

# Local Boundary Commission Statement of Decision

## Members

*Lynn Chrystal*  
Chair  
At Large

*John Harrington*  
Member  
First Judicial District

*Bob Harcharek*  
Vice Chair  
Second Judicial District

*Darroll Hargraves*  
Member  
Third Judicial District

*Lavell Wilson*  
Member  
Fourth Judicial District



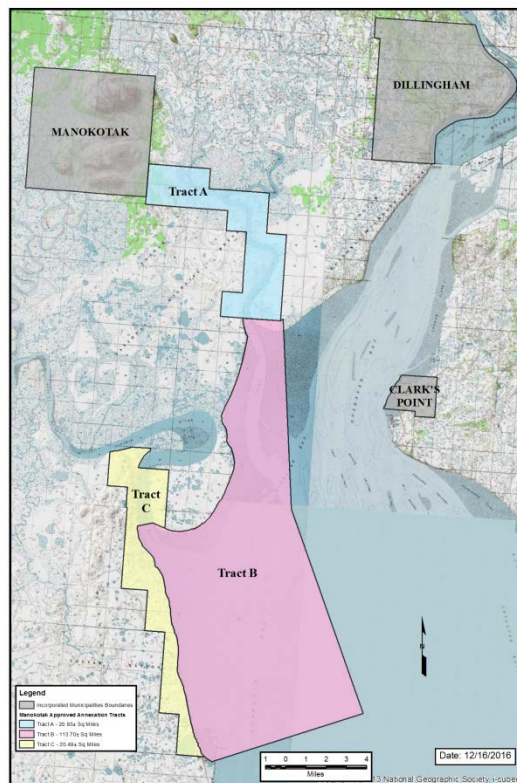
In the matter of the  
City of Manokotak  
Annexation Petition  
for 155.12± square  
miles of land and  
water

## Section 1 Introduction

On September 1, 2015, the City of Manokotak submitted a legislative review petition to annex 155.12± square miles of land and water to the Local Boundary Commission (LBC). The petition identified the territory proposed for annexation in three parts described generally as follows:

Tract A contains a segment of the Weary River as it flows into the Snake River and then into the Nushagak Bay where Tract A meets Tract B (described below). Tract A is approximately 20.93 square miles. Tract B consists of 113.7 square miles of water and includes the Snake River and Igushik Sections of the Nushagak Commercial Salmon District. Tract C is approximately 20.5 square miles of land called Igushik Village or Igushik Beach.

A summary of petition proceedings is in Section II of this Decisional Statement. This territory is wholly located in the Dillingham Census Area in southwestern Alaska and within the Bristol Bay Recording District.



Map of Proposed Annexation by the City of Manokotak

## **Section II Proceedings**

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

September 1, 2015: The City of Manokotak submitted a legislative review petition for annexation to the Local Boundary Commission.

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

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

December 4, 2015: The City of Manokotak's petition was accepted for filing and a public comment period for the consolidated petitions opened.

February 26, 2016: The public comment period on the consolidated petitions from cities of Dillingham and Manokotak ended.

June 3, 2016: A preliminary report to the LBC regarding the consolidated annexation petitions was released and a second public comment period began.

July 15, 2016: The second public comment period ended.

August 19, 2016: A motion from Ekuk, et al., was submitted to the LBC, and, consequently, an additional public comment period on the preliminary report opened and was extended through September 19, 2016.

October 28, 2016: A final report to the LBC regarding the consolidated annexation petitions was released.

November 28-30, 2016: A hearing was held in both Manokotak and Dillingham regarding the annexation petitions.

December 1, 2016: A decisional meeting was held in Anchorage whereby the petition was approved as presented. A legal description is found in Section IV.

## **Section III Findings and Conclusions**

### **Need – 3 AAC 110.090**

The commission noted that Manokotak demonstrated, particularly in the testimony at the public hearing, a strong need for city government in the territory proposed for annexation, including the need for city services such as waste disposal and ice machines to support fishing by city residents.

