

REPLY BRIEF
of the
CITY OF HOMER

Supporting Its Petition
for Annexation to the City
of Territory
West, North, & East
of the Current
City Limits



September 11, 2000

A Millennium 2000 Project

CONTENTS

I.	INTRODUCTION	7
II.	IDENTIFICATION OF PARTIES FILING RESPONSIVE BRIEFS.....	7
III.	COMMENTS ON PARTICULAR RESPONSIVE BRIEFS	9
A.	Alaskans Opposed to Annexation.....	9
1.	Revenue Estimates.....	10
2.	Finance Department.....	11
3.	Fire Department.....	11
4.	Police Department	12
5.	Public Works Department.....	14
6.	Library.....	15
7.	City Clerk's Office.....	16
8.	Legal Issues	17
B.	Doris Cabana.....	19
1.	Fire Department.....	19
2.	Zoning	20
3.	Department Heads	20
4.	Legal Issues	20
C.	Sallie Dodd-Butters	21
1.	Fire Department.....	21

2.	Library.....	22
3.	Zoning.....	23
4.	Permitting.....	23
5.	Park Development	24
6.	Taxable Real Property	24
7.	Police Service	25
8.	Road Maintenance	25
9.	Legal Issues	25
10.	Other	26
D.	Abigail Fuller	26
1.	Clerk Services.....	26
2.	Local Improvement Districts, HAWSP, and HARP	26
3.	Expense Estimates	27
4.	Fire Service	28
5.	Legal Issues	28
6.	Land Use and Regulation.....	29
7.	Beluga Lake.....	29
8.	Police Services	30
9.	Port and Harbor	31
10.	Road Maintenance	31
E.	Mary Griswold	31
1.	Revenue and Expense Projections.....	31
2.	Fire Services	32

3.	Planning and Zoning.....	33
4.	Police Services	34
5.	Port and Harbor	34
6.	Roads	34
7.	Election Precincts	35
F.	Vi Jerrel	35
G.	Kachemak Area Coalition, Inc. d.b.a. Citizens Concerned About Annexation ("CCAA").....	35
1.	Revenues and Expenses	35
2.	Fire and Emergency Services.....	36
3.	Police Services	37
4.	Port and Harbor	38
5.	Roads	38
6.	Public Works Vehicle Maintenance	39
7.	Snow Removal	40
8.	Local Improvement Districts	41
H.	Kenai Peninsula Borough	41
1.	Roads	41
I.	Objective Annexation Review	41
1.	Fire Service	41
2.	Library.....	42
3.	Police	42
4.	Port and Harbor	43
5.	Voter Services	43

6.	Other	43
J.	Pete Roberts	43
1.	Revenues and Expenses	44
2.	Fire Service	44
3.	Port and Harbor	45
K.	Steve and Margret Seelye	46
1.	Nonprofit Funding Grants	46
2.	Roads	46
3.	Fire and Water	46
L.	Bill Smith	46
1.	Fire and EMS	46
2.	Port and Harbor	47
M.	The Crossman Ridge Neighborhood	47
1.	Fire and EMS	47
2.	Police Service	47
3.	Roads	47
4.	Bridge Creek Reservoir	48
N.	The Raven Ridge Homeowner's Association	48
1.	Fire and EMS	48
2.	Police	49
3.	Snow Removal	49
IV.	SUMMARY COMMENTS	49
V.	THE CITY'S PETITION SATISFIES THE REGULATORY STANDARDS FOR ANNEXATION	52

A.	There Is A Reasonable Need For City Government In The Annexation Territory [3 AAC 110.090(a)]	52
B.	Neither Kachemak City Nor The Kenai Peninsula Borough Is Capable Of Providing "Essential City Services" More Efficiently And More Effectively Than The City Of Homer [3 AAC 110.090(b)].....	53
C.	The Annexation Territory Is Compatible In Character With The City Of Homer [3 AAC 110.100].....	55
D.	The Economy Within The Proposed Boundaries Of The City Includes Human And Financial Resources Necessary To Provide Essential City Services On An Efficient, Cost-Effective Level [3 AAC 110.110].....	57
E.	The Population Within The Proposed City Boundaries Is Sufficiently Large And Stable To Support The Extension Of City Government [3 AAC 110.120].....	57
F.	The Proposed Boundaries Of The City Include All Land And Water Necessary To Provide The Full Development Of Essential City Services On An Efficient, Cost-Effective Level [3 AAC 110.130(a)]	58
G.	The Annexation Territory Is Contiguous To The City [3 AAC 110.130(b)]	58
H.	The Proposed Annexation Territory Includes That Area Comprising The Local Community Plus Reasonably Predictable Growth, Development, And Public Safety Needs For The Next Ten Years [3 AAC 110.130(c)].....	58
I.	The Annexation Territory Excludes Large Unpopulated Areas Except As Justified By Annexation Standards [3 AAC 110.130(d)]	58
J.	Annexation Will Serve The Balanced Best Interests Of The State, The Annexation Territory, And Affected Political Subdivisions [3 AAC 110.140].....	59
VI.	CONCLUSION.....	61

EXHIBIT LIST63

I. INTRODUCTION

In accordance with 3 AAC 110.090 – 3 AAC 110.140, the City of Homer (City) has petitioned the Alaska Local Boundary Commission (LBC) for annexation of an estimated 25.58 square miles. The territory proposed for annexation ("annexation territory") encompasses all land within Township 6 South, Ranges 12 – 15 West, Seward Meridian, not presently with the corporate boundaries of the City of Homer or the City of Kachemak.

Complete petition materials, including detailed maps of the territory were available for public review at the Homer City Hall and Homer Library. An abridged version of the petition was also available for review on the Internet.

Responsive briefs supporting or opposing the City's annexation proposal were to be filed in accordance with 3 AAC 110.480 by June 5, 2000. This is the City's reply to those responsive briefs.

Each responsive brief will be individually addressed below. The City's reply to the first brief will be more extensive than the others because many of the issues addressed in the first responsive brief are also addressed in several of the other briefs. The City will address each issue, but will refer to an earlier brief when the issues are the same as previously addressed. Summary comments and a discussion of each of the disputed regulatory standards set out in 3 AAC 110.090 to 110.140 will follow.

Numerous exhibits are bound in separate volumes. Many of the exhibits are referenced throughout this reply. Of particular note are the copies of the department head memorandums relied on in the preparation of this reply brief. The departments were informed that their memos were to be published. The reader is urged to examine all exhibits.

II. IDENTIFICATION OF PARTIES FILING RESPONSIVE BRIEFS

First, consideration should be given the identity, make-up and character of the responding groups and individuals. This is necessary to put the annexation controversy in context and carefully evaluate the fourteen briefs filed.

Alaskans Opposed to Annexation. This seems to be an alter ego for Vi Jerrel and Doris Cabana who have also individually filed briefs. We are not aware of any other people in this organization.

Doris Cabana. Ms. Cabana is a member of Alaskans Opposed to Annexation and is, or was, a member of the Citizens Concerned About Annexation ("CCAA"). She testified in the Citizens Concerned About Annexation vs. City of Homer, 3HO-00-32 CI, lawsuit, and her

testimony in that action is available in a written transcript included as Exhibit 24 to this brief. Additionally, her comments made before the Homer City Council and her letters are available in Exhibits 73-2, 74-12, 74-54, 80-2, and 124-3. Ms. Cabana was very active in opposing the Kenai Peninsula Borough's classification of land near her Sterling Highway home in 1998-9, complaining about the lack of land use planning in the area.

Sallie Dodd-Butters. Ms. Dodd-Butters lives to the east of the city of Homer and has been very vocal in her opposition to annexation. She is a member of Citizens Concerned About Annexation. The reader is urged to consider Ms. Dodd-Butters brief in light of her comments at Homer City Council meetings, in letters of record, and letters to and articles in the press. Letters to the editor penned by Ms. Dodd-Butters appear as Exhibits 88-8, 91-5, 92-1, 100-5, 104-9, 107-5, 118-5, and 123-4. A summary of her comments before the Homer City Council appear as Exhibit 78-2.

Abigail Fuller. Ms. Fuller has been identified by other members of the CCAA as the CCAA Secretary and a researcher for their brief. She has written several letters of record, letters to the newspapers and is presently involved in litigation, Abigail Fuller vs. City of Homer, 3HO-00-83 CI, seeking access to internal City memos pertaining to consideration of the present annexation. She also sent a copy of a very ominous article reprinted from Libertarian Press to the Boundary Commission, which was interpreted as threatening. This article has been copied to the City Council and City Departments. Attached as Exhibit 8 is the article; Exhibits 9 and 10 her letters on the subject; Exhibits 86-4, 87-5, 88-3, 97-5, 104-8, 111-3, 112-6, 113-4, 114-7, 115-7, 122-3, and 124-3 are her letters to the editor; and her comments to the Homer City Council are in Exhibit 78-2.

Mary Griswold. Ms. Griswold has identified herself as an officer of, and researcher for, CCAA. The errata sheet she provided for her brief is virtually identical with that supplied for the CCAA brief. Her comments, letters and the like are included in Exhibits 58, 75-1, 76-1, 77-1, 77-7, 78-1, 92-3, 93-5, 102-9, 104-3, 106-8, 110-3, 111-5, 118-2, 119-3, 119-4, 122-2, and 123-2.

Vi Jerrel. Ms. Jerrel is or was a member of CCAA and is one of the two known members of Alaskans Opposed to Annexation. She was very active in opposing the Kenai Peninsula Borough's land use classification of land near her Sterling Highway home in 1998-9, complaining about the lack of land use planning in the area. Her comments, letters and the like are included in Exhibits 73-13 and 74-45.

Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation ("CCAA"). This group is the largest of the anti-annexation groups. The officers and leaders of this group include Doug Stark, Pete Roberts, Abigail Fuller, and Mary Griswold. Simultaneously they have both complained that they are unable to obtain information from the City of Homer and have urged their members to boycott all forums designed by the City to answer public questions concerning the City's position. They have posted signs outside City Hall urging the boycott. Their major visible activity concerning annexation is organizing regular picketing outside City Hall to entice passing motorists into 'blasting' their horns.

News articles about CCAA, and comments, letters and the like attributable to CCAA are included in Exhibits 41, 43, 61, 102-1, 102-11, and 116-1.

Individual briefs have also been filed by CCAA members Pete Roberts, Sallie Dodd-Butters, Abigail Fuller and Mary Griswold.

Objective Annexation Review. This organization formally known as CRAPS, includes in its membership Mike Kennedy, Larry Smith, Pam Brodie, and Dean Turner. The membership of OAR is composed of current city residents. Its advertised membership is Mike Kennedy, Larry Smith and Pam Brodie. Comments, letters and other information from these individuals are included in Exhibits 39, 48, 49, 60, 66, 75-2, 76-2, 77-2, 77-3, 77-8, 78-3, 78-4, 103-10, 112-2, 114-1, and 115-2.

Pete Roberts. Mr. Roberts identifies himself as the vice-chair of the CCAA. He has been prolific commentator on the annexation subject. Comments, letters and the like are included in Exhibits 74-1, 74-54, 77-2, 77-7, 84-2, 85-8, 87-4, 88-4, 90-5, 93-5, 94-4, 95-4, 97-3, 98-4, 99-6, 100-7, 102-8, 103-6, 105-5, 106-4, 112-5, 114-5, 117-4, and 124-2.

Steve and Margret Seelye. Mr. Seelye serves on the Kenai Peninsula Borough's Kachemak Bay Area Advisory Planning Commission. They reside in the annexation area.

Bill Smith. Mr. Smith is a City of Homer resident and serves on the City of Homer Planning Commission. Mr. Smith has been a commentator on the annexation issue and participated in the informational forums. Comments, letters and the like are included in Exhibits 103-11 and 107-6.

The Crossman Ridge Neighborhood. This organization, represented by Chris Rideout, is composed of property owners living in the area north of the City's water reservoir where road conditions are difficult.

The Raven Ridge Homeowners Association. Raven Ridge is a subdivision just outside City limits on the Baycrest Hill directly accessible to the City via the Sterling Highway.

III. COMMENTS ON PARTICULAR RESPONSIVE BRIEFS

In this section the City will reply to particular allegations made and issues raised by each of the responsive briefs.

A. Alaskans Opposed to Annexation

This brief and several other briefs often refer to figures and estimates compiled by City staff in a draft annexation proposal prepared in 1998. It should be noted that in 1998 the City staff was working on a preliminary annexation proposal that was never finalized. The geographic area considered by City staff in 1998 was substantially larger than that

included in the 2000 formal annexation petition. The draft maps and area considered in 1998 were based on voter precincts and included all of the Diamond Ridge voter area, the Fritz Creek/Kachemak Bay area and Kachemak City. For comparison purposes, a copy of the map used in 1998 is attached as Exhibit 67.

1. Revenue Estimates

The Alaskans Opposed To Annexation brief states in its preamble:

further, the use of unsupported assumptions for revenue and expenses casts substantial doubt on the ability of the City ...

Homer's petition is based upon very conservative estimates for revenues and liberal estimates for costs. The only revenue estimates in the petition are for property and sales tax. No estimates were included for other revenues because the City cannot be sure that these other revenues will be there in the future. The certified real property assessed values relied on by the City were received from the Kenai Peninsula Borough (KPB) Finance and KPB Assessment Departments. Recently this issue was revisited by the Public Works, Planning and Finance Department and the results appear in Exhibit 7, which includes a City Manager summary. The updated results are substantially similar.

The City determined the estimated sales tax revenue by the following method:

- (1) The KPB supplied a list of all sales tax payers and their reported sales in zip code 99603, which includes Homer, Kachemak City, and outlying areas;
- (2) the City of Homer eliminated from the list all businesses not located in the annexation territory;
- (3) the total remaining taxable sales were multiplied by the City's current sales tax rate of 3.5%; and
- (4) the City then reduced the resulting number by 20% to assure that any error would be on the side of under estimating revenues.

The spreadsheets relating to these calculations have been provided to anyone who asked for them. See Exhibit 15.

The Alaskans Opposed To Annexation brief also questions the difference in estimated property and sales tax revenues between 1998 and the current petition. Again, the area considered in 1998 draft proposal was substantially larger than the 2000 petition. Furthermore, property values and taxable sales have both changed since 1998.

2. Finance Department

The same can be said for operating expenses in the Finance Department. What was projected in 1998 as staffing needs is not relevant to the current projections. The Finance Director has reviewed the current operations of the Finance Department to see how the annexation would affect the current operations. There are no material changes that would affect the current Finance Department staffing or supply requirements. Future staffing and supply requirements may be affected as new customers are added to the water and sewer systems resulting in increased project accounting. The Finance Department response to the briefs and its response to Vern Johnson's Report to Citizens Concerned About Annexation appear as Exhibits 15 and 16.

3. Fire Department

Regarding fire issues, the City's Homer Volunteer Fire Department is already the sole provider of structural fire fighting and emergency medical services to the proposed annexation area. It has performed these services since being founded as a volunteer corporation in 1954. Since the fire department already is providing those essential services for the proposed annexation area, there are no anticipated increases of annual operating costs outside of those identified in the petition. The proposed new facility, whose final location is yet to be determined, will not be a manned station. Therefore the anticipated operating expenses (\$20,000) of that facility are for utilities and routine maintenance such as snow removal and sanding.

