceeding; and any interested person or entity who requests a copy.

(h) Promptly following the mailing of its final report, DCED shall post a copy of the final report on the Commission's Web site as noted in Section 1 of this Order.

Section 6 – Commission public hearing

(a) At least three weeks following the mailing of DCED's final report under Section 5(g) of this Order, the Commission will convene one or more public hearings at convenient locations within the corporate boundaries of the City of Homer.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by DCED to the City of Homer, each respondent, the respective legal counsel for: the Commission; City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller; and the former Commission members who participated in the original Homer annexation proceeding;

(2) published by DCED at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more

newspapers of general circulation selected by DCED to reach the people in the Homer area;

(3) posted by the City of Homer in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held for at least 21 days preceding the date of the hearing;

(4) posted by DCED on the Alaska Online Public Notice System (AS 44.62.175); and

(5) posted by DCED on the Commission's Web site as noted in Section 1 of this Order.

(c) DCED shall submit a request for a public service announcement of the hearing notice to the radio stations listed in Section 1(e) of this Order and request that the hearing notice be announced during the 21 days preceding the date of the hearing.

(d) The Commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the City of Homer and each respondent shall submit to DCED a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify,

and the estimated time anticipated for the testimony of each witness. On the same date that the City of Homer submits its witness list to DCED, the City of Homer shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to DCED, the respondent shall provide a copy of its witness list to the City of Homer and to all other respondents by hand-delivery or postage-prepaid mail.

Section 7 – Commission hearing procedures

(a) The Chair of the Commission shall preside at the hearing and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. DCED shall record the hearing and preserve the recording. Two members of the Commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the Commission may include

- (1) a report with recommendations from DCED;
- (2) an opening statement by the City of Homer, not to exceed five minutes;
- (3) an opening statement by each of the respondents, not to exceed five minutes;
- (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to KESA and the effect on KESA of the annexation of 4.58 square miles; and

(B) called by the City of Homer;

(5) sworn testimony of witnesses

(A) with expertise in matters relevant to KESA and the effect on KESA of the annexation of 4.58 square miles; and

(B) called by each respondent;

(6) sworn responsive testimony of witnesses

(A) with expertise in matters relevant to KESA and the effect on KESA of the annexation of 4.58 square miles; and

(B) called by the City of Homer;

(7) a period of public comment by interested persons, not to exceed three minutes for each person;

(8) a closing statement by the City of Homer, not to exceed five minutes;

(9) a closing statement by each respondent, not to exceed five minutes; and

(10) a reply by the City of Homer, not to exceed five minutes.

(c) If more than one respondent participates, the Chair of the Commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(05-13-04)

(d) A member of the Commission may question a person appearing for public comment or as a sworn witness. The Commission may call additional witnesses.

(e) A document may not be filed at the time of the public hearing unless the Commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the City of Homer or each of the respondents or for consideration in the reports with recommendations of DCED.

(f) The Commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the Commission's ability to make an informed decision.

Section 8 – Decisional Meeting

(a) Within 90 days after the last Commission hearing on the matter, the Commission will convene a decisional meeting to examine the written comments and testimony, make findings and reach conclusions regarding KESA and the effect of the March 20, 2002, annexation upon KESA, and render a decision regarding the matter. The Commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the Chair of the Commission may ask DCED or a person for a point of information or clarification.

(b) Three members of the Commission constitute a quorum for the conduct of business at a decisional meeting.

(c) The Commission will keep written minutes of the decisional meeting. Each vote taken by the Commission will be entered in the minutes. The approved minutes are a public record.

(d) Within 30 days after the date of its decision, the Commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the City of Homer, each of the respondents and their legal counsel, and other interested persons requesting a copy. DCED shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(e) Unless reconsideration is requested timely or the Commission, on its own motion, orders reconsideration, a decision by the Commission is final on the day that the written statement of decision is mailed, postage prepaid to the City of Homer, the respondents, the respective legal counsel for: the Commission; City of Homer; Alaskan's [sic] Opposed to Annexation, *et al.*; Kachemak Area Coalition, Inc.; and Abigail Fuller.

Section 9 – Reconsideration

The process for reconsideration set out under 3 AAC 110.580 shall apply to this proceeding.

(05-13-04)

Section 10 – Service of Decision on Court

A copy of the Commission's decision on remand will be filed with the superior court by the Commission's counsel of record.

Approved this ___ day of May 2004.