The commission also noted that the whole community moves from the existing city limits to Tract C in the summer and are without city services in Tract C. The commission found that Tract A was a necessary corridor and an integral part of the annexation because in order to provide the needed services in Tract C, Manokotak indicated that site control in the corridor (Tract A) through municipal jurisdiction was required.

The commission also found that no other existing city or organized borough could provide essential municipal services to the territory more efficiently or effectively than the City of Manokotak because there is no other city or an organized borough in place to do this. The commission found that no

borough was likely to form in the area in the foreseeable future and that there is not an existing city near enough to provide these services to the territory proposed for annexation.

The commission found the proposed annexation exhibits a reasonable need for city government and found that the standard in 3 AAC 110.090 is met.

### **Character – 3 AAC 110.100**

The commission found that the land proposed for annexation is primarily used by current residents of the City of Manokotak. The commission also noted the historical and current community ties to the land and the water described in the annexation boundaries. The commission noted testimony that Manokotak residents find it hard to differentiate between the city and Igushik Village because they consider it such an integral part of their community.

For these reasons, the commission found that the character of the territory proposed for annexation is compatible with the City of Manokotak and the standard regarding character found in 3 AAC 110.100 is met.

### **Resources – 3 AAC 110.110**

The commission noted that annexation will provide jurisdiction and site control over the territory proposed for annexation, thereby allowing the expanded city to qualify for more grant funding for its anticipated needs. The commissioners indicated that the city's fish tax will primarily be levied against residents of Manokotak, demonstrating the city residents' sincere intentions to fund needed services.<sup>1</sup> Revenue is anticipated from the proposed fish tax to provide services such as ice machines.

The commission noted that the testimony demonstrated that the area is economically depressed, and found that an additional income source and the city's desire to improve or extend city services is favorable for annexation.

The commission noted that the transition plan in the petition included a budget with anticipated expenses from the proposed annexation. They also found that the hearing included testimony providing more detail on the costs of providing some services. The commission found the testimony to present a fair estimate of the high costs of the services desired by Manokotak and the city's plans for securing funding sources.

Commissioner Hargraves noted that the size of the territory proposed for annexation meant that it would be difficult to administer city services throughout the entire territory. The commission, however, finds that the proposed expanded city has the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level, and meets the standard regarding resources found in 3 AAC 110.110.

### **Population – 3 AAC 110.120**

The commissioners found that the City of Manokotak is a growing community with a flourishing local school. In addition, the commission gave considerable weight to the statements in the petition and testimony describing the seasonal population shifts to the annexation territory. The commissioners did not all agree whether the territory had a permanent population, but found that the historical ties with the land and water, as well as the movement of the community to Igushik Village each season to set net was more important with respect to this standard concerning the population.

For these reasons, the commission finds that the population within the proposed expanded boundaries is sufficiently large and stable enough to support the extension of city government and that the standard regarding population found in 3 AAC 110.120 is met.

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<sup>1</sup> The City of Manokotak passed a two percent severance tax on raw fish in November 2016 in an election that has not yet been certified.

### **Boundaries – 3 AAC 110.130**

The commission considered that Tract A represented a necessary piece of the annexation with regard to the city's need to improve the boat launch in that area. The commission found that Tract A also provides the community's means of traveling to fish each season for commercial and subsistence purposes.

The commission finds that the proposed expanded city as presented with Tracts A, B, and C did not create enclaves or noncontiguous sections in the City of Manokotak.

The commission finds that the entire annexation was on a scale suitable for city government because each section of territory proposed for annexation is necessary to meet all the annexation standards.

As noted earlier, Tract A is necessary for transportation access as well as for necessary improvements to the boat launch. Tract B is made up of established statistical areas set by the Alaska Department of Fish and Game (ADFG) and splitting this section of the Nushagak District further than the way it is described by ADFG for Manokotak is impractical. Tract C consists of land that is important to and utilized by the residents of Manokotak. The commission found that the ties between each section proposed for annexation are essential.

