

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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

THE PETITION OF THE CITY OF
MANOKOTAK FOR ANNEXATION OF
THE WEARY/SNAKE RIVER TRACT, THE
SNAKE RIVER SECTION AND IGUSHIK
SECTION OF THE NUSHAGAK
COMMERCIAL SALMON DISTRICT, AND
THE IGUSHIK VILLAGE TRACT BY THE
LEGISLATIVE REVIEW METHOD.

**RESPONSIVE BRIEF OF SOUTHWEST REGION SCHOOL DISTRICT
PURSUANT TO 3 AAC 110.580(f)**

The Local Boundary Commission has reconsidered its previously issued written statements of decision regarding the annexation petitions of the City of Dillingham and the City of Manokotak. Respondent Southwest Region School District (the "District") submits this responsive brief pursuant to 3 AAC 110.580 and the Commission's Order on Reconsideration.

I. Facts

Hundreds of residents of the City of Manokotak, the majority, spend the summer at Igushik.¹ Residents of the City of Manokotak use the waterways included in Tracts A and B to reach those summer fishing grounds, including using the Weary River ramp which is located beyond the current city boundaries and which needs to be modified.²

As Anecia Toyukuk testified, families traditionally move to Igushik in the spring for subsistence food resources like seals, ducks, and letter berries, greens and clams.³ Her family could get silvers from the Weary River, but mostly would fish as much as possible from Igushik Beach.⁴ Her entire family including grandparents and grandchildren would go together to gather food.⁵ This well established pattern of long-term seasonal use of Igushik Beach for fish and other resources has been in place since the permanent village of Manokotak was established in the early 1940s.⁶ There are such strong ties between Manokotak and Igushik that the church building at Igushik was built by the Manokotak Moravian church.⁷

Igushik, the summer home for families that live during the winter in Manokotak,

¹ Exhibits M-5, M-6, M-7, M-8 and M-9; Mayor Melvin Andrew, 11/28/16 Tr. at 44-48; Kevin Waring, 11/28/16 Tr. at 67-68; Deb Forkner, 11/28/16 Tr. at 185-187; Kay Andrews, 11/30/16 Tr. at 42-43.

² Kevin Waring, 11/28/16 Tr. at 68; Edward Nick, 11/28/16 Tr. at 147, 149-153; Exhibits M-28, M-29, M-30; Kay Andrews, 11/30/16 Tr. at 44.

³ Anecia Toyukuk, Tr. 11/28/16 at Tr. 168.

⁴ Anecia Toyukuk, Tr. 11/28/16 at Tr. 169.

⁵ Anecia Toyukuk, Tr. 11/28/16 at Tr. 168-169.

⁶ Mayor Melvin Andrew, 11/28/16 Tr. at 46; Nancy George, 11/28/16 Tr. at 79; Moses Toyukuk, 11/28/16 Tr. at 97; Larry Bartman, 11/28/16 Tr. at 104; Tessa Nickerson, 11/28/16 Tr. at 161-162; Mike Toyukuk, 11/28/16 Tr. at 165-167; Anecia Toyukuk, 11/28/16 Tr. at 168-169; Nancy Sharp, 11/28/16 Tr. at 177-179.

⁷ Mayor Melvin Andrew, 11/18/16 Tr. at 46, 47; Exhibit M-5.

needs clean water and mechanisms for proper sanitation and waste disposal.⁸ Current water sources include a shallow well that does not reliably provide potable water, a spring that can only be accessed by boat on the right tide, purchase of water from floating tenders, or hauling water by skiff from Mankotak.⁹

Prior attempts by the City to site a well and control solid waste disposal were hampered by a lack of formal jurisdiction over the area.¹⁰ Annexation would provide the City of Manokogak mechanisms to provide the infrastructure needed to promote public health at Igushik.¹¹ Testimony from John Bouker and Gordan Isaacs testimony established the feasibility of putting in a well at Igushik, if the City of Manokotak had the legal authority to do so.¹² Annexation would also enable the City of Manokotak to extend to residents' summer homes in Igushik the prohibitions on importation and possession of alcohol which the City of Mankotak adopted in 1988.¹³

II. Manokotak's Petition Satisfies Applicable Regulatory Standards.

The City of Manokotak's petition should be granted because the circumstances presented by Manokotak's petition meet Alaska's statutory and regulatory standards for annexation to an existing city. The territory that Manokotak seeks to annex is compatible with the existing city, is already used extensively by city residents who need

⁸ Exhibit 26; Mayor Melvin Andrew, 11/28/16 Tr. at 49-50; Larry Bartman, 11/28/16 Tr. at 104-105. Arline Franklin, 11/28/16 Tr. at 137-139, 155.

