City of Dillingham
Responsive Brief On
Petition to Annex THE WEARY/SNAKE RIVER TRACT, THE SNAKE RIVER SECTION AND IGUSHIK SECTION OF THE NUSHAGAK COMMERCIAL SALMON DISTRICT, AND THE IGUSHIK VILLAGE TRACT, CONSISTING OF 118 SQUARE MILES OF WATER AND 37 SQUARE MILES OF LAND,
Using Legislative Review Method

February 26, 2016

BOYD, CHANDLER & FALCONER, LLP

By: Brooks W. Chandler
Attorney for City of Dillingham
AS 29.35.260(c) makes planning power optional for second class cities such as Manokotak. The city’s current ordinances\textsuperscript{16} do not provide for any planning and zoning authority within existing city boundaries. If the city has not exercised planning and zoning powers within existing boundaries a claim that annexation is necessary to provide for planning powers on any of the land within Tracts A, B and C is not logical. Igushik is a seasonal community which as documented by Manokotak’s petition has been in existence for decades. The municipality of Manokotak has been in existence for decades without exercising planning and zoning authority. There is no indication of a historical need for the exercise of such power either within Manokotak or within the territory it proposes to annex. Given this history the assertion that annexation is necessary to prevent haphazard development is a stretch too far. The need for city government at Igushik Beach has not been demonstrated.

**WITHIN TRACT B DILLINGHAM HAS THE ABILITY TO PROVIDE ESSENTIAL SERVICES MORE EFFICIENTLY AND EFFECTIVELY THAN MANOKOTAK**

In its December 2011 decision approving Dillingham’s annexation petition the LBC found “no other existing municipality has the ability to provide essential municipal services to the territory to be annexed more efficiently and more effectively” than Dillingham\textsuperscript{17}. The territory to be annexed included Tract B. This finding was based in part on the absence of an expressions from Manokotak that Manokotak residents wanted or were capable of providing essential municipal services within Tract B. This is not surprising. The focus of Manokotak’s petition is on provision of services in Tract C the upland area adjacent to Igushik Beach. But Dillingham’s long history of providing support services to the Nushagak District permit holders through existing port and harbor facilities, a landfill, roads and public utilities all of which are needed to provide a way to harvest fish, process fish and transport fish to market argues in favor of an LBC determination that Dillingham is more efficiently and effectively able to provide services within Tract B. That Manokotak has filed an annexation petition does not change the nature and value of the services actually provided by Dillingham in Tract B. A hope to provide services in the future does not diminish Dillingham’s history of providing services for decades. Dillingham remains the most effective and efficient municipality to provide services to permit holders fishing in the Igushik Section of the Nushagak District.

**MANOKOTAK’S PROPOSED FISH TAX CANNOT BE FEASIBLY IMPLEMENTED.**

3 AAC 110.110[4] requires the LBC to consider the feasibility and plausibility of Manokotak’s proposed operating and capital budgets. Both capital and operating budgets submitted with the Manokotak petition are premised on collection of a 2% raw fish tax on fish harvested within the proposed expanded Manokotak boundary\textsuperscript{18}. Whether the fish tax is feasible to implement is integral to Manokotak’s plan to extend services to Igushik Beach.

\textsuperscript{16} Exhibit G (excerpt from Manokotak code).

\textsuperscript{17} Dec. 12, 2011 Decision p. 6.

\textsuperscript{18} Manokotak Petition p. 65.
Manokotak has not provided a specific proposed fish tax with its petition. Such taxes typically take two forms: 1) a version of a sales tax in which the tax is imposed on the seller of raw fish and collected by the buyer at the point of delivery, and 2) a severance tax also based on the value of fish levied based on where fish were caught and also collected by the buyer at the point of delivery. Neither version is feasible to implement within proposed Tract B. Understanding why requires an understanding of how fish caught within Bristol Bay by the drift fleet are sold, delivered, and identified.

