Darroll Hargraves, Chairperson
Shelley Dugan, Vice-Chairperson
Fourth Judicial District

Frances Hallgren, First Judicial District
Myrtle Johnson, Second Judicial District
Helen Salmeier, Third Judicial District

Local Boundary Commission

Statement of Decision

IN THE MATTER OF THE)
MARCH 16, 1993 PETITION OF)
THE CITY OF SELDOVIA FOR)
ANNEXATION OF 42.8 ACRES)

SECTION I
INTRODUCTION & DESCRIPTION OF AREA

On March 16, 1993, the City of Seldovia petitioned the Local Boundary Commission to annex approximately 42.8 acres. The territory petitioned for annexation consisted of the two distinct groups of property noted below.

1. Remainder of Airport. The City petitioned to annex that portion of the State airport not already within its boundaries. The City estimated that the area encompassed approximately 36.6 acres. Private leasehold interests, privately owned aircraft and other property within that area were reported to have a taxable value of $113,300.

During the annexation proceedings, it was discovered that the City's petition had inadvertently excluded a 1985 extension of the north end of the airport runway. The runway extension encompassed approximately 1.8 acres.

2. Enclaves. The City also petitioned to annex what it identified as thirteen enclaves within its corporate boundaries. Collectively, the enclaves comprised approximately 6.2 acres. The thirteen areas included all or portions of 36 privately owned lots and segments of public rights-of-way along the waterfront. According to the City, the enclaves were inhabited by 3 persons.

Although a precise figure for the taxable value of the enclaves did not exist, the City of Seldovia estimated the value of such at $908,935. The City's petition estimated that businesses within the enclaves generated $4,000 in sales tax revenue for the City annually.

SECTION II
SUMMARY OF PROCEEDINGS

The major steps in the formal annexation proceedings are summarized below.

03/10/93 - Seldovia City Council adopted Resolution 93-5 authorizing the petition.

03/16/93 - Seldovia City Manager completed preparation of the petition.

03/17/93 - Petition was lodged with the Department of Community & Regional Affairs (DCRA).

04/06/93 - DCRA completed its technical review of petition and accepted the petition for filing.

04/08/93 - Public notice of the filing of the petition was published in the Homer News, a newspaper of general circulation in Seldovia.

04/14/93 - Notice of the filing was posted at the Seldovia Post Office, Seldovia Mart, Seldovia City Office and Seldovia Public Library.

04/15/93 - Notice of the filing was published for the second time in the Homer News. Notice was also posted at the Seldovia Airport, William C. Lethin property, Carl & Helen Hille property and the Deepak Kumar Stokes Cannery.

04/20/93 - Notice of the filing was mailed to more than 30 parties, including all owners of real property in the areas proposed for annexation, the news media serving the area, officials of the Kenai Peninsula Borough and other government officials.

04/22/93 - Notice of the filing was published for the third time in the Homer News.

04/28/93 - A copy of the petition was served on the Kenai Peninsula Borough, the City of Homer and the City of Kachemak.

04/29/93 - Copies of the petition were made available for public review at the Seldovia Library and the Seldovia City Office.

06/04/93 - The deadline was reached for filing responsive briefs and written comments regarding the petition. No briefs were filed, however, written comments were submitted by four parties by this date.

06/07/93 - The City of Seldovia responded to the comments from the four parties.

06/21/93 - DCRA issued its draft report concerning the annexation proposal. Copies were distributed to more than 50 parties, including all owners of real property within the area proposed for annexation, news media serving the area and various state and local government officials.

07/15/93 - Notice of the August 26 public hearing was mailed to 65 parties.

07/22/93 - Notice of the hearing was published in the Homer News.

07/23/93 - The deadline was reached for filing comments on DCRA's draft report. Comments were submitted by four parties by this date.

07/26/93 - Notice of the hearing was posted at the Seldovia Airport, Lethin property, Hille property, Stokes property, Seldovia City Office, Seldovia Post Office, Seldovia Library and Seldovia Mart.

08/03/93 - DCRA issued its final report on the proposed annexation. Copies were provided to 66 parties.

08/05/93 - Notice of the hearing was published for the second time in the Homer News.

08/15/93 - DCRA requested that KBBI-AM, a radio station serving Seldovia, broadcast public service announcements of the hearing.

08/19/93 - Notice of the hearing was published for the third time in the Homer News.

08/26/93 - Commissioners Hargraves, Hallgren, Salmeier and Johnson traveled to Seldovia. All four Commission members toured the community, including the areas proposed for annexation, before the hearing.

The Commission conducted a public hearing on the annexation proposal at the Seldovia Public Library. The hearing began at 7:30 p.m. and ended at approximately 11:00 p.m. Fourteen individuals provided testimony or comments to the Commission. Following the hearing, the Commission asked DCRA for information concerning the possible inclusion of the 1985 airport runway extension.

08/27/93 - Notice of the September 10 decisional session was mailed to 66 parties. Notice was also posted at the Seldovia Airport, Lethin property, Hille property, Stokes property, Seldovia City Office, Seldovia Post Office, Seldovia Library and Seldovia Mart. Additionally, KBBI-AM was requested to broadcast public service announcements of the decisional session.

09/02/93 - Notice of the September 10 meeting was published in Homer News.

09/03/93 - DCRA provided information requested by the Commission at its August 26 hearing concerning the possible inclusion of the 1985 airport runway extension.

09/10/93 - Commissioners Hargraves, Salmeier, Hallgren and Johnson met by teleconference to act on the petition. The Seldovia City Office was included among the teleconference sites. During the meeting, the Commission amended and approved the petition. The amendment expanded the area approved for annexation to include the 1.8 acre 1985 extension of the Seldovia airport runway. The decision of the Commission was unanimous among the four members who participated.

SECTION III
FINDINGS AND CONCLUSIONS

This section reports the Local Boundary Commission's formal findings and conclusions regarding the annexation proposal. These findings and conclusions are based upon:

1. The March 16, 1993 petition of the City of Seldovia;
2. Written comments opposing and supporting the annexation proposal;
3. DCRA's draft and final reports;
4. Written comments concerning DCRA's draft report;
5. Personal observations made in the course of the Commission's tour of the areas proposed for annexation;
6. Testimony at the August 26 hearing, and
7. DCRA's letter of September 3, 1993, concerning the possible inclusion of the 1985 Seldovia airport runway extension.

