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of **ALASKA**
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Final Report to the Local Boundary Commission

Concerning the Legislative Review Petition to Annex 396 Square Miles of Water
and Three Square Miles of Land to the City of Dillingham
&
Concerning the Legislative Review Petition to Annex 118 Square Miles of Water
and 37 Square Miles of Land to the City of Manokotak

October 28, 2016

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Executive Summary

This is the final report concerning the consolidated legislative review annexation petitions from the City of Dillingham and the City of Manokotak. The LBC chair consolidated the two petitions under 3 AAC 110.430 because the petitions contain overlapping territory in their annexation proposals. This report examines each petition individually on its own merits under one cover.

The City of Dillingham submitted a petition seeking to annex 399 square miles of land and water encompassing Nushagak Bay in western Bristol Bay. The area proposed for annexation is identical to the territory Dillingham sought to annex in its 2010 annexation petition, which the LBC approved, but which was later vacated by the Alaska Superior Court. In 2016, department staff performed an analysis of the current petition, and the entire record, and now recommend that the commission deny this petition. Principally, staff finds that the City of Dillingham is not the appropriate entity to claim entirely the revenue generated by taxing a fishery that is an important regional resource to multiple communities.

In addition, staff finds that the city does not meet the standards required for annexation to a city—including that there is no permanent population in the territory proposed to be annexed, and that the territory in question does not exhibit a reasonable need for city government. This is coupled with the fact that the City of Dillingham does not propose to provide additional services—only to receive revenue for the stated impact of the fishing industry on their community. That the LBC found the 2010 petition to have met the standards for annexation is not germane. The department finds more merit in the 1986 and 1987 LBC staff reports on similar annexation petitions and in both, the LBC found that annexation of Nushagak Bay was inappropriate for a single municipality because its needs would best be served by a regional body.¹ This report contains a formal summary of the department’s application of the standards.

The City of Manokotak also submitted an annexation petition seeking land and water totaling 155 square miles that included a section of the Nushagak District as well as a Weary/Snake River corridor and Igushik Village. Manokotak’s petition asserts that these territories, described separately in the petition as Tract A, B, and C, should be annexed to Manokotak in order to provide much-needed sanitary services, waste disposal, potable water, alcohol-control, and other municipal services in the territories. These services would be paid for in part by a tax levied on fish caught in the section of water called the Igushik Section. However, the department finds that neither the seasonally occupied territory nor the Igushik Section are in need of services that can be ably provided by the City of Manokotak. While there is a question of the feasibility of collecting the likely insufficient revenue from a fish tax related to Alaska Fish and Game fish tickets practices, the more

¹ September 1986 Report and Recommendation to the Alaska Local Boundary Commission on the Petitions of the Cities of Clark’s Point and Dillingham for the Annexation of Approximately 242 Square Miles and 918.25 Square Miles of Territory, Respectively; and September 1987 Report and Recommendation to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the Annexation of Approximately 421.25 Square Miles of Territory. During this period, staff only produced a single staff report rather than a preliminary and final report.

salient issue is whether the City of Manokotak has the financial and human resources to expand its territory and offer the services it wants to provide. The department acknowledges the historical and traditional connections many Manokotak residents have with these lands and waters, but the department is loath to recommend an annexation based on willingness without demonstrated ability.

Furthermore, allowing annexation of sections of the bay divides a natural body of water upon which many communities lie. The LBC has indeed allowed annexations of water adjacent to communities in the past, and will likely in the future, if those communities will provide necessary services to those using the territory, but particularly when a community is the only community with a claim to the water and its resources. Nushagak Bay hosts many communities, and therefore, its needs cannot be served by a single community; nor should its significant revenue generation potential be claimed by a single municipality with no mechanism or requirement to share that resource with other communities that have a legitimate connection to the bay. Residents and nonresidents alike fish Nushagak Bay, commercially, personally, and for subsistence activities.

In the case of Dillingham, the territory neither needs the extension of city government solely in the form of taxation without services, nor meets the other standards that are necessary for the department to recommend the petition for approval to the LBC. Though the department acknowledges that all cities including Dillingham would benefit from an influx of revenue, not all sources of revenue are free for the taking. Moreover, the department believes granting this annexation would cripple a future borough's primary source of revenue generation. Therefore, this annexation is not in the best interests of the state.

Regarding Manokotak, the department does not find the city capable of extending government services to the territory proposed for annexation, or that a seasonally occupied fish camp warrants a level of services similar to that provided by Manokotak within its current boundaries. The petition underestimates the cost of the services it proposes to provide and relies on outside sources of money and eminent domain to acquire land for potential project sites. In the department's view, Manokotak's petition seeks annexation before it has an adequate comprehensive plan in place for the land. Its own recently updated city comprehensive plan lists many critical needs for the city—none of which will be solved by this annexation proposal.

While these petitions are similar on paper, the two communities' petitions fail the annexation standards for substantially different reasons. This final report considers the entire record, which consists of the public comments, responsive and reply briefs, and the petition documents. The department also consulted its own files regarding LBC and other staff activity in the region in the past. Based upon all of this information, staff recommends that the LBC deny both petitions. This recommendation is nonbinding, and the LBC will convene a public hearing held in both cities November 28-30, 2016, where the public and all parties will be able to present their cases and testimony subject to LBC guidelines found in 3 AAC 110.550-560. The decisional meeting is scheduled to be held in Anchorage on December 1, 2016. *See Appendix B for more information.*

The LBC is tasked with deciding boundary issues from a statewide perspective. The issue of equitable distribution of fish tax revenue from Nushagak Bay will not be solved if the LBC follows staff's recommendation. To that end, the department recognizes that the region's communities must work together to find a solution. Though the threat of reductions in state and federal funding have often been offered as the impetus for exploring borough formation, these reductions will likely and eventually come to pass. Notwithstanding that reality, regional coordination is an effective way forward. This report does not recommend that the LBC form a borough; nor does this report recommend an inferior, and likely inequitable short-term solution in the form of piecemeal annexations of a body of water.

This report provides a background on each petition, and addresses each of the standards required for analysis by statute and regulation for annexations by cities.

General Background on Annexation

In Alaska, as in other states, the corporate boundaries of cities are flexible. That is, cities may expand or retract their boundaries to adapt to changing conditions. Annexation permits a city to enlarge its boundaries to accommodate growth and development or to address other needs.

Alaska law provides for objective analysis of annexation proposals by an independent body. Further, the law promotes consideration of interests beyond those of the local government and the territory involved. Alaska's constitution created the Local Boundary Commission to review annexation proposals and other municipal boundary issues.²

The Alaska Local Boundary Commission consists of five members, one from each of the four judicial districts of the state, plus one member who serves at large. Commission members serve without compensation and at the pleasure of the governor.

The present members of the Local Boundary Commission are:

- Lynn Chrystal, chair, serving at large
- John Harrington, serving from the First Judicial District
- Robert Harcharek, serving from the Second Judicial District
- Darroll Hargraves, serving from the Third Judicial District
- Lavell Wilson, serving from the Fourth Judicial District

While the Division of Community and Regional Affairs (DCRA), part of the Department of Commerce, Community, and Economic Development (DCCED), provides technical and administrative support to the Local Boundary Commission, the commission is completely independent of the division, and department, or other state agencies. The Local Boundary Commission is not bound in any fashion to conform to the recommendation made by the department in this report.

Staff investigates annexation proposals and prepares reports to the LBC conveying the department's recommendation. To ensure that interested parties' rights to due process and equal protection are maintained, laws strictly limit contact with the LBC on all pending municipal boundary proposals. Written communications must be submitted to the commission through staff.

Legislative Review

Article X, Section 12 of the Constitution of the State of Alaska provides that:

The [Local Boundary Commission] may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any

² The commission acts on petitions for incorporation, annexation, detachment, dissolution, merger, and consolidation of cities and boroughs.

regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

The Alaska Supreme Court has ruled that the intention of Article X, Section 12 of Alaska's constitution, and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes. The court concluded further that this was intended to avoid the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest.³ The Alaska Supreme Court has further held in several cases that the legislative review method of annexation stems from the conviction among those who wrote Alaska's constitution that "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."⁴

The court has also ruled that expansion of municipal boundaries is a matter of statewide concern. 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.⁵

Past LBC Activity in the Region

Relevant Prior Petitions

1986: The City of Dillingham submitted a petition seeking to annex approximately 918 square miles of land and water including Nushagak Bay, as is sought in this current petition. In the same year, the City of Clark's Point asked for approximately 242 square miles, of which 117 square miles overlapped the City of Dillingham's petition. The LBC denied Clark's Point's petition, and amended Dillingham's petition to include only 40 square miles of land, which it approved. As a legislative review petition, it was submitted to the Legislature, who disapproved it because the property owners and residents of City of Dillingham asked them to do so.⁶

1987: The City of Dillingham submitted a petition seeking to annex 421.25 square miles, 12.25 of which was land. The LBC, having just rejected a similar petition request four months previously, chose to do as staff had recommended in its reports, and only consider the land portion of the request for annexation. The LBC approved the annexation of 12.25 square miles of land to the city which was sent to the Legislature in 1988, and took effect thereafter.

1997: The Cities of Aleknagik and Dillingham jointly submitted a petition seeking to annex the entire western Bristol Bay area to the existing Lake and Peninsula Borough. This would have

³ *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

⁴ *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962); *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968); *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

⁵ *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

⁶ Local Boundary Commission, Minutes of October 25, 1987 meeting, p. 4

encircled the entire Bristol Bay Borough. While this petition did not go forward, the petition stated its motivation was to join a region with cultural, economic, and social ties, fulfill the constitutional goal of a minimum number of local government units, and to increase economies of scale by joining an existing and successful borough.⁷

2010: The City of Dillingham petitioned the LBC for 396 square miles of water and three square miles of land under the local action method. The LBC approved the petition and Dillingham residents voted on the measure which passed. The annexation and raw fish tax took effect until the decision was appealed and subsequently vacated. There is a discussion of this case later in this report.

Information Regarding the Consolidated Petitions

Court Ruling Summary

The City of Dillingham submitted a similar annexation petition under the local action method in 2010, which was approved by the Local Boundary Commission in a decision dated December 14, 2011. The Native Village of Ekuuk submitted 35 points on appeal in January 2012. In a decision released in 2014, the Alaska Superior Court found it only needed to address the first point on appeal, and that “the LBC acted without reasonable basis and outside the scope of its constitutional and statutory duties and abused its discretion by not proceeding in the manner required by law by failing to establish standards and procedures for determining whether annexation should be by local option or legislative review.”^{8 9} Ultimately, the superior court held that the LBC should have changed the method of annexation from local action to legislative review because it was not possible for the petition to proceed by local action.

The superior court vacated the LBC decision, and, thereby, the annexation, and remanded the matter back to the LBC to process via legislative review—a process that has several more requirements than the local action method. The court did not take up the other 34 points on appeal. Because, in the opinion of the court, the staff analysis in the prior petition process was flawed, and because the City of Dillingham submitted an updated petition under the legislative review method, this analysis of Dillingham’s annexation petition is necessarily made using a fresh perspective.

Consolidated Petitions

The LBC postponed proceedings on the petition by the City of Dillingham to annex Nushagak Bay in order to allow concurrent consideration of the Manokotak annexation petition. The LBC chair consolidated the two petitions so that they will proceed on the same schedule and considered concurrently under 3 AAC 110.430.

⁷ Annexation of the Dillingham-Nushagak-Togiak Territory to the Lake and Peninsula Borough. Submitted to the LBC in June 1997.

⁸ *Native Village of Ekuuk v. LBC*, Case No. 3DI-12-22CI Appellant’s Points on Appeal at p. 1.

⁹ *Native Village of Ekuuk v. LBC*, Case No. 3DI-12-22CI Order on Appeal (March 27, 2014), at p. 1.

Current Petition Proceedings

September 27, 2014—City of Dillingham held the required pre-submission hearing for legislative review petitions.

August 6, 2015—City of Manokotak held the required pre-submission hearing for legislative review petitions.

January 22, 2015—Dillingham submitted a legislative review petition.

June 12, 2015—Department accepted petition for filing and opened public comment period.

September 1, 2015—City of Manokotak submitted a legislative review petition for annexation.

September 25, 2015—Manokotak asked LBC to postpone Dillingham proceedings to consolidate the petitions so they would proceed on the same schedule.

October 1, 2015—Dillingham petition filing public comment period ended.

December 3, 2015—LBC granted Manokotak's request for consolidation.

December 4, 2015—Manokotak petition accepted for filing and public comment period for consolidated petitions opened.

February 26, 2016—End of public comment period on consolidated petitions from cities of Dillingham and Manokotak.

June 3, 2016: Preliminary Report to the LBC regarding the consolidated annexation petitions released and second public comment period opened.

July 15, 2016: Second public comment period ended.

August 19, 2016: Motion from Ekuk, et al., received and public comment period on preliminary report reopened and extended through September 19, 2016.

Future Proceedings

After the publication of this report, the LBC will convene a public hearing in the communities (subject to change) and a decisional meeting in Anchorage. These are scheduled for November 28-December 1, 2016.

If either petition is approved by the LBC, that decision will be presented to the Legislature within the first 10 days of their regular session in 2017. It will take effect if neither house takes action or disapproves the measure.

See Appendix A for the Consolidated Petition Schedule.

Comments Received

Briefs and Comments Received Re: Petitions:

Responsive Briefs	5
Reply Briefs	2
Public Comments	32
Summary of Comments:	22 expressed opposition to Dillingham 7 expressed support for Dillingham 2 expressed support for Manokotak

Reply Briefs: The Cities of Manokotak and Dillingham both submitted Reply Briefs.

Respondents Submitting Briefs

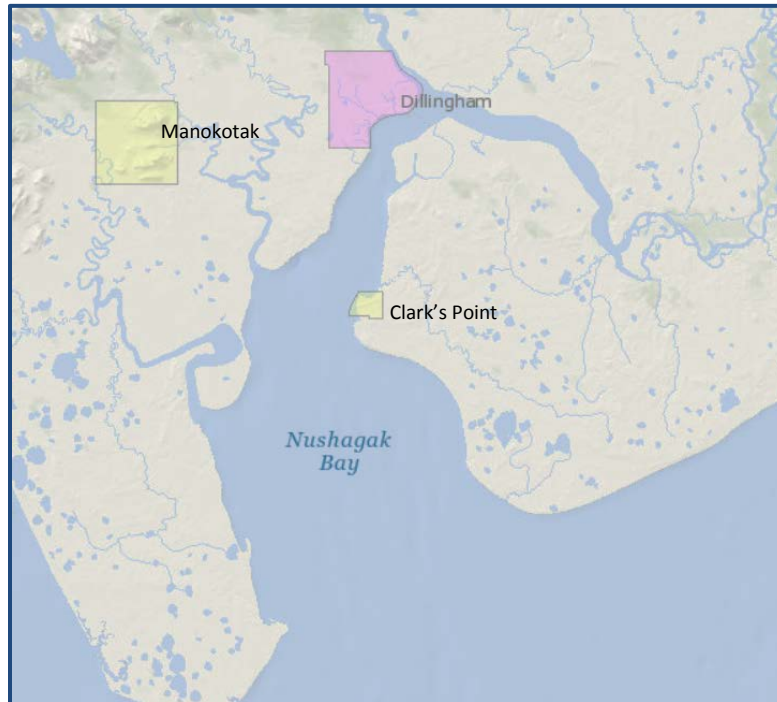
- City of Dillingham
- City of Manokotak
- Southwest Region School District
- Native Villages of Ekuik, Portage Creek and Native Village and City of Clark's Point (Ekuik, et al.) (submitted two)

Comments Received Re: Preliminary Report:

LBC staff received 150 public comments. Of these, 26 expressed support for Dillingham's annexation petition; 117 expressed opposition. In addition, five expressed support for Manokotak's annexation petition, and four expressed opposition. Two comments supported both annexation petitions. All comments are available at <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions/PublicCommentsandBriefs.aspx>.