The commission also found that the annexation did include entire geographical regions or large unpopulated areas. But, the commission justified this by stating that the standards for annexation are otherwise met. The boundary for Tract B is justified because it conforms to the statistical area boundaries drawn by ADFG, and the commission did not think it would be prudent to deviate from those boundaries. The commission finds that, overall, the boundaries proposed by Manokotak are necessary and justified for administration of a fish tax. This area is in the unorganized borough and not under other local government jurisdiction, and because of the coastal ties with the current City of Manokotak, the standard regarding the exclusion of large unpopulated areas is overcome.

The commission agreed that the proposed annexation does not describe boundaries that overlap any other city or borough because there is none nearby.

The commission, considering the factors described above in this section, finds that the proposed expanded boundaries include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

### **Best Interests of the State – 3 AAC 110.135**

#### **Maximum Local Self-Government**

The commission found that the proposed annexation was expanding local government to an area in the unorganized borough and outside any city and would bring more territory into the organized areas of the state. The commission, therefore, finds this annexation promotes maximum local self-government and meets the standards found in 3 AAC 110.981 and 3 AAC 110.135(1).

#### **Minimum Number of Local Government Units**

No new local government units will be created by this proposed annexation, and the commission found that the annexation proposed by the City of Manokotak is merely expanding an existing unit of local government. For this reason, the commission determined that the proposed annexation meets the standard promoting 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.

#### **Relief from State Provision of Local Services**

The commission, as described above, found that 3 AAC 110.135 (1) and (2) were met. With regard to subsection (3), the commission noted that the state does not currently provide any services to the proposed annexation territory. Commissioner Hargraves expressed concern that second class cities should not take the place of boroughs particularly with regard to size, and that this annexation will not relieve the state of provision of local services. The chair polled the commissioners regarding this standard. Commissioner Harrington, Commissioner Wilson, and Chair Chrystal indicated they believe the standard is met. Commissioner Hargraves and Commissioner Harcharek stated their

opposition. Because a majority of three commissioners found the annexation is in the best interests of the state and will not require the state to provide additional services, the commission found that the standard regarding the best interests of the state is met.

### **Legislative Review – 3 AAC 110.140**

The commissioners considered the standards for annexation via Legislative Review under 3 AAC 110.140 and found that four of the eight subsections describe circumstances that are present.

The commission found that subsection (1) is not met because the territory is not wholly or substantially surrounded by the annexing city. Regarding (2), the commission found conditions in the proposed territory were not detrimental or dangerous such that annexation is necessary for the city to regulate or control those conditions. Regarding the third subsection, the commission found that the city services Manokotak wishes to extend to the territory do require that the territory be within the city's jurisdiction through municipal boundaries, and that it is impractical for the city to extend these services unless the territory is within the city.

Subsection (4) was found not to apply because no city services are being extended to the territory by the city at this time. The commission found that the circumstances described in subsection (5) exist because Manokotak wishes to extend its regulation of alcohol to the territory, as well as land use planning, which cannot be done extraterritorially. As noted earlier, circumstances described in subsection (7) were determined to have been met. The commission also found that the annexation would strengthen and empower the City of Manokotak, and, therefore, subsection (8) is met, which states that the annexation will enhance the extent to which the existing city meets the standards for incorporation. The commission did not address subsection (9) because only one subsection must be met.

The commission finds that at least one of the circumstances in 3 AAC 110.140 is met, and that, therefore, the territory may be annexed to the City of Manokotak by the legislative review process.

### **Transition – 3 AAC 110.900**

The commission found that the petition and testimony heard during the public hearing included a practical plan that demonstrated the capacity of the City of Manokotak to extend essential municipal services into the boundaries proposed for change within a reasonable timeframe. The commission noted that a practical plan was described adequately in testimony and included some costs and descriptions from well drillers and descriptions of potential grants.