1. THE NEED FOR CITY GOVERNMENT IN THE TERRITORY IN QUESTION.

In considering the reasonable need for city government in the areas proposed for annexation, the Commission examined the following issues:

- arguments that the enclaves may already be within the jurisdiction of the City;
- the need for city services in the enclaves;
- the need for city services at the airport;
- whether essential city services can be provided more efficiently and more effectively to the areas proposed for annexation by another existing city or by an organized borough;
- the level of development and activity in the territory proposed for annexation; and
- the proximity of the territory proposed for annexation to the area within the existing boundaries of the City.

Arguments that the Enclaves are Already Within the Jurisdiction of the City. The 36 lots and portions of rights-of-way that make up the enclaves were created when the State filled in the tidelands and submerged lands in Seldovia during the mid-1960's. DCRA reported that McQuillin on Municipal Corporations, the standard treatise on municipal law, offers the argument that the City's original western boundary (which was coterminous with the line of mean high tide) was automatically extended as a result of the filing in the tidelands and submerged lands. Specifically, McQuillin Mun Corp § 7.06 (3rd Ed) states, in part:

> *. . . generally speaking the rules of construction as to descriptions of boundaries of municipal corporations bordering on a navigable or non-navigable water are the same as are applicable to a description in a grant of land so situated to an individual. If an individual has a right to extend his land by filling in and making improvements into the water and does so, the boundary of the municipality is extended in the same way and to the same extent. Boundaries on navigable waters may be extended for purposes of jurisdiction by the building of wharves, piers or structures, permanently filled in with earth and extending into the water; or, by natural accretions or gain of soil or alluvion; or, the filling out from the shore and reclaiming the land from the inundation of the water. . . . To extend the jurisdiction, the improvements must be permanent structures of a fixed nature, e.g., wharves, piers, warehouses, or the filling out from the shore.* (emphasis added)

DCRA noted further that McQuillin offers a second argument that the enclaves are legally under the jurisdiction of the City due to long acquiescence to City jurisdiction by all parties. McQuillin Mun Corp § 7.09 (3rd Ed) states, in part:

> *Although contrary authority exists, long acquiescence in the location of municipal boundaries by the corporation and the inhabitants thereof where all municipal action and improvements have been done under the assumption that such are the boundaries will support the conclusion that such are the true boundaries, notwithstanding they were not originally so located. Particularly is this true where there is doubt as to what the true boundaries were in fact, or as to the legality of their establishment, or where personal, civil and political rights have become fixed according to the boundaries established by usage. Thus after the lapse of nearly twenty years every presumption must be in favor of the regularity of proceedings to attach certain territory to a town. It has been held that the exercise of corporate powers over a place with knowledge of the public is a waiver of irregularities in its organization curing inaccuracies in the original survey and map, and is conclusive evidence of a valid corporation by prescription; sometimes territory has been said to have become, through long acquiescence in that status, a de facto part of a municipal corporation; and while the mere payment of taxes upon lands erroneously assessed in a city will not establish or extend municipal boundaries, nor constitute such acquiescence on the part of the owners as will estop him from claiming that the land is not within the city, property assessed and taxed by a city for a long period of time may, in a proper case, be held to be within the corporate limits.* (emphasis added)

Concerning the above, it is noted that from the mid-1960s to 1992, the businesses, homes and other properties in the enclaves had apparently been assumed by all parties to be within the boundaries of the City of Seldovia. During that time, City sales taxes were levied and received on retail sales occurring in the area. The City also levied and received real and personal property taxes in the area.

Notwithstanding the filing of the City's formal annexation proposal, the Kenai Peninsula Borough continued to collect City property and sales taxes within the enclaves. It is noted, however, that the Seldovia Native Association recently wrote to the City of Seldovia requesting the repayment of $47,846.71 in "wrongful taxes" levied by the City on its property within the enclaves, plus "no less than $34,965" in interest.

From the mid-1960s to the present, full services of the City of Seldovia have been provided to the area in question and the City has otherwise exercised its complete jurisdiction over that area. Until recently, neither the City, property owners, residents nor the commercial tenants in the area questioned the jurisdiction of the City over the territory.

Further, until recently, individuals living in the enclaves enjoyed full personal, civil and political rights of citizens of the City. However, Susan Mumma — a property owner and resident of one of the enclaves — testified at the Commission's hearing that she was denied the right to vote in the City's October 1992 election. She testified further that she was also informed that she could not become a member of a particular government commission because she was not a city resident. Ms. Mumma noted her long-standing belief that her property was already within the boundaries of the City. She urged that the restoration of her civil and political rights be addressed through annexation.

The actions of the City of Seldovia regarding Ms. Mumma might have weakened the case for claiming that her property is within the jurisdiction of the on the basis of long acquiescence to the City's jurisdiction. However, it must also be noted that Ms. Mumma testified that she did not pursue her right to vote by casting a challenged or questioned ballot at the election, or otherwise appealing the determination that she was not eligible to vote in the October 1992 City election. If any weakening of the argument did occur, it should be limited only to Ms. Mumma and any others who were similarly denied civil or political rights by the City.

Notwithstanding all the above, the Commission recognizes that the issue of the enclaves needs to be resolved definitively. Formal annexation of the area in question is probably the most efficient and expeditious means of doing so. However, no statement or action by the Commission regarding this matter is intended to add legitimacy to the claim by the Seldovia Native Association or any other party that property taxes have been wrongfully levied and collected by or on behalf of the City of Seldovia.

Given the preceding facts, the Commission finds that two persuasive arguments exist that the enclaves are technically within the jurisdiction of the City of Seldovia. One of the two arguments might have been weakened somewhat with respect to certain of the properties within the enclaves. Formal annexation of the territory in question appears to be the best way to put to rest all questions regarding the jurisdiction of the City over the area in question.