Analysis

Dillingham



City Profile

Dillingham is located in southwestern Alaska in the unorganized borough, approximately 350 air miles from Anchorage. It sits at the confluence of the Wood and Nushagak Rivers, which flow into Nushagak Bay. Nushagak Bay, in turn, flows about 35 miles into Bristol Bay. The current city is approximately 35 square miles of land and water in the Dillingham Census Area (an administrative Census boundary area used for statistical purposes in the unorganized borough of Alaska).¹⁰

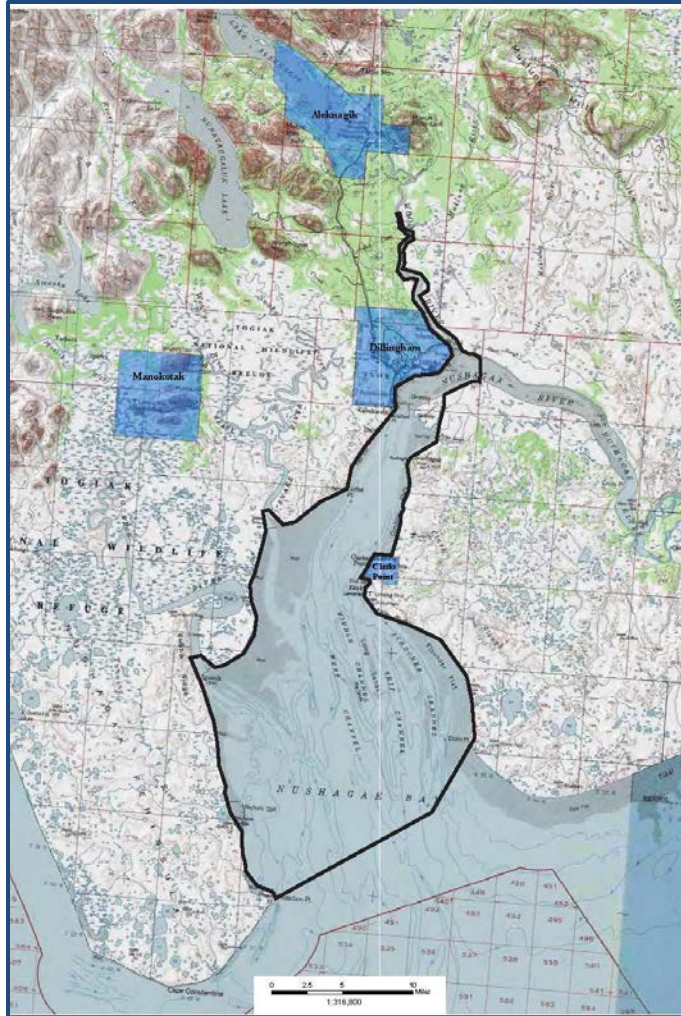
Dillingham is a first class city with a city manager-city council governing structure. It was incorporated in 1963 as a second class city, and reclassified in 1972, as a result of legislation, to a first class city. Its 2015 population is 2,386 persons.¹¹

The territory sought for annexation includes the Nushagak Commercial Salmon District and the Wood River Sockeye Salmon Harvest Area—an area of approximately 3 square miles of uninhabited lands and 396 square miles of water.¹² The City of Dillingham is the petitioner. This report refers to the territory primarily as Nushagak Bay, but recognizes the territory encompasses both fishing districts as well as uninhabited islands including Grassy Island.

¹⁰ Dillingham Petition, p. 26.

¹¹ “Dillingham.” Community Databases Online, DCRA.

¹² Dillingham Petition, Ex. A, p. 24-34.



Territory Proposed for Annexation by Dillingham¹³

Standards for Annexation to Cities

State law requires that certain standards be met before territory may be annexed to a municipality. It is the responsibility of the Local Boundary Commission staff to evaluate annexation proposals and to issue a recommendation to the Local Boundary Commission. It is the responsibility of the Local Boundary Commission to determine formally whether those standards have been met and render a decision regarding annexation.

While the Division of Community and Regional Affairs, part of the Department of Commerce, Community, and Economic Development, provides technical and administrative support to the LBC, the commission is completely independent of the division and department, or other state agencies. The Local Boundary Commission is not bound by the recommendations made by department staff in this report.

¹³ Dillingham Petition, Ex. A-4, p. 30.

The standards for annexation to cities are addressed in this report by section: need, character, resources, population, boundaries, best interests of the state, and legislative review. Each section also includes its regulatory or statutory reference in parentheses. This analysis must also address standards for all petitions: transition, statement of nondiscrimination, determination of community, determination of essential municipal services, and as well as determination of maximum local self-government and a minimum number of local government units. Under some of these sections, smaller text headlines address factors listed in these standards found in regulations.

The City of Dillingham seeks primarily to annex the waters of Nushagak Bay in order to implement a raw fish tax and supplement city revenues. The territory sought is identical to that sought by Dillingham in its 2010 petition. Though that petition was approved by the LBC, the superior court remanded and invalidated the decision on the basis of substantial due process and procedural issues. Therefore, the Dillingham annexation petition is evaluated given the superior court's direction and analyzed anew in light of Dillingham's updated petition.

The court indicated that Dillingham's petition must proceed by legislative review and so this analysis will cover standards for annexation as well as those for legislative review petitions (3 AAC 110.140).

Need (3 AAC 110.090)

The territory proposed for annexation by the City of Dillingham is approximately 99 percent water and includes the Nushagak Commercial Salmon District as well as the Wood River Sockeye Salmon Harvest Area (WRSSHA).¹⁴ The 3.24 square miles of land included are uninhabited islands within these waters.¹⁵ This standard requires the petition to demonstrate that the territory sought exhibits a reasonable need for city government.

The petition states the primary reason for the proposed boundary change is to ensure a more equitable arrangement for the services the city provides in support of the fishing industry. The petition states that the city provides services to those fishing in the territory—some of whom do not contribute to these expenses as non-residents of Dillingham.

Dillingham estimates approximately \$400,000 in expenses that can be directly attributed to serving the commercial fishing fleet.¹⁶ Because the water is not within its city boundaries, if fish caught are not processed onshore in Dillingham, the petition states the city cannot recoup costs incurred from the fishing fleet. The petition cites several other cities who have successfully annexed the waters adjacent to their communities and now levy a fish tax, including Togiak, St. Paul, Egegik, and Pilot Point.¹⁷ The Dillingham annexation petition contends that, as the largest municipality in the region, its support for the commercial fishing industry must be augmented with additional revenue in order

¹⁴ Dillingham Petition p. 6-7.

¹⁵ Dillingham Petition, p.6-7.

¹⁶ Dillingham Petition, p. 13.

¹⁷ Dillingham Petition, p. 13-14.

to be sustainable. In 2013, 46 percent of salmon landed were processed elsewhere—thereby avoiding any city taxes.¹⁸ State fish taxes do apply and will be addressed later in this report.

(1) Existing or Reasonably Anticipated Social or Economic Conditions

This factor in the standard seeks to determine whether social and/or economic conditions in the territory warrant the extension of city government. Dillingham does not address needs related to any social conditions, but focuses on the economic situation which is principally budgetary in nature. Dillingham lists many of the costs it attributes to commercial fishing, but the petition explains that the problem primarily is that user fees do not cover the costs of the services rendered. Harbor-related expenses are easily identified as fishery-related; however, other cited expenses such as those related to increased use of the city landfill by Aleknagik residents, street maintenance, and water and sewer utility upgrades, staff finds, are more difficult to connect as evidence Dillingham is providing a service from which it cannot recoup commensurate costs. The petition lists approximately \$430,000 in expenses relating to service provision, but the department believes the costs do not match the claims of regional service provision to the commercial fishing fleet and are instead primarily municipal costs and are likely addressed with appropriate taxes and user fees.

There is no explanation of revenues generated from the fishing industry—including increases in seasonal revenue in sales taxes, lodging taxes, personal or real property taxes, user fees of any kind or the positive economic benefits Dillingham enjoys from its “hub” status. For example, revenue generated from harbor and dock fees and other use fees are not enumerated in the provided petition budget. A closer examination by the department of the current and recent past fee schedules did not provide evidence that user fees have been raised in any significant way or at least to the extent one would expect from a struggling municipality. In addition, the department finds no compelling evidence that Dillingham’s budget needs the revenue it is seeking and from the source it is seeking. Indeed, in its own defense, Dillingham contends that diminishing state and federal monies, as well as the need for continued support for its school district are evidence of the need for supplemental revenue in the long run.¹⁹ A closer look at the budget indicates that while the harbors and docks are not self-supporting without commensurate increases in user fees, the city’s general fund is healthy.

The dock and harbor funds in the budgets provided do not identify a breakdown of costs in terms of direct and indirect expenses or even indicate that these enterprise funds are intended to be self-supporting. There is no reason they need to be if general fund transfers are sufficient each year.

Even if Dillingham’s budget were strained, the burden is the petitioner’s to explain why annexation is necessary and appropriate to ensure the viability of the community and the territory with regard to local government. It is not evident to the department how the territory proposed to be annexed exhibits a reasonable need for city government based on economic or social conditions.

¹⁸ Dillingham Petition, p. 52.

¹⁹ Dillingham Reply Brief, Ex. Q, p. 14-17.

(2) Existing or Reasonably Anticipated Health, Safety, and General Welfare Conditions

This section of the standard of need for city government asks whether the conditions in the territory warrant annexation. In addition to describing these conditions, a petition must indicate how annexation would alleviate or improve these conditions relating the health, safety, and general welfare of the territory.

The petition states that the continued presence of the fishing fleet will continue to require road maintenance, oil spill response equipment, search and rescue, as well as public safety response.²⁰ While the petition notes the city has recently purchased oil spill response equipment, it also states that the city does not plan to increase, or even engage in many of these activities, but merely plans to coordinate better with existing service providers including the Alaska State Troopers (AST), and a private volunteer search and rescue group.²¹ Certainly, safety is important, but Dillingham does not say it will be conducting additional public safety responses outside a quarter-mile offshore. Dillingham also states in a reply brief that this is typical of communities and even the AST does not routinely patrol waters. AST reports that Dillingham does not have a patrol boat for this type of use.²²

Indeed, the petition summarizes the Dillingham dispatch's calls for service and responses (with the AST in some cases) which include 37 instances that were in the territory proposed for annexation, but then says 12 of these were in "areas bordering the waterways (Ekuk, Clark's Point, Igusiak [*siz*], Wood River lands)."²³ Whether the petition means that these 12 occasions were separate from the 37 that happened in the territory proposed for annexation, or they are the same, the conclusion the department comes to is the same: AST serves a regional role—the bay and the communities around it—with regard to public safety because Dillingham only responds to some calls within certain areas. The petition notes that it does not intend to expand this reach post-annexation. The implication is that the annexation will not further serve the territory inasmuch as Dillingham does not serve the public safety needs of the bay currently. Whether the territory needs increased public safety is less relevant than the fact that Dillingham does not plan to provide this service if it were part of their city boundaries.

However, AST has stated its position on Dillingham's possible annexation of Nushagak Bay is that the enlarged city will be responsible for law enforcement in the territory—not the state troopers. Furthermore, their position is that it is not realistic for AST to continue to provide services to a city with its own police force and that is taxing the territory in question.²⁴ That the city declines to serve the role AST finds to be the city's reiterates to the department that this annexation is not a question of serving the territory so much as taxing the territory.

²⁰ Dillingham Petition, p. 49.

²¹ Dillingham Petition, p. 49.

²² Sgt. Luis Nieves, personal communication with author, September 1, 2016.

²³ Dillingham Petition, p. 49.

²⁴ Col. James Cockrell, personal communication with author, September 1, 2016.

It is not clear to the department that the territory exhibits conditions that warrant city government with regard to health, safety, and general welfare, or that Dillingham intends to provide such services in the territory.

(3) Existing or Reasonably Anticipated Economic Development

This standard cites economic development in the territory as a consideration in determining whether the territory needs city government. Dillingham refers to steps it has taken to encourage economic development including capping personal property tax for commercial vessels at \$300,000 to attract year-round vessels to stay in the area.²⁵ However, this and other examples cited are within the city and Dillingham acknowledges that its efforts are not likely to increase or decrease the viability of the fishery. The fishing industry, based upon a natural resource, is managed by the State of Alaska and is subject to fluctuations in the worldwide market. Economic development of the fishing grounds is unlikely to be affected by this annexation. The petition does not contain any evidence that there will be further economic development in the territory of any kind as a result of annexation. This factor is not satisfied.

(4) Adequacy of Existing Services

The Dillingham petition contends that the current services are adequate, but that user fees do not fully cover the expenses as well as future expenses.²⁶ The petition lists the facilities and services provided that it states support commercial fishing in the region, but whose costs are borne by the city without commensurate support.

The department finds that Dillingham seeks to supplement its general fund with revenue generated in this proposed annexation. The Dillingham harbor provides showers, bathrooms, ice, use of a crane, garbage and waste oil collection, as well as access to public safety around the clock. The petition also lists a number of needed harbor improvements, not only to the Dillingham harbor, but also to the Wood River and Kanakanak boat launches which Dillingham says are used by a variety of users including sport fishermen, hunters, set netters, residents, as well as city residents.²⁷

Certainly, the problem as presented is not unique to Dillingham—many cities with seasonal populations including those stemming from tourism or commercial activities must find ways to capture the costs associated with non-residents.

The petition emphasizes the presence of non-city residents fishing in Nushagak Bay. While this is significant, there are more appropriate ways to recoup these costs. The petition does not indicate how the city has tried to capture these costs in the past. Staff finds no significant increases in user fees for the services described. Indeed, many of the services described are fee-based. Nonresidents are charged or should be charged for what they use.

²⁵ Dillingham Petition, p. 50.

²⁶ Dillingham Petition, p. 50.

²⁷ Dillingham Petition, p. 57-60.

Dillingham argues that this section of Bristol Bay is the only area without a local fish tax. That alone is not a compelling reason to grant the territory to a single municipality. In addition, this issue has come before the LBC at least three times in the last 30 years—prior to this 2016 iteration. A local solution is necessary, but one that is fair to the entire region.

The petition only generally states future plans for operation and maintenance of the port and harbor. There are no guarantees that port and harbor improvements will take precedence over other city functions. Dillingham clearly states that it is not seeking to increase services or extend services into the territory proposed for annexation, but that it is seeking fair compensation. The department finds that the services currently provided do not indicate a need for city government in the territory. This factor is not satisfied.

(5) Extraterritorial Powers Available to the City

Dillingham does not plan to exercise extraterritorial powers as allowed by AS 29.35.020 and so the department will not address this consideration.

(6) Whether Residents or Property Owners Receive or May Receive Benefits Directly or Indirectly

This section asks whether those in the territory will receive benefits from an annexation. The Dillingham petition acknowledges there are no permanent residents or property owners in the territory, but says the seasonal population are the owners of limited entry permits and fishing vessels who use the services of the port and harbor, public safety, landfill, Department of Motor Vehicles (DMV), and the water and sewer systems in Dillingham.²⁸ The department does not find the seasonal fishery fleet to meet the definition of residents or property owners of the territory.²⁹ That they use the services infrequently or occasionally is not sufficient justification for annexation in staff's view. The fishing fleet who do use the services provided by Dillingham do so inside the city boundaries and incur user fees for provisions. This standard is not met.

Whether an Existing City or an Organized Borough can Provide Services More Efficiently or Effectively (3 AAC 110.090(b))

The petitioner has not demonstrated that the unpopulated territory exhibits a need for city government extended by the City of Dillingham. The department agrees there is no existing city to provide the specific services Dillingham describes; however, these services primarily benefit an existing city and take place within those boundaries. In addition, many communities in the region have similar services though not on the same scale for their part in the fishing industry. This standard also considers whether an organized borough can provide services more efficiently or effectively. Equity dictates that a resource upon which many communities rely for their livelihood be assessed and distributed by an appropriate entity.

²⁸ Dillingham Petition, p. 50-51.

²⁹ 3 AAC 110.990(10) "permanent resident"; 3 AAC 110.990(12) "property owner".

The department finds that the services needed by the region are more significant than those that Dillingham plans to provide to the territory. The department believes Nushagak Bay's benefits, and, therefore, its needs are regional in nature and would be most efficiently and equitably undertaken by a municipality with a larger scope. The management, maintenance, and support of the fishing industry is vital for more than simply Dillingham, and the tax revenue that a raw fish tax will potentially generate is larger than the scope of what a single municipality needs including Dillingham to provide the services Dillingham proposes.

Staff does not find that the territory demonstrates a legitimate need for city government in the manner that Dillingham intends to provide. Dillingham seeks compensation for the impact of the fishing industry without a plan to extend services to the territory. The fishing industry undeniably has an impact on the City of Dillingham, but the city has and can implement other methods to recoup those costs incurred by fishing and the seasonal population.

Facilitating the success of the fishing industry in western Bristol Bay is an important task, but staff does not find that Dillingham alone is willing or able to accomplish this. The services provided are only part of the fishery management which is provided primarily on the state level.

The standard of need asks whether the territory needs city government, not whether the city needs the territory for revenue generation. The revenue potential should be shared among the communities who rely on the territory's resources, and a single municipality is not the appropriate mechanism. Staff believes annexation of the territory to Dillingham is not the most effective method for regional service delivery and equitable distribution of the benefits of a raw fish tax. This standard is not met.

Character (3 AAC 110.100)

The standard requires that the territory to be annexed be compatible with the character of the existing city. The standard lists relevant factors the commission may consider including land use, salability of land, population density, and causes of recent population changes.

Many of the factors of this standard are irrelevant due to the absence of a permanent population, habitable land, or salable land. The land included in the proposed territory includes land owned by both Dillingham's village corporation and Clark's Point's village corporation, Choggiung Limited, and Saguyak, Inc., respectively.³⁰ Grassy Island or any other lands included are not given much discussion in the petition materials, neither corporation weighed in on the annexation, and no development is proposed for this land.