The City does plan to allocate \$15,000 for the maintenance of three additional vehicles that would be operated out of the new sub-station. Since the total fiscal year 2000 vehicle maintenance budget for the fire department is \$25,000 (9 vehicles) this figure is probably overstated. Because of a restructuring of the fire department paid staff, which occurred in late 1999, no additional personnel have been requested directly in conjunction with the annexation. The fire department did request, with the restructuring, the addition of one more full-time Emergency Service Specialist (Fire Fighter-II/EMT-III) and the half-time clerical position be expanded to full-time, but these positions were not funded in the fiscal year 2000 budget due to budget reductions. Those positions, at least the Emergency Service Specialist, remain a need, but it has nothing to do with annexation, only with current day-to-day operations.

The Alaskans Opposed To Annexation brief shows on page 12 a projected budget developed by former Fire Chief Purcell for fire department expansion in 1998. As stated above, the area under consideration in 1998 incorporated a substantially larger area (including the entire Diamond Ridge and Fritz Creek voting precincts) than what is currently proposed. This large an area would have required an additional sub-station, vehicles and, possibly, personnel, which will not be needed under the current proposal.

It is also noteworthy to comment on a couple of items listed in the 1998 proposal that had little or nothing to do with annexation, i.e. the funding of the Volunteer Incentive

Program, a Training Position, and conversion of a half-time clerical position to full-time. While the fire department would have utilized these three items, they should not have been tied to the proposed 1998 annexation. That gave an inaccurate impression that these were needs only if the department expanded the number of stations and operating fleet. All of these items have been, more or less, listed in initial fire department budget requests prior to and independent of the current annexation efforts.

Again, it is important to emphasize that the City of Homer already provides fire and emergency medical services to the proposed annexation area and does not anticipate any increased workload or run volume from those areas, other than normally anticipated growth.

The Alaskans Opposed To Annexation brief also points to the difference between the annual operating costs projected in 1998 and those projected in the 2000 petition. It is obvious that if we annualized the capital costs, as did they in the 1998 proposal, the figures would be closer after taking into consideration the other changes in the 2000 petition: only one additional sub-station, used apparatus instead of new, and no additional personnel. The figures supplied by the fire department in the 2000 petition are based on prices supplied by local builders, contractors and vendors, and the City considers them valid.

Please see Exhibit 2 for the Fire Department's memorandums responding to each of the responsive briefs.

4. Police Department

The Alaskans Opposed to Annexation brief also cites the police department's 1998 memorandums and attempts to compare that department's current annexation plans to those from 1998. This is not a valid comparison. They accuse the police department of very poor or non-existent planning and question how the department projected staffing needs. In 1998, the staff estimated the additional police officers required to patrol a vastly larger geographic area than the 2000 petition. The 1998 staff study quotes the national average of police officers per thousand and the Alaskan average. Both the large geographic area and the national average/Alaskan average were considered in that staff study. The 1998 staff study did not take into account that, historically, two Alaska State Troopers have been assigned to provide law enforcement services to the area.

In analyzing the police staff required to provide law enforcement services to the proposed area for the 2000 petition, the following factors were carefully considered:

(1) Crime levels. The amount of criminal activity reported to the Homer Police Department and the Homer post of the Alaska State Troopers has been steadily declining since 1997. The number of incidents reported to both agencies is down by approximately 30%. The declining trend is consistent in 2000 and, in fact, mirrors national trends. Consequently, the average police officer's caseload is 30% lower today than it was in 1997. During the 1998 staffing study, the 1997 crime levels and case loads were a factor in evaluating the number of officers needed to police the area. These figures indicate that a

police officer in Homer has more unallocated time available today than was projected in 1998. The Homer Police Department staffing level is the same now as it was in 1997.

(2) National average/Alaskan average. A police staffing average is the ratio of police officers employed by an agency per 1000 citizens in its service area. Averages vary by geographic area and population density. National averages are available for 1998, but have not yet been compiled for 1999.

The 1998 national staffing average for smaller cities is 1.8 officers per thousand citizens. The 1998 average for Alaska is also 1.8. These averages are just that, averages. They do not take into account a specific area's crime rate, population type or other local conditions. Obviously some locales have a higher number and other locales have a lower number of officers per 1000 citizens.

To be on the average of 1.8, the Homer Police Department should have 13 officers on staff if the annexation attempt is successful. The 2000 annexation proposal is to add two more police officers for a total of 12.

(3) Historical perspective. In the last 15 years, the Alaska State Troopers stationed in Homer have provided law enforcement services to the entire Southern Kenai Peninsula. They police the area south of Ninilchik to the terminus of East End Road. Their area has also included Port Graham, Nanwalek, Seldovia and three remote Russian Old Believer villages. They have provided law enforcement services to this entire area with as few as two troopers, normally three troopers, and at times four troopers.

The area currently being considered for annexation by the City of Homer is a very small portion of the troopers' area. It contains 2687 citizens and it is largely of a suburban/rural residential nature. It is a very "quiet" area and produces a relatively small share of the troopers' call volume. Although the exact amount of calls the troopers receive in this area cannot be separated out, trooper post commanders familiar with the post report that a relatively low volume of calls comes from the proposed annexation territory.

Consequently, it is very reasonable to assume that the City can police the area adequately with two additional officers (12 total officers). In essence, the City would be providing two officers in an area that is less than one-fourth of the area currently policed by the troopers with three to four officers.

(4) Geographic Perspective. In 1998, the proposed area for annexation was much larger than what is being considered in 2000. Geographic features alone can dictate a need for a higher number of police officers. Given the much smaller geographic area being considered for annexation in 2000, the City does not need the additional officers that would have covered the larger area formerly under consideration.

(5) Police Staffing Conclusions. A police staff study, such as the one outlined here, should take into account several factors. Those factors include such things as the

geography and demography of the area proposed for service, any demonstrated need for law enforcement services in the area, and any historical perspectives available that pertain to law enforcement services in the area. In this case, the City is fortunate to have a good level of information available to analyze. The police department has also considered the average numbers of police officers employed per 1000 citizens in Alaska and nationally, and has determined that, after adding the annexation territory, the City can safely and professionally provide police services to the entire City with a total of 12 officers.

(6) Dispatch services. The 1998 annexation study estimated a need for an additional dispatcher and clerk. Again, this was based on 1997 caseloads at the police department and expanding the police force by 8 officers. Currently the police department has seven full time dispatchers and does not foresee the need to add any additional dispatch staff.

Alaskans Opposed to Annexation allege in their brief that the police department plans to "contract" with the Alaska State Troopers to provide law enforcement services to the annexed area. This is not true. No such plan exists nor is one being contemplated. The Homer Police Department intends to provide law enforcement services to the area by hiring two additional officers and utilizing existing staff resources. The two agencies will continue to assist each other on request, as they are presently doing.

The Police Chief's memorandum responding to each of the responsive briefs appears as Exhibit 64.

5. Public Works Department

The City of Homer Public Works Department estimated the road maintenance costs in the 1998 annexation plan at \$80,748 and \$199,000 in the 2000 plan. Because of the use of different methodologies, it is not possible to directly compare 1998 estimates to 2000 estimates. Adjustments need to be made to make them comparable. This has been done in the following side-by-side comparison, which suggests that the City's projection of total road maintenance costs are higher in 2000 than in 1998:

Item	1998 (see Alaskans Opposed To Annexation Brief, Exh. A)	2000 (see City Petition)
Annual Road Maintenance*	\$80,748	\$199,000
Additional Start-up Cost	\$400,000	\$585,000
Additional Annual Cost	\$250,000	\$166,000
Total	\$730,748	\$950,000

* Neither the 1998 or the 2000 estimate projects any specific costs associated with providing water and sewer service to the area.

If annexation becomes a reality, the Public Works Department will work closely with the KPB road maintenance personnel to cause a smooth transition of road maintenance

responsibilities. The City will continue to provide road maintenance by using the same private contractors currently used by KPB. This essential service is scheduled to be implemented immediately upon loss of KPB funded road maintenance. If the contractors are unavailable or it is determined that the City could provide some or all services more cost effectively, the City is prepared to hire full-time and part-time personnel and purchase the necessary equipment to complete road maintenance.

The City will commit to providing a road maintenance budget of \$199,000 immediately upon assuming road maintenance responsibilities. This is slightly different from what was originally presented in road maintenance portion of the transition plan, but consistent with the expenditure portion of the formal petition. This should clarify any question as to whether the City can 'afford to' maintain these roads. The recently adopted KPB budget anticipates using contractors, as does the City of Homer. As shown in the expenditure section of the formal annexation petition, the City's proposed annual road maintenance budget is stated to be \$199,000. The KPB has never spent \$199,000/year maintaining the roads in the annexation area, so the City's budgeted amount should be sufficient for all necessary maintenance.

The Public Works Department memorandum commenting on the responsive briefs is attached as Exhibit 6. For additional information on roads, sewer, water, and other public works issues, see Exhibits 12, 13, 34, 38, 40, 51, and 62.

6. Library

Regarding the library, the Alaskans Opposed To Annexation brief cites a memorandum to V. Koeberlein from M. Helm dated May 14, 1998, which notes that the impacts of annexation on the library will necessitate additional personnel at \$32,000 and a larger library. The brief suggests that the City's 2000 petition "ignores" this. For clarification, the May 14th memorandum refers to the 1998 proposal, which considered a geographic area much larger than the area under consideration in the City's current petition. Since the memorandum is based on a much larger proposed annexation area, its conclusions cannot be used to compare with the City's 2000 petition. The estimates in the 1998 memorandum were based on the inclusion of the entire population in the Diamond Ridge and Fritz Creek voting precincts. Furthermore, it is the belief of the Library staff and the City, both in 1998 and now, that the present library building is inadequate — additional tax revenues can permit improvement that would benefit both the annexation territory and current City residents.

The Alaskans Opposed To Annexation brief states that the Library estimated the surrounding area growing faster than the City thus causing an increase in the need for library personnel and space. The Kenai Peninsula Borough's Situation and Prospects 1998, show that the Fritz Creek area has grown at 5% annually from 1990-97 while the City of Homer has grown at 2% annually. Library statistics show that non-city resident cardholders grew at 9% annual average from 1993-1997 while City resident cardholders grew at 5% annual average during those same years.

It is apparent from library records that non-city residents' use of the library has become proportionately greater than City resident use in recent years. By 1999 non-city residents represented 51% of library cardholders (4,293 KPB resident cardholders, 3,810 City of Homer resident cardholders) and generated 55% of library circulation.

Population growth, with its associated increase in patron usage, will drive the need for increases in the library's personnel, capital and operating expenses. In the future, any increases in the library's operating budget will depend on the desired level of service by patrons and the tax payers' willingness to pay.

The City's Petition states that no additional operating expense will be incurred by annexing the proposed area, because the library is presently serving residents of this area. This statement is correct — the library already serves residents in the proposed annexation area in the same capacity as City residents. No increase in usage is anticipated to result from extension of City boundaries.

The Petition also states that no additional direct capital expenses will be incurred because of annexation. Because the library already serves the annexation area, this statement is also correct. The library has been planning and fundraising for a larger building since 1982. Its future expansion depends on financing, not on the results of annexation. The population served by the library will be the same before and after annexation. People in the annexation territory already read books at the library. Inclusion of that territory within the City limits is not expected to affect the residents' reading habits.

The Alaskans Opposed To Annexation brief and several other briefs and letters suggest that the Kenai Peninsula Borough contributes to the funding of the library. No borough funds support the Homer library.

Several briefs suggest that the existing sales tax should be sufficient to support the library. Sales tax revenue is not sufficient to fund all the expenses in the City's general fund, as the recent budget cycle confirmed. If more sales tax revenue is allocated to designated funds, less money will be available for general operational expenses.

The Library Director's memorandum is Exhibit 3.

7. City Clerk's Office

In 1998 the City Clerk estimated that annexed area would require at least one new staff position costing at least \$30,000 because of the addition of approximately 3,000 people to the City. The 1998 estimate was based on the assumption of a larger population and geographic area and are not applicable to the 2000 petition.

The present staffing estimate is for a ¾ time or full time memo position at range 5; \$25,132.64 with benefits.

See Exhibit 4 for the City Clerk's memorandum commenting on the responsive briefs.

8. Legal Issues

In most general terms, the Alaskans Opposed To Annexation brief alleges that it was deprived of due process under the federal and state constitutions. The brief states at p. 21:

Under both constitutions in order to change or eliminate the property rights of citizens, the State must exercise due process of law.

However, the City's annexation petition does not even raise these constitutional issues. "As a threshold matter, due process rights are only implicated by a deprivation of liberty or property interests." Nickerson v. University of Alaska, 975 P.2d 46, 53 (Alaska 1999). Alaskans Opposed To Annexation fails to offer any explanation about what property rights it alleges are being changed or eliminated. It is fundamental that the property right must be identified before one considers the extent of protection, if any, that is due.

Compounding the effect of Alaskans Opposed To Annexation's failure to identify any affected property interests is its failure to cite the controlling Alaska legal precedent. Municipal annexations without a vote of the electorate do not affect any life, liberty, or property rights or deny any person due process of law. In Fairview Public Utility District Number One v. City of Anchorage, 368 P.2d 540, 545-546 (Alaska 1962), the court said:

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of "liberty, or property, without due process of law." The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation. ... Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The U.S. Supreme Court agrees with this interpretation. In Kelly v. City of Pittsburgh, 104 U.S. 78 (1881), a taxpayer claimed that taxes assessed by the city, into which his land had recently been annexed without his vote, deprived him of his property without due process of law. The court said, 104 U.S. at 80-81:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

Any remaining doubt that the state can approve an annexation without a vote of the local electorate was removed by Hunter v. City of Pittsburgh, 207 U.S. 161, 178-179, 28 S. Ct. 40 (1907) (emphasis added):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. ... The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. ... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, ... unrestrained by any provision of the Constitution of the United States.¹

At pages 23-24 of its brief, Alaskans Opposed To Annexation also complains that because of the annexation petition's alleged "profound" effect on people who now live outside of Homer, ten days' notice concerning the City Council's consideration of it was insufficient. Alaskans Opposed To Annexation says, "In the absence of time to reasonably review the Petition for Annexation and to have a hearing on the Petition, there is clearly a due process issue herein."

Clearly not. There are several points to be made. First, there was more than ten days' notice of the City Council's intent to consider an annexation proposal, so Alaskans Opposed To Annexation's claim is just not true. Furthermore, the notice that was given has been judicially found to be adequate. This issue was litigated in a suit entitled Citizens Concerned About Annexation vs. City of Homer, 3HO-0032 CI, Superior Court at Homer. The court

¹ As noted in Fairview Public Utility District Number One v. City of Anchorage, 368 P.2d 540, 546 (Alaska 1962), and Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 102 n. 29 (Alaska 1974), this broad discretion does not permit the state to refuse to reapportion in violation of the one-man one-vote principle, nor to manipulate local boundaries to deprive citizens of the right to vote on the basis of race. Neither of these equal protection concerns is raised by this annexation.

declared that the City fully complied with its public notice requirements prior to its adoption of the resolution approving the annexation petition. Transcripts of Judge Link's opening remarks and oral findings are attached as Exhibit 22 and Exhibit 25, respectively.