⁹ Mayor Melvin Andrew, 11/28/16 Tr. at 50, 63.

¹⁰ Mayor Melvin Andrew, 11/28/16 Tr. at 49-50, 53, 63; Tessa Nickerson, 11/28/16 Tr. at 160-161.

¹¹ Mayor Melvin Andrew, 11/28/16 Tr. at 51, 53, 57; Kevin Waring, 11/28/16 Tr. at 71; Nancy George, 11/28/16 at Tr. 82-83; Moses Toyukuk, 11/28/16 Tr. at 99; Larry Bartman, 11/28/16 Tr. at 104-105; Arline Franklin, 11/28/17 Tr. at 137-139, 155; Exhibit M-26.

¹² John Bouker, 11/28/16 Tr. at 86-90; Gordan Isaacs, 11/28/16 Tr. at 158-159.

¹³ Mayor Melvin Andrew, 11/28/16 Tr. at 51-52; Tessa Nickerson, 11/28/16 Tr. at 160.

city services. Need is present not only at the Igushik beach area where the majority of residents of the City of Manokotak have made their summer home for generations, but the waterways that residents use to reach that area and the waters that they fish for commercial and subsistence purposes. The needs includes not only basic infrastructure and capital projects but also the need for additional regulatory control such as extending to the area proposed for annexation the prohibition of alcohol which is already in effect within the existing City of Manokotak. The long-established summer population at Igushik is large enough and uses the area consistently enough to support the extension of small scale infrastructure as proposed by the City of Manokotak. There will continue to be a need for potable water. There will continue to be a need for solid waste disposal. No other entity provides those services or is likely to do so in the future.

A. The Area Proposed for Annexation Needs City Government.

During the November 2016 hearing, the Commission heard evidence of the need for city government in the area proposed to annexation. The residents of the City of Manokotak who live in Igushik during the summer need a fresh water supply, coordinated solid waste disposal and ice making. Residents would also like to extend to Igushik the prohibition on alcohol that already applies within the City. Annexation would provide the City of Manokotak a mechanism for meeting those needs.

B. The area that Manokotak proposes to annex is compatible with the character of the City.

There are strong and long-standing connections between Manokotak and the area proposed for annexation, primarily that the majority of the residents of the City of Manokotak spend the summer at Igushik. The ties between the two areas are strong. The church at Igushik was built by the Manokotak Moravian church. Entire families from Manokotak live and fish at Igushik every summer and have done so for

generations. Those residents already use the waterways sought for annexation for the purpose of reaching Igushik. They already use Igushik as their summer home.

C. Analysis of Resources and Population Supports Annexation.

Regulations require the Commission to consider whether the economy of the proposed expanded boundaries of the city includes human and financial resources necessary to provide essential municipal services. The area proposed for annexation is already consistently used on a seasonal basis by residents of the City of Manokotak who fish at Igushik in the summer. Testimony at the November hearing demonstrated the resourcefulness of the community and commitment to partnering with other local organizations to meet local needs.

D. The Area Proposed to be Annexed By Manokotak Has a Stable Seasonal Population Consisting Primarily of Residents of the City of Manokotak.

Under 3 AAC 110.120, the Commission must consider whether the population of the area proposed for annexation is sufficiently large and stable to support the extension of municipal services to the area. The area is already consistently used on a seasonal basis by residents of the City of Manokotak who fish at Igushik in the summer and have done so for generations. Although this population is only seasonal, it is permanent in the sense that families from Manokotak return to Igushik to fish every summer and will continue to do so.