LOCAL BOUNDARY COMMISSION

By: Darroll Hargraves, Chair

Attest:

Dan Bockhorst, Staff

Attachments:

- *Notice of Opportunity to Comment Regarding KESA and Homer Annexation Remand*
- Addresses of record of the City of Homer, respondents, and legal counsel.
- *Request for PSA Regarding Opportunity to Comment Regarding KESA and Homer Annexation*



NOTICE OF OPPORTUNITY TO COMMENT REGARDING KESA AND HOMER ANNEXATION REMAND

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

Upon remand by the superior court, the Local Boundary Commission will discuss the Kachemak Emergency Service Area (KESA) and effect on KESA of the 4.58 square mile annexation to the City of Homer that occurred March 20, 2002. The court indicated that such discussion is warranted to ensure that annexation was in the best interests of the State.

An interested person or entity may file written comments with the Commission concerning this issue. **Written comments based on evidence dated or events occurring after January 17, 2002 (the date on which the Commission denied requests for reconsideration of its December 26, 2001, decision), will be rejected.** The provisions of 3 AAC 110.500 prohibiting ex parte contact with the Commission apply to this remand proceeding.

A printed copy of the original petition materials is available for review at the office of the Homer City Clerk, 491 East Pioneer Avenue, Homer (telephone: 235-3130). Copies of the record in electronic format (Adobe Acrobat pdf on CD) have been provided to each of the respondents in the original proceeding. Multiple CDs of the record have also been provided to the Homer Public Library and the Homer City Clerk for use by the public. CDs are also available upon request from Commission staff.

To be considered, **written comments must be received in the office below by 4:30 p.m., Thursday, June 24, 2004:**

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Fax: 907-269-4539
Email: LBC@dced.state.ak.us

Further information about this matter, including details regarding the procedures to be used by the Commission is posted on the Commission's Web site at <http://www.dced.state.ak.us/dca/lbc/lbc.htm> under "Homer Annexation Remand" which is listed in the "Quick Links" directory. Inquiries may also be directed to Commission staff by telephone at (907) 269-4559.

Homer Remand Mailing List

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Moscow, ID 83843

Mary Griswold
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Homer, AK 99603

Sallie S. Dodd-Butters
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Homer, AK 99603

Doris I. Cabana
P.O. Box 607
Homer, AK 99603

Bill Smith
P.O. Box 150
Homer, AK 99603

Vi Jerrel, Ph.D.
P.O. Box 938
Homer, AK 99603

Kachemak Area Coalition, Inc., d/b/a
Citizens Concerned About Annexation
Attn: Peter C. Roberts
P.O. Box 1134
Homer, AK 99603

Crossman Ridge Homeowners' Association
Attn: Cris Rideout
P.O. Box 2430
Homer, AK 99603

Objective Annexation Review
Attn: Larry Smith
1520 Lakeshore Drive
Homer, AK 99603

Raven Ridge Homeowners' Association
Attn: Wayne Clark
P.O. Box 1335
Homer, AK 99603

Kathleen S. Wasserman
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City Clerk
City of Homer
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Homer, AK 99603

Walt Wrede
Manager
City of Homer
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The Honorable Jack Cushing
Mayor
City of Homer
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Allan Tesche
Russell Tesche Wagg
Cooper & Gabbert
510 L Street, Suite 300
Anchorage, AK 99501



**REQUEST FOR PSA REGARDING OPPORTUNITY TO
COMMENT REGARDING KESA AND HOMER
ANNEXATION**

**PLEASE BROADCAST FOR 14 DAYS
FOLLOWING RECEIPT OF THIS REQUEST**

**STATE OF ALASKA
LOCAL BOUNDARY COMMISSION**

The superior court has directed the Local Boundary Commission to discuss the Kachemak Emergency Service Area (KESA) and the effect on KESA of the 4.58 square-mile annexation to the City of Homer that occurred March 20, 2002. The court indicated that such discussion is warranted to ensure that annexation was in the best interests of the State.

The Commission is accepting written comments concerning this issue. **Written comments based on evidence dated or events occurring after January 17, 2002 (the date on which the Commission denied requests for reconsideration of its December 26, 2001 decision), will be rejected.**

A printed copy of the original petition materials is available for review at the office of the Homer City Clerk, 491 East Pioneer Avenue, Homer (telephone: 235-3130). The record is also available for review in electronic format (Adobe Acrobat pdf on CD) through the Homer Public Library and the Homer City Clerk. CDs are also available upon request from Commission staff.

Written comments must be received by the Commission no later than 4:30 p.m., Thursday, June 24, 2004. The address is:

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Fax: 907-269-4539
Email: LBC@dced.state.ak.us

Further information about this matter, including details regarding the procedures to be used by the Commission is posted on the Commission's Web site. Inquiries may also be directed to Commission staff by telephone at (907) 269-4559.