Second, people who reside outside the City of Homer are not its citizens. They are welcome, as is any member of the public, to attend Homer's City Council meetings, and their public comments are always accepted. However, the City did not have any duty to provide them special notice before the City made the administrative decision to initiate the annexation process. The City does not have general governmental duties or notice obligations flowing directly to non-citizens. *See Jordan v. Reed*, 544 P.2d 75, 81 (Alaska 1975) (denial to residents of the former Eagle River-Chugiak Borough of the right to vote in the Anchorage Charter Commission elections was not unconstitutional; "To hold otherwise would be tantamount to holding that residents of the Fairbanks North Star Borough who are denied the right to vote in Anchorage area elections are entitled to judicial relief."); and 56 Am. Jur. 2d *Municipal Corporations* § 228 ("The primary purpose of a municipal corporation is to contribute toward the welfare, health, happiness, and public interest of the inhabitants of such corporation, and not to further the interests of those residing outside its limits")

Third, the claim that there is an "absence of time to reasonably review the Petition for Annexation and to have a hearing on the Petition" is patently false. The procedures of the Local Boundary Commission require that public notices about the petition be posted and published in the area to be annexed. They were. Briefs and letters may be filed in response to the petition. They were filed in record numbers. Still to come are public hearings where testimony will be taken and arguments made. If the Commission recommends an annexation, there will also be opportunity for judicial review and a mandatory legislative review. Contrary to Alaskans Opposed To Annexation's contention, there is more than ample time, notice, and opportunity to be heard.

Fourth, Alaskans Opposed To Annexation is not entitled to a hearing on the petition *before* the City files it with the Local Boundary Commission, if that is what it is asking for. The decision to initiate such proceedings is executive, not adjudicatory, and no person's rights can be affected prior to an opportunity for a hearing before the Local Boundary Commission. In these circumstances, making a decision to initiate legal proceedings without prior notice to affected persons is not a denial of due process. *Kuzinich v. County of Santa Clara*, 689 F.2d 1345 (9th Cir. 1982).

B. Doris Cabana

1. Fire Department

This brief contains several allegations regarding the Fire Department. Just for the record, as of June 2000 the fire department has 36 volunteer emergency service personnel (fire fighters and EMT's). Of those 36 people, 15 (42%) live within the existing Homer City limits, 2 (5%) live within Kachemak City limits, 6 (17%) live within the proposed annexation

area, and the remainder of 13 (36%) live outside the proposed annexation area. Also for the record, no volunteers have threatened to resign because of annexation.

What the Fire/EMS issue boils down to is that people outside of Homer or Kachemak City limits have been receiving free fire and emergency medical service protection. Although the City charges for EMS service calls (both for residents and non-residents alike), those revenues cover only about 1/3 of the EMS operating budget. Also, anyone paying for fire insurance with an Insurance Service Office (ISO) rating less than a 10 (no fire protection available) has been benefiting from the City of Homer, Homer Volunteer Fire Department whether they have experienced a fire or not.

2. Zoning

The Cabana brief also states that local option zoning is available at the Borough level. (It should be noted that the Ordinance that permits this to actually occur was passed by the Kenai Peninsula Borough Assembly on May 16, 2000.) While it is true that property owners may initiate the process, the Borough Assembly votes on whether to approve, disapprove or amend the zoning district. The City of Homer Planning Commission and Council would be more responsive and knowledgeable of the local issues and concerns than the Borough Assembly. The City of Homer will not zone an area without first developing a comprehensive plan for the territory which will allow for a public process and a comprehensive look at the entire area, not on a case by case, piece meal fashion. A copy of KPB Ordinance 2000-02, the current local option zoning ordinance, is attached as Exhibit 72. Ms. Cabana often stated her opposition to the Borough's lack of land use planning when the Borough attempted solve a land use dispute in her area.

3. Department Heads

At one point in Mrs. Cabana's brief, she indicates that "some" of the department heads within the city administration are not "happy" about annexation and are "doing as they're told to do." Such unsubstantiated claims are impossible to evaluate. Ms. Cabana does not identify who the "unhappy" department heads are, nor does she explain the significance of the remark. Again, memorandums of the Department Directors that were used in this response brief are attached as Exhibits.

4. Legal Issues

Ms. Cabana's 'legal' arguments are interesting. Citing the First Amendment of the U.S. Constitution ("Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances."), Ms. Cabana states in her brief that she does not believe "the Alaskans writing the law at that time meant for the taking our rights to vote away from us." Presumably, she is referring to the Alaskans writing the state constitution and the statutes that provide for annexation by legislative review without a vote of the local electorate. Her belief is, however, contrary to history and Alaska Supreme Court case law.

As Fairview Public Utility District Number One v. City of Anchorage, 368 P.2d 540 (Alaska 1962), explains at some length, it unquestionably was on the minds of the authors of the Alaska constitution that there must be a means of approving annexations without a vote of the local electorate. Their reasoning was quite evident — recent pre-statehood attempts at annexation provided rich examples showing how "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level," id. at 543. Some may find it hard to believe, but it is true that the writers of Alaska's constitution and laws definitely meant to allow for annexation without a vote of the people.

Ms. Cabana's reliance on the redress of grievances clause of the First Amendment is unavailing. That clause guarantees a right of access to the legislative, administrative, and judicial branches of the government, but it has nothing to do with voting rights or the creation of local government boundaries. See, 16A Am. Jur. 2d *Constitutional Law* §§ 531-538 (1998). The annexation process does nothing to abridge any First Amendment rights.

C. Sallie Dodd-Butters

1. Fire Department

At the risk of deviating from annexation issues the City has the following response to Ms. Dodd-Butters comments on the \$250,000+ the City of Homer expended on the repairs to the fire station. The original fire station was indeed constructed “in-house” but not by the City of Homer. The work was done by the very volunteers that Ms. Dodd-Butters calls “heroic public servants” further on in her brief. Up until 1990/1991, a volunteer corporation (HVFD Inc.) operated the Homer Volunteer Fire Department, with the City of Homer its primary financial source. The existing station was constructed with local expertise and volunteer “sweat equity”.

The \$250,000+ expended by the City of Homer not only repaired some existing problems with rotting structural members due to improper ventilation and high humidity within the building, it also brought the station up to current earthquake resistance standards. All repair and refurbishment work was completed following an extensive review of the fire station by the engineer firm of USKH out of Anchorage. Except for some initial demolition work, the project was completed by a state licensed contractor and licensed and bonded sub-contractors.

On page two of the brief, Ms. Dodd-Butters mentions that a neighbor, 6 miles from the station, suffered a fire loss. Any loss due to fire is devastating, but the fact of the matter is there was much salvaged from the home due to the efforts of the fire fighters. In addition, an independent fire investigator (hired by the home owners' insurance carrier), commented that he was surprised to find as much of the structure intact as he did, considering the type of construction and the obvious level of fire present prior to “911” being called. Furthermore, the fire department was able to “save” two residential structures this past winter, both outside

city limits and one over 3 miles further away from the station than the one mentioned in the brief.

While Ms. Dodd-Butters is correct in her assumption that there is a correlation between distance and fire fighting potential, there are many other more important variables to consider: time of day, accessible water, personnel availability, construction type (code versus "Alaskan Built"), and the presence of a residential sprinkler system. In reality, the location of a fire station makes little difference if the responders have to travel to the station, as they normally do in a volunteer system. The City's Homer Volunteer Fire Department has a strong tradition of providing public service, and the department (City of Homer) supports a "First Responder" program for both fire and emergency medical services. That allows the volunteers to respond directly to the scene of an emergency while other volunteers or paid staff responds from the station with needed apparatus and equipment. These first responders are equipped with personal protective equipment, large fire extinguishers, first-aid kits, etc., in order to treat a patient, or intervene, if possible, on small incipient fires. An improved level of service is the result.

While the City congratulates the Anchor Point Volunteer Fire Department for its accomplishments, that department has also come to realize that it cannot continue to operate even its limited department on 0.5 miles and maintain what it already has, not to mention make improvements. As far as mutual aid goes, the City more often offers mutual aid to Anchor Point than the other way around, but that is the purpose of having mutual aid agreements. Both agencies work well together, and it is imperative to maintain this working relationship for times when either department finds itself temporarily overwhelmed for any reason.

[Note from Fire Chief Painter: "Finally, though not directly related to the fire department, I would like to point out that at no time, in any forum, has the City Manager, Ron Drathman, or any other city official threatened, or in any way even intimated that my job would be in jeopardy if I did not support annexation. As Fire Chief, the City Manager asked me to present my proposals for what I felt would be necessary to improve services if the city were to annex the land addressed in the petition. I have done so, with forethought and careful consideration of the issues that would impact the fire department and the continued delivery of services to the entire area."]

The Fire Department memorandum is available as Exhibit 2.

2. Library

The Dodd-Butters brief suggests that library services should be paid for by user fees rather than an expanded tax base. There are two potential problems with this suggestion: (1) user fees take a proportionately greater share of disposable income from a lower income user, therefore such fees have a discriminatory effect against lower income users; and (2) in order to fund operating and capital needs, the fees would have to be higher than the individual patron would be willing to pay.

Libraries have traditionally been funded through property taxes as a responsibility of local government, rather than user fees, because libraries are seen as being an intrinsically valuable part of a civilized society. The public is generally supportive of the role of libraries because they promote an enlightened citizenry. Democracy is based on an educated populace, and libraries provide the means for every person, not just the few who can afford it, to educate themselves. Libraries also make information available for citizens to participate in an informed manner in the political process.

User fees will have a hugely different impact among those who can afford to pay and those who cannot. Fees should not be used to supplant public financing because it goes against the fundamental belief that no one should be excluded from access to knowledge and self-improvement. Furthermore, the Library Advisory Board has already reviewed user fees and has found that a \$5.00 or \$10.00 card fee will not generate sufficient income to fund the library's operating and capital needs.

See the Library Director's memorandum, Exhibit 3. Exhibit 46 also indicates that more patrons live outside the City of Homer than inside. The same is true about circulation usage.

3. Zoning

The Dodd-Butters brief states the "Rosi' Jeep Dealership lost it's grandfather rights overnight when the City zoned such business illegal." There is no truth in this statement. Homer City Code Chapter 21.64 (nonconforming uses) allows "grandfathered" uses to continue as long as they are not abandoned or discontinued for over one year. Whether Mr. Rosi lost any rights to continue a nonconforming use turned on the question as to whether or not he abandoned or discontinued the use. This did not happen overnight, and the retention or loss of such rights is controlled by the property owner's own conduct.

4. Permitting

Another statement in this brief reads as follows: "Expensive, tedious licenses and permits stifle further growth." This is also not accurate. In fact, over the last decade, through July 2000, the City of Homer has issued 535 building/zoning permits valued in excess of \$70 million. 229 permits have been issued for new residential construction and 116 permits have been issued for residential additions. 78 permits have been issued for new commercial construction and 79 have been issued for commercial additions/remodeling. The remaining 33 permits were for non-taxable projects.

Since 1990, the Planning Commission has approved over 85 preliminary plats for land subdivisions. Building/zoning permits in the City of Homer require only a site plan, drawn to scale, which can be done by any lay person, and the most expensive zoning permit is \$125.

Attached as Exhibit 47 is a table indicating subdivision growth for the past decade. Also, the Planning Department Memorandums are available as Exhibits 1 and 27.

5. Park Development

This brief states that the former dumpsite, which is being turned into a softball facility, was donated to the Homer Softball Association. This is not true. The dumpsite was traded to the City by the private property owners in exchange for an uncontaminated parcel of City property on East End Road that has access to water and sewer. Federal grant funds have been obtained to rehabilitate the site into a softball facility. The cost of the project has been considerably reduced by using City of Homer resources for planning and project coordination. Additionally, the City administration has been successful in negotiating an agreement with the Alaska Department of Transportation which permits DOT to use the site to place fill removed from East End Road reconstruction. The re-engineering and DOT agreement enable the cost of the project to be substantially reduced. There will be considerable volunteer work done by Homer Softball Association members on this project — this is similar to Homer Little League’s work with the City of Homer at Hornaday Park.

6. Taxable Real Property

Ms. Dodd-Butters brief indicates that 40% of Homer is non-taxable. She states this in an accusatory manner, with explanation as to the substance of the accusation. This statement needs to be put in a meaningful context and factually examined.

In the Central Business District 83% of the land is taxable. The non-taxable land in this District includes Churches 1%, Institutional [schools & government] 2%, Parks 2% and U.S. Fish and Wildlife Service 13%. The USF&W Service is scheduled to begin construction on a multi-million dollar National Maritime Refuge Visitor Facility, which will create jobs, increase sales tax revenues and assist in the growth of the tourism industry.

The General Commercial I District, which allows for industrial and automotive related activities, contain no non-taxable property.

In the General Commercial II District 90% of the lands are taxable. The remaining 10% is the airport.

The Spit contains tidelands and conservation properties deeded to the City of Homer by the Exxon Valdez Trustee Council, and, 28 City leased properties which generate \$480,000 in revenues per year.

In the Residential Office District, 96% of the lands are taxable. The remaining 4% are churches [3%] and institutions [1%].

In the Urban Residential District, 98%+ of the lands are taxable. The remaining 2%± contain churches, institutions and parks.

Of course, the City has little or no say in whether land is or is not taxable. Real property tax exemptions are mandated by federal law, the Alaska Constitution (Article IX, Section 4), and by state law (primarily AS 29.45.030).

The City of Homer does not have a plan nor has it made an offer to purchase the Lakeside Mall. The implication that the City of Homer intends to displace jobs or private businesses is not true.

7. Police Service

Ms. Dodd-Butters indicates that she is satisfied with the current state trooper coverage in the area. She points out that the City does not currently staff 24 hours a day everyday. This is true, but it varies based upon when officers are on vacation, out sick or in other cities attending training. In 2000 the City has averaged staffing levels of over 20 hours a day. The local state troopers' staffing level average is approximately 12 hours a day.

In Ms. Dodd-Butters' brief she alleges that police officers are at city council meetings for intimidation purposes. This allegation is false. The police officers are at council meetings for security purposes to make sure that emotions don't carry people away; not to stifle free speech. In the instance she refers to, two officers did not sit down next to her after her testimony. One officer was on the other side of the room. The second officer sat down on the opposite side of the room from the first officer next to Ms. Dodd-Butters as this was the only empty chair in the room - - where he sat had nothing to do with Ms. Dodd-Butters. Any question about timing as to the second officer, is purely coincidental and had nothing to do with whatever she said.

She also alleges that a former police officer from Homer has been sued several times for "brutality" and that a recent Homer Police response to an incident at the Bayside Lounge took over an hour. These allegations are untrue. The City has never been successfully sued for any "brutality" related charges, and the response time to the incident call at the Bayside Lounge was 16 minutes.

8. Road Maintenance

The State pays the City a portion of the cost to maintain Pioneer Avenue, but only Pioneer Avenue. Through the efforts of the present administration, the City now receives \$34,000 per year to maintain Pioneer Avenue. The State currently maintains all the other streets mentioned in her brief, which are state highways like Pioneer Avenue.

