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June 11, 2014

Via Hand Delivery

Local Boundary Commission
550 West 7th Avenue, Suite 1770
Anchorage, AK 99501-3576

Re: IN THE MATTER OF PETITION OF THE CITY OF DILLINGHAM FOR ANNEXATION OF NUSHAGAK COMMERCIAL SALMON DISTRICT WATERS AND WOOD RIVER SOCKEYE SALMON HARVEST AREA WATERS, TOGETHER CONSISTING OF APPROXIMATELY 396 SQUARE MILES OF WATER AND 3 SQUARE MILES OF LAND

Gentlemen:

The City of Dillingham ("City") notifies the Local Boundary Commission ("LBC") that the City Council has scheduled a public hearing on the City's annexation petition for September 24, 2014. This hearing will be conducted in accordance with the requirements of 3 AAC 110.425.

The City does not agree with the WHEREAS clause in the proposed Resolution No. 14-01 indicating the LBC intends to repeat the already-completed consideration of the merits of annexation assuming the annexation petition is refiled for the following reasons:

1. The court did not order the LBC to reconsider the merits of annexation. (See, Order on Reconsideration p.2, p.3, p.7, p.11). All references to the annexation petition on these pages of the Order on Reconsideration indicate only that a pre-filing hearing needs to occur before the petition can be referred to the Legislature by the Commission.

2. The premise of the court's order was that the LBC had the legal authority to "convert" a local option petition to a legislative review petition under existing LBC regulations just as the LBC has the authority to "convert" a legislative review petition to a local option petition.

3. There is no Commission precedent in instances where the LBC has converted a petition for the Commission having repeated consideration of the merits of annexation after a petition was converted.

4. Annexation regulations have not been substantively changed since the petition was originally filed.

5. The Commission is bound by all of its findings approving annexation save for the finding relating to converting the petition to one for legislative review by the legal doctrine of law of the case.

6. It is premature to determine the process the LBC will follow until an actual petition has been refiled which can be compared to the petition filed in 2010.

7. It is not necessary to decide the process the LBC will follow in order to comply with the court's order on remand which only required the LBC to enter an order requiring refiling of the petition after a public hearing had been held that met the requirements of 3 AAC 110.425.

8. Any question about the process the Court intended to be followed after a public hearing was held and a petition refiled should be resolved by the Court not the Commission or its staff. There will be time to do so before the petition is refiled.

9. Staff did not distribute the proposed resolution 14-01 until 1:45 p.m. on June 10 leaving insufficient time for the City to fully respond to the proposal. The City reserves the right to present additional reasons and supplement these comments at the time of refiling the annexation petition.

For these reasons the City requests the Commission delete the last WHEREAS clause of proposed resolution 14-01 and defer making any pronouncement on reconsideration of the merits of annexation whether in a WHEREAS clause or otherwise until after an annexation petition has been refiled.

Very truly yours,

BOYD, CHANDLER &
FALCONER, LLP

By: 
Brooks W. Chandler

BWC\ms
enclosure

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF PETITION OF THE CITY)
OF DILLINGHAM FOR ANNEXATION OF)
NUSHAGAK COMMERCIAL SALMON DISTRICT)
WATERS AND WOOD RIVER SOCKEYE)
SALMON HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3 SQUARE)
MILES OF LAND)

CERTIFICATE OF SERVICE

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Linda Rasmussen, being first duly sworn upon oath, deposes and states as follows:

1. I am employed as a secretary with the law firm of Boyd, Chandler & Falconer, LLP, attorneys for the City of Dillingham.

2. On June 11, 2014, I sent via electronic mail the City of Dillingham's comments on the draft Resolution No. 14-01 as follows:

Brent Williams: brent.williams@alaska.gov

James L. Baldwin, Esq.: redalderlaw@ak.net

Erling Johansen, Esq.: Erling.Johansen@alaska.gov

Dated this 11th day of June, 2014.

By: 
Linda Rasmussen