Need for City Services Within the Enclaves. DCRA's report addressed the need for City services in the enclaves. For example, the report noted that property owners and residents of the enclaves receive, either directly or indirectly, City fire protection, EMS, parks and recreation, road maintenance, water and sewer utilities, small boat harbor, dock, police, jail cemetery, library, clinic and mental health services.

During the Commission's hearing, Jere Murray took exception to the manner in which DCRA characterized the services provided by the City. For example, he noted that DCRA failed to recognize that the State of Alaska also maintains roads within the City's boundaries (he claimed that the State maintains about one-fourth of such roads). He also noted that the report indicates that the Borough provides senior citizen programs, when the State pays about 80% of the cost of such services.

The Commission is quite familiar with the manner in which State and local government services are commonly provided throughout Alaska. The Commission recognizes that the State of Alaska funds many local government services and facilities directly or indirectly. For example, direct funding of services is provided in most, if not all, municipal governments in Alaska through State owned, operated and maintained airports and/or roads. Indirect funding is provided for the construction of many facilities such as harbors, schools, water facilities and sewer utilities. State funding for the indirect operation of many of those facilities is provided by a host of programs such as the education foundation funding, revenue sharing and municipal assistance programs.

The Commission never viewed DCRA's report as attempt to overstate the level of services provided by the City. Rather, the report was understood to identify services which the City has the legal authority to offer and which it does indeed provide. The report clearly stated the level of funding for services provided by the City. For example, while the report states that the City provides emergency medical services, it also notes that only $5,900 was appropriated for that function and that the City acknowledged that it provides only about 20% of the cost of providing that particular service.

Beyond Mr. Murray's comments, there was little dispute of the need for city services in the enclaves. For example, even though he spoke against the annexation, Earl Hensley of the Linwood Bar testified that his business uses city services. Fred Elvsas another property owner in the enclaves also testified against the annexation, but stated the belief that his property should be annexed. Mr. Elvsas was, however, opposed to the use of the legislative review method to annex his property.

Further, Mr. Elvsas — representing the Seldovia Native Association (SNA) — expressed opposition to the annexation of SNA property. He indicated the belief that the SNA property was not an enclave because the area that was annexed to the City on September 25, 1992 included only City owned uplands, tidelands and submerged lands (i.e., it did not include the water itself which links the SNA property in question to other SNA properties).

The Commission rejects SNA's argument that the property in question is not totally surrounded by territory already within the jurisdiction of the City. Further, the Commission notes that the merits of annexing the property in question do not rest on whether the property is an enclave.

On the basis of the foregoing facts, the Commission finds that there is a need for city services within the enclaves.

Need for City Services at the Airport. Approximately 15.2 acres of the Seldovia airport presently lie within the boundaries of the City of Seldovia. Initially, it was reported that only 36.6 acres of the airport were outside the City. However, it was subsequently determined that the City's annexation proposal inadvertently excluded an estimated 1.8 acre extension of the airport runway completed in 1985.

Several parties wrote and testified in opposition to the annexation of the remainder of the airport. Many disputed the need for city services at the airport. Jere Murray wrote, "*. . . there does not appear to be any such need [for city government at the airport].*" Judi Johnson expressed her belief at the hearing that, "*. . . the City is not now and cannot in the future provide any services to the proposed annexation of the airport.*" Sandra Murray testified that the City should be required to assume operation and maintenance of the airport from the State if it annexes the remainder of that facility.

These sentiments suggest the belief by some that because the City of Seldovia has no desire to assume responsibility for the operation and maintenance of the airport, it should not be within the City. The Commission notes, again, that it is quite common for State owned and operated airports, harbors, roads and other transportation facilities to be within the boundaries of city governments throughout Alaska.

The fact that the airport is maintained by the State does not mean that there is no need for City services at the airport. Indeed, Earl Hensley, who indicated at the hearing that he has "almost 9,000 hours of pilot-in-command time", characterized the airport as one that is challenging to pilots. He testified that there has been an average of about one airplane accident at the airport every six months.

The City formally provides emergency services that respond to accidents at the airport — these include police, fire protection, ambulance and emergency medical. The Commission understands that such services are supported, to an extent, by parties other than the City. For example, residents living inside and outside the City serve as volunteers who provide fire protection and emergency medical services. Additionally, the Alaska Department of Public Safety provides limited funds for contractual service by the Seldovia Police outside the City boundaries, and the Seldovia Native Association (through a federal grant) provides funds for the community's Emergency Medical Services Director.

Further, the Commission recognizes that individuals who purchase goods and services within the boundaries of the City pay sales taxes that are used to partially fund the services in question. Jere Murray estimated that about one-third of the City sales taxes are paid by individuals who live outside the City.

However, the Commission also recognizes that City contributes substantially to the provision of the services in question. DCRA reported that the City's current fiscal year budget appropriates $51,261 for fire protection, $5,900 for emergency medical services and $114,842 for police services.

A. W. Anderson, Police Chief of the City of Seldovia, testified that the level of State support for police services outside the City's boundaries is $10,600 annually — less than one-tenth of the Police Department's budget. He noted, however, that of 28 criminal charges recently brought by the City, 21 (75%) stemmed from incidents occurring outside the City. He testified further that during the same time, the Police Department responded to 420 "incidents", 115 (27.4%) of which occurred outside the City.

Gerald Willard, Mayor of the City of Seldovia, testified in favor of the annexation. With respect to the services available to and needed at the airport, he informed the Commission that the City also provides a fire hydrant near one of the hangers.

One major insurance company surveyed by DCRA indicated that it rates property at the airport and other property within 5 miles of the Seldovia fire hall as being within an "insurance protection class 8." Without the Seldovia Fire Department, such property would be in an insurance protection class 10. The difference between the two classes is substantial. The insurance company which was surveyed indicated that it charges about 30 percent more to insure property in a class 10 area than it would charge in a class 8 area.

Further, the level of insurance protection available in a class 8 area is much greater than in a class 10 area. For the company surveyed, full replacement coverage on buildings would be unavailable altogether in a class 10 area, but is available in a class 8 area. It was indicated that the same would likely be true for theft insurance.