9. Legal Issues

Without any explanation, Ms. Dodd-Butters refers to annexation as an unconstitutional right of eminent domain. Eminent domain is the act of taking private property for governmental purposes. Annexation, with or without a vote of the electorate, does not do that. In fact, our court has not identified any deprivation, not even an

infringement, of property rights resulting from annexation without a vote. Fairview Public Utility District Number One v. City of Anchorage, 368 P.2d 540 (Alaska 1962). If there is no infringement or deprivation of property rights, then there cannot be a taking of property, either.

The reference in the Dodd-Butters brief to ex parte discussions and deliberations on the part of the City of Homer makes no sense. The City is not acting as a quasi-judicial body or making an adjudication in this case. For the City, this is an administrative matter, and the legal principles applicable to ex parte communications in adjudicative proceedings do not apply to the City's decision-making process in this case.

10. Other

Finally, the City Manager categorically denies threatening any jobs or private contracts as alleged in her brief. Her comments are simply untrue.

D. Abigail Fuller

1. Clerk Services

The extent of informational services that the City Clerk's Office provides is apparently not understood by Ms. Fuller. Each day, on average, the Clerk receives 25± phone calls, 20± in person contacts and 20± e-mails. Averaging 5 minutes per contact accounts for about 5 ½ hours per day. These figures do not include the Deputy Clerk's contacts.

2. Local Improvement Districts, HAWSP, and HARP

There are references in the Fuller brief to seven water and sewer Local Improvement Districts (LIDs), with the inference that the City is still trying to figure out how to fund these improvements. In actuality there are seven with two outstanding. The City already addressed these needs by going to the voters October 1999 for approval to use certain unexpended sales tax revenues for water and sewer system improvements and to dedicate and continue a 3/4 % sales tax (after certain bond debt obligations are retired) for water and sewer system improvements. The City also created a new Homer Accelerated Water and Sewer Program (HAWSP) to fund and encourage construction of the facilities needed to extend sewer and water service into additional areas of the City. The cost of utility main extensions is great, property owners are understandably reluctant (or unable) to pay the entire bill, and the City does not have a surplus of funds to do it without property owner participation. The City is no different than any other city on the peninsula in dealing with the problems caused by the gigantic reduction in State grant fund programs.

Regarding the Homer Accelerated Roads Program (HARP), it is not HARP itself that is created with the vote of property owners, but rather that is how a Local Improvement District is formed. This procedure is used to create funding districts for roads, utilities,

sidewalks and the like. See Homer City Code 17.04.030 - 050. The property value is used in the initial petitioning process only. The actual voting for the approval or rejection of the LID is based on the amount of actual assessments. To be included in HARP project LID, a parcel must have road frontage. If a lot has no road frontage it would not even be included in the LID.

The following qualifying criteria of HARP are taken directly from the City's HARP policy manual:

The following criteria may be considered for qualifying reconstruction/utility improvements: (Resolution 87-61(S); 88-47 #14; 94-50; 95-97;).

- a. Life, safety and traffic flow (Resolution 88-47);
- b. Correct deficiencies of existing systems (Resolution 88-47);
- c. System wide basis versus local needs (Resolution 88-47);
- d. Complete traffic circulation pattern (Resolution 88-47);
- e. Encourage economic development (Resolution 88-47);
- f. Correct drainage problems (Resolution 88-47);
- g. Reduce maintenance cost (Resolution 88-47);
- h. Built to city standards prior to acceptance for maintenance (Resolution 88-47);
- i. Reconstruction is a higher priority than new construction projects (Resolution 88-47);
- j. Property owner contribution through LID process by paying \$30 per front foot for gravel and \$17 per front foot for paving cost of a residential standard street and the city pays all costs for additional improvements deemed necessary (Resolution 88-47; Resolution 94-50; Resolution 95-97)
- k. City share can apply to related utilities, sidewalks, street lighting, drainage, paving and/or reconstruction of roads identified in Groups I-IV (Resolution 88-47);
- l. City share of road money is prorated proportionally between Groups I-IV (Resolution 88-47);
- m. Other factors deemed appropriate by the City Council (Resolution 88-47).

The Fuller brief also takes issue with City “promises” on water and sewer. The petition states that the City will attempt to secure funding for up to 20 years to facilitate a property owner assessment pay off of twenty years. The City used to do this for HARP, but in 1988 went to a ten year repayment cycle with an 8.32 % interest rate for assessment payments. The HAWSP process began in 1999. The water and sewer LID process has been in existence since 1974 and was established by Ordinance 74-4.

3. Expense Estimates

Regarding the allegation that the “City has vastly underestimated the expenses of annexation”, please see above in Part III. A of this brief as to how the City estimated expenses.

4. Fire Service

To repeat earlier comments, to date, the fire department has 36 volunteer emergency service personnel (fire fighters and EMT's). Of those 36 people 15 (42%) live within the existing Homer City limits, 2 (5%) live within Kachemak City limits, 6 (17%) live within the proposed annexation area, and the remainder of 13 (36%) live outside the proposed annexation area.

The crux of the issue is that people outside of Homer or Kachemak City limits have been receiving free fire and emergency medical service protection. Although the City does charge for EMS service (both for residents and non-residents alike), those revenues only cover about 1/3 of the EMS budget. Also, anyone paying for fire insurance with an Insurance Service Office (ISO) rating less than a 10 (no fire protection available) has been benefiting from the Homer Fire Department whether they have experienced a fire or not.

It would not be reasonable or practical for City of Homer to turn control of the fire department that has obtained an ISO rating of 3 (which only a handful of Alaska communities share) over to a new fire service area that would have to demonstrate to the ISO its fire fighting capabilities. That would jeopardize the current excellent ISO rating. It is highly unlikely that a fire service area (especially the one currently supported by anti-annexation groups) could improve, even maintain, the existing ISO rating with the funding structure proposed.

While the Strategic Planning Group, organized several years ago to review fire department funding options, did "officially" recommend the formation of a "Donut Fire Service Area", in the present Fire Chief's professional opinion, such a district is not the best alternative. The 1998 planning group was looking at a much larger area for annexation than that proposed in the City's current petition. That larger area would require the addition of at least two stations, additional apparatus, and possibly additional personnel. The territory the City's current annexation petition encompasses is only a portion of the area the City already responds to. At this time, there are no plans for discontinuing fire and/or emergency medical services to those areas still outside the petitioned area.

The City of Homer and its fire department will have to determine the best methods available to secure funding from those non-annexed areas, once the petition process is complete. Potential options include: additional fees for service, Fire and EMS Subscription Programs, or a combination of both. While these funding sources may also be options for the proposed annexation area if the petition is withdrawn or fails, they are not the best options available for consistent, equitable, or reliable funding. That is why the fire department supports the City's efforts for annexation.

5. Legal Issues

The Fuller brief refers to land use planning, which the City would provide in the annexed area, as "unconstitutional, and will likely be challenged." Perhaps Ms. Fuller does

not realize that she already resides in an area subject to land use planning, and that it is mandatory. By state law the existing borough "shall provide for planning, platting, and land use regulation on an area wide basis," AS 29.40.010(a).² If her property is in the territory annexed into the City of Homer, there will merely be a substitution of one local government's land use planning for another's.

Alaska would indeed have a very widespread problem if land use planning were unconstitutional, but Ms. Fuller is wrong in this assertion. For almost 75 years, since the U.S. Supreme Court decision of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 (1926), comprehensive zoning regulations have been recognized as a legitimate and constitutional exercise of the regulatory powers of local governments implemented for the public welfare. Zoning is authorized in all fifty states. 1 Kenneth Young, *Anderson's American Law of Zoning*, § 3.10 (4th ed. 1996).

6. Land Use and Regulation

The allegation that the City of Homer opposes growth is not supported by the facts. The City has issued 74 commercial building permits valued at approximately \$14 million dollars, and 74 existing commercial additions/remodeling valued at approximately \$6 million dollars in the last ten years.

Regarding land use disputes, it must be noted that the City's land use disputes have been primarily the work of one local individual who has made something of a hobby of litigating with the City. While the court cases have been high profile, it should be remembered that almost all land use conflicts are resolved informally or administratively. In 1999, the Planning Department conducted an inventory of zoning violations that existed in Homer. Of the 36 potential violations discovered, all but three were handled by in-house staff informally. All have now been resolved, and none required formal legal proceedings.

7. Beluga Lake

Beluga Lake is entirely located within the present boundaries of the City of Homer. The City's petition refers to present water quality issues and poses a vision for future uses. The lake contains 170 acres of fresh water and was expanded by the creation of overflow gates, which regulate the volume of water and limit tidal effects on the lake. The lake's dimensions are approximately 5,000 lf by 1,750 lf, running length-wise from east to west.

It is said in several briefs that Beluga Lake is an airport, not a potential "jewel." Concerns about obvious health issues with lake waters are trivialized. The health issues relate to the fact that most of the surrounding area's soils do not percolate. Because the soils are clay-heavy, impurities suspended in fluids, including those from failed septic systems, tend

² The borough may delegate such powers and duties to a city in the borough, AS 29.40.010(b). It has done so for the City of Homer.

to flow down hill. At the bottom of this particular hill is Beluga Lake. This concern is easily verifiable by visually examining the terrain and discussing this matter with any competent soils engineer or by querying DEC. Formal monitoring of the water quality of this water body is fairly recent and sporadic. The City of Homer has done limited testing and the Cook Inlet Keeper recently released a report of a study they are doing of the area. See Exhibit 19, and also Exhibits 28 and 55.

Beluga Lake could be much more than an airport. It is also used in the winter by aircraft on skis, skaters, hockey players, snow mobile racers and auto racers; this is joint use that already exists. The petition suggests that this lake can become a "jewel" as a community resource. The members of the City of Homer Parks & Recreation Commission have, for the past ten to fifteen years, often discussed potential uses of the lake.

The possible uses include swimming, limited boating and fishing — and this can be compatible with the use of floatplanes. Lake Spenard in Anchorage is approximately 104 acres and is 2,500 lf by 1,900 lf feet, smaller than Beluga Lake. A park containing a swimming beach is maintained by the Municipality of Anchorage on Lake Spenard. The reader should also note that both summer and winter, the Lake Hood/Lake Spenard water bodies comprise one of the very busiest airports in the entire state. Beluga Lake, which is larger than Lake Spenard, with a mere fraction of the air traffic, can successfully be jointly used in the summer as it is in the winter. See Exhibit 37.

Alaska Department of Fish and Game can stock Beluga Lake, although there are political questions as to funding and practical questions concerning the extent of the "winter kill" because of the shallowness of the lake. If stocked, it may be possible to create trout fishing facilities for kids and seniors alike. Disregarding possibilities for additional uses for the Lake would not be conducive to long range planning.

A cleaner lake is a starting point for development of other uses. To ignore pollution problems in a growing area is costly in both money and lost opportunity. Perhaps a bit of planning can avoid future expensive ecological problems.

8. Police Services

Ms. Fuller writes that 911 emergency dispatch and jail services are paid for by the state. This is not quite true. The state does not pay for dispatch costs for a 911 emergency. The cost of operating the jail typically exceeds \$400,000 annually. The state provides an annual contract payment in the amount of \$334,000± for community jail operations. Almost all inmates in the jail are charged with state offenses — they are not 'City' prisoners.

Mrs. Fuller expresses satisfaction with current state trooper coverage, yet later in her letter she asserts that the City's intended staffing level is too low to cover the increased area. This is somewhat inconsistent in that 2 troopers seem to be plenty, but 13-14 police officers are not enough. Please refer to staffing study explanations outlined under Part III.A.4. of this brief for further clarification on this issue.

9. Port and Harbor

The Fuller brief states at page 7: “The Port and Harbor is not a service! It is part of the industrial infrastructure of the local economy, and should be self-supporting, if not outright profitable. Homer has a Port and Harbor Enterprise Fund but keeps losing money . . .” The City could have used that sort of public support when it proposed tariff rate increases in order to achieve self-sufficiency and actually make the Port self-supporting. The fact is that the Port and Harbor is both service and infrastructure, and Ms. Fuller is correct in identifying it as a critical part of the local economy. It benefits many fisherman, fish charter operators, tour operators, and boaters who live both in the City and in the annexation territory. The City has recently instituted increases in fees, and the Port and Harbor will achieve a balanced budget sometime during 2001, after implementation of the “second step” of the approved increases in moorage and ice rates. This will also provide funds to deal with deferred maintenance. The port and harbor facilities should not be operated for a profit, however, contrary to Ms. Fuller’s implications, but rather with “cost recovery rates” that also provide the necessary maintenance dollars and capital reserves for facility replacement at the end of a facility's service life. The City does not need to make money off the fish dock and ice plant; however, it is important to balance revenues and costs each year. The City is working to achieve that, independent of annexation.

10. Road Maintenance

The City can provide road maintenance in the annexation area at the same level or better than what is being provided at the present time. The numbers clearly support this belief. See Part III.A.5 above.

E. Mary Griswold

1. Revenue and Expense Projections

In Ms. Griswold's brief she states that: “Expenses will exceed revenues.” According to our estimates, this statement is incorrect. Please see the response in Part III.A above for methodology. Ms. Griswold's brief does not contain information to support her conclusions.

Ms. Griswold has recently suggested that the City of Homer should raise its sales tax to pay for services. See Exhibit 58. This suggestion makes no sense in a time when sales are down inside City limits and sales tax rates are already lower outside of the City. How many more dollars worth of local sales and how many local jobs should be shipped north to Kenai and Soldotna to their “big box” stores? That would be one result of a significant a sales tax increase. Consider the following table showing that Homer's tax rate is already higher than the other cities on the peninsula.

	Homer	Kenai	Soldotna	Seward
Population	4,154	7,005	4,140	3,010
Mill Rate	5.5	3.5	1.65	3.12
Sales Tax	3.5%	3%	3%	3%

2. Fire Services

In response to Ms. Griswold’s points regarding the fire department, there are several assumptions that are made that have neither argument nor fact to support them. The first assumption is that the proposed fire service area mentioned is a better alternative than annexation. It should be noted that a service area is being seriously discussed only because annexation is being seriously pursued.

Neither the City of Homer, nor its fire department, have received a formal proposal by anyone regarding a proposed fire service area contracting with the City to provide continued fire and emergency medical services to the areas identified in the proposed fire service area. To imply that this would happen is clearly placing the cart before the horse. It is evident that the proposed tax cap of 1.0 mil to fund this service area is inadequate to fund existing, let alone improved services.

The Fire Department Strategic Planning Group referenced by the brief identified a much higher mil rate that would be necessary to fund the purchase of required facilities and equipment. In addition, the brief refers to the establishment of this service area to include all areas presently serviced by the Homer Volunteer Fire Department. If this entire area were incorporated into a service area, at least three additional stations would have to be built (Diamond Ridge, Fritz Creek, and beyond McNeil Canyon) to reasonably spread resources throughout the entire service area.