The Bristol Bay fishery is managed by the Alaska Department of Fish and Game (ADF&G) in accordance with a published management plan. For management purposes, Bristol Bay is divided into 5 Districts. A commercial drift permit is issued for the entire Bristol Bay fishery. A Bristol Bay limited entry drift permit can be fished in any one of the 5 commercial fishing districts – Togiak, Nushagak, Naknek-Kvichak, Egegik, Ugashik. A permit holder may fish in the Nushagak District or may fish on the eastern side of Bristol Bay in the Egegik District. This election is made before starting to fish and may be changed with 48 hour notice.

The Nushagak District drift net commercial fishery is divided into three sections - the Nushagak (or “all other”), Snake River (closed), and Igushik. Within the Nushagak District a drift permit holder may fish in either the Igushik Section or the Nushagak Section without making any formal declaration and can move between sections without advance notice. ADF&G may open the entire Nushagak District or to ensure escapement in the Igushik Section is met, will very occasionally only open the Nushagak Section.

---

19 Manokotak’s Transition Plan does not provide a schedule for adoption of such a tax or implementation of collection. Should the LBC approve Manokotak’s petition such approval should be conditioned on actual adoption and implementation of a fish tax. [3 AAC 110.570(c)(1) [authority to impose conditions on annexation].

20 See, for example SPCO 6.10.110(b)(City of Sand Point sales tax); UCO Chapter 6.44 (City of Unalaska raw fish tax).

21 Chapter 60.40 (Aleutians East Borough severance tax). These local ordinances are attached as Exhibit H.


23 5 AAC 06.370(a) and (b)(notice of election of district required, change in district permitted with advance notice).

24 5 AAC 06.200.

ADF&G has designated six set net areas and the two drift fishery sections as statistical areas\(^{26}\). Manokotak seeks to annex both the Igushik Beach set net statistical area (325-11) and the Igushik Section drift fishery statistical area (325-10).

Bristol Bay fish deliveries are made on the water to tenders and recorded using either paper or electronic fish tickets\(^{27}\). The Bristol Bay drift fleet reports all salmon caught in Bristol Bay by “District Caught” not by statistical area\(^{28}\). When the entire Nushagak District is open salmon harvested are reported as “Nushagak District” fish using the 325-00 designation. According to ADF&G “it is not possible to separate harvest by section” when both the Igushik Section and the Nushagak Section are open\(^{29}\). Permit holders and fish buyers are not required to estimate or separately identify in which section a particular fish was harvested.

This means Manokotak’s planned fish tax is not capable of being implemented and enforced under the current ADF&G reporting system. This greatly complicates Manokotak’s plan to collect fish tax levied on fish harvested in the Igushik Section. In fact, Manokotak told ADF&G the current reporting system “may frustrate the ability of Manokotak to determine which fish harvests are subject to the 2% raw fish tax Manokotak proposes in its annexation petition . . . Unless ADF&G’s fish tickets specifically identify salmon as being harvested from the Igushik Section, it may not be feasible to have the fish buyers collect and remit the tax payments”\(^{30}\).

3 AAC 110.110[4] requires the LBC to assess the “feasibility” of Manokotak’s anticipated capital and operating budgets. Those budgets are premised on an assumption of collecting raw fish tax on fish harvested from the Igushik section that, by Manokotak’s own admission is of doubtful feasibility. It is not in the best interests of the State of Alaska to encourage the expansion of municipal boundaries based on taxation schemes that are not feasible to implement. This is not simply a matter of two municipalities taxing the same delivery of the same fish at different rates. Rather, tax collection would be destined to be based on estimates not capable of verification or audit. These are standard features of a sales tax critical to its feasibility. Manokotak’s taxation plan is simply not capable of implementation given the current fish ticket reporting system used by the State of Alaska. The LBC should avoid approving a

\(^{26}\) Exh. J (ADF&G Nushagak Commercial Salmon Statistical Area Maps. The set net statistical areas are Ekuik, Clarks, Queens, Nushagak/Combine, Coffee Pt. and Igushik.)