It is clear that the City of Dillingham is adjacent to the territory and that city residents depend on fishing to a large extent as indicated by local economic data as presented in the petition.

³⁰ Spatial Data Management System, Bureau of Land Management-Alaska. Accessed September 28, 2016.

However, subsection (1) of the standard lists ownership patterns as a consideration of compatibility of character. No person owns land in the territory, but the coastline of Nushagak Bay hosts several villages, fish camps, as well as the City of Clark's Point on its borders. In addition, set net fishermen line the water's edge for shore-based fishing using limited-entry permits as well as subsistence fishing. The water is important to those set netters, and those annual fish camps, as well as to those who live upstream of the waters of Nushagak Bay. Salmon returning to Nushagak Bay are headed to one of the many rivers flowing into the bay and just as the salmon stocks are varied, so are the communities relying on the bay and its specific watersheds. Proximity of one community to the bay is not sufficient to justify annexation of the entire bay. Nor does being the largest community in the region indicate the strength of its relationship and dependence on the resource.

In addition, if the owners of set net permits or drift net permits are no longer primarily residents of the region, this does not change that these are communities with historical and present ties to the fishing industry for both commercial and traditional use.

Subsection (5) lists as a factor the suitability of the territory for the anticipated purpose of the community. As noted above, the territory in question connects many communities to the fishery. While Dillingham is the largest city in the region, it is clear many others use the territory for their livelihood, and therefore the livelihood of their own communities.

Dillingham's petition states that the territory is compatible and suitable for inclusion within the city boundaries because the city depends on fishing for its economic well-being.³¹ It is difficult to establish which community if any depends on the bay most, but staff believes this is not necessary in order to acknowledge that many communities do, and that annexation and subsequent taxation of that resource is not equitable or appropriate in this case for a single city.

Dillingham contends that one reason it is most appropriate is because many limited-entry permits are owned by non-residents. This strengthens staff's view that the remaining permits as well as the current ones, wherever the permit-holders reside, be treated in the most equitable way.

The territory is not only the fishing ground for Dillingham residents, but for several other communities in this western Bristol Bay region. Therefore, any tax revenue should be shared among those communities with ties to the fishery. That many non-residents use the Dillingham harbor does not necessarily allow for the extension of boundaries into territory to which other communities may easily make the same claim as the city has. The territory is not suitable for the anticipated purpose—taxation of the raw fish caught in the bay to supplement a single city's revenue.

Unlike many communities that rely on the fisheries, Dillingham's size allows it to draw from additional resources such as property, sales, and lodging taxes. Many of these taxes, in addition to user fees, are the more appropriate method for enhancing revenue to recoup impacts from those uses.

³¹ Dillingham Petition, p. 65.

This standard also lists transportation patterns and facilities as a consideration with regard to compatibility of character between the city and the territory to be annexed. Dillingham states in its petition that its harbor and dock are the main transit point to and from the fishing grounds, and in and out of the community.³² Certainly, much fishing activity in Nushagak Bay is based out of Dillingham. As stated previously, drift netters launching and mooring at Dillingham are not the only users of the bay. It is true that Dillingham does not need to prove that it is the sole provider of services used by the fishing industry in order to demonstrate the impact of the fishing industry. Rather, it must demonstrate that its provision of services is reasonably necessary to those fishing in the territory and the city should be compensated beyond revenue generated by user fees.

The majority of set net permits in Nushagak Bay are held by non-Dillingham residents.³³ Those fishing commercially from shore-based permits may or may not use Dillingham services and if so, those using skiffs should pay transient moorage fees, or for any services or purchases when in Dillingham. Transportation patterns do indicate and staff agrees that Dillingham is the hub for the region especially with regard to air transportation. However, scheduled air service is determined by the private market and companies can enter and exit this market easily at the state-funded airport facilities. In addition, there are fees associated with many of the other amenities that are located in Dillingham as the hub community. Hub community status is not a consideration formally or informally, however, in determining whether a community is entitled to a resource shared by many communities.

In further determining the relationship of communities with Nushagak Bay, staff examined two data sets. Dillingham residents only make up a small percentage of fish landings in Nushagak Bay. In addition, between 2004 and 2008, between 56 and 66 percent of salmon were processed outside Dillingham; in 2013, it was 46 percent.³⁴

As opposed to fish landings, vessels with seasonal harbor permits in 2014 from Dillingham made up 44 percent of the 547 harbor permits that are only offered seasonally.³⁵ Thirty percent were non-Alaska residents; nineteen percent were Alaska residents from outside the region, and seven percent were from other communities in the region.³⁶ Data from the Dillingham petition also indicates that while there were more than 500 seasonal permits, there were only 21 transient moorages.³⁷ The number of drift net permits fished in a season in Nushagak District is largely irrelevant because drift permit holders are allowed to fish anywhere in the fishing management area, which includes several districts and sections that are larger in scope than even the Dillingham Census Area. Fish do not conform to administrative boundaries.

³² Dillingham Petition, p. 65.

³³ Dillingham Petition, p. 68.

³⁴ Dillingham Petition, p. 8.

³⁵ Dillingham Petition, p. 7.

³⁶ Dillingham Petition, p. 51.

³⁷ Dillingham Petition, p. 51.

Nushagak District Salmon Landings

Year	Landings	Dillingham residents
2008	807	155 (19 percent)
2012	729	138 (19 percent)
2013	675	143 (21 percent)

Source: Dillingham Petition, p. 8

For the years of data provided by the petition, landings in the district from Dillingham residents are only a fraction of the total. There is no feasible method to determine if those landings were by Dillingham harbor permit holders, but if the majority of those fishing are non-residents who do not use the harbor, and do not have their fish processed in Dillingham, this indicates that fishing in Nushagak Bay is not primarily or only associated with Dillingham—but elsewhere. That “elsewhere” is the Bristol Bay Management Area, and beyond those boundaries as well.

With regard to the use of the dock by other communities, Dillingham does not address this in detail, and staff points out that if use of the dock is necessary to these communities, fees must reflect this.

The LBC must make note that the water, if allowed to be annexed by Dillingham, will touch several communities and incorporated cities. Therefore, staff does not find Dillingham to have met the requirements for this standard. Dillingham has connections to the territory, but it is not the only community to meet this standard. Dillingham must demonstrate it is compatible with the territory and that it is most compatible—not only because it wants the tax revenue the most, but also because it is entitled to the revenue generated by the resource.

With regard to character, Dillingham has not demonstrated it is compatible with the territory to the extent that it should singularly exploit the resources for revenue enhancement without extending any additional services or benefits to communities who also rely on the territory. This standard is not met.

Resources (3 AAC 110.110)

This standard requires that the proposed expanded city—that is, the territory plus the existing city—have the financial and human resources to provide essential municipal services.

According to the petition, no additional services will be provided to the proposed expanded city.³⁸ No new residents will be part of the city, and no new staff will be hired as a result of a successful annexation.³⁹ The petition states that revenue generated from the proposed annexation and subsequent implementation of a raw fish tax is necessary for sustainable finances in the city of Dillingham.

³⁸ Dillingham Petition, p. 66.

³⁹ Dillingham Petition, p. 69.

Because the territory is uninhabited and the city does not plan to extend any new services, no new functions or expenses will be associated with the proposed annexation.

Anticipated income from taxing the territory is well documented and the primary driver of the petition. Dillingham contends this additional income will ensure a sustainable, long-term city budget that will allow it to devote resources to city services including the dock and harbor. However, the petition only lists possible harbor-related improvements as potential future projects to undertake with new revenue.⁴⁰

The petition states that all revenue sources have been exhausted in its explanation to city residents and that taxes are already high enough.⁴¹ A closer look at the more detailed FY15 Dillingham audit does not reveal a city operating at a deficit or in dire need of raising revenue from a fish tax.⁴²

Dillingham cites transfers from the general operating fund and dock fund to the harbor fund as evidence that it is operating at a deficit. The petition fails to list a schedule of harbor fees or that it has considered increasing them. Use of the harbor incurs user fees, and if they do not cover the cost of service, Dillingham could raise them, or alternatively, eliminate these services. Indeed, harbor fees should cover many of the services that Dillingham includes in the list of services it provides that it claims are not covered by the commercial fishermen.

As documented in the table below, dock revenue has generally decreased in the period from 2011 to 2015 while expenses have almost doubled. Over the same timeframe, harbor expenses have remained about the same, while revenue has decreased, even accounting for the transfer of funds to the harbor fund.

Dock and Harbor Revenue and Expenses between 2011-2015 in Dillingham⁴³

Year	Revenue		Expenses		Transfer
	Dock	Harbor	Dock	Harbor	
2011	600,451	223,196	363,469	223,196	108,458
2012	639,466	110,482	369,429	211,544	101,062
2013	709,603	175,426	479,327	211,544	-
2014	645,594	140,114	640,105	250,552	110,438
2015	490,327	137,363	622,513	244,979	107,616

⁴⁰ Dillingham Petition, p. 59-60.

⁴¹ Dillingham Petition, p. 290.

⁴² City of Dillingham FY15 Financial Audit. DCCED.

<https://www.commerce.alaska.gov/dcra/dcrarepoext/RepoPubs/FinDocs/DillinghamFY2015Audit.pdf>, accessed August 17, 2016.

⁴³ Budgets, City of Dillingham website, http://www.dillinghamak.us/index.asp?Type=B_BASIC&SEC={F96DC0FB-E950-45F7-889C-CADA7C67CC18}, accessed September 12, 2016; City of Dillingham FY15 Financial Audit. DCCED. <https://www.commerce.alaska.gov/dcra/dcrarepoext/RepoPubs/FinDocs/DillinghamFY2015Audit.pdf>, accessed August 17, 2016.

The seasonal moorage rate for a 32-foot vessel was raised from \$260 to \$280 in 2015. The rate had not been raised since at least 2004. In 2013, Dillingham raised its transient moorage fees. However, the petition indicates low transient use, so raising the transient rate will have little effect on the revenue generated.⁴⁴ Staff believes that increases in user fees should be the first task for recouping the costs of providing dock and harbor services. Dock rates were last raised in 2007.⁴⁵

In both cases, generally, fees have not increased with expenses. A relatively small increase in fees would eliminate the need for a transfer to the harbor fund from the dock fund or general fund. Staff does not find evidence that revenue on the level of what a successful annexation would bring justifies the proposal for annexation.

Staff points out that harbor fees are set much lower than many other comparable cities.⁴⁶ For example, as the City of Manokotak's Responsive Brief notes, an increase in annual harbor fees to the average of the seven harbors they surveyed could raise approximately \$392,000.⁴⁷

Dillingham responds by highlighting the other harbors surveyed offer many more services and amenities than does Dillingham.⁴⁸ However, there is little indication that Dillingham has tried to raise fees to attempt to match costs. Harbormaster Jean Barrett stated that higher fees would deter vessels from using the harbor.⁴⁹ If this is true, this indicates there are viable alternatives to use of the Dillingham harbor and dock.

Not all fishermen in Nushagak Bay have a strong association with Dillingham, however. Primarily those fishing from boats use Dillingham's harbor. However, much of the bay hosts shore-based set net permit holders who may or may not be part of the commercial fishing fleet transiting through Dillingham.

While the petition notes that there are no other public docks or harbors in the bay, other facilities are used by the communities that fish in those sections.⁵⁰ For example, set netters in Manokotak, Ekuk, or Clark's Point may have no reason to use Dillingham's harbor. Furthermore, drift net vessels do not all use Dillingham's harbor. This is evident not only from anecdotal evidence provided by public comments, but also by the harbor permits, only seven percent of which are held by "Local Villages resident[s]", while 44 percent are held by Dillingham residents.⁵¹ Drift net vessels may harbor somewhere at some point during the season, but there appear to be alternatives to the Dillingham harbor. Nushagak Bay and the Wood River Sockeye Salmon Harvest Area (WRSSHA)

⁴⁴ Dillingham Petition, p. 7.

⁴⁵ Minutes, January 15, 2015 Regular Meeting of the Dillingham City Council. City of Dillingham website. Accessed August 24, 2016.

⁴⁶ Manokotak Responsive Brief, p. 10.

⁴⁷ Manokotak Responsive Brief, p. 10.

⁴⁸ Dillingham Reply Brief, p. 27-28.

⁴⁹ Jean Barrett, email conversation with LBC staff, May 24, 2016.

⁵⁰ Dillingham Petition, p. 61.

⁵¹ Dillingham Petition, p. 51.

both have navigable rivers from which drift net vessels may transit, and certainly, Bristol Bay has several other fishing districts and communities.

Though Dillingham cites increased costs regarding waste disposal and landfill use, the petition does not state that the city has increased waste disposal fees as a result of these cost increases. It notes that Aleknagik residents bring their trash to Dillingham's landfill, but neglects to mention that there are usage fees associated with using Dillingham's landfill that are unrelated to commercial fishing.⁵² Dillingham includes in its assessment of fishing-related costs general infrastructure investments within the city boundaries, but does not provide any evidence that it would not have needed to make these investments except for the impact from seasonal fishing.

While staff understands that maintenance of the harbor and related services including economic development do provide important infrastructure to the fishery, staff points to state and federal management and funding that also contribute substantially to the viability of this important resource. These resources are important to more than just the community of Dillingham. The petition mentions grants and funding from outside sources, but emphasizes that the city must continue to maintain and operate its infrastructure even if it did not shoulder the cost initially.⁵³ The detrimental effect of these expenses is not borne out in the city's more detailed audited budget reports provided to DCCED.⁵⁴

Another important point the petition fails to raise is the revenue cities receive from the state Shared Fisheries Business Tax—the stated purpose of which is to assist communities affected by fisheries-related activities.⁵⁵ There are two kinds of landings taxes levied by the state and distributed back to municipalities, both called the Shared Fisheries Business Tax. One is levied for landings within a municipality (also called the Raw Fish Tax and administered by the Department of Revenue) and one for landings outside a municipality (administered by DCCED). If Dillingham annexes the whole of Nushagak Bay, Dillingham will receive 50 percent of the tax collected in Dillingham's enlarged borders. These anticipated additional sources of revenue or effect on other communities are not mentioned in the petition or in the budget. Dillingham received \$407,654 in FY15 for activity within its boundaries and \$18,356 as allocated by DCCED for activity outside its borders.⁵⁶

⁵² "Fines, Fees, and Taxes." City of Dillingham website, http://www.dillinghamak.us/index.asp?Type=B_BASIC&SEC=%7B8A748244-AF8B-4E79-9910-A8BB0C428103%7D. Accessed August 16, 2016.

⁵³ Dillingham Petition, p. 59.

⁵⁴ City of Dillingham FY15 Financial Audit. DCCED, <https://www.commerce.alaska.gov/dcra/dcrarepoext/RepoPubs/FinDocs/DillinghamFY2015Audit.pdf>, accessed August 17, 2016.

⁵⁵ "Shared Fisheries Business Tax/Fishery Resource Landing Tax." DCCED, https://www.commerce.alaska.gov/web/Portals/4/pub/Shared_Fisheries_Business_Tax.pdf, accessed August 18, 2016.

⁵⁶ Dillingham Petition, p. 39; Community Revenue Sharing, "Dillingham" DCCED, <https://www.commerce.alaska.gov/dcra/eGrantsOnline/Pages/RevSharingReport.aspx?pgmyear=2015&pgmid=3>, accessed August 22, 2016.

The tax revenue generated for landings outside a municipality will not only decrease for Dillingham, but will decrease for Clark’s Point, Manokotak, and other cities fishing in the Bristol Bay Management Area as a result of Dillingham’s annexation. This is because the area in the Bristol Bay Management Area outside municipalities will decrease as Dillingham’s size increases. The allocation of landing taxes is fixed within each fishery’s management area and distributed based on location (within a borough, municipalities, etc.) and population—and annexation will shift a greater share to Dillingham from these communities without water in their boundaries, but who are still affected by the fishing industry.

The petition states that commercial fishermen benefit from city services, but their contributions do not cover the costs.⁵⁷ Dillingham has not indicated that it has striven to associate revenues with the source of the expenses—primarily by increasing user fees. In addition, the petition fails to account for what are likely significant tangible financial or other benefits to the city from the commercial fishing industry. Dillingham does not succeed in proving the financial connection between the substantial revenue potential of the territory and the services Dillingham will provide for that territory with that revenue.

Moreover, the impact of the fishing is significant, but does not entitle a community to tax and reach into an entire area without seriously looking at increasing the user fees for service.

Dillingham claims it does not have to prove it is the only provider of services in the region; only that it is the most important.⁵⁸ Staff contends that Dillingham overstates the benefits the city actually provides to the region’s fishing industry as the “hub city”—a term with no meaning in this context. Dillingham’s tangible benefits to the industry are not analogous to public schools and public libraries as it claims.⁵⁹ In contrast, while schools, libraries, and an economic driver such as fishing all contribute to the public good, the fishing industry’s impact brings revenue to Dillingham and to other communities in the region.