The second assumption made by Ms. Griswold is that a service area would better serve those persons living in the proposed annexation area. Even if the proposed fire service area were approved by voters (attempts to form a fire service area have previously failed), and they successfully contract with the City of Homer to provide services to those areas, the proposed 1.0 mil would, at most, only maintain the status quo. No additional fire station(s) and no additional apparatus could be funded using the monies generated by the service area. The City of Homer could only reduce the level of funding presently provided by them resulting in no net increased funding for the fire department. All of the equipment presently used by the fire department is owned, operated and maintained by the City of Homer and could not be reasonably expected to be pre-positioned outside of city limits.

There is also the issue of the fire insurance premium rates paid by residents in the proposed annexation area. Most residents in the proposed annexation area receive credit on their fire insurance because of the Insurance Service Office (ISO) fire protection class already earned by the Homer Volunteer Fire Department. In fact, anyone paying for fire insurance based on any rate less than a 10 (which is used to identify property considered to have no fire protection) is directly benefiting from the City of Homer, Homer Volunteer Fire

Department regardless of where they live. Granted, persons that live within five miles of the existing station and within 1,000' of a fire hydrant receive the best fire protection class rating (3), but any resident within 10 miles of the station receives some adjustment of their fire protection class because of this fire department.

The City of Homer would be ill-served to relinquish its fire protection rights to a newly-formed Borough service area that would have to then re-establish its ISO classification. It is very unlikely that it could improve upon the ISO rating already established. In fact, if those persons in the proposed fire service area choose to attempt the establishment of a fire department wholly independent of the Homer Volunteer Fire Department (not contracting with the City of Homer to provide service) their ISO rating would default to a protection class 10 until such time as they could establish, through a comprehensive review of their department, the ability to provide adequate fire protection.

Without the advantage of a hydrant system, the best likely scenario would result in an ISO protection class of seven for portions of the new fire service area within five driving miles of the new station(s). The majority of the proposed annexation area already is in a protection class of seven by virtue of the City's fire department. That could possibly be improved upon once the City facility proposed in the annexation petition is completed, and additional water sources are identified and made accessible. At the very least, the response time of fire apparatus to areas served by the proposed sub-station would be reduced.

See Exhibit 2.

3. Planning and Zoning

Concerning Ms. Griswold's comments on local option zoning at the Borough level, please see the City's response in Part III.B.2 above. The Griswold brief also states that the Kachemak Bay Planning Commission is available to assist in evaluating local land use issues. The City of Homer Planning Commission has the statutory authority to make land use decisions such as conditional use permits, variances, as well as making recommendations to the locally elected Homer City Council. In contrast, the Kachemak Bay Planning Commission has no statutory authority and only makes recommendations to the Kenai Borough Assembly. Only two members of that nine member Borough Assembly are elected by local voters who are included in the proposed annexation territory. Assembly District Eight includes most of the annexation area south of Diamond Ridge/Sky View to Waterman Canyon. District Nine includes from Ninilchik to Nanwalek.

If the concern is that the community wants local control of land use decisions, then it would be best met by having land use decisions made by the local City Council, not by the Kenai Peninsula Borough Assembly, which will likely be less responsive to local concerns and issues.

The brief also states that the present planning staff is not adequate to handle the upcoming land use issues. Budgetary support for the planning department has traditionally

been less than adequate. However, this does not mean that land use planning for the proposed territory cannot be done. It means that it will take longer than if there were a larger staff or appropriations for private consulting. Additional funding is certainly available under the present petition.

4. Police Services

Ms. Griswold expresses satisfaction with the level of police protection provided by the state troopers. She also lists the national average police population figures and asserts that we would be understaffed with only two more police officers. The City disagrees. Please refer to the police staffing discussion in Part III.A.4 above for further information.

5. Port and Harbor

The City agrees with Ms. Griswold that port and harbor services should, ideally, be provided by a self-supporting enterprise fund fully sustained by user fees. She attended some of the Port and Harbor Rate Review Committee's weekly meetings and is aware that the City worked hard to analyze costs and develop "cost recovery rates" for services. The Port & Harbor Department should reach the goal of self-sufficiency by year 2001 after the scheduled "second year" increases in moorage and ice rates are implemented.

Regarding Ms. Griswold's comment about "charges for use of water in the boat harbor" deserves evaluation. There are practical problems to doing this that are being examined by the design engineer, PN&D, who is working on the state Transfer of Responsibilities Agreement ("TORA") harbor improvements and renovations. It appears at this stage that the costs of installing meters to enable charging for water would be excessive. This will be further evaluated, however. (Currently, the charge for water usage within the small boat harbor is a component of the moorage rates.)

6. Roads

Page 4 of the Griswold brief states that the City is only budgeting \$199,000 for roads to provide the same service the Borough is providing. The brief also implies that the Borough spends \$234,000. Of these statements, neither is entirely true.

It is true that the City proposes an operating budget of \$199,000. This will be used to pay for private contractors (or City personnel if it is more cost effective) to do actual road maintenance. In addition, the City is prepared to spend an additional \$585,000 for equipment purchases if necessary.

The \$234,000 amount is the money spent by the Borough in 1999 (the most expensive year to date). Broken down, the Borough estimates they spent \$134,000 for private contractors; \$25,000 for administration; and \$60,000 for capital improvements. In previous years, far less money was spent to provide road maintenance. Only \$120,000 was

paid to all contractors in 1998, and in some years, this year for instance, no capital improvements dollars were spent at all.

The City already has the staff necessary to administer a road maintenance program. No capital improvement budget has been included in the City's petition budget, because the City does not presently improve existing roads using a capital improvement program. A separate Homer Accelerated Road Program (HARP) is used to fund road improvements. The City Council has the prerogative to include the annexation territory in this program to assist benefited property owners to complete road reconstruction and paving projects.

The differences between the increased revenues and increased costs associated with annexation are large enough to insure an improved level of service. The City believes that based on even the worst-case scenario, it can provide a level of service comparable to the road maintenance presently provided by the Borough. During years of average or below average snowfall, the City can provide more winter and summer road maintenance than is currently being provided.

7. Election Precincts

Whether new voter precincts will be established is not presently known. This decision is made by the state. It not expected that precincts will be defined until the final outcome of annexation is known. There may be no new precincts, only enlargements of Homer Precincts 1, 2 and 3.

F. Vi Jerrel

There are no substantive issues raised in this brief to which the City could respond.

In response to the issues raised in this brief, the Constitution of the State of Alaska has been tried and proven in court. the legislative process of annexation has also been tried and proven al the way to the Alaska supreme court.

G. Kachemak Area Coalition, Inc. d.b.a. Citizens Concerned About Annexation ("CCAA")

1. Revenues and Expenses

At page 4, addressing taxable sales, the CCAA brief states: "According to the Borough's report, taxable sales did increase by 6.7% since 1988." To get an accurate understanding of the rate of growth of sales tax revenues, one must adjust for a significant anomaly—the large increase in tax revenues from 1988 to 1989 (approximately 25%) resulting from the Exxon Valdez Oil Spill clean up efforts. For the next 10 years following that event, 1989-1999, the growth rate in taxable sales was only 3.9% per year.

At page 13 of its brief, CCAA argues: “[The City is] spending reserves for operations and subsidizing enterprise funds which should be self-supporting.” The City just completed 2 years of rate studies on the Port & Harbor and Water and Sewer funds and is currently implementing the recommended rate adjustments. These rates are set to meet the operation and maintenance needs of the funds. The new City Manager and managerial staff reduced the FY 2000 budget by approximately 10% to bring the expenses in line with the expected revenues to reverse decreasing trends in the fund balances. These developments are all independent of the annexation effort.

CCAA makes the statement at page 18 of its brief that expenses have been underestimated. It is easy to make a broad statement that ‘the numbers are wrong’, but, to date, no one has explained what is wrong with them. Revenue spreadsheets have been provided to whoever asked for them, showing how property tax and sales tax estimates were calculated. See above.

At page 24 of its brief CCAA comments that, with a fairly steady population, expenses have increased at an annual rate of 1.5%. First, the population has increased, and this will be graphically demonstrated by the 2000 census. Second, expenses have increased at approximately the same rate as inflation for the time period.

If the proposed annexation area’s population is 2,720, that is 65.5% of the existing City of Homer population of 4,154, not the 69% as repeatedly stated in the CCAA brief.

CCAA generally maintains that in the past the City administration has mismanaged the City’s financial affairs and has put the City into financial crisis. This is simply not true. The City is audited by an outside independent auditing firm each year, in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The City has received an unqualified opinion each year. In fact, CCAA’s own hired expert, Vern Johnson, supervised the City of Homer audit for many years until 1997 when the City changed auditing firms from Johnson's KPMG Peat Marwick to the current auditors, Mikunda Cottrell. Mr. Johnson's annual audits are available at City Hall.

2. Fire and Emergency Services

While this brief accurately describes the fire department's run volume, it inaccurately describes the number and percentages of volunteers, which have changed (see Part III.B.1 above). However, the issue of where a volunteer resides has little or nothing to do with the annexation petition. The volunteers for the City of Homer, Homer Volunteer Fire Department provide a critical and valuable service to the community, regardless of politics, race, origin, or ability to pay. The volunteers join the fire department for many and varied reasons, such as: an inexpensive way to receive valuable training that could be used in a paying job; improved job opportunity; pure educational purposes; desire to help out in a crisis, etc.

Except to repay the department for initial training received (a one year commitment is required), volunteers are free to leave the department and go about their personal lives, and many have done so through the years. On the other hand, the vast majority of our volunteers have stayed not for only one year, but longer—some for five, ten, fifteen and even twenty years. Not for pay or prestige, but because they truly enjoy helping their neighbors in time of need. The only things that our volunteers ask for in return are adequate training, facilities and equipment to perform their tasks safely and effectively, and an adequate paid staff to ensure that everything else occurs in accordance with state and federal law.

Except for EMS fees and the moneys received from Kachemak City to provide fire and emergency medical services to that community, these services are paid solely by the City of Homer. Whether the City General Fund account is funded by property taxes, sales taxes or a combination of both is hardly relevant to the fact that city residents continue to pay both while non-city residents pay only sales tax (and only if they make purchases within city limits). User fees, while helpful in offsetting costs, cannot adequately fund the level of services currently provided.

User fees traditionally do not cover the cost of building new facilities, buying new apparatus or training and equipping members. For example, revenues from EMS fees (estimated at about \$50,000) account for less than 1/3 of the current EMS operating budget. While user fees are not currently charged for fire or rescue services outside of city limits, the cost per fire response would have to be in the thousands of dollars per response to even partially cover the annual operating costs of the fire service funded each year by the City of Homer.

3. Police Services

As for police issues, the responsive brief filed by CCAA inaccurately cites the national average of police officers per thousand. They also have based a good share of their opposition to the current staffing plan for the proposed area on the 1998 annexation memorandums, which, as explained above, are irrelevant to this petition because of the vast difference in size of the territory considered. Please refer to Part III.A.4 above for further information.

The CCAA writes that current state trooper coverage is adequate, but it also complains that the City plan to hire two additional officers will not provide for 24 hour a day coverage or regular patrol services. With two additional officers, the police department will be able to average two officers on duty for 23 hours out of every 24-hour period. We will have additional officers on duty during traditional hours of peak activity, and there will actually be many instances of 24 hour a day service being provided. Contrast our proposed staffing levels with state trooper staffing levels—it is apparent that they are barely able to staff the Homer Post for an average of 12 hours a day.

4. Port and Harbor

The CCAA brief states at page 9, “Port services are not needed in the proposed annexed area which does not have any potential port site. It is impossible to draw a line around the area that makes use of the Port...” And, at page 24, “For its own political reasons Homer has not chosen to properly manage its enterprise funds. The Port of Homer has operated at huge net losses for years. A total of nearly \$3,000,000 of losses. ... The City has just raised fees at the Port for the first time in 12 years...” Further at page 28, “Homer’s failure to operate enterprise activities in a financially prudent manner is not a valid reason to compel annexation . . .”, and “Fees for fire suppression; user fees for recreational opportunities at City ball parks and the library, charges for use of water in the boat harbor (harbor fees include water); and differential fines for resident and nonresident animal impound are a few measures to evaluate.”

In response to CCAA's comments in the paragraph above: the Homer Port and Harbor is a regionally used facility, which serves a wide array of clients and users. While there may never be a port facility built in the annexation territory, it is nevertheless true that many residents of the territory already rely on the Homer Port and Harbor as the community's strongest economic engine. Fishermen, tour operators, charter boat owners, store owners and employees, bed & breakfast operators, longshoremen, lumberjacks, restaurant workers and owners, artists, taxi drivers, and vessel repair shops all depend on the economic activity in and surrounding the Homer Port and Harbor. It is, indeed, impossible to draw a line around the area that uses the port and harbor, but certainly the annexation territory is within the zone that benefits directly from it.

Under the published tariff (FMC approved) the same rates are charged to all customers for a service, regardless of their physical place of residence. To do otherwise would be contrary to FMC regulations. With the implementation of the scheduled “second step” increases during 2001 in moorage, and ice rates, Port and Harbor enterprise fund should achieve a balanced budget. Any alleged prior financial “mismanagement” of Homer Port and Harbor (by failing to charge higher fees) is not a factor in the annexation effort, however, because the City is now on track to achieve self-sufficiency and a balanced budget. And as previously mentioned, the “TORA” design engineers are evaluating the costs and benefits of metering water to pass these costs on to the actual users of water rather than incorporating water costs in the moorage rates, as is currently done.

5. Roads

The City's Public Works Department takes exception to the statement on page 7 of this brief, “Snow removal is often not done in a timely manner.” No evidence has been presented that this is true.

See the comments in response to the Mary Griswold brief, Part III.E.6 above, regarding the relationship between the City’s proposed \$199,000 road maintenance budget and Kenai Peninsula Borough's \$234,000 road maintenance expenditure.

Contrary to the statements of CCAA members, who presently pay \$50 per year per \$100,000 of property value to maintain the KPB roads, there is evidence that area residents are dissatisfied with the road maintenance services they now receive. Unlike other areas of the Borough, the residents in the proposed annexation area voted in favor of increasing the .5 mil rate established to pay for road maintenance. It is unlikely that the residents just wanted to pay more than everyone else does for the same service. The election results show that residents in the annexation territory do desire more service.

In addition, the statement that area residents happily pay for street maintenance must be commented on. Currently, residents in the proposed annexation area pay approximately \$63,000 in taxes as a result of the .5-mil rate. The Borough claims to have spent \$234,000 on road maintenance in this area in 1999. Most residents, wherever they reside, can generally be expected to be happy about paying less than a third of the cost of the service they receive.

The statement made at the top of page 14 regarding the superiority of the KPB capital improvement program is not supportable. The brief acknowledges that 70% of the KPB program is funded by State grants. A program that depends to this degree on state grants in a period of drastically reduced state revenue sharing and the elimination of many state grant programs cannot be considered “superior” to the City’s program. The City’s program has been able to fund \$863,800 for street improvements this year alone. In contrast, the Borough, in fiscal year 2000, budgeted \$0.00 for road capital projects for the entire Borough. Funds for local road improvements are going to become more and more difficult to obtain from the State whether the KPB or the City is responsible. To say that the KPB program is superior to that of the City’s just isn’t credible.