Given the facts outlined in this segment, the Commission finds that there is a need for city services at the Seldovia airport. This need extends to all developed portions of the airport, including the 1.8 acre extension of the runway inadvertently excluded from the City's petition.

Alternative Service Providers. This segment examines whether essential city services can be provided more efficiently and more effectively to the area proposed for annexation by another existing city or by the Kenai Peninsula Borough.

The nearest neighboring city governments are the City of Homer and the City of Kachemak. Both are on the opposite shore of Kachemak Bay, approximately 16 miles north of the area proposed for annexation. Given this circumstance, the Commission finds that no other existing city government is able to serve the area proposed for annexation more efficiently and effectively than the City of Seldovia.

The Kenai Peninsula Borough does, however, provide many essential services to Seldovia, including the area proposed for annexation. These services include primary and secondary education, assessment and collection of taxes, planning, platting, land use regulation, solid waste disposal and "911 communications."

However, there is no indication that the Borough plans the extension of additional services to the area proposed for annexation. Even if it were willing to do so, it may face obstacles that would prevent it from providing the level of services currently provided by the City of Seldovia.

Unless the Borough arranged to provide additional services on an areawide or non-areawide basis, it could do so only by creating new service areas. However, Alaska's Constitution and statutes prohibit the creation of any new service area so long as the desired service can be provided through annexation to an existing city.

This strong preference for annexation over the formation of new service areas stems from Article X, § 1 of the Constitution. That provision states that the purpose of the local government section of the constitution is "to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions" (emphasis added). According to *Borough Government in Alaska* (Morehouse & Fischer, March 1971), the purpose of the limitation on the creation of new service areas, *". . . was to avoid having 'a lot of separate little districts set up . . . handling only one problem . . .'; instead, services were to be provided wherever possible by other jurisdictions capable of doing so."*

As fundamental as these issues are, they do not address whether the Borough might be capable of providing the services in question more efficiently and effectively than the City. In order for the Borough to provide the services independent of the City of Seldovia, it would have to obtain equipment (e.g., fire truck, police car, ambulance), provide one or more buildings to house the equipment, hire staff to perform the services and so on. Given the poor economies of scale associated with such a prospective operation, it seems rather obvious that it would be particularly inefficient. Thus, it is apparent that the Borough could not provide essential city services to the area in question more efficiently or effectively than the City of Seldovia.

All of this notwithstanding, DCRA reported that the Seldovia City Manager has indicated that financial circumstances may lead the City to begin exploring the merits of establishing a borough fire service area to encompass the area outside the boundaries of the City. Rather than obtaining and maintaining separate equipment, the fire service area would use the equipment and other resources of the Seldovia Fire Department.

Unless the City of Seldovia relinquished its power to provide fire protection and became part of the prospective borough fire service area, a proposal to form a fire service area would seem to contravene constitutional and statutory provisions noted earlier.

It would be prudent for the City of Seldovia to carefully consider the long-term consequences that might result from the formation of a fire protection service area. The prospect of creating a service area may hold certain attractions because such might be accomplished more quickly than annexation and it would likely be more politically acceptable to the residents outside the City. However, creation of a fire service area would clearly weaken arguments for annexation of inhabited and developed territory outside the boundaries of the City.

While creation of the fire service area might address the immediate financial needs of the Fire Department, it does nothing to resolve the bigger issue of providing other city services to the territory outside the boundaries of the City. For example, the City should consider the consequences of a hypothetical decision by the Alaska Department of Public Safety to — as it recently did in the cases of Wasilla, Juneau and the Hillside area of Anchorage — discontinue community-level protection for the territory outside the City of Seldovia.

The resulting loss of more than $10,000 by the City in contract fees from the Troopers would seem to require one or a combination of the following: increased property taxes, reduced services, creation of another borough service area, or annexation.

The Commission encourages the City and the Kenai Peninsula Borough to carefully consider the feasibility of a broader annexation during any future deliberations on the issue of the prospective borough fire service area.

On the basis of the facts set out in the discussion of alternative service providers, the Commission finds that the City of Seldovia is most capable of efficiently and effectively providing essential city services to the areas proposed for annexation.

Level of Development and Activity. This segment addresses the level of development and activity in the territory proposed for annexation.

The 36 lots that make up the enclaves contain a number of substantial developments, including:

- The Deepak Kumar Stokes cannery (idle);
- The Deepak Kumar Stokes bunkhouse (idle);
- Seldovia Native Association fish processing plant (idle);
- Seldovia Native Association dock (poor condition);
- Linwood Package Liquor Store;
- Linwood Bar;
- One building serving as a gift shop/bookstore and bed & breakfast;
- Two buildings used for storage;
- Two unoccupied homes;
- One unoccupied commercial/residential building.

The assessed value of the 36 lots <u>in their entirety</u> (i.e., including the areas both inside and outside the City), amounts to $1,817,870. While these properties encompass only four percent of the area within the proposed post-annexation boundaries, they represent nine percent of the taxable value within the same area. The relationship of value to area (9% to 4% or 2.25:1) reflects the substantial development and importance of the properties to the community.

The modest taxable value of the airport (0.6% of the value within the proposed post-annexation boundaries), stems from its largely tax-exempt status. The figure does not reflect the true level of development and activity at the airport.

Given the facts noted in this discussion of the level of development and activity in the areas proposed for annexation, the Commission finds that these areas contain extensive development.

Proximity. This segment addresses the proximity of the territory proposed for annexation to the area within the existing boundaries of the City.

By definition, all the enclaves are surrounded by property already within the boundaries of the City. The airport is contiguous to the boundaries of the City of Seldovia. The area petitioned for annexation encompasses a modest 42.8 acres. The 1985 airport runway extension would expand the area to 44.6 acres.

The Commission finds that the 44.6 acres in question are compact and immediately adjoining the existing boundaries of the City of Seldovia.

CONCLUSION. Based upon the findings set out in the discussion of this particular standard, the Commission concludes that there is a reasonable need for city government in the 42.8 acres petitioned for annexation, plus the 1.8 acre runway extension. Thus, the standard set out in 19 AAC 10.090 is satisfied concerning this area.