The resources of Nushagak Bay are not for solely Dillingham to exploit—those resources must sustain all the communities that rely on them. It is unfair for Dillingham to impose a tax for which it has no demonstrated need, and on a resource that it cannot wholly claim. Furthermore, the amount that would be generated with annexation far exceeds the costs of service delivery needs for a single city. Staff does not find that annexation of the territory, which has considerable and well-demonstrated resources and potential revenue generation, is necessary for Dillingham to provide essential municipal services to the existing city.

⁵⁷ Dillingham Petition, p. 7.

⁵⁸ Dillingham Reply Brief, p. 11,15.

⁵⁹ Dillingham Reply Brief, p. 31.

Population (3 AAC 110.120)

This standard seeks to ensure the population of the proposed expanded city (existing city plus that of the annexed territory) can sustain the extension of city government to territory proposed for annexation.

The current population of Dillingham is 2,386.⁶⁰ The permanent population of the territory proposed for annexation is zero. Because neither the permanent population will increase as a result of the proposed expansion of city boundaries, nor will city services be increased, whether the population of the city (before or after the proposed expansion) is sufficiently large and stable to support extension of city government is irrelevant.

Furthermore, staff does not find credible Dillingham's argument that seasonal fishing crews and visitors that come to Dillingham and "other places in Bristol Bay" represent a true and permanent population, and points to the definition of permanent resident in 3 AAC 110.990(10).⁶¹

The standard states the petition must prove that the population within the proposed expanded boundaries can support extension of services. The population of the territory, which is zero, will not strain Dillingham in provision of services to the current city. However, neither growth nor extension of services are planned or anticipated, so this standard cannot be met.

Boundaries (3 AAC 110.130)

This standard considers whether the proposed expanded boundaries contain all land and water necessary to provide essential municipal services on an efficient, cost-effective level. This serves to ensure municipalities include what is necessary to provide services and do not create enclaves, and plan for growth if appropriate. This standard also considers the scale that is appropriate for a city, as well as whether the proposed boundaries overlap existing municipalities.

With regard to whether the proposed boundaries include all land and water necessary to extend essential municipal services, staff asserts that the boundaries include more land and water than is necessary because no additional municipal services will be extended into the territory, and the LBC staff has not determined those services Dillingham plans to provide to be essential to the territory. (See the section on 3 AAC 110.970 later in this report.)

This section lists factors for consideration such as land use and ownership patterns, population density, transportation patterns and facilities, natural geographical features and environmental factors, and the extraterritorial powers of cities.

While the land and water within the territory is uninhabited, there are two managed fisheries within the boundaries. The territory conforms to the Nushagak Bay, which is formed at the mouths of

⁶⁰ "Dillingham." Community Databases Online, DCRA.

⁶¹ Dillingham Petition, p. 70.

several rivers including the Nushagak, Wood, Igushik, and Snake Rivers. Earlier sections discussed land use and ownership around the bay.

Staff finds the expanded boundaries will have no effect on Dillingham's ability to provide services within its proposed expanded boundaries. It is contiguous and will not create enclaves. It will not overlap any existing cities or boroughs, though it will be contiguous to the boundaries of Clark's Point, touch the fish camps that line Nushagak Bay, and reach into the waters on which communities such as Aleknagik sit. These boundaries encompass all the most lucrative areas for tax generation without also claiming the communities who also rely on this fishery. The factors addressed in this section do not contribute to Dillingham's argument for annexation of the bay.

Limitation of community

This section of the standard regarding boundaries requires that the proposed expanded boundaries for an annexation must be on a scale suitable for city government. Specific limitations on city size are not defined in regulation or statutes. Dillingham notes that the LBC has approved other municipalities' annexation proposals for large bodies of water. However, every petition is different and the scale must be appropriate for governance in each situation. Only cities—as opposed to boroughs—have limitations to their boundaries. Indeed, the limitation of community doctrine requires that territory annexed must represent a community and “there must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty.”⁶²

Dillingham contends that the seasonal population represents a local community for several reasons: the fishermen have common interests in the livelihood of the fishery, long-term upkeep of the port and harbor facilities; and the presence of medical-, vehicle repair-, and supply-related businesses in Dillingham.⁶³ Within the first reason given here, it specifically argues that the seasonal population has an interest in management of the fishery, future oil and gas activities, fish processing facilities, and transportation in and out of Dillingham.⁶⁴ Staff notes that while fishermen in Nushagak Bay are undeniably interested in the viability of the salmon stocks, Dillingham is not and will not be involved in the management of the fishery. These reasons, with the port and harbor as an exception, for the seasonal population constituting a part of the Dillingham community are primarily services that Dillingham has little to no jurisdiction over.

While specific limitations on the size and scale of city government are not defined in regulation, Dillingham correctly points out that several other municipalities in Alaska have more land and water as part of their boundaries than does the territory proposed for an expanded Dillingham. However, staff notes Dillingham fails to overcome the bar set by law and regulation that the territory in

⁶² *Mobil Oil Corporation et al. v. LBC*, 518 P.2d 92, 100 (Alaska 1974).

⁶³ Dillingham Reply Brief, p. 19-20.

⁶⁴ Dillingham Reply Brief, p. 20.

question comprises an existing local community as defined by 3 AAC 110.920, with reasonably anticipated growth, development needs and public safety needs. There is no present local community in the territory proposed for annexation.

Dillingham lists examples of other cities who cited a need for financial resources to enlarge boundaries and to which the LBC granted water including Egegik, St. Paul, Pilot Point, and Togiak.⁶⁵ Notable among these examples is the absence within each community's expanded boundaries of included or adjacent incorporated communities. While the petition's proposed boundaries do not overlap an existing jurisdiction, they do run contiguously to several existing communities, villages, and incorporated cities. Those communities also rely on the resources found within the boundaries proposed for inclusion within Dillingham. In fact, similar claims are made by another incorporated city—Manokotak—which will be addressed later in this report.

In addition, the limitation of community doctrine spelled out in the standard of boundaries prohibits annexing entire geographical regions or large unpopulated areas. Nushagak Bay easily meets the definition of region: “a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors.”⁶⁶

In fact, Dillingham's petition asserts that Dillingham serves other communities in the areas. While the territory does not include cities or communities in its boundaries, it skirts several of them—in essence, allowing Dillingham access to those communities' possible revenue source without offering any tangible benefits to those communities. As a first class city in the unorganized borough, Dillingham has no obligation or expectation that it will use revenue generated from taxing the resources in Nushagak Bay to help the region's other cities and communities. Though the city is the hub of the region, that status is not formal and has no formal duties attached.

The LBC can allow annexation of large unpopulated areas or entire geographical regions if the boundaries are justified by other factors including best interests of the state, resources, character, and need.⁶⁷ Staff finds no justification given by the petition or any other part of the record to allow this annexation.

Staff finds the boundaries sought by Dillingham include more than what is necessary to provide essential municipal services because Dillingham does not intend to provide additional services to the territory. Instead, the territory, which has no permanent population, is home to the primary resource in the region. Because of this and other reasons, staff does not find that the territory is on a scale suitable for city government of a single community. Moreover, the territory fits the definition for a

⁶⁵ Dillingham Petition, p. 74-75.

⁶⁶ 3 AAC 110.990(28) “region” (A).

⁶⁷ 3 AAC 110.130(c)(2).

large, unpopulated geographic area, and is, therefore, inappropriate for annexation by Dillingham. The standard of boundaries is not met.

Best Interests of the State (3 AAC 110.135; AS 29.06.040(a))

This standard is the crux of the Local Boundary Commission’s task in serving a statewide role in boundary changes. This standard asks about the role of government in the proposed boundary change—specifically whether it will maximize local self-government and whether it minimizes the number of local government units. The framers sought to avoid the overlapping jurisdictions of the Lower 48 states.

The Alaska Supreme Court characterized the framers’ purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: those 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 area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.⁶⁸

While the “best interests of the state” standard lists three factors, they need not be the only factors commissioners consider. Consistent in Dillingham’s arguments is the claim that revenue generated from annexation of the territory will contribute to a stronger region. Staff finds no evidence that a financially strengthened City of Dillingham will affect the region’s residents in a favorable manner. The Local Boundary Commission is tasked with making boundary decisions that are in the best interests of the state, and not just that of the local community.⁶⁹

If Dillingham claims the entire bay as a source of revenue, then no other community can do so—especially in the absence of a regional government. Dillingham’s annexation petition has not fully considered the effect of this tax on the surrounding communities’ long-term well-being and viability.

This sentiment is echoed in many public comments. In fact, of the six other incorporated communities in the Dillingham Census Area, five have expressed opposition to Dillingham’s annexation in either its prior iteration (in 2010) or its current legislative review petition. In addition, most of the regional entities that are physically headquartered in Dillingham are also opposed to Dillingham’s petition.

⁶⁸ “Background on the Local Boundary Commission.” LBC staff, no date; *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

⁶⁹ *Fairview Pub. Util. Dist. No. One v. City of Anchorage*, 368 P.2d 540, 546 (Alaska 1962).

Dillingham contends that creation of a future borough is not discouraged by annexation; staff disagrees. While a future borough could indeed levy an additional fish tax on top of what Dillingham is proposing, this would further burden those relying on fishing for their livelihood and affect the distribution of fish taxes at the state level. It is also unlikely a borough could function without fishing as its main source of revenue or that Dillingham would be willing to give up any of Nushagak Bay if a borough were formed.

The petition posits that without this annexation the city's finances will be so strained the state will have to step in.⁷⁰ Staff is unsure in what capacity the state would step in. Dillingham presents no evidence that stronger city finances will contribute any benefits to the other local communities in the region, and it does not present any plans to contribute to the continuing success of the fishery or the local villages of the region. Dillingham presents no evidence that their need for supplemental revenue is any stronger than other communities in the region. This claim is unfounded.

In fact, the effect of the annexation on the state fisheries business tax and the state raw fish tax would be to increase revenue for Dillingham—while reducing revenue for other cities who also receive allocations through DCCED as incorporated municipalities in the unorganized borough for fishing-related activities outside their boundaries. Certainly a stronger Dillingham is beneficial, but not at the cost of destabilizing the primary resource and revenue stream for smaller villages and cities in the region. The petition fails to consider the long-term effects of the proposed annexation on communities within the region with regard to finances and equity.

Boundary changes in Alaska are decided at the state level and the LBC is tasked with determining whether a proposed change is in the best interests of the state. Dillingham's annexation, while in the city's best interest, is not fair to the surrounding communities. It is therefore not in the best interests of the state.

(1) Maximum Local Self-Government (*see also*, 3 AAC 110.981)

The petition contends that annexation of the territory will maximize local self-government because it will reduce the size of the currently ungoverned unorganized borough.⁷¹ While true, there are no additional citizens who will be able to take advantage of this expansion of local government. In addition, residents of the region's communities will be taxed without demonstrated benefits or representation. This standard is not met.

(2) Minimum Number of Local Government Units (*see also*, 3 AAC 110.982)

No new governments will be created and so the standard of a minimum number of local government units is met.

(3) Relief to State Government of Local Services

⁷⁰ Dillingham Petition, p. 77.

⁷¹ Dillingham Petition, p. 78.

This annexation will not relieve the state of the provision of any services. As will be discussed below, the city plans to delegate public safety of the proposed territory to the AST—who has disavowed this responsibility citing the presence of a city police department. Furthermore, the territory and its assets will continue to be monitored, maintained, and managed by state and federal agencies. These considerations contribute to staff’s conclusion that this annexation is not in the best interests of the state.

Legislative Review (3 AAC 110.140)

This section of the standards applies to legislative review petitions. A primary reason for legislative review is to allow for greater extra-jurisdictional participation in boundary changes in the initial stages.

Legislative review requires a pre-submission hearing and additional notice to affected communities, which the LBC staff finds Dillingham did when staff accepted the city’s petition for filing. The city’s petition asserts that, because the LBC found that Dillingham’s 2010 petition met the annexation standards, those same standards are met for the current petition. Staff, however, notes that the superior court found fault with the staff’s and LBC’s approval of the 2010 annexation petition. The current petition is a new petition with new information and has been reviewed on its own merits and on the present record.

Territory may be annexed to a city by the legislative review process if the LBC determines that any of eight enumerated circumstances exists.

(1) The territory is wholly or substantially surrounded by the annexing city

The territory proposed for annexation cannot be described as wholly or substantially surrounded by the City of Dillingham and so this factor is not met.

(2) The health, safety, or general welfare of city residents is endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions

The petition does not document, in the department’s view, conditions that are present or developing in the territory that are likely to be ameliorated through the proposed annexation.

(3) The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city

There is no planned extension of city services or facilities into the territory proposed for annexation and so this factor is not met.

- (4) Residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits**

There are no permanent residents in the territory within the territory proposed for annexation, and in the department's view, as noted in this report, there are equitable alternative methods available to offset the effects of the fishing industry.

- (5) Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city**

No growth or development is planned in the territory proposed for annexation so this factor does not apply.

- (6) Repealed**

- (7) Annexation of the territory will promote**

(A) Maximum local self-government, as determined under 3 AAC 110.981; and

(B) A minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska

As determined in this report, the standard of 3 AAC 110.981 is not met and so this factor is not met.

- (8) Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042, and is in the best interests of the state**

As documented in this report, the department finds that this annexation is not in the best interests of the state, and, so, this factor is not met.

- (9) The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state**

As discussed in this report, this annexation is not in the best interests of the state and so this factor is not met.

In the department's opinion, none of the eight circumstances required for annexation via legislative review are present, and so this standard is not met.

Transition Plan (3 AAC 110.900)

This regulation requires that petitions for annexation include a plan with details about the transfer of powers, duties, and assets. The petition includes a transition plan to complete the proposed annexation in the shortest practicable time. Most of the tasks listed in the plan are noted as accomplished because the groundwork, as indicated in the petition, has already taken place as a result of the vacated annexation, which went into effect in 2011. Initiation of the raw fish tax within its new territory its primary focus of Dillingham's transition plan.

Dillingham's transition plan also lists those communities, entities, and organizations the city consulted regarding its annexation petition. The plan indicates that there are no assets and liabilities within the boundaries of the proposed annexation and there is not any loss in value to assets, credit reputation, or bond rating likely to occur as a result of the transition.

While the transition plan has been updated from the 2010 petition, the plan does not indicate any resolution with AST regarding the public safety response in the territory. As stated earlier in this report, AST has confirmed to staff that they do not plan to respond to Nushagak Bay if it is annexed and taxed by the city. Moreover, Dillingham does not have a police boat or stated plans to purchase one to serve the public safety needs of the entire territory.⁷²

Because the transition plan does not indicate how Dillingham plans to provide essential municipal services such as public safety within the expanded boundaries, staff finds the plan incomplete. It does not meet the standard.

Statement of Nondiscrimination (3 AAC 110.910)

The effect of the petition will not deny anyone the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. This standard is satisfied.

Determination of Community (3 AAC 110.920)

This regulation asks if the territory in question is a community. The territory in question has no residents and therefore it is not possible for the commission to determine that the territory includes residents that comprise a community.

Essential Municipal Services (3 AAC 110.970)

When the annexation standards call for the identification of essential municipal services of the city, the commission is to determine whether those services are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently or effectively by the creation or modification of some other political subdivision of the state.

⁷² Col. James Cockrell, personal communication with author, September 1, 2016.

Essential services that the City of Dillingham currently provides include public works, port and harbor, police, education, planning, animal control, and other services. These are essential municipal services for a city. However, none of these services will be extended into the territory. Management of the fishery, waters, and other aspects of the territory—even if annexed—would continue to be managed at the state and federal levels. Therefore, only public safety is essential to the territory and Dillingham does not plan to increase or extend public safety services to the territory. The other municipal services provided by Dillingham are not reasonably necessary to the territory.

As stated before, the annexation will not maximize local self-government. With regard to service delivery by creation of some other political subdivision of the state, staff concludes that a city is not the most efficient or effective method for service delivery in a territory with regional significance.

Staff finds that Dillingham only plans to implement a tax on a resource that multiple communities also claim and such taxation does not represent an essential municipal service. Nushagak Bay, therefore, cannot be served most effectively and efficiently by a single city.