Statements about the City’s “frequent” inability to plow out the Hospital are false, as is the statement that ADOT “frequently” plows the road to the airport because the City is unable to respond in a timely manner. The City and the State work together to efficiently use the equipment and personnel each has. The City routinely plows roads that are the responsibility of the State and the State routinely plows roads that are the responsibility of the City. This is the result of a cooperative effort.

6. Public Works Vehicle Maintenance

The Public Works Department successfully maintains an ever-increasing list of equipment. The new street sweeper and the proposed new waste oil transfer vehicle will be the most recent additions to the Public Works fleet. The additional equipment necessary to maintain the roads within the proposed annexation area will continue that trend. The Heath Street Public Works complex is crowded, but no expensive improvements are required to provide for equipment storage. No additional repair bays are necessary to support the acquisition of additional road maintenance equipment, if needed as part of annexation.

Currently, most all of the Public Works construction and maintenance equipment is parked at the Heath Street facility. None of the equipment (loaders, graders, backhoes, dump

trucks, vacuum trucks, pickup trucks) have covered storage. Two heated service bays in the old section of the complex are used to keep sander trucks and snow blowing equipment warm during the winter months. All other equipment is stored outside on gravel pads with access to power (for head-bolt heaters). The City can find room to park existing and new equipment without major expense. Although the Public Works Department has recommended that covered storage be provided for all equipment, no funds have ever been identified to provide this type of facility.

The Public Works complex includes three motor pool service bays for the repair of City vehicles. Taking on the additional repair effort associated with purchase of additional equipment will require additional staff (now suggested to be an additional half time mechanic), but even with the proposed equivalent three full time mechanics, we cannot fully utilize any more than 3 bays. If the repair workload would ever be higher than those bays can handle, some repair work can be diverted to the City's two service bays at the Public Works shop on the Spit, or the 2 equipment parking bays at the Heath Street Complex, or to an auto repair business here in Homer.

The City's Public Works Department believes that covered storage for valuable equipment is desirable and that additional service bays would make the repair of City vehicles more convenient, but it is capable of storing and maintaining additional road maintenance equipment without new expensive storage facilities or additional service bays. There are currently more repair bays available than mechanics required. More repair bays would be nice, but the decision to annex or not shouldn't be made based on the inaccurate statement that there are inadequate repair facilities. See attached Exhibit 20.

7. Snow Removal

It is true that snow conditions are different within the proposed annexation area than they are in the lower portions of the City. In the lower areas, the City contends with wet snow and icing conditions not generally encountered on the bluff. The areas on the bluff are subject to more blowing, drier snow and somewhat greater accumulations. However, the City proposes to use the current private contractors and their equipment for snow removal in the annexation territory, so the differing conditions is a non-issue. The equipment the Borough requires that its road maintenance contractors have is not much different than the equipment the City uses to complete the snow removal within the current City limits. The Borough requires that the contractor have access to a bulldozer; the City has snow blowers that can effectively do the same job.

Page 20, first paragraph, of the CCAA brief contains a statement that the City intends to replace private contractors with City employees. That is not accurate. The City will use private contractors to complete road maintenance in the proposed annexation area unless it finds that City forces can do the work more cost effectively.

8. Local Improvement Districts

The CCAA brief, page 21, second paragraph and fourth paragraph, states that no LIDs have been constructed in the past nine years. This is not true. East End Road Sewer LID was constructed by Builder's Services in 1993. Danview Water LID was constructed by Builder's Services in 1994. There have been several road LIDs constructed in the past nine years that included water and/or sewer stub outs and are on the deferred assessment list. See above at part III.D.2 of this brief.

H. Kenai Peninsula Borough

1. Roads

The City's petition states that the KPB budgets approximately \$80,000 for road maintenance in Units 5, 6, and 7. These are the figures that were given to the City's Public Works Department by the Borough. It's no secret that the Borough spends more to maintain the Units than is collected from the .5 mil rate. The average cost of road maintenance for FY 1998-2000 (based on the figures contained in the KPB responsive brief) is \$184,000. This time period includes the unusually heavy snowfall events experienced in 1999. The expenditure section of the City's annexation petition shows an annual road maintenance budget of \$199,000. The City understands completely what the KPB's actual expenses have been and has established a budget that exceeds what has been spent in the last few heavy snowfall years.

The City's intent is to take over maintenance of the roads that the Borough currently maintains. The City plans to agree with the Borough on a definite date on which the City will become responsible for maintenance. The City does not envision the KPB being involved in a transition plan.

I. Objective Annexation Review

1. Fire Service

The Objective Annexation Review (OAR) brief raises only one additional point regarding the fire department that has not been previously addressed. It says "Training, equipment and emergency assistance from other agencies should be part of the analysis". The City of Homer, Homer Volunteer Fire Department is a "cooperator" with the State of Alaska, Department of Natural Resources (Division of Forestry). As such, and under the "Annual Operating Plan" the City is able to bill the Division of Forestry for some funding for wildland fire responses made by the fire department outside of city limits and during the statutory "fire season". In addition, under this agreement, the Division of Forestry may be called upon to assist the local fire department with specific training, and may also provide some of the hand tools and small equipment necessary to meet the obligations of the "Cooperative Agreement". The Division of Forestry does maintain a wildlands fire-fighting contingent

here in Homer during the fire season the size of which is dependent on the projected fire danger, weather and availability of state resources.

The fire department also maintains mutual aid agreements with many other agencies surrounding Homer: Anchor Point Volunteer Fire Department, Seldovia Volunteer Fire and EMS, HEA, State Parks, and Port Graham and Nanwalek. These agreements all state that this fire department will provide additional resources, if available, to those other agencies if requested. The only one of these that can reasonably be relied upon to assist with Homer's emergency services needs is the Anchor Point Volunteer Fire Department, which has, upon occasion, provided crews and equipment when City crews were temporarily overwhelmed.

2. Library

The OAR brief cites a Memorandum to V. Koeberlein from M. Helm dated May 14, 1998, which notes that the impact of the 1998 annexation proposal on the library would be the need for additional personnel at \$32,000 and a larger library. The briefs suggest that the City's 2000 Petition for Annexation "ignores" these statistics.

As stated earlier, the 1998 annexation proposal, to which the May 14th memorandum refers, covered an area much larger than the area under consideration in the City's current petition. Since the 1998 memorandum assumes a much larger proposed annexation area and population, its conclusions cannot be used to compare with the City's 2000 petition.

3. Police

Similarly, Objective Annexation Review cites the 1998 memorandums and asserts that the disparity between them and the current proposal concerning the police department are so large as to be sufficient reasoning to oppose the City's current annexation attempts. The City is considering a vastly different annexation area now as compared to 1998. Therefore, this comparison would not be correct.

The OAR brief also makes reference to memorandums that the city department heads wrote during current annexation planning, which have not been made available to the public. It strongly suggests that hidden within these memorandums are secrets that would reveal the whole and true cost of annexation if exposed. The Homer Police Department staff has always presented an accurate and truthful presentation of law enforcement related costs of the proposed annexation. The figures provided have not been manipulated by anyone and are accurately represented in the petition for annexation filed by the City. In one of the police department's previous memorandums, the police chief did write that the department could "possibly" need three to four police officers to provide law enforcement services to the area. However, thorough evaluation of the required staffing leads the chief to the conclusion that the City will need two police officers. See Exhibit 64.

4. Port and Harbor

At page 3 of its brief OAR says about Homer's port and harbor: “A gift to area residents from the people of Alaska, these facilities are administered (and soon will be owned) by Homer, with the help of State subsidies. An historical accounting should include all sources of funds, distribution of revenues, and the range of accounting alternatives (which suggest everything from a City burden to a City slush fund.)”

The port and harbor facilities are totally owned by the City of Homer. The financial reports for the Port and Harbor fund have been audited every year as part of the City of Homer finances. These audits support the City position that Port and Harbor fund has been a drain on the general fund and has been subsidized by the general fund. Rates at the Port and Harbor have been too low, largely as a result of the failure to increase rates periodically since 1986 to account for, and keep up with, inflation. However, the rate increases approved last year, together with the scheduled “second step” moorage and ice rates increases to be implemented next year, should result in a balanced budget for Port and Harbor fund starting with budget year 2001. The Port and Harbor fund has clearly not been a “City Slush fund,” and if any one has any evidence that proves the accusation, it should be brought forth immediately. The City of Homer stands by the audits that have been conducted every year since its creation in 1964.

5. Voter Services

Page 4 of the OAR brief questions whether the City seeks and receives financial support from the Borough, the State and the United States for voter services. The City benefits from some sharing of election costs at the polls when there is a joint election. The City has an agreement for election equipment use with the State of Alaska, Division of Elections. The City provides voter services for the three City precincts, four non-City precincts and the State Division of Elections. National elections are held at the same time as the State general and City run-off elections, the first Tuesday in November. Election worker costs are shared.

6. Other

The OAR brief also alleges that a City Council work session packet dated May 18, 1998, was not provided to the public. This is not true. The City Clerk's office provided the document to the public.

J. Pete Roberts

The Roberts brief contains many vague and irrelevant comments, which will largely be ignored in this brief.

1. Revenues and Expenses

The City's various enterprise funds have already been addressed above. The comment that the expenses have been underestimated is not supported or documented. The City has nothing to gain by purposely underestimating expenses. To underestimate expenses is to invite financial ruin. The annexation goal is not to bankrupt the City or denigrate its financial position.

On page 6 of his brief, Mr. Roberts states that the Homer Accelerated Roads Program is running a \$400,000 deficit — this is erroneous. The HARP has a fund balance of approximately \$1.2 million.

2. Fire Service

In the often-mentioned Fire Department Strategic Planning Group Report of 1998, the idea of a “Donut Service Area” was selected as the best alternative to continue funding of the fire department. That report states on page 8, “The initial assumption is services would continue at the existing level for a fee of 1 mil.” Existing level of service must be construed to mean absolutely that; no additional resources (stations or apparatus) can be funded with the amount that 1 mil will generate. The report goes on to state, “The capital and operational costs of the additional facilities would be funded by the Service Area through a higher mil rate”.

If one carefully analyzes that report, which reviews both advantages and disadvantages of annexation compared with a "donut service area," it is easy to see that the annexation petition presented by the City of Homer is currently the best option. First there are clearly more advantages to annexation than previously stated by the Planning Group; namely improved level of service to that area being annexed; improved response times; less wear and tear on existing fire department apparatus; improved “visual recruitment” to provide crews for a “local” station; and possibly improved insurance rates, reducing the residents fire insurance payments. In addition, the annexation petition has addressed the disadvantages stated by the Planning Group regarding annexation. By reducing the size of the annexation territory, proposed revenues (taxes) more than offset the additional costs of the fire department. Since the population of the annexation area is growing at a faster rate than that within city limits (as the brief contends), more of the City's fire and EMS responses will be generated to those areas than occur presently. The final disadvantage of annexation identified by the Planning Group was that “additional personnel, facilities, and equipment required by annexation will result in the growth of local government”. As stated in the petition, no additional personnel are necessary due to annexation and the required increases in infrastructure will result in little increased workload for staff.

Furthermore, the City's fire department questions some of the reasons given by the 1998 Planning Group for its endorsement of a donut service area over annexation. The Planning Group contended that a donut service area will “. . . avoid the creation of a large, new bureaucracy”. On the contrary, anytime a service area is formed, that service area is

administered by both the service area board and the Kenai Peninsula Borough Assembly (the largest, most bureaucratic entity on the peninsula). No decisions could be made regarding the new service area by the fire department administration without the consent and approval of this service area board and the Borough Assembly. In contrast, the City's Fire Chief, by virtue of departmental and city regulations, could expedite procedures for anywhere within city limits (including the annexation area), *e.g.*, by moving any city-owned resources wherever needed, at any time, for any legitimate reason.

A fire service area is not the best alternative to fund the fire department and definitely not a reasonable alternative to annexation. Even the 1998 Planning Group concluded that the creation of a service area was merely a “temporary patch or interim step to annexation”.

3. Port and Harbor

Mr. Roberts states at page 3 of his brief: “The City has a long history of projects poorly managed that turned out to be very costly; the harbor ice plant, the Ocean Trawl deep water dock exclusive dock contract, the failed retaining wall by the harbor grid (planned and built in house instead of engineered and built by experts) . . .”

The Port and Harbor management goals now include self-sufficiency for the Port and Harbor fund, and careful analysis and review of any proposed construction project. Ocean Trawl is long gone as a contractor for the deep water dock, and the contract in question never stopped the City from making beneficial use of the dock when it was needed for economically viable projects. The wood grid bulkhead design was the product of expert design engineers, the mistake was in the failure to build according to the design in an ill-advised effort to save money.

At page 4, Mr. Roberts states: “Fee collections are not very good (especially at the port and harbor, Vern Johnson, CPA) and the rate structures seem to be constantly out of date. In any case, as “enterprise funds” the harbor, water and sewer are not general fund dependent and should not be on the table here . . .” The City agrees that the Port & Harbor Enterprise Fund should be self sufficient, should stand alone, should not be “general fund dependent.” The rate modification adopted by the City Council should solve this problem. After the “second year” rate increases are implemented in 2001 for moorage rates and ice sales, this department should become self-sufficient. And to avoid the mistakes of prior years, the Port plans to apply each year to City Council for an annual increase in Port and Harbor Tariff rates commensurate with the rate of inflation (the CPI index). Fee collections at Port and Harbor are improving. The collection of seafood wharfage will be strictly enforced now that ‘Fish Ticket’ information has finally been made available to the City.

K. Steve and Margret Seelye

1. Nonprofit Funding Grants

It is stated in the Seelye brief that money to nonprofits comes from pass-through grants. This is true only in very few instances, and those are clearly identified in all budget documents. However, none of the organizations listed in the Seelye brief received any pass-through grant monies, they received City general fund monies.

2. Roads

City of Homer Public Works Department has never referred to KPB road maintenance as “minimal and inadequate”. See the response to the Kenai Peninsula Borough brief, Part III.H.1 above, which provides evidence that the City's proposed road maintenance budget is at least equal to what is currently being spent by the Borough.

The cost of maintaining roads within the current City limits is higher per mile than what the KPB spends and higher than what the City proposes to spend in the proposed annexation area. One of the important reasons why snow removal costs more per mile within the existing City limits is because paved roads with curb and gutter require that the snow be loaded into trucks and moved to snow disposal sites. The presence of a greater number of driveways and intersections per mile also make snow removal in more densely populated areas of the City more expensive. Sidewalks and trails also make snow removal costs more expensive per mile. This causes ‘in city’ snow removal costs to be higher than ‘outside city’ costs, not some imagined complexity involved in removing snow from borough roads.

3. Fire and Water

The City's Public Works Director has never indicated that a \$1.1 million dollar treatment plant would be required to provide water to the fire substation or to meet post-annexation water demand. The proposed fire substation would be located at the existing water treatment plant. The increased storage capacity apparently alluded to by the Seelyes is required with or without annexation. It will allow the treatment plant to produce water at the average daily rate of demand instead of peak hourly demand. The larger tank permits increased contact time between water and chlorine for purification purposes.