2. THE COMPATIBILITY OF THE CHARACTER OF THE TERRITORY PROPOSED FOR ANNEXATION WITH THE EXISTING CITY.

Factors relevant to a comparison of the character of the territory proposed for annexation and the area within the city include the following:

- land use;
- subdivision platting;
- salability of land for residential, commercial, or industrial purposes;
- population density; and
- suitability of the territory for reasonably anticipated community purposes.

Land Use. The enclaves include a mix of residential, commercial and industrial uses. Approximately 19 of the 36 lots are vacant. According to the City's annexation petition (page 20), the enclaves are part of the "same zoning classification as the adjoining property" already within the City.

With respect to the airport, the land use at that part of the airport outside the City's boundaries is identical to the land use at that part of the airport inside the City.

Subdivision Platting. The 36 lots that make up the enclaves are subdivided into lots similar in size and shape to lots within the City. The average size of the lots in question is less than one-quarter acre.

The airport property is divided into a number of tracts, each of which is further divided into several parcels. The platting of the 36.6 acres of the airport outside the City is compatible with the 15.2 acres of the airport inside the City.

Salability of Land. All the 36 lots comprising the enclaves are privately owned. In that sense, the property is available for sale as residential, commercial or industrial property. The airport property is owned by the State of Alaska and is not available for sale.

Population Density. According to the City's petition, the enclaves are inhabited by 3 permanent residents. The population density of these enclaves, based upon 6.2 acres, is 310 persons per square mile. The population density within the City, based on 306 acres and 302 permanent residents, equals 632 persons per square mile. Thus, the population density of the permanent residents of the enclaves is half that of the area within the City. The airport has no permanent residents.

Suitability for Community Purposes. A community is defined as a social unit with permanent residents living in close geographic proximity, with a population density characteristic of neighborhood living. With its proximity and availability for residential, commercial and industrial purposes, the property within the enclaves is clearly suitable for community purposes.

On the basis of the facts outlined in this segment, the Commission finds that the enclaves and the area within the boundaries of the City share similar characteristics concerning land use, subdivision platting, salability of land for residential, commercial and industrial purposes and, lastly, suitability for community purposes. The enclaves have a lower density of permanent residents than the existing city. The airport property proposed for annexation shares fewer characteristics with the area generally inside the City. However, about one-third of the airport is already within the boundaries of the City. The two segments of the airport (i.e., the part inside the City and the part outside the City) are virtually identical in character to each other. Given the importance of air transportation to the isolated community of Seldovia, the airport is clearly an important part of the community.

CONCLUSION. Based upon the foregoing findings, the Local Boundary Commission concludes that the enclaves and the airport (including the 1.8 acre runway extension) are compatible in character with the territory presently within the City of Seldovia. Thus, the standard set out in 19 AAC 10.100 is satisfied.

3. THE HUMAN AND FINANCIAL RESOURCES TO PROVIDE FULL DEVELOPMENT OF ESSENTIAL CITY SERVICES ON AN EFFICIENT, COST EFFECTIVE LEVEL.

In analyzing whether the City will have the resources to efficiently serve the area proposed for annexation, the Commission considered the following factors:

- the extent to which the City is presently serving the area proposed for annexation; and
- anticipated revenues and expenses resulting from annexation.

Current Service by City. This factor was addressed in detail regarding the standard relating to the need for city government. Based on determinations made under that standard, the Commission finds that the City is providing services to the enclaves and the airport. The level of current service to the enclaves and airport creates the strong presumption that the City has the resources to continue to serve those areas. Of course, the City has been providing those services, in part, with property and sales taxes collected within the enclaves. If those revenues were no longer available, the City would presumably have to curtail its services.

Revenues and Expenses. DCRA reported that the enclaves would generate $7,044 in annual City property tax revenues, based on current tax rates and the estimated value of the area proposed for annexation. Further, DCRA reported that the City estimates that businesses within the enclaves generate $4,000 in sales tax revenue for the City annually. If the Deepak Kumar Stokes cannery opens, the territory will generate additional revenues for the City in the form of fisheries business taxes. Those taxes are levied by the State and shared with the City. Such shared taxes might amount to several thousand dollars annually.

With respect to the reasonably estimated cost of providing services to the enclaves, it is important to realize that the City is already providing full municipal services to those properties. Thus, annexation of the enclaves will not increase the expenses of the City beyond the current level. Given the characteristics of the enclaves (proximity, limited population, services already being provided), the Commission finds that the $11,000+ in annual revenues is adequate to allow the City to continue to serve the enclaves on an efficient basis.

Annexation of the airport is likely to generate little in the way of revenue for the City. DCRA reports that at the present tax rate, the annexation of the airport property would generate an additional $878 in annual City property taxes. Taxable retail sales at the airport property would likely be minor. The Seldovia City Manager speculated that the City sales tax collections at the airport might amount to $1,200 annually if the property were annexed. While the annexation of the airport is expected to generate little revenue, it is not likely to add substantially to the cost of providing City services.

The Commission finds that there will be little or no demands upon the City's human resources as a result of the annexation of the areas in question. Further, it appears that annexation will be financially feasible for the City.

CONCLUSION. Based upon the findings outlined in the discussion of this particular standard, the Local Boundary Commission concludes that the City has the capacity, using its existing staff and other resources, to serve the airport and the enclaves on an efficient, cost effective level. Such can be done without any significant increase in expense to the City. Thus, the standard set out in 19 AAC 10.110 is satisfied.

4. THE CAPACITY OF THE POPULATION TO SUPPORT THE EXTENSION OF CITY GOVERNMENT.

In considering whether this standard is met, the Commission examined the potential demands that annexation would place on the elected officials and staff of the City of Seldovia. The area proposed for annexation is a mere 42.8 acres. Adding the airport runway extension brings the total area to 44.6 acres. Reportedly, only 3 persons live there on a permanent basis. The City of Seldovia's population exceeds 300. On the basis of these factors, the Commission finds that the population of the post-annexation boundaries is sufficient to support the extension of city government to the area, especially because the City already serves the area proposed for annexation.