Conclusion

In assessing Dillingham's petition, staff has reviewed the petition as well as the comments, reply briefs, responsive briefs and other material submitted. In addition, staff has reviewed the documents from the 1986, 1987, and 2010 Dillingham annexation petitions. In each annexation petition, the City of Dillingham sought to annex at least the whole of Nushagak Bay in order to levy a raw fish tax to ensure support from the seasonal fishermen who receive city services without payment of commensurate fees. In 1986, and 1987, the LBC rejected the proposed annexation of the water. It did allow annexation of populated land unrelated to Nushagak Bay, but in each decision, and in subsequent decisions prior to 2010 involving other communities, the LBC reasoned that the problems facing residents were of a regional nature. Staff agrees with the prior assessments that the fisheries are an important regional resource that will continue to be managed at the state level and should not be subject to taxation by a single community. The needs of the region are greater than those that Dillingham seeks to meet, and staff believes that service delivery, and the revenues to support such services could be distributed more broadly, equitably and efficiently on a regional scale.

The LBC typically only hears petitions that are brought before it by interested parties with the resources and time to draft and support such petitions. Staff does not presume, however, that the communities that submit such petitions are the only ones who wish to annex territory. Public comment periods and respondent status allow for these other communities to contribute to the discussion. The majority of comments received by staff expressed strong opposition to Dillingham's petition.

While staff recognizes that the resources of Nushagak Bay will not be capitalized at least in the short term, staff recommends denial of the City of Dillingham's petition because the LBC should pursue long-term solutions rather than short-term plans for revenue generation that draws on a regional resource, but only benefits a single community.

In this assessment of the annexation standards, staff finds that Dillingham's petition for annexation of 396 square miles of water and three square miles of land has not met the required standards. Staff finds that the planned annexation is not in the best interests of the residents of the region, or in the best interests of the state. Staff recommends the LBC deny Dillingham's annexation petition.

Manokotak



City Profile

Manokotak incorporated as a fourth class city in 1970. The city was reclassified in 1972 when third and fourth class cities were eliminated by the Legislature. The 2015 population is 482 and is governed by a seven-member city council from which the mayor is elected.⁷³ This is the City of Manokotak's first petition to the Local Boundary Commission.

The current city is about 36 square miles of land and about one square mile of water located 25 miles southwest of Dillingham on the Igushik River. The city is situated inland about 16 air miles from Nushagak Bay.⁷⁴ Its boundaries also encompass a section of the Weary River that flows with the Snake River into Nushagak Bay. Manokotak is located in the unorganized borough in the Dillingham Census Area.⁷⁵ The petition states that the formal petitioner is the City of Manokotak, but that the decision was reached with support from the tribal government, the Manokotak Village Council, and the village corporation, Manokotak Natives Limited.⁷⁶

The territory sought by Manokotak is approximately 154.7 square miles of which approximately 113 square miles are water.⁷⁷ A more detailed description of the territory is set out below.

⁷³ "Manokotak." Community Database Online, DCRA; Manokotak Petition, p. 34.

⁷⁴ Manokotak Petition, p. 4.

⁷⁵ Census areas are purely administrative boundaries in the absence of organized boroughs in Alaska.

⁷⁶ Manokotak Petition, p. 69.

⁷⁷ Manokotak Petition, p. 29-30.

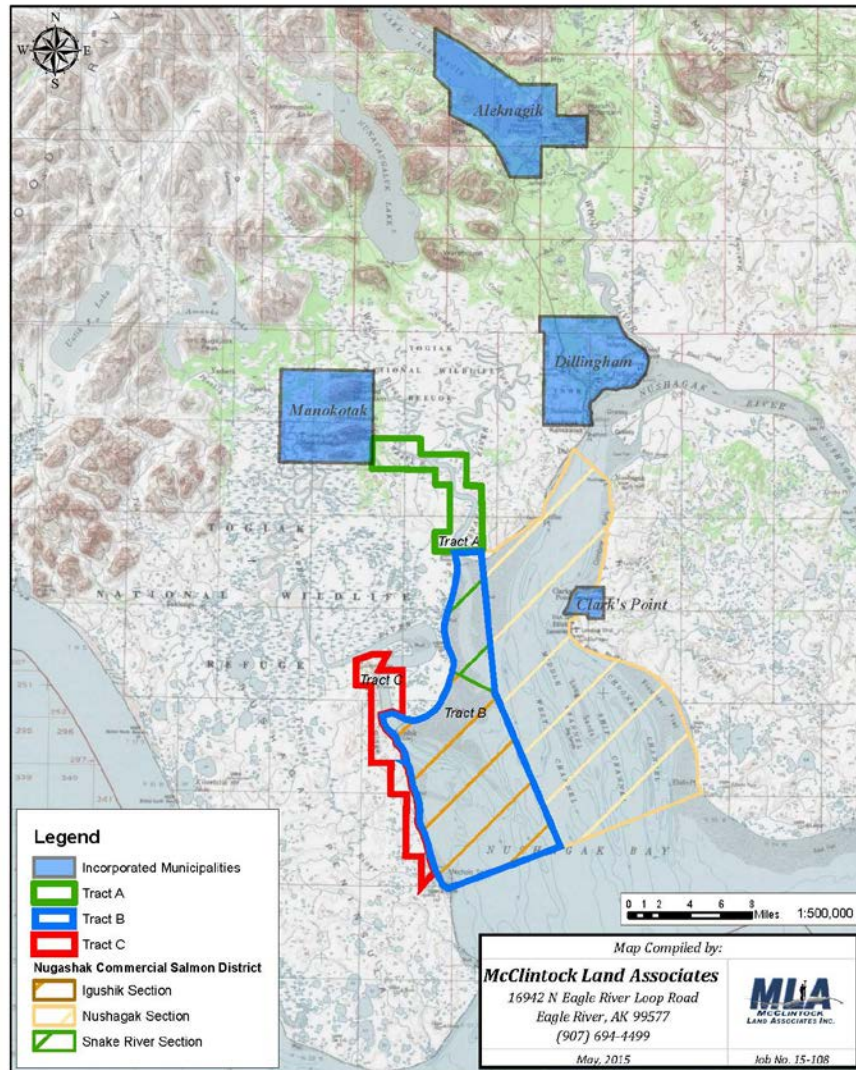
Standards for Annexation to Cities

State law requires that certain standards be met before territory may be annexed to a municipality. It is the responsibility of the Local Boundary Commission staff to evaluate annexation proposals and to issue a recommendation to the Local Boundary Commission. It is the responsibility of the Local Boundary Commission to determine formally whether those standards have been met and render a decision regarding annexation.

While the Division of Community and Regional Affairs, part of the Department of Commerce, Community, and Economic Development, provides technical and administrative support to the LBC, the commission is completely independent of the division, the department, and other state agencies. The Local Boundary Commission is not bound by the recommendations made by staff in this report.

The standards for annexation to cities are addressed in this report by section: need, character, resources, population, boundaries, best interests of the state, and legislative review. Each section also includes its regulatory or statutory reference in parentheses. This analysis must also address standards for all petitions: transition, statement of nondiscrimination, determination of community, determination of essential municipal services, and as well as determination of maximum local self-government and a minimum number of local government units. Under some of these sections, smaller text headlines address factors listed in these regulatory standards.

Description of the Territory



Map of Proposed Territory for Annexation⁷⁸

This report considers the entire record including the petition, responsive and reply briefs, public comments, as well as research conducted by staff. The petition and subsequent documents from the petitioner emphasize that the three tracts should be considered as a single territory and are only labeled separately for ease of understanding. The department finds that the three pieces, though part of the same annexation petition, have been addressed separately and given separate reasons in support of their inclusion in the petition and will be treated as such by this report.

Significant among the facts presented in this case is that while the City of Manokotak is the only municipal government represented in this community, the village corporation Manokotak Natives

⁷⁸ Manokotak Petition, p. 55.

Limited, and the tribal government Manokotak Village Council, also own, operate, and provide funding for some municipal services in the city. The petition notes that the three entities agreed to advance the petition, though the city is the formal petitioner.⁷⁹ However, DCCED regulations require that the report analyze whether the territory is appropriate for annexation to the city.

Description of the Territory by Tract

Tract A: 20.9 square miles

Tract A contains a segment of the Weary River as it flows down into the Snake River and then into Nushagak Bay where it meets Tract B (described below). According to the petition, the city seeks this tract to secure the means of travel between the fishing grounds and the city and to facilitate services.⁸⁰ In the past, Manokotak residents primarily used the Igushik River to reach their fish camp before transitioning to using the Weary River which has a much shorter travel time and distance to Nushagak Bay.⁸¹ However, the Weary River experiences severe erosion and the city is seeking funds to build a barge dock and rebuild the boat launch.⁸²

Tract B: 113 square miles

This tract consists of the Igushik and Snake River Sections of the Nushagak Commercial Salmon District Boundaries. It is a 113 square mile section of Nushagak Bay and overlaps with the territory sought by the City of Dillingham's annexation petition which includes the entire bay. The Snake River Section is closed by regulation to fishing, but is included because Manokotak residents traveling down the Weary/Snake Rivers to Igushik Beach move through this section.⁸³ It also connects Tract A to Tract C (described below).

Manokotak seeks to annex this tract in order to levy a raw fish tax to fund services in the expanded city. This Igushik Section is part of the Nushagak Commercial Salmon District, which is part of the Bristol Bay Management Area. While Manokotak intends to levy a fish tax on those fishing in this section, the Alaska Department of Fish and Game has indicated an unwillingness to require fish tickets for Nushagak District to specify in which section of the district fish were landed, which creates a tax collection problem for Manokotak.⁸⁴ This is discussed in more detail later in this report.

Tract C: 20.8 square miles

This tract is called either Igushik Beach or Igushik Village and is home to a seasonal fish camp. Igushik Beach is where the majority of Manokotak residents move for the fishing season each summer and is also relied upon for subsistence activities. This tract is at the mouth of the Igushik

⁷⁹ Manokotak Petition, p. 69.

⁸⁰ Manokotak Petition, p. 21.

⁸¹ Manokotak Petition, p. 21.

⁸² Manokotak Petition, p. 21.

⁸³ When this report refers to fishing in Tract B, it only refers to the Igushik Section of Tract B.

⁸⁴ Dillingham Responsive Brief, Ex. I, p. 1; Manokotak Petition, p. 25.

River which flows into Nushagak Bay. Manokotak states that the set net permit holders and shore fishery leaseholders are primarily from Manokotak, and taxing them is appropriate, as they would be the primary beneficiaries of services the city plans to provide.⁸⁵ It also states that services are severely lacking in this section, and that the city's historical connections make it the most appropriate entity to annex this tract.

Department Assessment of the Territory

These three territories will be analyzed individually inasmuch as the department does not find annexation of Nushagak Bay (Tract B in particular) appropriate for a single municipality. The Nushagak District is part of the Bristol Bay Management Area. Though Manokotak disputes the Alaska Department of Fish and Game (ADFG) practice of only requiring fish tickets to indicate Nushagak rather than specific sub-sections of the district, ADFG has indicated they do not intend to change this practice.⁸⁶ Even so, the department believes it is not prudent to specify certain sections of bodies of water “belong” to specific communities, when several communities may be entitled to claim a body of water. As stated previously, the LBC typically only hears petitions from cities and entities with the resources to draft them rather than from all cities who wish to annex territory they believe should be included in their boundaries. For example, Clark's Point has at times sought to annex parts of the bay, but was denied because the LBC said the same body of water served as a regional resource.

Furthermore, representatives from Clark's Point have indicated that if either Manokotak's or Dillingham's petitions were granted, the LBC should “reserve” part of the bay for the City of Clark's Point's potential future annexations.⁸⁷ The City of Clark's Point considered submitting its own annexation petition in 2015, but states that statements made by Dillingham in its pre-submission hearing and in its petition that the LBC should approve Dillingham's annexation petition because the commission did so in 2011 discouraged Clark's Point from doing so.⁸⁸

As stated previously, the department view is that Nushagak Bay supports the region. The Igushik Section (as well as the larger Nushagak District) hosts drift netters who hold permits allowing them to fish anywhere in the Bristol Bay fishery.

One such example of the regional significance of the bay is the Shared Fisheries Business Tax. This tax is distributed by DCCED to communities by fishery management area to compensate for the impact on their communities from the fishing industry. Within the Bristol Bay Management Area, there are 13 communities who receive funds. Each community, including Lake and Peninsula Borough, split 40 percent of the allocation—which is based on the amount of fish processed in that fishing management area. The remaining 60 percent of that allocation is split based on the populations of each community.

⁸⁵ Manokotak Reply Brief, p. 21.

⁸⁶ Dillingham Responsive Brief, Ex. I, p. 1.

⁸⁷ Eastside Respondents (Ekuk, et al.) comment submitted July 15, 2016, p. 9.

⁸⁸ Ekuk, et al., Responsive Brief, February 22, 2016, p. 9.

Communities in the Dillingham Census Area, Shared Fisheries Business Tax Revenue, 2016

Community	2016 Raw Fish Tax Revenue
Aleknagik	\$5,872.49
Clark's Point	\$4,093.34
Ekwok	\$4,779.85
Dillingham	\$27,135.28
Manokotak	\$8,463.86
New Stuyahok	\$8,445.20
Togiak	\$12,099.52

Source: DCCED, DCRA Community Aid and Accountability Reports

Even though New Stuyahok, Aleknagik, and Ekwok are not located on Nushagak Bay or directly on Bristol Bay, they are considered to have been affected by the fishing industry. There are two methods for determining allocation. The standard method is for municipalities to document the impact from the fishing industry and DCCED to allocate money accordingly. The alternate method (and the one used for the Dillingham Census Area) is for the communities in the management area to agree to allocate the money partially based on population, but also allocating a certain percentage for each community to receive.

Splitting up the water in the bay among communities that are closest in proximity disregards that the fishing industry, processing, and seasonal activity impact more than simply the communities that physically border the bay. Furthermore, Nushagak Bay is significant in that several major rivers empty into this bay, and the other non-contiguous communities are primarily located upriver from the bay.

In 2010, the City of Manokotak submitted a resolution to the LBC identifying its connection to Nushagak Bay, specifically to the Igushik Section, to register its opposition to Dillingham's petition. Specifically, it stated:

- (1) Manokotak relies on the precedent established by the Local Boundary Commission in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay region. [...]
- (2) The City of Manokotak opposes the annexation of the Nushagak Commercial Salmon District to the City of Dillingham because the waters of Nushagak Bay are not a part of the community of Dillingham, but rather they belong to all of the cities and villages of the Dillingham Census Area.
- (3) If the Local Boundary Commission determines to change the precedent established in 1987 and allow the City of Dillingham to annex the waters of the Nushagak Commercial Salmon District, Manokotak hereby states its intent to respond by filing a petition to annex the lands between the existing city boundary to and including Igushik Beach and the waters of

Nushagak Bay Commercial Salmon District adjacent to those lands used by the people of Manokotak.⁸⁹

The department agrees with Manokotak's position that the waters of Nushagak Bay belong to all of the communities. Here, the City of Manokotak indicates its willingness to annex land and water in order to counter the City of Dillingham's annexation petition. The department believes this current annexation petition is legitimate, but that its aim is not entirely singular or fully fleshed out.

In its petition documents, Manokotak asserts that it has a more legitimate connection and claim to the Igushik Section than does Dillingham. While the department acknowledges the historical and ongoing ties to set net fishers on Igushik Beach, the bay also hosts drift netters from the region and elsewhere. No city can claim that the drift net vessels and their catch are the entitlement of their city alone for this reason. The department also acknowledges the LBC has approved many petitions that allowed many cities in Alaska to annex "their" fishing grounds. Each petition is analyzed separately and past decisions are viewed as guiding precedent, but are not binding on the LBC with respect to other petitions.

The long history of discord over taxation of the waters dating back to at least 1986 when Dillingham and Clark's Point first sought to claim the bay demonstrates that this issue must be solved not by slicing up the bay in a manner that will likely be contested and difficult to enforce using municipal boundaries, but through a more comprehensive regional solution. These petitions have arrived at this point in time, but the fishery is a long-term resource if it is managed well, and a long-term and regional solution must be reached.

For the same reasons Manokotak stated in its 2010 resolution, and this report states in the analysis for Dillingham, the department does not find that the Igushik Section of the Nushagak District or any part of Nushagak Bay is appropriate to be annexed by any single municipality without a regional structure in place to ensure equitable distribution of revenues derived from the bay's resources. Therefore, while this report will discuss Tract B, it will primarily consider only Tracts A and C as appropriate for annexation.

Need (3 AAC 110.090)

This standard requires the petition to demonstrate the territory sought exhibits a reasonable need for city government.

The City of Manokotak seeks to annex the territory for several reasons:

1. Enhance its ability to govern itself in its long-established and continuing use and occupancy of the annexation territory;
2. Provide essential city services and facilities to the territory and to the growing numbers of Manokotak families who use and occupy the territory on a seasonal basis;

⁸⁹ City of Manokotak, Resolution 11-4, dated September 17, 2010. Received by LBC staff September 21, 2010.