L. Bill Smith

1. Fire and EMS

The Smith brief recommends not expanding fire or EMS services beyond what is now provided, only sharing of the costs more equally. As previously mentioned, the City would be ill-advised and derelict of its responsibility to transfer its fire fighting resources to a fire service area that might then redistribute those resources away from the highest potential fire loss area on the south peninsula, the city center. The proposed fire and EMS service area

currently being considered by the Borough is huge. See Exhibit 18. The funding level suggested for the competing new fire service area cannot adequately fund additional facilities or apparatus, leaving a vast service area without adequate facilities and equipment and without any improvement in services rendered.

2. Port and Harbor

The City agrees with Mr. Smith that the Port and Harbor fund should be self-sufficient. The rate increases approved by City Council in late 1999 should permit the City to achieve this goal of self-sufficiency after the scheduled rate increases (on moorage and ice) are implemented in 2001.

M. The Crossman Ridge Neighborhood

1. Fire and EMS

Regardless of whether those persons in the Crossman Ridge area state a desire for fire or EMS coverage, they continue to call for those services when there is an injury, a fire or other related emergency in their neighborhood. The City fire department does not contend that it can deliver those services to every residence within the annexation area but it has a good record of improvising ways of getting to patients and other emergencies in remote areas, including the Crossman Ridge area.

During one winter when the roads were impassible, the fire department accessed one residence in this area on foot and used shoveled snow to keep a fire from spreading from a workshop to the adjacent residence. The fire department volunteers are very resourceful and can at least keep a fire from spreading beyond the structure of origin or to the surrounding wildlands. What people don't realize is that many fire calls don't originate from the homeowner. Neighbors or passersby that see smoke or flames call them in. Once a "911" call comes in, the City feels obligated to investigate and provide what service is deemed appropriate to keep the situation from escalating. If the proposed sub-station is built, these residents have the most to gain from annexation and eventual road improvements.

2. Police Service

The Crossman Ridge brief focuses on the relative remoteness of the Crossman Ridge area and its access problems. The residents apparently feel that the city will be unable to provide services to their area due to its remote nature and limited road access. The police department will be able to provide a level of law enforcement service to this area that is, at the very least, equal to that they presently receive from the state troopers.

3. Roads

The information regarding the location of roads maintained by the KPB in the proposed annexation area was obtained from the Borough. In evaluating the costs associated

with assuming responsibility for maintenance, the City has to depend on what the borough says it is currently doing. Some discrepancies may exist, but the mapped information provided in the petition does provide a good estimate of the total miles of road maintained and where these roads are in relationship to the current City road maintenance activities.

4. Bridge Creek Reservoir

Despite Crossman Ridge Neighborhood's status as probably the most remote, least accessible, least developed part of the annexation territory, the neighborhood nevertheless remains an important part of the area that should be annexed to the City. A large part (perhaps half) of the Crossman Ridge Neighborhood, as identified on the maps contained at page 14 of its brief, is located within the Bridge Creek watershed. This watershed is the City's sole source of water for the municipal water utility, and its preservation as a healthy and plentiful source of water is critical to the City. Because of its location in and near the watershed, Crossman Ridge is included in the area proposed for annexation. Even those portions of the Crossman Ridge Neighborhood that lie outside the watershed appear to have access to the road system through the watershed. Therefore, development of any portion of the neighborhood has the potential to impact the watershed, either directly or indirectly. Growth and development of this neighborhood is a matter of current and future concern to the City.

N. The Raven Ridge Homeowner's Association

1. Fire and EMS

As previously mentioned, the Division of Forestry does offer some fire protection services (wildland fires only) during the statutory fire season of May 1 through September 30 of each year. During the remainder of the year, all fire and EMS services are provided by the City of Homer, Homer Volunteer Fire Department. The fire department is a City department and has been since over the City assumed those responsibilities from the volunteer corporation in 1990-1991.

In very few instances can a service area fire department, governed by at least four bodies (the fire administrator/chief, the service area board, the borough administration and the borough assembly) be better managed than a city's fire department administration. None of the respondents' briefs have demonstrated the expertise, knowledge, or understanding of the issues facing the fire department or the delivery of services, yet, in response to the annexation petition, they are suddenly in favor of a service area. The issue of the service area has been brought before the community on at least two occasions since 1991. On each occasion the efforts stalled and eventually failed because, as a whole, the area was not willing to pay a tax for a service. This is totally understandable because they were already receiving the service from the City of Homer for free. If not for the threat of annexation, this counter-move to form an under-funded fire service area would never have started.

2. Police

The responsive brief filed by the Raven Ridge Homeowners Association makes one reference to the police department intended staffing levels. They express satisfaction with the service provided by the state troopers, but suggest that the City of Homer staffing plan is inadequate. This issue has been well addressed above.

3. Snow Removal

The City's Public Works Department has never referred to KPB road maintenance as “minimal and inadequate”. Snow pack on the ground on March 30 is not a meaningful way to define the differences in road snow removal costs between the two areas. There are differences in climate, but to infer that the proposed annexation area receives nine times as much snow as the existing City limits does not characterize the differences very well. See Part III.G.7 above.

IV. SUMMARY COMMENTS

In summary, the reader should first consider the numbers:

The financial data supporting annexation is solid and has been unassailable by critics except those who say “the city can’t afford it”, “the numbers aren’t right” or “it just doesn’t add up.”

The following table summarizes the City's revenue and expense projections for the annexation territory.

Annual Revenue Items	Revenues	Totals
Real Property Tax	\$598,287	
Personal Property Tax ³	38,068	
Sales Tax – General	286,288	
Sales Tax – W&S	103,656	
Sales Tax – HARP	103,656	
	\$1,129,955	\$1,129,955
Expense Items	Expenses	
Roads	\$199,840	
Added Operating	190,330	
10 year bond ⁴	166,966	
	\$557,136	-\$557,136
Revenue Surplus		\$572,819

The property tax revenue projections are based upon taxable values provided by the Kenai Peninsula Borough and certified by the State of Alaska Assessor. The sales tax projections are based upon information provided by the Kenai Peninsula Borough (businesses not in the annexation area excluded). The City of Homer sales tax rate is then applied. The resulting figure was then decreased by 20% to err on the side of under estimating rather than over estimating. No dollar figure for sales taxes generated by Kenai Supply was included because that business is closing. Even though a large percentage of their business will probably be picked up by Spenard Building Supply, no additional revenues were added.

The case of Kenai Supply serves as a good illustration that the writings of the annexation foes are often more emotional than factual. Ms. Griswold's statement in her brief that Kenai Building Supply "went out of business this year, apparently unable to compete with a similar business within the city boundaries" is without factual basis and does not help to clarify any annexation issues. Kenai Supply had branches in the Homer area, Kenai, North Kenai and Wasilla. Homer was not the biggest location either on or off the Peninsula. It was widely reported in the press that the business was sold because its principal was retiring and

³ Does not include revenues for City of Homer/KPB boat tax.

⁴ 10 year \$1.2M bond which includes \$585,000 in road maintenance equipment that will not be needed if contractors continue to be used in maintaining these roads.

his children were not interested in continuing the business. Spenard Building Supply bought their business and some of their properties. The true facts about the closing expose a fundamental weakness in the anti-annexation methods of analysis.

No state or federal revenue sharing figures were added to the annexation revenue projections because these sources of funding are not reliable or predictable. A review of this year's State appropriation for Safe Cities and Revenue Sharing demonstrates that the funds are based solely upon the population of City of Homer, not the folks that live and are served outside city limits. Fairness is an issue? The following table (derived from Exhibit 65) indicates the revenues the City of Homer will actually receive for fiscal year 2001 and what the City would have received if annexation had occurred — in other words, it shows the financial impact of annexation on funding from these two programs:

Program	Present City Limits Population & Roads	Proposed City Limits Population & Roads	Increase
Safe Communities	\$101,073	\$145,113	\$44,040
Revenue Sharing	57,039	84,996	27,957
Total			\$71,997

The reader should note that revenue figures used by the City of Homer in its annexation petition do not include the \$158,112 it will receive in 2001 in Safe Communities & Revenue Sharing.

The annexation critics' claim that the city of Homer is built largely with state tax money that they pay or are responsible for rings hollow. Most people in Alaska haven't paid state taxes since the state income tax was repealed around 1976. Alaska residents draw Permanent Fund Dividends instead.

The increases in City expenses are estimated as accurately as possible by the City departments, based upon historical costs and reasonable projections. The gratuitous comments about City employees being 'muzzled' about 'true' costs are without basis. If this is true, where are the 'real' figures? Where are the 'real' accusers? What remote motive would the City of Homer have to understate the costs? If this information exists, where is it?

All of the anti-annexation emotion and rhetoric combined cannot alter the financial facts relevant to annexation. If all tax rates remain the same and the economy remains in a *ceteris paribus* state, there will be a surplus of revenues above expenses of \$400,000 to \$500,000 each year. Annexation can be opposed on political and emotional grounds, but not on economic grounds.

The proposed annexation territory is clearly compatible with the City. City services are presently being used by those residing outside the city limits. When the facts of annexation are calmly evaluated and considered, it is inescapable — annexation is good for

the community and the state. The City urges the Commission to examine its petition and consider the very vocal critics in the same light as Judge Folta viewed the foes of an Anchorage annexation effort nearly 50 years ago:

Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith.

Annexation to the City of Anchorage, 15 Alaska 67, 69, 128 F. Supp 717, 718 (D. Alaska 1954).

The City of Homer annexation Petition represents fairness and value to both residents and non-residents alike.

V. THE CITY'S PETITION SATISFIES THE REGULATORY STANDARDS FOR ANNEXATION

A. There Is A Reasonable Need For City Government In The Annexation Territory [3 AAC 110.090(a)]

In Alaska there are currently 16 organized boroughs and unified municipalities and 145 cities incorporated under Alaska law. *Alaska Municipal Officials Directory 2000*, Alaska Department of Community and Economic Development and Alaska Municipal League. Standing alone, the proposed annexation territory has an estimated population (2,687) that would make it more populated than six of the existing boroughs and unified municipalities.⁵ If incorporated as a city, the annexation territory, standing alone, would be the 17th most populated city in Alaska, and if the annexation territory population is included with Homer's population as a result of this annexation petition, the city of Homer will jump from the 11th to the 5th most populated city in the state.⁶ See Exhibit 69. These figures illustrate that the population of the annexation territory is greater than the vast majority of other communities that have previously been approved for city government. The presence of such a large population is a strong indicator of a need for city government.

⁵ Aleutians East Borough, Bristol Bay Borough, Denali Borough, Haines Borough, Lake & Peninsula Borough, and City and Borough of Yakutat.

⁶ The four more populated cities will be Fairbanks (31,697), Ketchikan (8320), Kenai (7005), and Kodiak (6893).

Residents of the annexation territory already use services provided by the City of Homer, including fire and EMS response, police protection (back-up to state troopers, area wide dispatch, jail), library, parks, animal shelter, port and harbor, and voter services. The City also receives requests, and sometimes provides, water or sewer service in the area through limited line extensions. Water is also sold to commercial water haulers who resell it to customers in the annexation territory.

The growing population of the area is expected to increase the demand for these and other city services. Both residential and commercial growth suggests a greater need for land use planning. Conflicts over land use in the annexation territory have already begun, especially in the Baycrest Hill/Sterling Highway area.

The City's potable water supply source (Bridge Creek watershed and reservoir) is located entirely within the annexation territory. The City will begin to regulate development in that area extra-territorially if the annexation is not approved. Current and anticipated growth in that area must be regulated to protect water quality in the watershed. Inclusion of the area within city boundaries, thus giving residents a direct voice in City government, would be preferred over extraterritorial regulation.

The presence of 2,687 people (the equivalent of Alaska's 17th largest city) residing on the outskirts of Homer puts a lot of pressure on the normal city services provided by the City. The social and economic problems of the area are already significant, and for an unincorporated community of that size, the problems can be expected to grow over time. The problems already acknowledged by area residents include stated needs for fire and emergency service (area residents recently began to support a local service area), improved road service (area residents were unique among borough voters in recently voting to increase the property tax to improve the local road service), and water and sewer (several requests for extraterritorial service, including a subdivision developed by Mr. and Mrs. Tulin, and Northern Enterprises (vessel storage and repair business), to name a few). In fact, the offices of CCAA, one of the most active opponents to this annexation, are housed in the Glacier Building on East End Road, which is served by City sewer on an extraterritorial basis, Exhibit 45.

B. Neither Kachemak City Nor The Kenai Peninsula Borough Is Capable Of Providing "Essential City Services" More Efficiently And More Effectively Than The City Of Homer [3 AAC 110.090(b)]

For most essential city services, neither the Kenai Peninsula Borough nor Kachemak City can provide the services more efficiently and effectively than can be done by the City of Homer. No other existing borough or city could feasibly provide any service of any kind in the annexation territory.

Fire and emergency service is at the top of the list of essential services for the annexation territory. Neither the Kenai Peninsula Borough nor Kachemak City currently provide fire or emergency services in the vicinity of Homer. In fact, Kachemak City

contracts with the City of Homer to provide such services in Kachemak City. In order for the Borough to provide such service, the voters would have to approve a local fire and emergency service area. This is very inefficient compared to the City's ability to immediately step in with its existing fire and EMS service. The local service area, if approved by the voters, would first have to organize and form a local service area board, which, in conjunction with the KPB Assembly, would have to create a budget, make appropriations, levy and collect a tax, acquire equipment and facilities, recruit employees and volunteers, and train the volunteers before it could begin service. Homer could begin providing service immediately and without the formation of a new layer of bureaucracy to administer the service. Furthermore, a new service area cannot legally be formed if the service can be provided by annexation to the City, AS 29.35.450(b). This legally precludes the inclusion of the annexation territory in a new fire and emergency service area.

Water and sewer utilities are another example of a service that cannot be provided more efficiently or effectively by the Borough or Kachemak City. Only Homer has an existing water treatment plan and distribution lines. Only Homer has a sewage treatment plant and sewer lines. Kachemak City cannot do it more efficiently — it already has an intergovernmental agreement with Homer for Homer to provide sewer service to the residents of Kachemak City. The Borough does not and cannot provide water and sewer service in the vicinity of Homer. While it will take time and money for Homer to extend water and sewer service into fully the annexation territory, no existing government can provide this service sooner or cheaper than the City of Homer.

Land use regulation can also be more efficiently and effectively provided by Homer than by the Borough or Kachemak City. Homer has an active Planning and Zoning Department that has been at work since 1982. Zoning outside of cities is a newly-available local option at the Borough level, and its efficiency and effectiveness are untested. For years the City has been far more active in zoning and land use planning than the Borough is or will be for many years to come.

Similarly, parks and recreation can be most efficiently and effectively provided by the City of Homer. Kachemak City is quite small and limited in its revenues and services. It cannot be more effective or efficient than Homer. Nor is the Kenai Peninsula Borough, with its headquarters in Soldotna, able to be more efficient and effective than Homer, which has its seat of government, public works department, and parks and recreation commission all based locally.

The Homer Public Library already serves a large number of non-city residents, many of whom can reasonably be presumed to live in the annexation territory. By 1999 non-city residents represented 51% of library cardholders (4,293 KPB resident cardholders, 3,810 City of Homer resident cardholders) and generated 55% of library circulation. The City is already effectively and efficiently providing this service for the southern part of the peninsula.