CONCLUSION. Based on the foregoing, the Commission concludes that the population of the City is large and stable enough to support the extension of city government to the 44.6 acres in question. Thus, the standard set out in 19 AAC 10.120 is met.

5. THE INCLUSION OF ALL AREAS NECESSARY TO PROVIDE THE FULL DEVELOPMENT OF ESSENTIAL CITY SERVICES ON AN EFFICIENT, COST EFFECTIVE LEVEL.

In examining whether this standard is met, the Commission again considered the size of the area proposed for annexation and the relationship of the territory proposed for annexation to the area inside the City. The enclaves and the airport are obviously part of the compact community of Seldovia. The enclaves, in particular, have received City services for more than twenty-five years. Because the City provides services to these areas, their annexation will promote efficiency and cost-effectiveness in the delivery of services by improving economies of scale in the delivery of City services.

In its report, DCRA noted that while the annexation of the territory in question promotes greater efficiency and cost-effectiveness in service delivery, the City's optimum boundaries may be larger.

The Commission finds that the formal extension of city government to the area proposed for annexation will add few additional demands on City officials and staff. The City has been receiving tax revenues from the enclaves that are critical to fund the services provided to the enclaves and the balance of the area within the City.

CONCLUSION. Based upon the findings made with respect to this standard, the Commission concludes that annexation of the 44.6 acres in question will promote greater efficiency and cost-effectiveness in the delivery of service by the City. Thus, the standard set out in 19 AAC 10.130 is met.

6. THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE ANNEXED, AND ALL POLITICAL SUBDIVISIONS AFFECTED BY THE ANNEXATION.

The first task in addressing this standard is to identify the interests of the various parties. Often, the interests of one party may conflict with the interests of another. Even certain interests of a particular party may conflict with other interests of the same party. For example, owners of property in the area proposed for annexation would presumably prefer to avoid having to pay City property taxes (some have stated so directly). However, if those individuals need services from the City (e.g., fire protection, police, emergency medical services), it is certainly in their interests to have such available to them immediately.

The standard set out in 19 AAC 10.140 requires the Commission to balance the various interests to determine the collective interests of the territory proposed for annexation, the community, the region and the state.

The Commission finds that all the various interests would benefit in some manner from annexation. For example, annexation would put to rest any questions over the status of the enclaves. Annexation of properties that receive full services from the City will promote equity and fairness toward those who are already within the City and are paying fully for those services. The annexation would promote proper boundaries so long as it meets the requisite standards. Annexation would enable the City to legally provide essential city services to the area in question. As it is, the City has no express statutory authority to provide certain critical services (e.g., fire protection) outside its boundaries. Lastly, the qualified citizens of the area could enjoy full personal, civil and political rights of citizens of the City. The interests of property owners and residents to avoid paying taxes is balanced against the other interests of being within the City.

CONCLUSION. Based the findings made regarding this particular standard, the Commission concludes that the proposed annexation serves the balanced best interests of the City of Seldovia, the Kenai Peninsula Borough, the territory proposed for annexation and the State of Alaska. Thus, the standard set out in 19 AAC 10.140 is satisfied.

7. THE PROCESS FOR FINAL APPROVAL OF THE ANNEXATION.

Alaska's Constitution places a duty on the Local Boundary Commission to judge an annexation proposal on its merits rather than its political appeal.

After carefully examining the purpose and role of the Commission, the Alaska Supreme Court concluded that those who reside or own property in an area to be annexed by a municipality have no vested right that annexation take place only with their consent. In doing so, the State's highest court recognized that what is right is not always popular and what is popular is not always right. Specifically, the court stated:

> *Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee —*
>
> > ** * * lies in placing the process at a level where areawide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.*

> *We cannot assume that they [the delegates to the Constitutional Convention] were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.*
>
> *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.*

CONCLUSION. The appeal of allowing the voters to give final approval to any annexation must be weighed against the needs and interests of the parties involved. As is so evident in this particular instance, the interested parties are not limited strictly to the residents and property owners of the territory proposed for annexation. They also include the residents and property owners within the current boundaries of the City of Seldovia, the Seldovia City government, the Kenai Peninsula Borough government and the State of Alaska. The balanced interests of the various parties involved in this matter warrant the use of the legislative review process.