3. Extend the protection of important city ordinances, such as alcohol control, to the territory;
4. Acquire jurisdiction to levy taxes to fund provision of essential services and facilities in the territory;
5. Facilitate maintenance and improvement of the transportation infrastructure, including roads, boat landings and boat haulouts and storage areas, that links Manokotak and Igushik Village;
6. Maintain their traditional access to and benefit from the subsistence resources of the territory
7. Support the efforts of the Manokotak Fishermen’s Association to promote local participation in the Igushik Section subsistence and commercial fishery and to represent the interests of Manokotak fishermen in the management and sustainability of the Igushik River sockeye salmon stock;
8. Support the efforts of the Manokotak Fishermen’s Association to development fisheries-related improvements at Igushik Village; and
9. Diversify, broaden, and stabilize sources of local revenue for city government.⁹⁰

Within these stated reasons, the department finds community goals that are not necessarily accomplished by annexation of this particular territory. For example, management of the fishery and keeping fishing permits within the region are unlikely goals if they are proposed as a result of annexation. The needs of Manokotak as a small community in rural Alaska are significant, but they cannot all be solved by annexation of the proposed territory.

The petition states that Tract B is “crucial” to Manokotak to ensure funding is available to extend services.⁹¹ According to the petition, without Tract B, there will be no new revenue. Funding and management capacity must be balanced with need.

(1) Existing or Reasonably Anticipated Social or Economic Conditions

This factor in the need standard examines whether social or economic conditions in the territory warrant the extension of city government. This factor includes consideration whether commercial or residential growth has occurred outside the existing boundaries of the city or is expected to occur in the next ten years.

No residential or commercial growth is expected in the territory or within the expanded boundaries as a result of annexation.⁹² No additional taxes are expected to be collected as a result of annexing Tracts A or C. Though no property tax is planned, these lands are owned primarily by village corporations (not Manokotak’s village corporation) and are therefore not taxable.

⁹⁰ Manokotak Petition, p. 28-29.

⁹¹ Manokotak Petition, p. 76.

⁹² Manokotak Petition, p. 77.

About 400 residents of the City of Manokotak move to Igushik Village each fishing season.⁹³ The petition states it seeks to exercise control over the territory inhabited by these residents. The petition does not provide any information that corroborates its claim that more families are moving to the seasonal fish camp than in the past.⁹⁴

The department does not find existing or anticipated social or economic conditions present in the territory that contribute to a demonstrated need for city government from the City of Manokotak.

(2) Existing or Reasonably Anticipated Health, Safety, and General Welfare Conditions

This factor of the standard of need for city government asks whether the conditions in the territory warrant annexation. In addition to describing these conditions, a petition must indicate how annexation would alleviate or improve these conditions relating the health, safety, and general welfare of the territory.

The petition lists existing conditions in the territory as a lack of a potable water source, solid waste disposal, alcohol control ordinances, or any facilities for fishing activities. Certainly, Manokotak residents deserve healthy and sanitary conditions. However, the cost of providing these particular municipal services is not adequately documented by Manokotak's petition. In the department's estimation, however, these amenities will far exceed the revenues Manokotak has or plans to collect, or has received in grants. The City of Manokotak already has two water treatment systems. They only have one certified employee to maintain both systems.⁹⁵

The petition describes sanitary conditions too often found in rural Alaska. However, Igushik Beach does not warrant the same level of services as a permanent settlement such as the City of Manokotak.

The petition does not describe how the extension or provision of these services will be funded, or whether it is feasible to provide these services to an area only occupied on a short-term basis. Multiple sources indicate the city water and sewer infrastructure is itself in need of costly repairs.⁹⁶ These issues are not mentioned in the petition.

Because the territory is outside any municipal jurisdiction, city ordinances regarding public nuisances, sanitary disposal, and alcohol control do not apply.⁹⁷ The petition does not specify whether or how the city plans to enforce its ordinances in the territory—particularly pertaining to alcohol control. It also does not demonstrate what the current needs or problems are; for example,

⁹³ Manokotak Petition, p. 71.

⁹⁴ Manokotak Petition, p. 28.

⁹⁵ Alaska Department of Environmental Conservation, Operation and Maintenance Best Practices Score, August 2016 Score for Manokotak. <http://dec.alaska.gov/water/opassist/BestPractices.html>.

⁹⁶ Indian Health Service, Sanitation Tracking and Reporting System (STARS) report for Manokotak, accessed September 20, 2016, <https://wstars.ihs.gov/index.cfm?fuseaction=Reports.listSdsProjectsForCommunity>; Manokotak Community Comprehensive Plan Update, August 2015. Prepared by Agnew::Beck Consulting.

⁹⁷ Manokotak Petition, p. 71.

if the alcohol problem is one of consumption or importation. In fact, AST reported only one call for service as of October for 2016 to Igushik Village.⁹⁸

The territory in Tracts A and C do not demonstrate conditions of need that can be solved by an extension of city government in the department's view.

(3) Existing or Reasonably Anticipated Economic Development

This factor examines existing or reasonably anticipated economic development in the territory to determine whether the territory needs city government. The petition does not indicate that economic development is reasonably anticipated to occur in the city or the territory, and annexation is not expected to provide or encourage economic development in the city. This factor does not contribute to Manokotak meeting the standard of need.

(4) Adequacy of Existing Services

Tract C does not have any water, waste disposal, or sanitary facilities. However, it is a seasonal fish camp—not a permanent part of the city. Manokotak states that it is seeking ice-making equipment, solid waste management, small boat haul-outs and boat storage at Igushik Beach and Weary River, alcohol control and other general welfare powers, a reliable source of potable water, search and rescue support, and comprehensive planning.⁹⁹

Staff also examines whether the existing services are adequate within the city's current boundaries and whether annexation will alleviate or further strain any inadequacies. According to Manokotak's comprehensive plan, the city's water systems need repair. Annexation will not provide any relief to the city's need for these repairs.

With regard to public safety, there is currently no Village Public Safety Officer (VPSO), though BBNA is currently advertising for one.¹⁰⁰ However, they are advertising for this position in several cities in the region and appear to be having trouble with recruitment and retention.¹⁰¹ If this position is filled, the petition does not provide any information on the volume of calls, how the VPSO will be able to respond to calls for service given the distance between the city and the territory, or how the VPSO and, volunteer search and rescue will be integrated into services currently provided by the AST.

The petition states that the city does not plan to provide search and rescue—rather, it intends to support a volunteer group.¹⁰² There is no information provided regarding the funding for this

⁹⁸ Sgt. Luis Nieves, Alaska State Troopers, personal communication with author, October 7, 2016.

⁹⁹ Manokotak Reply Brief, p. 12.

¹⁰⁰ DCRA staff, personal communication, September 13, 2016.

¹⁰¹ DCRA staff, personal communication, September 13, 2016.

¹⁰² Manokotak Reply Brief, p. 15.

search and rescue squadron except that the petition states that it is aided by the city's maintenance of radio communications.¹⁰³

There are no plans to increase staff so it is unclear to the department how the extension of services will be achieved after a short-term contract with a planner expires. Manokotak references its comprehensive plan completed in 2015 and notes that the petition has included funds for planning.¹⁰⁴ The department maintains that extensive planning is necessary before any action, and the funds included in the three fiscal years post-annexation only account for the planning process and do not guarantee any eventual services. The comprehensive plan addresses city needs, but these stated needs would not be addressed by this annexation.

There is currently no reliable source of potable water available to fish camp residents at Igushik Beach. The transition plan does not provide any details on how an expanded City of Manokotak would provide this service or how it could be provided only seasonally. In addition, there is no estimation of the cost of such provision or whether there is a fresh water source on the beach.

The petition notes that there are currently no ice machines for the fishing fleet. The extension of city government is not necessary to provide this. In fact, the Bristol Bay Economic Development Corporation (BBEDC)'s 2014 Annual Report lists several tribal organizations that received funds for ice machines.¹⁰⁵

The petition characterizes Tract A as "an overland and water transportation pathway," but unlike a road or other transportation corridor, Tract A is neither owned, managed nor maintained by the city.¹⁰⁶

Many other fish camps in Alaska do not have the services that Manokotak wishes to extend. It is not practical or feasible to extend services to a temporary population. The department finds that it would be cost-prohibitive.

(5) Extraterritorial Powers Available to the City

The petition states that the city currently provides some services outside its boundaries including maintenance of the Weary River Road, maintenance of the Weary River boat landing and storage, and assistance to AST and the Manokotak Village Council in search and rescue services.¹⁰⁷

The Weary River boat launch is owned by Manokotak Natives Limited. The city does not own the land where the boat launch is located.¹⁰⁸ However, the city maintains these assets. The petition does

¹⁰³ Manokotak Reply Brief, p. 15.

¹⁰⁴ Manokotak Reply Brief, p. 14.

¹⁰⁵ BBEDC 2014 Annual Report, p. 19, <http://www.bbdc.com/wp-content/uploads/2015/09/BBEDC-AR-2014-ALL-WEBr.pdf>.

¹⁰⁶ Manokotak Petition, p. 79.

¹⁰⁷ Manokotak Petition, p. 72.

¹⁰⁸ Final Engineering Study: Weary River Barge Dock and Boat Launch, Manokotak, Alaska. June 2003. Prepared by Bristol Environmental & Engineering Services Corporation (BEESC). p. 6.

not indicate how having municipal jurisdiction over these assets would change or benefit these arrangements.

A 2003 engineering study indicated the need for a barge landing on the Weary River and improvements to the severely eroding Weary River bank.¹⁰⁹ The engineering firm estimated the city's costs for a barge dock and boat launch as well as an access road and design costs to be in excess of \$13 million in 2002—14 years ago.¹¹⁰ The petition does not indicate how extending city government will alleviate issues and costs like this that the city faces.

Funding sources outside the municipality cover much of the city's current costs. The department does not find the city's extraterritorial provision of service to warrant such an extensive expansion of jurisdiction to continue its limited provision of services, which the petition admits, are administered on an "ad hoc" basis.¹¹¹

(6) Whether Residents or Property Owners Receive or May Receive Benefits Directly or Indirectly

This factor examines whether residents or property owners in the territory will receive benefits from an annexation. There are no permanent residents in the territory proposed for annexation. Set net permit holders, native corporation holdings, and those holding native allotments own property in the Igushik Beach section would likely benefit from an increase in services.

However, any services provided by the city would likely benefit nonresidents, as well. Though the petition states the primary owners of set net permits and shore fishery leases are Manokotak residents, some are not and some are non-Native. This is relevant because BBEDC grants are only available to tribal governments. However, cities may receive funds in coordination with a tribal organization.¹¹²

These nonresidents and property owners would likely benefit from annexation if services were extended or increased, though it is unclear how or if they would be entitled to services currently funded by native institutions for tribal governments and entities rather than municipalities.

Due to the infrequency and degree to which the city proposes to provide municipal services and facilities within the territory, it is unlikely that the residents and property owners in the territory will receive, or will be reasonably expected to receive, the benefit of services and facilities provided by the City of Manokotak.

¹⁰⁹ Final Engineering Study: Weary River Barge Dock and Boat Launch, Manokotak, Alaska. June 2003. Prepared by BEESC. p. 14.

¹¹⁰ Final Engineering Study: Weary River Barge Dock and Boat Launch, Manokotak, Alaska. June 2003. Prepared by BEESC. p. 18.

¹¹¹ Manokotak Petition. p. 77.

¹¹² Dillingham Responsive Brief, Ex. E, p. 1, and DCRA staff, personal communication, September 26, 2016.

Whether an Existing City or an Organized Borough can Provide Services More Efficiently or Effectively (3 AAC 110.090(b))

There is no other city near the territory proposed for annexation. Nor is there any existing organized borough to provide these services. The department is undecided whether Manokotak could even receive the services it desires from a potential organized borough. Currently, many services and city functions are provided or funded by extra-municipal organizations. For example, electricity and fuel are provided by the tribal organization.¹¹³

The department does not find that an existing city or an organized borough can provide services more efficiently or effectively.

Conclusion on the Standard of Need

While it is clear that Igushik Beach is seasonally inhabited by set net permit holders primarily from Manokotak, the Igushik Section is fished by drift net permit holders from across the Bristol Bay Management Area. The city's claim that this section needs services is not documented in the petition, and the city does not plan to offer drift net fishermen additional services.

The City of Manokotak does not currently exercise powers of planning, platting, or land use regulation. It has contracted with Agnew::Beck to create a comprehensive plan, but even those reports demonstrate needs that will not be solved by this particular annexation. For example, the comprehensive plan indicates a severe lack of housing.¹¹⁴ An included joint resolution empowering that comprehensive plan update also mentions the five most important needs within the village. However, none of these significant needs including the need for land suitable for residential development will be addressed by this large annexation proposal.¹¹⁵ The city's proposed annexation is given only a cursory mention in the comprehensive plan, and is not given the same treatment as many of the plans' other goals.

The comprehensive plan lists available land for development within the city as a major challenge. According to the plan, the land suitable for development within the current city boundaries is owned by Manokotak Natives Limited and, therefore, not immediately available for development.¹¹⁶ The plan indicates that the expansion of services across a larger area as it has with the distant Manokotak Heights subdivision (which is still within current city boundaries) increases the costs of providing and maintaining those services and is a current challenge.¹¹⁷

Typically, a comprehensive plan identifies community goals and policies to pursue in order to achieve those goals. A comprehensive plan often includes aspirational goals that are long-term

¹¹³ DCRA staff, personal communication, September 1, 2016.

¹¹⁴ Manokotak Community Comprehensive Plan Update, August 2015. Prepared by Agnew::Beck Consulting, p. 46

¹¹⁵ Resolution of Manokotak Village Council, Manokotak City Council, and Manokotak Natives Limited, Manokotak Community Comprehensive Plan Update, August 2015. Prepared by Agnew::Beck Consulting, p. 7.

¹¹⁶ Manokotak Community Comprehensive Plan Update, August 2015. Prepared by Agnew::Beck Consulting, p. 42.

¹¹⁷ Manokotak Community Comprehensive Plan Update, August 2015. Prepared by Agnew::Beck Consulting, p. 42.

visions for growth and development. Previous versions of Manokotak's comprehensive plan do not include a need to include these areas proposed for annexation in the city boundaries.¹¹⁸ If the city is already experiencing challenges with finding solutions to fit its current needs, expansion of the city on a large scale is not prudent. In addition, the source of funds for these proposed projects are limited primarily to native tribal governments and do not depend on annexation. In documented staff activity reports, the Manokotak Village Council expressed interest in annexation to Local Boundary Commission staff as early as 2010, but no petition from Manokotak was filed at the time that Dillingham pursued its local action petition.¹¹⁹ This letter to the LBC only identified interest in Igushik Beach for annexation by Manokotak Village Council.¹²⁰

The department does not find that the territory exhibits a reasonable need for city government. It is occupied only seasonally, and the services the City of Manokotak proposes to provide are impractical and not reasonably likely to be provided given the distance and the duration of residency of people within the annexation territory, and given the city's other stated needs.

Character (3 AAC 110.100)

The standard examines whether the annexation territory is compatible with the character of the existing city. The standard lists relevant factors the commission may consider including land use, salability of land, population density, and causes of recent population changes. This standard also includes the suitability of the territory for reasonably anticipated community purposes as a factor.

The department has already indicated that because Tract B (the Snake River and Igushik Sections of Nushagak Bay) hosts drift net vessels from across the Bristol Bay Management Area, it is not compatible in character with the City of Manokotak, but rather is associated with the entire region, and, therefore, is not suitable for annexation by a single city.

With regard to Tracts A and C, the department acknowledges Manokotak's historical connection and present day use of these lands. Historically, Manokotak residents lived at Igushik Village until settling permanently at the current city site which was incorporated in 1970.¹²¹ Manokotak residents continue to move seasonally to live on Tract C, to fish on Tract B for commercial, subsistence, and personal use. Tract A is how residents get to Tracts B and C.

Subsistence activities will not change if the land is annexed to the City of Manokotak. The petition does not provide any information that indicates subsistence activities will change if Manokotak annexes the territory.

¹¹⁸ Manokotak Comprehensive Plan, October 2005, http://www.agnewbeck.com/pdf/downloads/BristolBayCommunityPlanningProject/Manokotak/Manokotak_Comp_Plan_TOC.pdf.

¹¹⁹ Staff Activity Reporting System (STARS), DCRA staff, May 19, 2010.

¹²⁰ Letter from Wassillie Tugatuk, on behalf of Manokotak Village Council to DCCED, received May 18, 2010

¹²¹ Manokotak Petition, p. 4-7.

The majority of land and water in Tracts A and C is not owned by the City of Manokotak or either of its associated Native organizations. Within Tract A, there are no permanent or seasonal residents. The boat landing and storage facility on the Weary River is owned by the Manokotak Village Council and is linked to the city by a road built and owned by the Village Council.¹²² Manokotak does not own the lands that it wishes to annex. The petition does not indicate how gaining jurisdiction over this tract will affect the projects proposed by the city.