\(^{27}\) Exh. K (Series B Bristol Bay Salmon Fish Ticket).

\(^{28}\) Id. (area highlighted).

\(^{29}\) Exh. I (ADF&G Nov. 25, 2015 letter to James Brennan).

\(^{30}\) Exh. L (James Brennan to ADF&G Commissioner Nov. 10, 2015).
November 25, 2015

James T. Brennan
Law Offices of Brennan and Heideman
619 E. Ship Creek Ave #310
Anchorage, AK 99501

Dear Mr. Brennan:

Commissioner Cotten asked me to respond on his behalf to your recent letter on fish ticket reporting in Nushagak Bay. I understand why your client is interested in more detailed reporting as it could bolster tax revenues for the City of Manokotak if the annexation request is successful.

On October 20, 2015, Assistant Attorney General Seth Beausang with the Department of Law provided you with the following guidance:

_The Nushagak District drift gillnet fishing area may be opened by individual section (the Nushagak section (325-30) or Igushik section (325-10)), or as a whole (the Nushagak and Igushik sections together (325-00)). The regulation at 5 AAC 39.130(c)(7) refers to statistical area, district, and subdistricts. The Nushagak District does not have any subdistricts. When the entire district is open harvests are reported as 325-00 and that is all the regulation and department require. There is no requirement to list the section where fish are harvested when the entire district is open (reporting is different when only one section is open). Furthermore it is not possible to separate harvest by section when both are open._

Mr. Beausang reviewed your November 10, 2015 memorandum and has not changed his position that our reporting practices in Nushagak Bay are consistent with Alaska’s statutes and regulations. He did, however, ask me to respond to your assertion that our use of statistical areas for purposes of fish ticket reporting conflicts with the definition of the “Igushik Statistical Area” in 5 AAC 06.370(f). Mr. Beausang pointed out that this regulation defines statistical areas in the Nushagak District “[f]or purposes of this section” only, and the regulation pertains to registration and not reporting. I would also like to add there are other areas of the state (e.g., Upper Cook Inlet) where reporting on fish tickets is handled in a similar manner.

As there are several reasons why your request is impractical for the department and fishermen, I am unable to accommodate your request. If you have any further questions on this issue, please contact Mr. Beausang directly.
Sincerely,

Scott Kelley
Director

Cc:  Sam Cotten, Commissioner
     Seth Beausang, Department of Law
LOCAL BOUNDARY COMMISSION

DECISIONAL MEETING

December 1, 2016
9:07 a.m.

Taken at:
Anchorage, Alaska

Commissioners Attending:
Lynn Chrystal, Chairman
John Harrington (via telephone)
Bob Harcharek (via telephone)
Lavell Wilson
Darroll Hargraves

Staff Attending:
Eileen Collins
Brent Williams
teleconference.

MS. MACSALKA: You -- Chair

Chrystal, you can ask everybody to go on mute
maybe, except the two Commissioners. That helps
(inaudible).

CHAIR CHRYSAL: Yeah. I did that

several times yesterday. It helped.

MS. COLLINS: Yesterday.

MS. MACSALKA: Oh, I'm sorry.

CHAIR CHRYSAL: We've actually had
to disconnect and start over a couple times.

MS. COLLINS: I guess we could

remind people.

CHAIR CHRYSAL: Okay. Anyway.

I'm sorry to interrupt you, Commissioner Wilson,
you were starting to --

COMMISSIONER WILSON: Is that

appropriate now to --

CHAIR CHRYSAL: Yeah.

COMMISSIONER WILSON: My thought

on -- rather than excluding all of Tract B, would
be to give from the mouth of the Weary River a
3-mile-wide corridor all the way down to the
bottom of Tract B following the coastline. That
would protect their setnet fishery 3 miles out and
about it. But in this petition as well as in
another petition we're going to look at, there's
nothing out there but fish. Fish don't vote and
fish don't particularly need any services from
those municipalities. So I -- in my estimation,
that standard is not met.