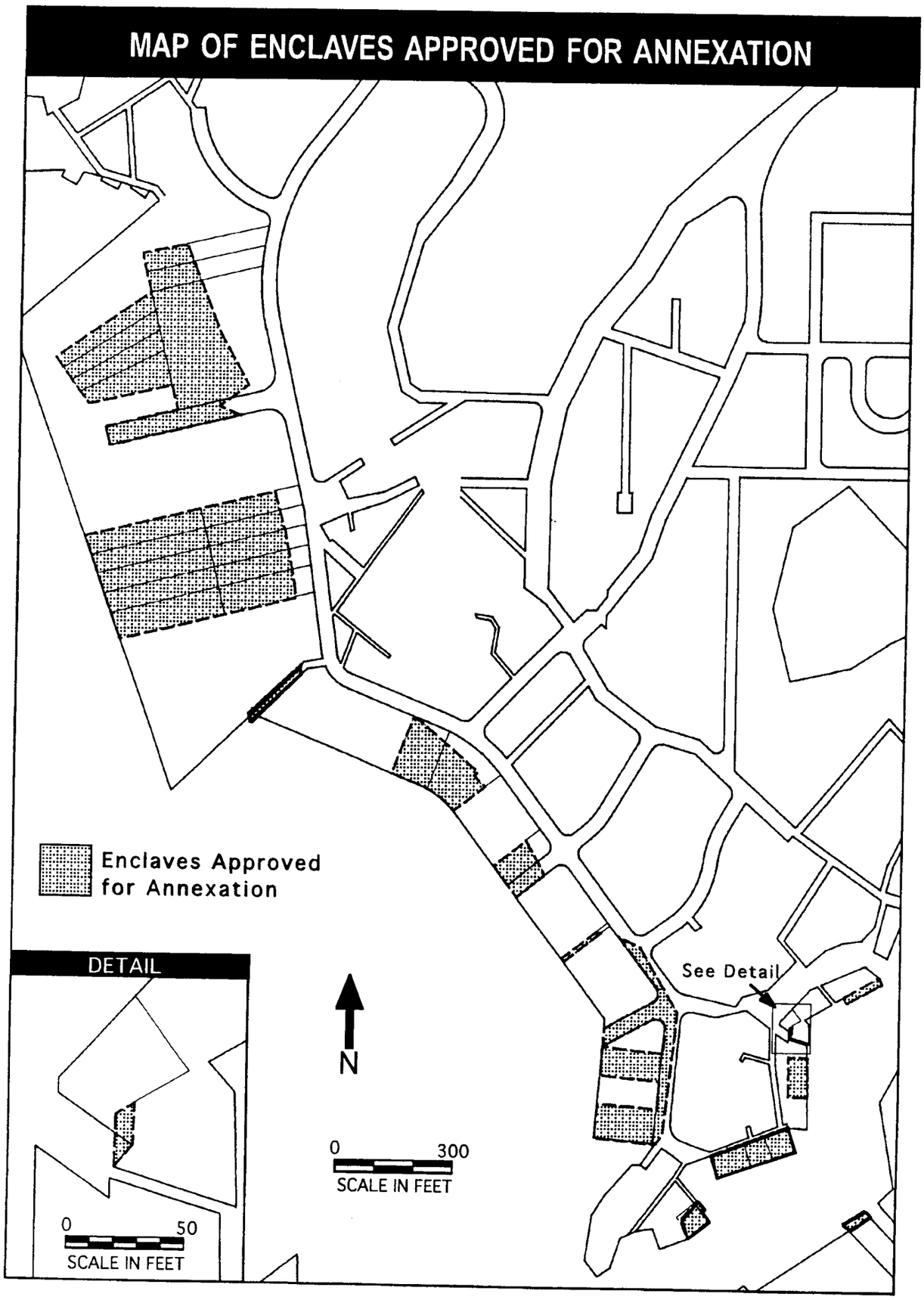
SECTION IV
ORDER OF THE COMMISSION

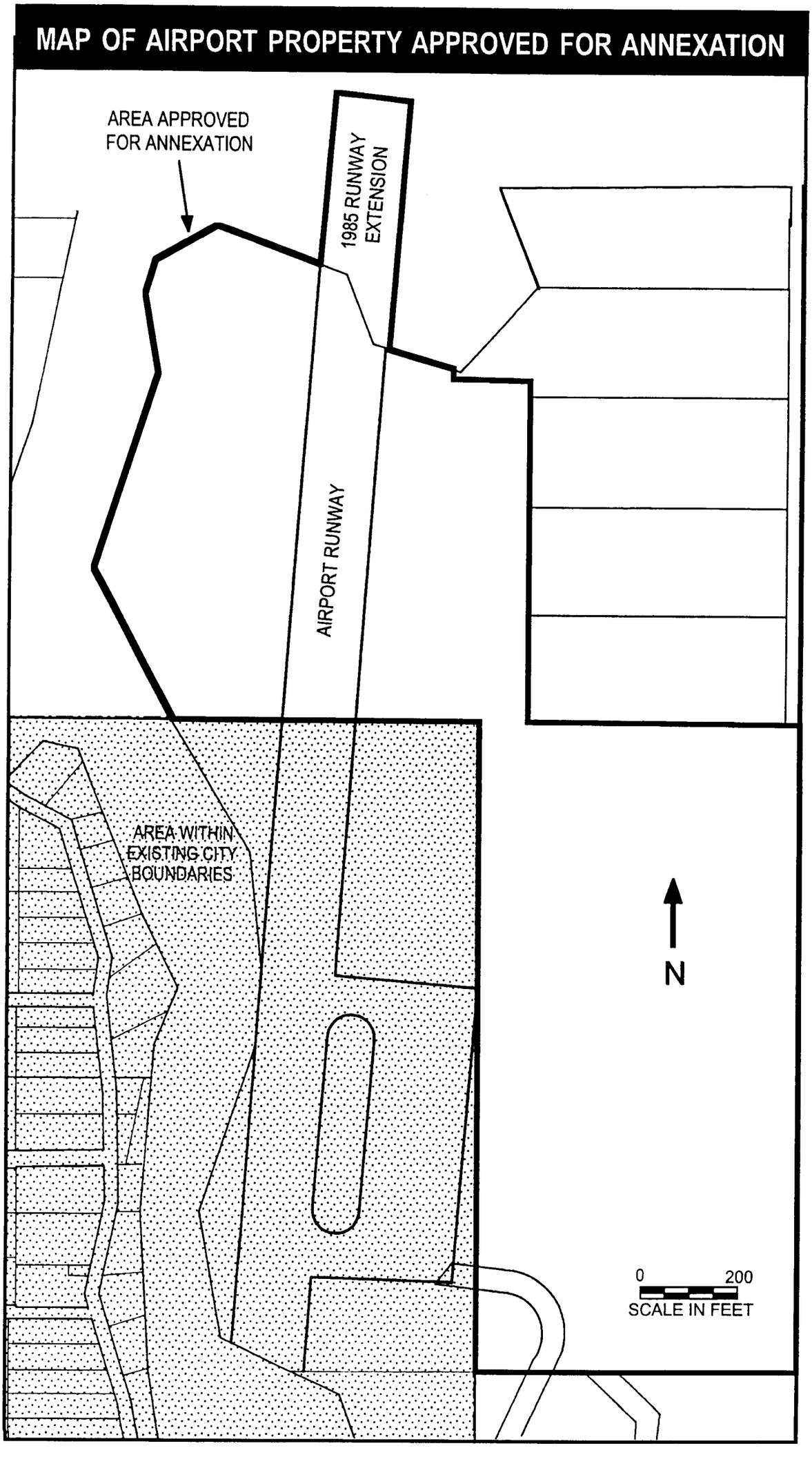
On the basis of the foregoing findings and conclusions, the Local Boundary Commission hereby orders as follows:

1. That the March 16, 1993 petition of the City of Seldovia for the annexation of approximately 42.8 acres is amended to include the following described area:

   > The filled area lying above the mean high water line in Seldovia Slough containing the extension of the Seldovia airport runway adjoining the northerly line of Government Lot 1; containing 1.8 acres, more or less.