The commission noted that the plan did not need to address the transition of powers, duties, rights, and functions because there is no existing borough, city, or borough service area currently exercising these. The commission also found subsection (c) not applicable because there are no assets or liabilities to transfer or integrate because there is no existing borough, city, or borough service area in the territory proposed for annexation. For the same reason, the commission found no reason for the petitioner to consult other officials or to require an agreement between any entities. The commission determined that the information contained in testimony, the petition, and the entire record is sufficient to meet the standard in 3 AAC 110.900 regarding transition.

### **Statement of Nondiscrimination – 3 AAC 110.910**

The commission found no evidence that the adoption of the annexation proposal from the City of Manokotak would deprive any person of any civil or political rights because of sex, creed, national origin, or race. The commissioners found the standard under 3 AAC 110.910 is met.

### **Determination of Essential Municipal Services – 3 AAC 110.970**

Because essential municipal services were discussed, the commission did identify those that are reasonably necessary to the community and promote maximum, local self-government, as well as services that cannot be provided more efficiently or more effectively by the creation or modification of some other political subdivision of the state.

Land use, planning, public safety, road maintenance, water and wastewater, utilities, refuse collection, search and rescue, and emergency medical services (EMS) were listed in the petition as

existing powers. The commission also identified garbage service, ice machine, alcohol regulation, and taxation as essential municipal services for the proposed annexation.

Several commissioners noted that a borough could better provide some of the identified services, but at this time, with no anticipated borough formation petition, the commission found that the City of Manokotak was the most able entity to provide those essential municipal services.

### **Conclusion and Vote**

After a discussion of the standards described above, Commissioner Harcharek moved to approve the Manokotak petition as presented; Commissioner Wilson seconded the motion. A discussion followed the motion.

Three commissioners voted in favor of the petition: Chair Lynn Chrystal, and Commissioners Robert Harcharek and Darroll Hargraves. Commissioners John Harrington and Lavell Wilson voted against approval. With three votes in the majority for approval, the commission approved the City of Manokotak's annexation petition to annex approximately 155 square miles of land and water. A legal description of the approved boundaries is set out in Section IV.

## **Section IV**

### **Order of the Commission**

The territory of the City, should the proposed annexation be approved by the Legislature, is generally described as all lands and waters contained within the following metes and bounds:

Beginning at MC 1 of USS 4875 Manokotak Townsite (recorded as Book 17, Page 252, Bristol Bay Recording District), Thence North 4.0 miles to a point on the North Boundary of the City of Manokotak and the **True Point of Beginning**;

Thence, Easterly along the Northerly boundary of the City of Manokotak, 5 miles, to the Northeast Corner of the City of Manokotak;

Thence, Southerly along the Easterly boundary of the City of Manokotak 23,002± feet to the intersection with the Northerly boundary of Section 10, Township 14 South (T14S), Range 58 West (R58W), Seward Meridian (SM);

Thence, Easterly along the Northerly boundary of Sections 10, 11 and 12, T14S, R58W, SM and Section 7, T14S R57W, SM to the Northeast Corner of Section 7, T14S, R57W, SM;

Thence, Southerly along the Easterly boundary of Section 7, to the Northwest Corner of Section 17, T14S, R57W, SM;

Thence, Easterly along the Northerly boundary of Sections 17, 16 and 15 to the Northeast Corner of Section 15, T14S, R57W, SM;

Thence, Southerly along the Easterly boundary of Sections 15 and 22, to the Northwest Corner of Section 26, T14S, R57W, SM;

Thence, Easterly along the Northerly boundary of Section 26, to the Northeast Corner of Section 26, T14S, R57W, SM;

Thence, Southerly along the Easterly boundary of Sections 26 and 35, to the Northeast Corner of Section 2, T15S, R57W, SM;

Thence, Southerly along the Easterly boundary of Sections 2, 11 and 14, to the North 1/16<sup>th</sup> Corner, being the SE Corner of the NE1/4 NE1/4 of Section 14, T15S, R57W, SM;