CHAIR CHRYSAL: Okay. I totally
disagree. I think there are residents out there,
but they're not out there full time.

COMMISSIONER HARGRAVES: No.

CHAIR CHRYSAL: They're out there
part of the year, but they're still residents.
They still use that property and that land for
probably, what? Four months. So I do feel those
are residents and this would help, say, the people
that live there. That's the people that are there
part time.

We heard so much testimony about how
Manokotak just basically pulls up stakes and moves
out there during the fishing season. So I'm not
sure how you could not consider them residents.

COMMISSIONER HARGRAVES:

Mr. Chairman?

CHAIR CHRYSAL: Yes.

COMMISSIONER HARGRAVES:
municipal services on an efficient, cost-effective level? The Commission may consider relevant factors; including, land use and ownership patterns, population density, existing and reasonably anticipated transportation patterns and facilities, natural geographic features and environmental factors, and extraterritorial powers of cities.

I presume we'll have a little disagreement here on the boundaries. I know Commissioner Harrington would disagree with having so much water.

COMMISSIONER HARRINGTON:
Absolutely.

CHAIR CHRYSAL: What you got against water?

COMMISSIONER HARRINGTON: I don't. And if I make it clear, I would seriously consider having the boundaries of such a city include the natural setnet area -- for that area to be included. It's just that massive inclusion of the bay that I have problems with.

CHAIR CHRYSAL: Okay. Fair enough.

COMMISSIONER HARCHAREK:
a little bit, and we missed that last -- at least
I missed part of that last couple minutes.

COMMISSIONER HARRINGTON: Can you
hear me fine?

CHAIR CHRystal: Yeah. Right there
is perfect.

COMMISSIONER HARCHAREK: That's
better. Much better.

COMMISSIONER HARRINGTON: Okay. I
will stay standing still. Now, where was I?

CHAIR CHRystal: We were talking
boundaries and water.

COMMISSIONER HARRINGTON: The
noncontiguous nature of the Manokotak city --
current city and the Section C and the water in
front of Section C is not contiguous to the city
limits of Manokotak. That's my only dilemma.

And yet if we have the option of waiving
that -- because I think we have a clear indication
of the historical ties and community ties between
the two. That's, to me, the only real problem I
see adding Section C and the waters above Section
C to the City of Manokotak is that noncontiguous
section.

CHAIR CHRystal: Well, I would
counter that by saying that it is contiguous, if
you use part of Tract B.

COMMISSIONER HARCHAREK: Correct.

CHAIR CHRYSSTAL: Anyway. Okay.

Anybody have any more comments on that?

COMMISSIONER HARGRAVES:

Mr. Chairman?

CHAIR CHRYSSTAL: Yes, sir.

COMMISSIONER HARGRAVES:

Commissioner Hargraves. I question the population
density. I question anticipated transportation
patterns and facilities. That corridor, if it had
a road scheduled through it, if there was some
kind of need for that, I could understand it. I
do have questions on those.

As far as the water is concerned, this
annexation, a lot of the information that was
provided to us, makes it clear that what we're
after is fish. Now, whether you take a 200-foot
strip along that beach or whether you take the
whole area is immaterial to me.

The petition, as they put it in, to my mind,
doesn't need any amendments. I just question the
overall petition, but have no interest in
modifying or amending this petition request.
continually on down to the very bottom of Tract B, you'd basically half Tract B and would still leave all that contiguous area. I think that would be a very good solution.

CHAIR CHRYSAL: I think you're absolutely correct, Commissioner Wilson.

COMMISSIONER HARGRAVES: Mr. Chairman?

CHAIR CHRYSAL: Yes, sir.

COMMISSIONER HARGRAVES: Commissioner Hargraves. What would be the purpose of reducing that water portion? What's the purpose of that?

COMMISSIONER WILSON: Of reducing it?

COMMISSIONER HARGRAVES: Yeah.