Even law enforcement cannot be provided more efficiently and effectively by another existing city or borough. The Borough has not assumed law enforcement (police department)

powers, and Kachemak does not have a police department, either. The Alaska State Troopers do provide some law enforcement, but their staff of two to four troopers is spread thinly over a very large area. Homer can provide the annexation territory nearly 24 hour per day coverage by adding two officers, but the State, even if it would add two more troopers, can not approach that level of coverage. Thus, Homer can provide this essential service more efficiently and effectively than any other government.

C. The Annexation Territory Is Compatible In Character With The City Of Homer [3 AAC 110.100]

The annexation territory is so compatible in character with Homer as to form virtually one community. People from the annexation territory work in Homer, go to church in Homer, and do business at Homer businesses. The children from the annexation territory go to the same schools as Homer children, play on Little League and hockey teams together, and share the same cultural experiences as they grow up.

Residential subdivisions inside the borders of Homer are indistinguishable from residential subdivisions just across the City boundary. The City and the annexation territory are connected by a web of roads, including numerous subdivision streets that transect the City boundary. In driving from the City into the annexation territory, one cannot visually distinguish the boundary between the City area and the annexation territory. Of course, one must acknowledge an exception to that generality in the case of East End Road, where numerous businesses have been established just outside the City limits forming a visual line of demarcation. However, even that tends to show the compatibility of the areas — both include large residential areas, as well as commercial and light industry areas.

Land use and platting in the annexation territory are highly compatible in character with that of the City, especially in the large rural residential zone of the City that abuts most of the annexation territory. Subdivision development and lot sizes are quite similar in the annexation territory and the City's rural residential zone. See the maps attached as Exhibit C to the City's Petition.

Although the acrimony that surrounds this annexation proceeding might suggest an inability to get along, that has not been the case in the past. The folks of the City and of the annexation territory have worked together harmoniously on many things. A very significant illustration of the compatibility, indeed interconnectedness, of the annexation territory and the City is the fact that the City has for many years voluntarily included on a number of its advisory boards and commissions nonresidents of the City. These commission members do not necessarily reside in the annexation territory (they might be from more distant reaches), but certainly some of the commission members are or have been residents of the annexation territory. One notable example is Sallie Dodd-Butters who recently resigned her position on the City Parks and Recreation Commission in protest over this annexation proceeding. At least five standing City boards and commissions are authorized by City Code to have one or more nonresidents as members: Library Advisory Board (one nonresident authorized, HCC 1.48.040), Port and Harbor Advisory Commission (two nonresidents authorized, HCC

1.72.010), Parks and Recreation Advisory Commission (three nonresidents authorized, HCC 1.74.010), Advisory Planning Commission (one nonresident authorized, HCC 1.76.010), and the Economic Development Advisory Commission (two nonresidents authorized, HCC 1.78.010). This inclusion of nonresidents on the City's formal boards and commissions shows not only compatibility, but even a desire by the City to include nonresidents and a desire by the nonresidents to participate in matters affecting the general well-being and common interests of the community that already exists.

The population density of the annexation territory is approximately 105 persons per square mile.⁷ If the annexation territory were incorporated as a separate city, this density would make it more densely populated than approximately 64% of Alaska's incorporated cities, putting it at approximately 52nd out of 146 cities.⁸ In comparison, the current population density of the City of Homer is approximately 378 persons per square mile. See Exhibit 70 attached. The ratio of the City of Homer population to the annexation territory is 3.6:1. This is a very reasonable ratio when considering the annexation territory is largely rural residential and has virtually none of the high density urban areas present in the existing Homer city center. After annexation, the estimated City population density of 150 persons per square mile would make Homer the most densely populated city in Alaska with a total area exceeding 40 square miles, more densely populated than Bethel, Kotzebue, Petersburg, Wrangell, Unalaska, Valdez, Skagway, and 16 other cities of at least 40 square miles.

Finally, the character of existing uses proves the annexation territory is, without question, suitable for reasonably anticipated community purposes. It already has a very significant residential population, thus proving it is suitable for community residential purposes. There are currently commercial businesses, both in the East End Road area and the Baycrest Hill/Sterling Highway areas of the annexation territory, thus proving its suitability for community business purposes. The area already contains the City's fresh water supply (Bridge Creek Reservoir), thus establishing the suitability of the area for community water supply purposes. The area is already interlaced with roads, electricity, and telephone service. There can be no question that this area, as a whole, is suitable for community purposes.

⁷ 2687 people divided by 25.58 square miles equals approximately 105 people per square mile. Note that the estimate of 2687 people in the annexation territory is based on the 1990 Census, now ten years old. The City expects the 2000 Census to show considerable growth in this area.

⁸ Population densities for Alaska cities were derived from data obtained from the Alaska Department of Community and Economic Development Alaska Community Database Online. These densities were computed by dividing the Current Population (1999 DCED) by the Land Area (square miles). Water Area was disregarded.

D. The Economy Within The Proposed Boundaries Of The City Includes Human And Financial Resources Necessary To Provide Essential City Services On An Efficient, Cost-Effective Level [3 AAC 110.110]

The residents of Homer have been successfully governing themselves for 36 years.⁹ There are clearly sufficient human and financial resources to provide essential city services within the current City boundaries. The proposed boundaries after annexation will result in a the geographic area increasing by a factor of 2.22 (from 21 square miles¹⁰ to 46.58 square miles) and the population increasing by a factor of 1.65 (from 4154 to 6841). The area is compact enough, and the population is large enough that human resources will be more than adequate to provide efficient and cost effective essential city services. The few people that the City will need to hire to extend services into the new territory are readily available and obtainable within a reasonable budget.

As described in more detail on page 38 of the City's Petition, the taxable value of real and personal property will rise from the City's current \$236,644,954 to \$361,220,155 in the proposed boundary, resulting in a total property tax revenue of \$1,971,157 from within the proposed boundaries, assuming current tax levy rates. Sales tax revenues are expected to increase by \$493,600 to a total of \$2,447,352. Thus, total property tax and sales tax revenues from the proposed boundary area are projected at \$4,418,509 annually.

Among all the responsive briefs, none has persuasively shown that the City's projections of operating and capital expenses to extend services are unreasonable. Nor has anyone shown that the tax revenue projections are wrong. By City calculations, the tax revenues will exceed the increased expenditures. Therefore, there will be adequate financial resources to provide the essential services.

E. The Population Within The Proposed City Boundaries Is Sufficiently Large And Stable To Support The Extension Of City Government [3 AAC 110.120]

With an expected population of 6841, and a 30 year history of steady growth in the City, see Exhibit 71, there cannot be any serious question about whether the population is large and stable enough to support the extension of city government.

⁹ Homer was incorporated on March 31, 1964.

¹⁰ Includes land and water area within current City boundaries.

F. The Proposed Boundaries Of The City Include All Land And Water Necessary To Provide The Full Development Of Essential City Services On An Efficient, Cost-Effective Level [3 AAC 110.130(a)]

There are no areas outside the proposed boundaries that are crucial to the full development of essential city services on an efficient, cost-effective basis. One of the most crucial areas for inclusion is the Bridge Creek watershed, which is necessary for the provision of treated water to the residents of Homer. It is included within the proposed boundaries.

From another perspective, inclusion of all of the proposed annexation territory is necessary to allow the City to continue to provide city services on an efficient, cost-effective level. As noted previously, numerous city services are used by nonresidents who are not property tax payers. In order for the City to continue to provide such services efficiently and cost-effectively, the properties in the annexation territory should be included in the city and its tax base.

G. The Annexation Territory Is Contiguous To The City [3 AAC 110.130(b)]

It is not contested that the area proposed for annexation is contiguous with the City of Homer.

H. The Proposed Annexation Territory Includes That Area Comprising The Local Community Plus Reasonably Predictable Growth, Development, And Public Safety Needs For The Next Ten Years [3 AAC 110.130(c)]

As noted previously, the population of the annexation territory is estimated (1990 Census) at 2687, which would make it Alaska's 17th largest city if it incorporated independently. One could readily make the case that the area could easily have been annexed 10 years ago, so it is certainly reasonable to conclude now that both (a) the annexation territory is already a part of the local community, and (b) over the next ten years there will continue to be growth, development, and public safety needs that should be addressed by inclusion of the area within City boundaries. Although it is disputed by many, the City continues to believe that no excess territory is included in the proposed boundaries.

I. The Annexation Territory Excludes Large Unpopulated Areas Except As Justified By Annexation Standards [3 AAC 110.130(d)]

If the annexation is approved, Homer's new population is estimated to be 6841, which would rank it as the 5th most populous city in Alaska. Its new land area will be 36.58 square miles and its total area (land and water combined) will be 46.58 square miles. These figures yield a post-annexation population density of 187 persons per square mile if only the land area is considered, or 147 persons per square mile if both land and water areas are considered.

These densities are quite comparable to the population densities of Alaska's ten most populous cities (not including Homer).¹¹ The average land area of Alaska's ten most populous cities is 47.9 square miles. The average combined land and water area of the ten cities is 65 square miles. The total population of the ten cities is 81,764, yielding an average population of 8,176. See Exhibit 69. Therefore, the average density of the ten cities is 171 persons per square mile when land only is considered, or 126 persons per square mile when land and water are both considered. Thus, under either method of computation, Homer's anticipated post-annexation population density will be greater than the average of Alaska's ten largest cities.

It is entirely to be expected that the population density of the annexation territory varies from place to place within the territory. However, the fact that some spots are uninhabitable because of terrain, or that other areas are less densely populated for other reasons (e.g. Crossman Ridge) does not indicate the presence of large areas of unpopulated land. When compared to similar cities of large population, Homer will be more densely populated than the average, indicating that by Alaska standards excessively large unpopulated areas are not being included.

Another indicator that excessively large areas of unpopulated land are not being included is the level of development within the annexation territory. The per capita assessed value of real and personal property in the current City limits is \$56,487, while the per capita assessed value in the annexation territory is \$47,107. These figures compare very favorably. They show that the development of the annexation territory is very significant, especially when one takes into account that most of the commercial and business properties are located in the City, while the annexation territory is predominantly residential on larger lots and parcels.

**J. Annexation Will Serve The Balanced Best Interests Of The State, The Annexation Territory, And Affected Political Subdivisions
[3 AAC 110.140]**

One of the factors that may be considered under 3 AAC 110.140 is that the residents or property owners within the annexation territory receive, directly or indirectly, the benefit of city government without commensurate tax contributions. The benefits of Homer's city government are received by and rendered to annexation territory residents, both inside and outside the territory to be annexed. As discussed previously in this brief, those benefits include, but are not limited to, fire and EMS service, jail and police dispatch services, voter services, port and harbor services, economic development benefits, parks, city roads, and the public library.

¹¹ The ten most populous cities are Fairbanks, Ketchikan, Kenai, Kodiak, Bethel, Wasilla, Barrow, Palmer, Unalaska, and Valdez.

Property owners in the annexation territory do not make a commensurate contribution for these services. They pay no City property taxes, unlike their neighbors in the City. Sales tax and user fee increases cannot practically make up for this deficiency. Increasing City sales taxes will only intensify the present tendency of businesses to locate outside City boundaries to avoid City taxes. User fees cannot practicably be increased to levels sufficient to pay the actual costs of fire and EMS service, for example, nor is it consistent with the mission of the public library or public parks to charge significant user fees commensurate with the cost of providing these services.

Another factor favoring this annexation is the strong indication that additional service areas are likely to be formed to provide services in the area if annexation does not occur. This will result in a proliferation of local government units contrary to the state constitutional policy of limiting the number of local government units. Alaska Constitution, article X, section 1. Furthermore, the proliferation of several specialized local government units with limited powers tends to degrade the equity, efficiency, and cost-effectiveness in the delivery of local government services, especially when established on the borders of an existing City for the purpose of hemming it in.

The State interest favors cities over local service areas. Local government powers are vested in boroughs and cities, Alaska Constitution, article X, section 2. No government powers are vested in service areas. Furthermore, a new service area may not be legally formed when the service can be provided by annexation to a city, AS 29.35.450(b). The Alaska court has confirmed the statutory and constitutional preference for cities over the establishment of new service areas. See Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995). Clearly it is in the state interest to approve annexation in preference to forming new local service areas.

Maintaining the financial health of Alaska's cities, Homer in particular, is an important interest of all concerned—the City, the Borough, the State, and the residents of the annexation territory. A desire to halt the migration of sales tax producing businesses outside the city boundaries has factored into several recent annexation cases. See DCED, *Preliminary Report to Local Boundary Commission Concerning Annexation of 1.2 Square Miles to the City of Ketchikan*, pp. 73-76 (October 1999). The same tendency of businesses to locate just beyond City boundaries, thus impairing the financial health of Homer, favors annexation in this case.

Annexation is the most appropriate means to ensure that the City of Homer maintains both legal jurisdiction and financial ability necessary to continue to fund the broad array of essential services that benefit the residents of both the City and the outlying areas. Doing so is in the interests of the residents and property owners of the City as well as those in the annexation territory. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. This will degrade the quantity and quality of essential services available to a substantial number of residents of the annexation territory and place greater burdens on the Borough and the State.

It is also in the interests of the City and the residents of the annexation territory to enfranchise the residents of the territory. Much that the City government does affects the large number of community residents who reside outside the City limits. While the City has already put a number of these community residents on formal City boards and commissions, those living outside the City limits have never been allowed to vote in City elections. Furthermore, they have expressed frustration at being denied direct input in Homer City Council decisions. For example, the suit Citizens Concerned About Annexation v. City of Homer, 3HO-0032 CI, Superior Court in Homer, dealt for the most part with claims by residents of the annexation territory that they did not have adequate notice and opportunity for input into the Homer City Council's decision to file this annexation petition. They clearly want to have more input in City actions that might have significant impact on them. There is no more direct or effective way to give them the right to give such input than to include them in the City's boundaries and give them the right to vote.

There are many reasons why this annexation is in the balanced best interests of the annexation territory, the City, the Borough, and the State. Cities are the State's constitutionally preferred means of providing essential government services on local level. Cities have the flexibility to adjust to varying demands within their boundaries. City government officials are highly accountable to their constituents, both formally (City Council meetings and the voting booth) and informally (encounters at the park, the post office, and the grocery store). It is contrary to the best interests of the City, the State, the Borough, and the annexation territory to have such a large unorganized population perched on the outskirts of the City, where it is dependent on the City for many essential service benefits and constitutes a drain on the City's resources without contributing politically and financially to the City's well-being.

VI. CONCLUSION

The high level of interest in and opposition to the City's petition is not unexpected. The most bitter opposition to the City's petition seems to be a direct backlash to the procedure for annexation by legislative review. However, annexation by legislative review without a vote of the people has been tested in court and approved under both state and federal constitutions. It is the most common procedure used for annexation in Alaska. The emotional response resulting from the public's lack of understanding and resentment toward this lawful procedure should not be a factor in the consideration of the merits of the petition. The City is confident that the DCED and the Local Boundary Commission will not let that happen.

The City's annexation petition is meritorious and should be approved.

Dated this ____ day of _____, 2000.

City of Homer

By: _____

Ronald Wm. Drathman
City Manager

EXHIBIT LIST