Thence, Northeasterly to a point on the Mean High Water (MHW) Line of the Snake River and an Alaska State Fish and Game marker, identified as geodetic position 58°52.90' North Latitude, 158°43.30' West Longitude and referenced in Alaska Code 5 AAC 06.200(a)(2);

Thence, Southeasterly to a point in Nushagak Bay to a geodetic position 58°44.80' North Latitude, 158°41.50' West Longitude and referenced in Alaska Code 5 AAC 06.200(a)(1);

Thence, Southeasterly to a point in Nushagak Bay to a geodetic position 58°36.28' North Latitude, 158°34.40' West Longitude and referenced in Alaska Code 5 AAC 06.200(a)(1);

Thence, Southwesterly to an Alaska State Fish and Game marker, identified as geodetic position 58°33.77' North Latitude, 158°46.57' West Longitude and referenced in Alaska Code 5 AAC 06.200(a)(1);

Thence, Northwesterly to the intersection with the MHT Line of the Nushagak Bay and the Southerly boundary line of Section 36, T18S, R58W, SM;

Thence, Westerly along the Southerly boundary of Sections 36 and 35, to the Southwest Corner of Section 35, T18S, R58W, SM;

Thence, Northerly along the Westerly boundary of Sections 35 and 26, to the Southeast Corner of Section 22, T18S, R58W, SM;

Thence, Westerly along the Southerly boundary of Section 22, to the Southwest Corner of Section 22, T18S, R58W, SM;

Thence, Northerly along the Westerly boundary of Sections 22, 15, 10 and 3 to the Southeast Corner of Section 33, T17S, R58W, SM;

Thence, Westerly along the Southerly boundary of Section 33, to the Southwest Corner of Section 33, T17S, R58W, SM;

Thence, Northerly along the Westerly boundary of Sections 33 and 28, to the Southeast Corner of Section 20, T17S, R58W, SM;

Thence, Westerly along the Southerly boundary of Sections 20 and 19, to the East-West-East 1/256<sup>th</sup> Corner, being the SW Corner of the SE1/4 SE1/4 SW1/4 SE1/4 of Section 19, T17S, R58W, SM;

Thence, Northerly through Sections 19, 18, 7 and 6 along the East-West-East 1/256<sup>th</sup> line, to the East-West-East 1/256<sup>th</sup> Corner Section 6, being the NE Corner of the NW1/4 NE1/4 NW1/4 NE1/4 of Section 6, T17S, R58W, SM;

Thence, Westerly along the Township Line, to the Southwest Corner of Section 35, T16S, R58W, SM;

Thence, Northerly along the Westerly boundary of Section 35, to the Southeast Corner of Section 27, T16S, R58W, SM;

Thence, Westerly along the Southerly boundary of Section 27, to the Southwest Corner of Section 27, T16S, R58W, SM;

Thence, Northerly along the Westerly boundary of Sections 27 and 22, T16S, R58W, SM to the intersection with the MHW Line of the Igushik River;

Thence, Northeasterly along the MHW Line of the Igushik River, to the intersection with the MHW line and the Northerly boundary of Section 23, T16S, R58W, SM;

Thence, Easterly along the Northerly boundary of Section 23, to the Northeast Corner of Section 23, T16S, R58W, SM;

Thence, Southerly along the Easterly boundary of the Section 23, T16S, R58W, SM to the MHW Line of the Igushik River;

Thence, Southerly along the MHW Line of the Igushik River to the intersection with the Northerly boundary of Section 26, T16S, R58W, SM;

Thence, Easterly along the Northerly boundary of Sections 26 and 25, to the Northeast Corner of Section 25, T16S, R58W, SM;

Thence, Southerly along the Westerly boundary of Sections 25 and 36, to the Southeast Corner of Section 36, T16S, R58W, SM;

Thence, continuing Southerly through Sections 4 and 9, T17S, R58W, SM, parallel with the Easterly boundary of Sections 4 and 9, to the intersection of the MHW Line of the Igushik River;