This standard also examines existing and reasonably anticipated transportation patterns and facilities to determine whether the territory is compatible in character to the annexing city. Without Tract B, the department does not find Tract A compatible or appropriate for annexation to a city government. Development of the facilities and transportation patterns within Tract A do not need to be a part of the city in order to be maintained and funded because they are not municipally provided or maintained facilities. The petition does not indicate that this would change if the city were to annex the territory. Moreover, the petition offers no evidence indicating development of transportation facilities in these tracts must be facilitated through a municipality.

Manokotak residents consider Igushik Beach and the Igushik Section to be a part of their community. However, this standard asks whether the city is compatible with the territory. Tracts A and C are distant, unpopulated, and not primarily owned by the residents of or the City of Manokotak. There is a historical connection between the residents of Manokotak and Igushik Beach; however, it is a seasonal fish camp used by residents of the city, but it is not a permanent part of the City of Manokotak. Igushik Beach is nearly 12 miles from the current City of Manokotak.

Within Tract C, there are some pre-ANCSA native allotments, as well as shore fishery permit sites used by set net permit holders.¹²³ These extend from the mouth of the Igushik River to Nichols Spit, which coincides with the edge of the Nushagak District.¹²⁴ Land on Igushik Beach or Tract C is owned primarily by Saguyak, Inc. and Choggiung, Limited—the village corporations for Clark’s Point, and Dillingham, Ekuk, and Portage Creek respectively.¹²⁵

In addition to set net permit holders, there are shore fishery leaseholders within Tract C. In the department’s estimation, there are at least 13 shore fishery leaseholders who are not residents of Manokotak.¹²⁶ In the petition, Manokotak provided a map that listed estimated set net sites for set netters from Manokotak that totaled 51.¹²⁷ Staff verified the majority of those names listed are Manokotak residents, but found that 17 either did not have 2015 set net permits or were not from

¹²² Manokotak Responsive Brief, p. 8.

¹²³ Manokotak Petition, p. 14; Spatial Data Management System, Bureau of Land Management-Alaska. Accessed September 23, 2016.

¹²⁴ Manokotak Petition, p. 12-14.

¹²⁵ Spatial Data Management System, Bureau of Land Management-Alaska. Accessed September 23, 2016

¹²⁶ Alaska Department of Natural Resources, Alaska Mapper, <http://dnr.alaska.gov/MapAK/browser?set=map&id=1491>, Accessed August 17, 2016.

¹²⁷ Manokotak Petition, p. 14.

Manokotak. Only 10 of the family set net sites listed also had shore fishery leases. The objective of this analysis is to note that Manokotak residents are not the only residents of the fish camp.

Fish camp residents lease the land on which their cabins are built from the village corporations that own the land. Regardless of whether the primary users of Tract C are Manokotak residents during the remainder of the year, Tract C is a fish camp that is not contiguous to the City of Manokotak and is not used only by Manokotak residents though there are no year-round residents in Tract C. Its seasonal residents stay for only a short period: about four to six weeks.¹²⁸ Subsistence activities may occur over a longer period, but are not affected by city jurisdiction at all.

The department does not find it reasonable to expect the same level of services at a fish camp that is only occupied for part of the year as in the city which is occupied year round. Tract C does not meet the standard of compatibility of character to the City of Manokotak.

Tract A does not have permanent or seasonal residents. This section of the proposed annexation has been given the least attention and the department finds its inclusion primarily to stem from the requirement that the tracts must be contiguous.

The territory in Tracts A and C is an area of significance to Manokotak residents, but the department does not find its character to be compatible with the municipal government of Manokotak. This standard is not met.

Resources (3 AAC 110.110)

This standard requires that the proposed expanded city—that is the territory plus the existing city—have the financial and human resources to provide essential municipal services.

(1) , (2) Reasonably anticipated expenses and functions of the city in the territory

It is the department's view that the city is unlikely to be able to provide additional services proposed for the territory given the lack of anticipated revenue, taxable property, additional tax base, or employees.

Simply stating that a city wishes to provide services does not indicate that a community is able. The petition indicates no new employees will be hired as a result of this annexation—despite the need for increased outside revenue that presumably will require grant writing and other efforts to solicit potential funds. Furthermore, if these grants are primarily available to the tribal organizations, it is unclear why the city needs to pursue annexation.

¹²⁸ Personal communication with DCRA staff, September 19, 2016.

The petition anticipates an increase in operating expenses for police and fire, as well as search and rescue, including: an additional \$5,000 for police and \$2,000 for fire in each of the three years following a potential expansion.¹²⁹

First, Manokotak has no Village Public Safety Officer (VPSO) at this time.¹³⁰ If it had a VPSO, it would be funded jointly through Bristol Bay Native Association (BBNA) and the state.¹³¹ According to the budget Manokotak submitted to DCRA for FY17, it budgeted \$15,000 for police services. The petition's budget lists \$20,000, and in each subsequent year, the city anticipates \$25,000 for these services.¹³² What is unclear is how this additional money will be spent and how it will contribute to the level of service Manokotak desires.

Furthermore, while the petition budget lists \$10,000 for fire, the city's adopted budget allocates no funding for this service. It is the department's understanding that Manokotak has a volunteer fire department.¹³³ However, for example, the petition does not explain what expenses the amount budgeted for fire is proposed to cover.

In the last quarter, the City of Manokotak has been cited by the Alaska Public Offices Commission for violations, been notified of non-payment for the Alaska Municipal League Joint Insurance Association (AMLJIA) dues including those for workers' compensation, and was late in submission of past-due required documents for receiving Community Revenue Sharing or Payment in Lieu of Taxes (PILT).¹³⁴

The petition indicates there will be no new employees hired post-annexation, and yet the department finds ample evidence as documented in this section that the city does not currently have the adequate management capacity even without an expansion. The petition merely indicates that the services it intends to provide are "modest"¹³⁵

The functions the City of Manokotak lists as proposed for the territory are not reasonable given its income and potential income, and the petition does not provide a credible plan to extend services to the territory other than that it asserts it will apply for grants. Most of the grants listed as possible sources of funding in the petition are available to tribal governments rather than to the city.¹³⁶ The BBEDC 2014 Annual Report notes that each community receives a set allocation that in 2014 was

¹²⁹ Manokotak Petition, p. 66.

¹³⁰ Sgt. Luis Nieves, personal communications, Alaska State Troopers, September 22, 2016.

¹³¹ Manokotak Petition, p. 16.

¹³² Manokotak Petition, p. 66; and FY17 Adopted Budget for the City of Manokotak, DCRA Financial Documents Library, Submitted June 2016.

¹³³ "Manokotak," Community Database Online, DCRA.

¹³⁴ Personal communications with DCRA staff, September 2016; Staff Activity Reporting System (STARS), DCRA staff, September 15, 2016 and September 1, 2016; PILT provides payments to local governments that contain certain federally-owned lands known as "entitlement lands." These payments are intended to help offset losses in property taxes due to nontaxable federal lands within municipal boundaries.

¹³⁵ Manokotak Petition, p. 75.

¹³⁶ Manokotak Petition, p. 68.

\$500,000 per community for various projects through either the city or tribal organization.¹³⁷ While this is significant, it does not rise to the level of the services Manokotak is proposing.

(3) Actual income and the reasonably anticipated ability to generate and collect local revenue from the territory

This factor considers income and revenue in light of the ability of the city to provide municipal services. Manokotak seeks to annex the Igushik Section of the Nushagak District in order to implement a raw fish tax. The Bristol Bay Management Area has several districts in which permit holders may fish. Within Nushagak District, there are three sections of the commercial salmon fishery, Igushik, Snake River and Nushagak Sections. The Snake River Section is closed to commercial salmon fishing by regulation.¹³⁸ Representatives for the City of Manokotak wrote to the ADFG Commissioner in order to facilitate a new practice of recording the statistical area on fish tickets in the Nushagak District—in this case the Igushik Section.¹³⁹ This would have allowed the City of Manokotak to levy a tax on fish landed only in that particular statistical area. However, ADFG declined to make any changes citing a Department of Law opinion that their current practices met regulations and requiring fishermen to provide more information would be impractical.¹⁴⁰ Taxing the fish in Tract B or the Igushik Section is therefore not feasible according to the ADFG.

The department believes the City of Manokotak is willing to provide the services it proposes, but it does not demonstrate its ability actually to do so. The revised petition lists the estimated revenue derived from a potential fish tax to be \$93,000.¹⁴¹ Even if the department found this territory (Tract B) appropriate for annexation by Manokotak, this amount of money does not come close to the estimated cost of the city services Manokotak wishes to provide.

The fish tax as it stands according to Fish and Game is only able to be collected on set netters if Tract B were annexed. However, the estimated income from a potential fish tax is based upon set net and drift net catches. If the portion attributed to drift netters is not possible to collect, it follows that this revenue would be even less.

Furthermore, the petition states it needs the revenue collected in Tract B from levying a fish tax in order to extend government to the other sections of the territory proposed for annexation. While the department does not find the proposed income from the fish tax to be adequate, this report is recommending denial of Tract B, and so this is not relevant.

¹³⁷ BBEDC 2014 Annual Report, p. 19.

¹³⁸ 5 AAC 06.200(a)(1-3); 5 AAC 06.350(3).

¹³⁹ Dillingham Responsive Brief, ex. L.

¹⁴⁰ Dillingham Responsive Brief, ex. I. p. 1.

¹⁴¹ Manokotak Petition, p. 67: This estimate is based upon average salmon catch between 2005 and 2014 and a weighted average of prices in the same timeframe.

In addition, local revenue sources are scarce. The city's two percent sales tax does not generate much revenue and appears inconsistent year to year, as it is based primarily on a single business with documented collection challenges.¹⁴²

(4) Feasibility and Plausibility of Affected Parts of the Capital and Operating Budget

The petition states that the city anticipates an increase in operating increases to stem from:

- Police and fire for public safety and search and rescue services
- Water and sewer for maintenance of the Igushik water source
- Garbage and landfill for solid waste disposal operations at Igushik
- Boating facilities maintenance
- Land Use/CIP [Capital Improvement Plan] Planning for the Annexed area¹⁴³

In addition, projected capital expenditures are anticipated to be spread across these priority projects:

- Igushik Village potable water source
- Igushik Village ice-making equipment
- Solid waste disposal at Igushik Village
- Igushik beach boat land/storage
- Weary River boat landing/storage¹⁴⁴

However, these substantial projects are only accounted for in the proposed budget by adding expenditures to the budget for planning for these projects. Additional expenses listed are \$12,000 for a Land/CIP planner in year one.¹⁴⁵ There are no details regarding funds for the provision for services—only planning for services. These expenditures are for short-term contracts without any indication the city can advance past the planning stages. Grants for planning are anticipated, but no grants or other revenue sources to build, or even maintain these services are identified or anticipated by the city in the petition. Each of the three years of the post-annexation budget provided also list \$15,000 for “Boat facilities.”¹⁴⁶ This is not explained, and it is unclear to the department whether this amount is proposed to be used for improving boat facilities. Annexation would not include transfer of ownership of any land to the city. It is unclear how the city could complete the proposed projects since the property is owned by other village corporations and not by the city.

In addition, the adopted Fiscal Year (FY) 2017 budget lists \$810,000 as an expense labeled “Community Building” which amount appears to be the total of outside revenue from grants. This amount, however, is not found in the city's FY17 budget ordinance submitted to DCRA.¹⁴⁷ Was the city not awarded these unspecified grants? If so, this supports the department's view that the city is

¹⁴² Manokotak Reply Brief, p. 17.

¹⁴³ Manokotak Petition, p. 63.

¹⁴⁴ Manokotak Petition, p. 64.

¹⁴⁵ Manokotak Petition, p. 61.

¹⁴⁶ Manokotak Petition, p. 66.

¹⁴⁷ FY17 Adopted Budget for the City of Manokotak, DCRA Financial Documents Library, Submitted June 2016.

unlikely to receive grant funds to pay for the extension of services. This discrepancy is only one question raised by the city's proposed post-annexation budget.

In addition, the three years of transition budgets list \$450,000 each year for capital expenditures for the extension of services.¹⁴⁸ These expenditures are offset by the anticipated revenue from what is listed as "federal capital projects" and "BBEDC/Community Block Grant (CBG)" funds which in each year total exactly \$450,000 in the city's transition budgets.

However, these are anticipated and unspecified grants—with no evidence that they are likely to be awarded, or that they are on any agency or organization's top priority list. Table 12 in the petition lists "Potential Funding Sources for Small Capital Projects." The department finds that the capital expenditures planned for Manokotak do not fall into the category of "small" capital projects, and that simply listing them indicates the city's willingness to make the expenditures, but not the ability to provide or secure the funding to do so. There is not any indication that the city's goals are realistic with regard to funding. Nor is there any explanation of how the city will acquire land needed for these projects.

Additionally, the City of Manokotak's Budget and Monthly Financial Statement from FY16 indicates a severe challenge with regard to delinquent collections for garbage, landfill, and water and sewer utilities.¹⁴⁹ That this is a pattern is buttressed by DCRA staff reports over the years indicating problems with collection.¹⁵⁰ Manokotak's petition emphasizes that services will be provided to and paid for by taxes collected from its own residents. Simply observing that the city's collections are delinquent does not indicate whether the problem is on the side of the residents or the city, but only that a significant problem exists. The petition simply states that the city has the financial and human resources, including staff and equipment, and presents a picture that is not corroborated by the information staff has reviewed.¹⁵¹

The inconsistencies, discrepancies, delay in provision of actual budgets to DCRA, and the underestimation of the cost of the major projects proposed lead the department to find the city's budget unfeasible and implausible. The budget simply does not reflect reality or even reasonable expectations given the information the department has regarding the human and financial resources of the city.

(5) , (6) Economic Base of the Territory Post-annexation and Valuations of Taxable Property in the Territory Proposed for Annexation

There will be no change in the economic base of the expanded city. There will only be an increase in services, but not in revenue without Tract B. There is no taxable property (there is no planned property tax in the territory or in the existing city).

¹⁴⁸ Manokotak Petition, p. 65.

¹⁴⁹ City of Manokotak Budget and Monthly Financial Statement, FY16. Dated July 1, 2016.

¹⁵⁰ STARS reports, DCRA staff, dating back to 1997.

¹⁵¹ Manokotak Petition. p. 75.

(7) Land use in the territory proposed for annexation

The City of Manokotak does not own the land in the territory proposed for annexation. Fish camp residents lease the land on which their cabins sit, or hold native allotments.¹⁵² The land is not subdivided or improved.

(8) Existing and Anticipated Industrial, Commercial, and Resource Development

The petition and other information reviewed by staff give no information or indication of any potential development or anticipated in the territory or the existing city.

(9) , (10) Personal Income of Residents and Need for and Availability of Employable Skilled and Unskilled Labor

The petition did not address these factors and this report does not find income or labor relevant because there are no income taxes planned or additional employees proposed as a result of annexation.

The City of Manokotak has not maintained a level of service that demonstrates an ability to extend services to a distant, unconnected territory. As presented and in light of additional information reviewed by staff, the annexation petition for the City of Manokotak does not demonstrate that it has the resources to extend city government to a distant territory that is only seasonally occupied. This standard is not satisfied.

Population (3 AAC 110.120)

This standard seeks to ensure the population of the proposed expanded city (existing city plus that of the annexed territory) can sustain the extension of city government to territory proposed for annexation.

The 2015 population of Manokotak is estimated to be 482.¹⁵³ The population of Manokotak has risen each year from 120 in 1950 when the census first recorded the population of the community.¹⁵⁴ The proposed annexation will not increase the population at all because the territory proposed for annexation has no permanent residents and is not reasonably anticipated to be developed.

The department finds that the City of Manokotak has a stable population; however, because the current city has difficulties in regard to management capacity, then large scale expansion with no increase in residents leads the department to find this standard cannot be met.

¹⁵² DCRA staff, personal communication, September 2, 2016; Choggiung, Inc., <http://www.choggiung.com/land-dept/land-lease-program/>, Accessed September 12, 2016.

¹⁵³ "Manokotak" Community Database Online, DCRA.

¹⁵⁴ "Manokotak" Community Database Online, DCRA.

Boundaries (3 AAC 110.130)

This standard considers whether the boundaries of the expanded city are appropriate for the desired services on a cost-effective and efficient level.

This standard considers whether the proposed expanded boundaries contain all land and water necessary to provide and extend essential municipal services on an efficient, cost-effective level. This serves to ensure municipalities include what is necessary to provide services and do not create enclaves, and plan for growth if appropriate. This standard also considers the scale that is appropriate for a city, as well as whether the proposed boundaries overlap existing municipalities.

This section lists factors for consideration such as land use and ownership patterns, population density, transportation patterns and facilities, natural geographical features and environmental factors, and the extraterritorial powers of cities.

Because the territory will rely solely on outside funding sources, the department concludes that the territory includes more territory than is necessary for effective and efficient service delivery. The department also questions whether the level of service delivery within the city is currently adequate, and whether annexation will further strain the level of service provided.