2. That the petition, as amended to include 44.6 acres, is approved. Maps of the two groups of property approved for annexation are provided on the following pages.


MAP OF ENCLAVES APPROVED FOR ANNEXATION
Enclaves Approved for Annexation
DETAIL
0
50
SCALE IN FEET
N
0
300
SCALE IN FEET
See Detail


MAP OF AIRPORT PROPERTY APPROVED FOR ANNEXATION
AREA APPROVED FOR ANNEXATION
1985 RUNWAY EXTENSION
AIRPORT RUNWAY
AREA WITHIN EXISTING CITY BOUNDARIES
N
0
200
SCALE IN FEET

The boundaries of the City of Seldovia, including the territory approved for annexation, are described as follows:

Beginning at the Standard Corner common to Sections 31 and 32 on the Second Standard Parallel South, T8S, R14W, Seward Meridian, Alaska, identical with Corner No. 11, U.S. Survey No. 1771 (U.S.S. 1771);

thence west along the south line of said Section 31, identical with line 11-12 of U.S.S. 1771, to Corner No. 12, a meander corner, U.S.S. 1771, identical with Corner No. 104, Alaska Tidelands Survey No. 219 (A.T.S. 219);

thence continue west along line 104-105 of A.T.S. 219 to Corner No. 105, A.T.S. 219, in Seldovia Bay;

thence northwesterly along line 105-106 of A.T.S. 219 to Corner No. 106, A.T.S. 219, in Seldovia Bay;

thence north along line 106-107 of A.T.S. 219 to Corner No. 107, A.T.S. 219, in Seldovia Bay;

thence east along line 107-1 of A.T.S. 219 to Corner No. 1, A.T.S. 219, identical with Corner No. 13, a meander corner, U.S.S. 1771;

thence northeasterly along the meanders of the eastern shores of Seldovia Bay, identical with the western boundary of Lot 5, George Cook Subdivision, Plat No. D-145, Seldovia Recording District, to the northwest corner of said Lot 5;

thence east along the north line of said Lot 5 to the northeast corner of said Lot 5 on the line common to Sections 31 and 32, T8S, R14W, S.M.;

thence south along the east line of Said Lot 5, identical with the said common line to Sections 31 and 32, to the southeast corner of said Lot 5, identical with Corner No. 14, U.S.S. 1771, identical with the N 1/16 corner to said Sections 31 and 32;

thence east along the north 1/16 line of said Section 32 to Corner No. 63, A.T.S. 219, on the western shore of Seldovia Slough;

thence continue east to Corner No. 64, A.T.S. 219, on the eastern shore of Seldovia Slough, identical with the westerly corner common to Government Lots 1 and 4 in said Section 32;

thence northerly and easterly along the meanders of the eastern shores of Seldovia Slough, thereby including the filled area in Seldovia Slough containing the northerly extension of the Seldovia Airport Runway, to the point of intersection with the western boundary of Lagoon Acres Subdivision, Plat No. 86-1, Seldovia Recording District;

thence easterly and southerly along the western boundary of said Lagoon Acres Subdivision to the southwest corner of said Lagoon Acres Subdivision, identical with a point on the line common to Government Lots 1 and 4 in said Section 32;

thence east along the south boundary of said Lagoon Acres Subdivision, identical with the said line common to Government Lots 1 and 4, to the southeast corner of said Lagoon Acres Subdivision, identical with the eastern corner common to said Government Lots 1 and 4, identical with a point on the north-south centerline of said Section 32;

thence south along the north-south centerline of said Section 32, identical to the east line of said Government Lot 4, to the southeast corner of said Government Lot 4, identical with the center 1/4 corner of said Section 32;

thence west along the south line of said Government Lot 4, identical with the east-west centerline of said Section 32, to the easterly right-of-way line of Airport Avenue;

thence southwesterly along the easterly right-of-way line of said Airport Avenue to the point of intersection with line 7-8, U.S.S. 1771;

thence south along line 7-8 of U.S.S. 1771 to Corner No. 8, U.S.S. 1771;

thence west along line 8-9 of U.S.S. 1771 to Corner No. 9, U.S.S. 1771;

thence south along line 9-10 of U.S.S. 1771 to Corner No. 10, U.S.S. 1771, identical with the west 1/16 corner on the south line of said Section 32;

thence west along line 10-11 of U.S.S. 1771, identical with the south line of said Section 32, to Corner No. 11, U.S.S. 1771, identical with the Standard Corner common to Sections 31 and 32 and the Point of Beginning.

Containing 344, acres, more or less.

3. That two formal recommendations for the annexation of the territory in question are to be submitted in accordance with Article X, § 12 of the Alaska Constitution to the Second Session of the Eighteenth Legislature of the State of Alaska. The first recommendation will provide for the annexation of the 42.6 acres identified in the City's original annexation petition. The second recommendation will provide for the annexation of the 1.8 acre airport runway extension added by the Commission.

   Separate recommendations for the annexation of the areas in question are warranted to fully insulate the City's original petition from any allegation that the amendment of the petition to add the 1.8 acre runway extension was carried out in a wrongful manner. This is not to suggest that the Commission has any belief that such is the case. To the contrary, the Commission strongly believes that the amendment was carried out in a diligent manner and one that fully protected the rights of all interested parties.

4. That, the annexation take effect only upon:

   (a) The passage of forty-five days from the date of presentation of the Commission's recommendation to the legislature (or the adjournment of the session, whichever is earlier) without disapproval of the recommendation by the legislature; and

   (b) The filing of documentation with the Department of Community and Regional Affairs showing that the City of Seldovia has complied with 42 U.S.C. 1973c (Voting Rights Act of 1965) regarding this annexation.

APPROVED IN WRITING THIS 1ST DAY OF OCTOBER, 1993.

LOCAL BOUNDARY COMMISSION

By: Darroll Hargraves, Chairperson

Attest:

Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this decision becomes final under 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.