Thence, Easterly and Northerly along the MHW Line of the Igushik River, Nushagak Bay and the Snake River, to a point on the Southern boundary of the NW1/4 NW1/4 of Section 15, T15S, R57W, SM;

Thence Westerly through Sections 15 and 16 along the North 1/16<sup>th</sup> line to the North 1/16<sup>th</sup> Corner Section 16, being the SW Corner of the NW1/4 NW1/4 of Section 16, T15S, R57W, SM;

Thence, Northerly along the Easterly boundary of Sections 16 and 9, to the Northwest Corner of Section 9, T15S, R57W, SM;

Thence, Easterly along the Northerly boundary of Section 9, to the Southwest Corner of Section 3, T15S, R57W, SM;

Thence, Northerly along the Westerly boundary of Section 3, to the Southwest Corner of Section 34, T14S, R57W, SM;

Thence, Northerly along the Westerly boundary of Sections 34 and 27 to the Southeast Corner of Section 21, T14S, R57W, SM;

Thence, Westerly along the Southerly boundary of Section 21, to the Southwest Corner of Section 21, T14S, R57W, SM;

Thence, Northerly along the Westerly boundary of Section 21, to the Northwest Corner of Section 21, T14S, R57W, SM;

Thence, Westerly along the Southerly boundary of Sections 17 and 18, to the Southwest Corner of Section 18, T14S, R57W, SM, and continuing Westerly to the Southwest Corner of Section 14, T14S, R58W, SM;

Thence, Westerly 671± feet, along the Southerly boundary of Section 15, to a point due South of the Southeast Corner of boundary of the City of Manokotak (recorded as Book 17, Page 252, Bristol Bay Recording District);

Thence, North 1,961± feet to the Southeast Corner of the City of Manokotak boundary,

Thence, Westerly along the Southerly boundary of the City of Manokotak, 6 miles, to the Southwest Corner of the City of Manokotak;

Thence, Northerly along the Westerly boundary of the City of Manokotak, 6 miles, to the Northwest Corner of the City of Manokotak;

Thence, Easterly along the Northerly boundary of the City of Manokotak, 1 mile, to the **True Point of Beginning**, containing approximately 191± square miles (of which 118± square miles is water), all within the Third Judicial District, Alaska.



Description based on USGS Quads Dillingham A-8 [1952 (Revised 1963)], Goodnews Bay A-1 [1979 (Revised 1979)], Nushagak Bay C-3 [1950 (Revised 1981)], Nushagak Bay D-3 [1952 (Revised 1955)] and Nushagak D-4 [1952 (Revised 1955)].

Approved in writing on this 20<sup>th</sup> day of December, 2016

Local Boundary Commission

By:   
Lynn Chrystal, Chair

Attest:   
Eileen Collins, Staff

Based on the findings and conclusions set out in Section III of this decisional statement, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied by the annexation proposal filed by the City of Manokotak. Accordingly, the commission hereby approves the September 1, 2015, petition of the City of Manokotak.

The commission will submit a recommendation for the annexation of the territory in question to the First Session of the Thirtieth Alaska Legislature in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska.

**Reconsideration by the Commission**

Regulation 3 AAC 110.580 titled “Reconsideration” provides as follows:

- (a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.
- (b) Within 30 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.
- (c) A person filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.
- (d) If the person filing the request for reconsideration is a group, the request must identify a representative of the group. Each request for reconsideration must provide the physical residence address and mailing address of the person filing the request for reconsideration and the telephone number, facsimile number, and electronic mail address, if any, for the person or representative of the group.

(e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law;  
or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(f) If the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

### **Judicial Appeal**

A decision of the Local Boundary Commission may be appealed to the Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2). Per 3 AAC 110.570(g), this is the final decision of the commission, unless reconsideration is timely requested or the commission orders reconsideration. A claimant has 30 days to appeal to the Superior Court.