Land Use and Ownership Patterns (3 AAC 110.130(a)(1))

Land in Tracts A and C is owned by a variety of surface landowners which was discussed earlier in this report. The petition also notes that in order to provide services, the city will have to acquire land using eminent domain.¹⁵⁵ However, no land has been identified for acquisition, nor has any process been provided for the city to take steps toward acquisition. In the department's view, relying on the use of eminent domain at the outset of a development plan is risky. Second class cities such as Manokotak must enact an ordinance and hold an election in order to acquire land by eminent domain.¹⁵⁶ Political backlash is unpredictable, especially as the land owners have not weighed in on this annexation petition and none provided public comment. Site control is a significant aspect of whether funding is granted for large scale projects such as the city is proposing.

While traditional and historical land use patterns conform to those of the residents of City of Manokotak, the city does not own the land and it does not manage most of it. The petition does not indicate that there is a source of fresh water from which to derive potable water for a seasonal fish camp in Tract C. The petition emphasizes the need to manage this land in order to preserve it for subsistence reasons. The department finds that subsistence activities on the lands are preserved for traditional uses by state and federal laws. Annexation will have no impact on these practices.

¹⁵⁵ Manokotak Reply Brief, p. 15.

¹⁵⁶ AS 29.35.030.

Extraterritorial Powers of Cities (3 AAC 110.130(a)(5))

Manokotak states that it already provides some services outside its boundaries. Extraterritorial jurisdiction is provided in AS 29.35.020 with some limitations. For example, local option alcohol laws cannot be enforced outside of Manokotak's boundaries. The petition indicates that one reason for the annexation is to enforce the city's alcohol-related laws outside of its current boundaries. The City of Manokotak currently bans the sale, importation, and possession of alcohol within its boundaries. However, the petition does not provide details on whether problems stem from consumption, or importation or how its alcohol-related laws will be enforced in the territory.

The capital projects Manokotak describes and the funding sources need not be within a municipality to be funded. The needs of the territories are infrequent and are not documented in a way that justifies such a large expansion and need for city government. Furthermore, a larger jurisdiction, in the department's view, does not offer any advantages to the maintenance of current city services because they are and will still be owned by non-city entities.

Natural Geographical Features and Environmental Factors (3 AAC 110.130(a)(4))

Annexation of Tract B would divide a body of water and the commercial fishing district, and for reasons described in Dillingham's analysis, and elsewhere in this report, the department does not find that any single city is entitled to revenue generated from the bay without consideration for the many other communities in the region. This is the department's view even without consideration of the questionable feasibility of taxing sections of the bay.

This standard seeks to prevent the creation of enclaves and noncontiguous city boundaries. Without Tract B, Tract C is left as an enclave—separated by the unorganized borough and not contiguous with the City of Manokotak. Tract A is contiguous with the city, but does not meet the standards of need, character, or population.

Manokotak states that the LBC has allowed other cities that are “dependent on a specific fishery” to annex those waters that are “discretely associated with that city, and not with another city or community.”¹⁵⁷ This argument is used by Manokotak in an effort to disqualify Dillingham from annexing the Igushik Section of the Nushagak District, but the Igushik Section is a part of the larger fishery management area and Nushagak Bay and the department does not find Manokotak to fit that description either. As discussed elsewhere in this report, there is no doubt that many communities in this region are dependent to varying degrees on the fishery for their livelihood through commercial fishing or subsistence or other ways, despite not all communities being directly or physically contiguous to those fishing areas. Salmon are a transient species and return to their native stream, and Nushagak Bay is the confluence of several of these waterways. The department does not find persuasive the arguments regarding which city most depends on fishing or which stream's salmon stocks are more significant. The area is managed as a region—beyond the few administrative

¹⁵⁷ Manokotak Responsive Brief, p. 25-26.

boundaries that exist such as Bristol Bay Borough. Cities and boroughs do not manage fisheries because their importance and relevance is not dependent on administrative boundaries and agreements.

Manokotak’s argument that the Igushik Section is discrete with regard to harvest data is not supported by information from the Alaska Department of Fish and Game.¹⁵⁸ The Igushik Section is discrete with regard to management considerations (*i.e.* closures to allow escapement)—but not for fish ticket data collection. While Manokotak may be the only community closely associated with the Igushik River, it is not feasible or reasonable to try to separate fish headed to that stream for revenue generation singularly for Manokotak. The department also recognizes that the land in the proposed territory is owned by village corporations and other entities. The waters are owned and managed by the state regardless of any expansion of jurisdiction proposed by a city or borough.

Overlap with Existing Communities (3 AAC 110.130(d))

None of the territory proposed for annexation overlaps any existing municipal boundaries and so this part of the standard is satisfied.

Limitation of community (3 AAC 110.130(c))

This provision of the standard regarding boundaries requires that the proposed expanded boundaries for an annexation be on a scale suitable for city government. Specific limitations on city size are not defined in regulation or statutes. Only cities—as opposed to boroughs—have limitations to their boundaries. Indeed, the limitation of community doctrine requires that territory annexed must represent a community and “there must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty.”¹⁵⁹ The territory in question does not comprise an existing or anticipated local community.

Petitioners and others point out other cities that have similarly sized water boundaries or have annexed fisheries adjacent to their boundaries. In each case, whether in an organized borough or in the unorganized borough, these communities do not share their waters with other communities or lie as far from the waters that they sought to annex.

The department does not find that Tracts A and C represent a “community” as defined in 3 AAC 110.920 and do not meet the standard of boundaries. This standard is not met.

Best Interests of the State (3 AAC 110.135; AS 29.06.040(a))

This standard is the crux of the Local Boundary Commission’s task in serving a statewide role in boundary changes. This standard asks about the role of government in the proposed boundary

¹⁵⁸ Dillingham Responsive Brief, Ex. I, p. 1.

¹⁵⁹ *Mobil Oil Corporation et al. v. LBC*, 518 P.2d 92, 100 (Alaska 1974).

change—specifically whether it will maximize local self-government and whether minimizes the number of local government units. The framers sought to avoid the overlapping jurisdictions of the Lower 48 states.

The Alaska Supreme Court characterized the framers’ purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: those 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 area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.¹⁶⁰

While the “best interests of the state” standard lists three factors, these factors need not be the only factors commissioners consider. Boundary changes in Alaska are decided at the state level and the LBC is tasked with making boundaries decisions that are in the best interests of the state, and not just that of the local community.¹⁶¹

(1) Maximum Local Self-Government (see also, 3 AAC 110.981)

No new residents will be added to Manokotak as a result of this annexation. The territory will decrease the size of the ungoverned and unorganized borough. Still, the annexation does not bring anyone into a local government that did not have access beforehand. This standard is not met.

(2) Minimum Number of Local Government Units (see also, 3 AAC 110.982)

No new local governments will be created and so the standard of a minimum number of local government units is met.

(3) Relief to State Government of Local Services

With regard to public safety, any VPSO that is hired in the future is still funded by BBNA and the state—not Manokotak. The department does not see any real relief to state funding of services provided to the community as a result of the proposed annexation despite the petition’s claim otherwise.¹⁶²

Education will still be provided by the Regional Education Attendance Area (REAA), a fully state funded enterprise. The waters, fishery, and land will still be managed by organizations other than the

¹⁶⁰ “Background on the Local Boundary Commission.” Authored by LBC staff, no date; *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

¹⁶¹ *Fairview Pub. Util. Dist. No. One v. City of Anchorage*, 368 P.2d 540, 546 (Alaska 1962).

¹⁶² Manokotak Petition, p. 82.

City of Manokotak. This annexation does not propose to relieve the state of the responsibility of providing these services.

The fact that the city does not propose adding any additional staff as a result of the annexation troubles the department because the city functions with a lean operation and relies on the state for assistance with many tasks. Furthermore, the department believes that allowing this annexation would decrease the likelihood of potential borough formation because annexation by cities of part or all of the core area for fishing in Nushagak Bay funnels the primary source of wealth in the region to those individual cities. Appropriating those resources in this manner would constrain the economic base of a future borough. This would have the department encouraging action that would adversely affect the economic viability of a future borough. This is contrary to the directive from the constitution to “provide for maximum local self-government with a minimum number of local government units.”¹⁶³ The proposed annexation does not appear to be in the best interests of the state.

Legislative Review (3 AAC 110.140)

This section of the annexation standards applies to legislative review petitions. A primary reason for legislative review is to allow for greater extra-jurisdictional participation in boundary changes in the initial stages. There are eight factors (numbered 1-9 with one repealed totaling eight) and the commission need only determine that one has been met.

(1) The territory is wholly or substantially surrounded by the annexing city

The territory proposed for annexation cannot be described as wholly or substantially surrounded by the City of Manokotak and so this factor is not met.

(2) The health, safety, or general welfare of city residents is endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions

The petition does not document, in the department’s view, conditions that are present or developing in the territory that are likely to be ameliorated through the proposed annexation.

(3) The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city

Neither of the situations described in this factor are applicable to Manokotak’s proposal to extend services to the territory.

¹⁶³ Constitution of the State of Alaska, Article X, Section 1.

- (4) Residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits**

There are no permanent residents in the territory or taxable property within the territory proposed for annexation.

- (5) Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city**

No growth or development is planned in the territory proposed for annexation so this factor does not apply.

- (6) Repealed**

- (7) Annexation of the territory will promote**

(A) Maximum local self-government, as determined under 3 AAC 110.981; and

(B) A minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska

As determined in this report, the standard of 3 AAC 110.981 is not met and so this factor is not met.

- (8) Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042, and is in the best interests of the state**

As documented in this report, the department finds that the extension of services would strain the resources of the City of Manokotak, and so this annexation would not enhance the extent to which the existing city meets the standards for incorporation of cities; rather, it may have a detrimental effect.

- (9) The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state**

As discussed in this report, this annexation is not in the best interests of the state and so this factor is not met.

This regulation requires that one of the eight factors exist in order for a petition to annex territory via the legislative review method. The department does not find that the standard of legislative review is met.

Transition Plan (3 AAC 110.900)

This standard requires that petitions for annexation include a plan with details about the transfer of powers, duties, and assets. The City of Manokotak states that it currently exercises planning powers as allowed to a second class city, but the department found no city ordinances related to planning. Manokotak later acknowledges that it does not have any ordinances relating to zoning, but exercises planning powers per AS 29.35.260(c).¹⁶⁴ However, the transition plan does not mention any plan to adopt ordinances regulating planning, platting, or land use. Additionally, the city is currently in the process of working with other DCRA staff to determine land ownership within the city.¹⁶⁵

Manokotak points out that the commission has allowed other cities to annex without having ordinances regulating land use. The department evaluates petitions individually and makes recommendations specific to each petition. One example of this is with incorporation petitions: in some instances, the department will recommend to the LBC that a sales tax be placed on the ballot with an incorporation question and in others, reports do not recommend this. The difference is due to the perceived financial and management capacity of a community as by an investigation of the facts available to staff.

This annexation seems to be anticipated without a firm plan in place. The 2015 comprehensive plan makes only a cursory mention of the efforts to annex the territories in question. Land use regulation and management of the land in the territory are not mentioned. Nor are the plans for development of Igushik Village which is still a seasonally occupied camp. The petition states that future steps will clarify needs and develop a land use and capital improvement project (CIP) plan. Typically, a land use or CIP plan would have identified the needs of the community and highlighted these areas for growth rather than proceeding in the other direction.

The transition plan does not list any steps regarding revising city ordinances to accommodate extension of city government and accomplish the goals listed in the petition including alcohol control, public nuisance, or waste disposal.¹⁶⁶ The plan does not list how the city plans to develop a reliable source of potable water, or specify how Manokotak plans to implement any of the functions the city proposes. The transition plan does not mention how it will implement a sales or severance tax after an annexation is approved—for example, whether the city will put the issue on a future ballot.

Typically, a plan comes before an annexation. If the boat launch has been inadequate since shortly after it was constructed with Bureau of Indian Affairs (BIA) funds then the fact that it was identified

¹⁶⁴ Manokotak Reply Brief, p. 14.

¹⁶⁵ Staff Activity and Travel Reports (STARS), DCRA staff, dated August 18, 2016.

¹⁶⁶ Manokotak Petition, p. 71.

in 2002 as a priority, but in 2016, no plan is near a project stage—the department does not find it appropriate to recommend that a city to take on more territory than it can manage.

While the department acknowledges that the transition plan emphasizes the cooperative spirit among the city, the village corporation, and tribal organization, this does not assuage the department’s doubts about the ability of the city to implement its transition plan.¹⁶⁷ The city has not demonstrated that it can ably implement the plan it has proposed. The department is not satisfied with the transition plan to incorporate this large annexation territory into the city.

Statement of Nondiscrimination (3 AAC 110.910)

The effect of the petition will not deny anyone the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. This standard is satisfied.

Determination of Community (3 AAC 110.920)

This standard asks if the territory in question is a community. The territory in question has no residents and thereby fails the test of determination of community.

Essential Municipal Services (3 AAC 110.970)

When the annexation standards call for the identification of essential municipal services of the city, the commission is to determine whether those services are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently or effectively by the creation or modification of some other political subdivision of the state.

The department finds that levying and collecting taxes, public safety, and land use and platting are essential municipal services that the city should provide. As stated earlier in this report, Manokotak has not demonstrated that they provide these services adequately in their own current city boundaries, and, therefore, the department finds that the city is not likely to be able to meet the local government needs of the residents of the community post-annexation.

Conclusion

Given the information provided in the petition and other materials in the record, and additional research conducted by department staff, the department concludes that Manokotak does not meet the standards for the proposed annexation by legislative review.

As with the City of Dillingham’s annexation petition, the department finds that annexation of Nushagak Bay by a single community is not appropriate. Without Tract B, the territory proposed for annexation by the City of Manokotak is not contiguous and is distant from the present city. Furthermore, the current city has not demonstrated the capacity in terms of human and financial

¹⁶⁷ Manokotak Petition, p. 69.

resources to provide services within its current boundaries. The department finds that an extension of government over a large territory without adding new residents is imprudent.

While the City of Manokotak appears to have a strong relationship with the tribal government, the tribal government also represents the city's primary source of potential revenue. LBC regulations can only address the city's capacity, and the city's petition demonstrates a willingness, but not an ability to provide the services proposed. The petition underestimates the costs and does not provide commensurate sources of revenue that demonstrate an ability to move past the planning stage to complete projects.

This annexation will not relieve the state of the provision of any services, and does not maximize local self-government, and so this annexation proposal is not in the best interests of the state.

LBC staff recommends denial of the entire territory sought by the City of Manokotak. Notwithstanding that the ADFG practice renders taxation of landings in Tract B unfeasible, the department does not find dividing jurisdiction of the bay in the best interests of the state or the region. The remaining territory (Tracts A and C) do not meet the required standards for annexation based on the reasoning provided in this final staff report.

Report Conclusion

The annexation petitions for the Cities of Dillingham and Manokotak were consolidated by the LBC chair in order for the commission to consider them simultaneously. The primary consideration in consolidation was that the two petitions' proposed annexations partially overlapped. While each petitioner's argument focuses on the claim to annex and subsequently impose a fish tax on the waters of Nushagak Bay, the department's report finds that neither argument is persuasive. Though many other communities have successfully annexed adjacent bodies of water for taxation purposes, the department acknowledges a critical difference in this case. There is an absence of a borough, as well as the presence of multiple communities, both incorporated and unincorporated, that rely on this fishery for their livelihood. Measuring which community most relies on the bay or which is most connected is an unfruitful line of analysis. The issue of jurisdiction over this water has come before the LBC multiple times and has remained unresolved for decades. The department recognizes that significant revenue will not be captured by prolonging this issue, but to allow a single community to annex and procure revenue to be used only in that community would be a disservice to the other communities. The LBC is empowered to consider annexations from a statewide perspective. Approving Dillingham's petition will not contribute any additional services or income to the region. Rather, because Dillingham's proposed annexation only includes water, it precludes other communities from seeking to tax fish in the future without offering any tangible benefits to those communities.

Manokotak's petition emphasizes its historical ties to the Igushik Section and the beach fish camps where families operate set net sites. The department recognizes this important connection, but finds that two salient factors impede this annexation from the outset: the department's view that the City of Manokotak does not have the capacity to extend services beyond its current boundaries, and that distant the fish camp and Igushik section are home to drift net fishermen and set netters from outside Manokotak. In addition, the ability of the city to collect revenue on the Igushik Section is not feasible at this time. However, the primary issue at hand is that the territory that Manokotak is seeking is large, and does not demonstrate a need for full-time, year-round city government as Manokotak is proposing.

In essence, these two petitions are superficially similar, but the reasoning behind the department's recommendations for denial in each is quite different. Neither petition meets the applicable standards for annexation.

Appendices

Appendix A: Petition schedule

Appendix B: Notice of Hearing and Final Report

Appendix C: Map of Both Proposed Annexations