E. The proposed boundaries of the area sought to be annexed by Manokotak are consistent with 3 AAC 110.130.

The proposed boundaries associated with Manokotak's request for annexation are informed by the presence of an established seasonal population of hundreds of residents who annually spend the summer in permanent buildings at Igushik, to whom Manokotak intends to extend municipal services. Tracts A and B provide a

transportation corridor. There is already an established pattern of residents of the City of Manokotak using Tracts A and B to access Igushik. Families return to Igushik year after year to fish for the summer and can reasonably be expected to continue to do so not just for the next ten years but for the foreseeable future.

F. Manokotak's proposed annexation is in the best interests of the State.

Southwest Region Schools shares the State's interest in maintaining the health of the community of Manokotak and the health of the children who live there. To determine whether the requested annexation is in the best interests of the State, consider the alternative. Denial of Manokotak's petition would prevent the residents of the City of Manokotak from meeting the challenges presented at their summer home.

At the November hearing, witnesses speculated about whether the region might, or might not, form a borough and whether borough formation might be a preferable mechanism for taxing and allocating the benefits of taxation of the Nushagak Bay fisheries. But even if a borough were formed, that borough would not provide the small scale local infrastructure needed at Igushik or matters typically handled by city government.¹⁴ The State has never provided and the type of small scale infrastructure which is needed at Igushik and denying annexation in hopes that the State would do so in the future would be counter to the principal of maximum local control.

Manokotak has requested annexation so that it can meet an existing need for small scale municipal services like a water source and solid waste disposal which will otherwise continue to go unmet. Denying the petition would deprive the families who make their seasonal home at Igushik of the legal authority and administrative tools necessary to meeting those needs. It is in the best interests of the State to permit the City

¹⁴ Testimony of Kevin Waring, 11/28/16 Tr. at 72.

of Manokotak to take responsibility for meeting the public health needs of its residents at their summer home in Igushik.

G. Manokotak's petition satisfies 3 AAC 110.140.

3 AAC 110.140 provides that annexation is appropriate when any one of several circumstances exists. The petition should be granted because several of those circumstances are present.

3 AAC 110.140(2). The health, safety, and general welfare of city residents is already endangered by conditions in the territory to be annexed, including the lack of a source for potable water and lack of facilities for solid waste disposal needed by the families who spend the summer at Igushik. There is an existing need for potable water, ice and solid waste disposal. There is no other entity, governmental or otherwise, in a position to remedy the unsanitary conditions that result from the absence of local infrastructure. Manokotak could provide the infrastructure necessary to eliminate those public health hazards if annexation were granted.

3 AAC 110.140(3). Annexation is necessary to extend services or facilities into the territory. Annexation would provide the City of Manokotak with formal mechanisms to obtain the site control necessary for securing funding for and operating the infrastructure needed at Igushik.

3 AAC 110.140(7). Annexation of the territory sought by Manokotak will promote maximum local self-government and a minimum number of local government units. No other government has any interest in, ability to, or intention to provide the services that are needed at Igushik. Allowing the City of Manokotak to annex the requested area would promote maximum local self-government.

3 AAC 110.150(8). Permitting annexation of the Ighusik area will enhance the

extent to which the City of Manokotak can meet the year-round needs of its residents, who have a long-established practice of spending their summer at Igushik.

III. Conclusion

Manokotak is a growing community whose residents spend their summers at Igushik. There are meaningful and specific social and financial connections between Manokotak and the tracts it seeks to annex. Annexation would enable Manokotak to extend additional services, including those related to potable water, ice making, waste disposal and boat landing and storage to improve public health and the health of the District's students. Annexation would permit Manokotak to bring those areas which it is already serving under its formal regulatory control. Having more formal mechanisms for governing the village of Igushik where many families served by the District summer would strengthen public health and the community of Manokotak and be in the best interests of the State. Mankotak's petition for annexation by legislative review should be granted.

IV. Designation of Representative

The Southwest Region School District has designated the following person as their representative for the purposes of this responsive brief and all proceedings regarding the Legislative Review Petitions of the City of Dillingham and the Legislative Review Petition of the City of Manokotak:

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DATED this 18th day of January, 2017.

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By: Lea Filippi
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I hereby certify that a copy of the above brief was sent on January 18, 2017 by email to:
Brooks Chandler (bchandler@bcfaklaw.com);
James Brennan (jbrennan@law-alaska.com); and
James Baldwin (redalderlaw@ak.net).

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