COMMISSIONER WILSON: Well, need, for one thing. Their basic need is along the shore, not way out in the bay. They testified there's not many drift fisherman even drift in that area. It's -- their main concern was the setnetters and the need for a corridor. And we get into that contiguous thing. That would keep it contiguous.

CHAIR CHRYSAL: I could accept all
with second-class cities in recent years.

I don't know how to get guidance on it, but I cannot believe that people at the constitutional convention foresaw a second-class city of this configuration and size. Thank you.

CHAIR CHRYSAL: Okay. Any other comments?

COMMISSIONER WILSON: I'd just like to point out that, you know, you're talking about the size of the cities, Wasilla and Palmer. They're not annexing -- they don't cover large expanses of water. You know, it's strictly land.

And now we've gotten into this thing where cities are annexing water and have been for some time, which greatly increases the amount of square miles that city has. But it doesn't really -- we're talking apples and oranges is what I'm saying.

CHAIR CHRYSAL: Right. Any comments on that? We still --

COMMISSIONER HARRINGTON: Well, Commissioner Wilson --

CHAIR CHRYSAL: Do we still assume that we're in the best interest of the State here on this one?
CHAIR CHRYSALIS: No. He was talking about --

COMMISSIONER HARRINGTON:

Hargraves. He said it was not in the best interest of the State. I heard that part, but I did not hear what he was referring to.

CHAIR CHRYSALIS: Well, we were discussing item 7. At the very end it says, And is in the best interest of the State.

COMMISSIONER HARRINGTON: And is he referring to the entire annexation proposal?

COMMISSIONER HARGRAVES: Correct.

CHAIR CHRYSALIS: Excuse me. You're saying that you're -- the entire proposal is not in the best interest of the State?

COMMISSIONER HARGRAVES: Yes.

CHAIR CHRYSALIS: Because I thought earlier you were saying that you accepted the petition?

COMMISSIONER HARGRAVES: I said I wouldn't vote to amend it to cut the water. But I'm saying that that proposal, I don't see how it benefits the State one iota. The State will continue to do everything that they have done in the past out there, provide education, what have
call vote.

MS. COLLINS: Chair Chrystal?

CHAIR CHRYSTAL: Yes.

MS. COLLINS: Commissioner Wilson?

COMMISSIONER WILSON: Uh...

MS. COLLINS: I can come back to you.

COMMISSIONER WILSON: Come back to me.

MS. COLLINS: Commissioner Hargraves?

COMMISSIONER HARGRAVES: Yes.

MS. COLLINS: Commissioner Harrington?

COMMISSIONER HARRINGTON: No.

MS. COLLINS: Commissioner Harcharek?

COMMISSIONER HARCHAREK: Yes.

MS. COLLINS: Commissioner Wilson?

COMMISSIONER WILSON: I'm going to vote no. I'm in favor of the petition, but not to include all of Tract B. So I'll vote no.

CHAIR CHRYSTAL: Okay. We have a vote of three to two.

MS. COLLINS: The record will
Mr. Chairman?

CHAIR CHRYSAL: Yes, sir.

COMMISSIONER HARGRAVES: Since I took a no position with Manokotak, perhaps it's okay for me to insert no here. There is no need for government on those fish.

CHAIR CHRYSAL: Okay. Anybody else? Commissioner Wilson? Okay. We have mostly noes on that one.

Under boundaries, 3 AAC 110.130(c)(2). To promote the limitation of community, the proposed expanded boundaries of the city may not include entire geographical regions or large, unpopulated areas. Do they include entire geographic regions or large, unpopulated areas?

COMMISSIONER WILSON: Yes.

COMMISSIONER HARRINGTON: Yes.

COMMISSIONER HARCHAREK: Yes.

COMMISSIONER HARGRAVES: Yes.

CHAIR CHRYSAL: Okay. We have a whole bunch of yeses. Okay. If yes, are those proposed boundaries justified by the application of standards in 3 AAC 110.090, 3 AAC 110.135, and are otherwise suitable for city government?

COMMISSIONER HARRINGTON: Yes.
CHAIR CHRYSAL: Okay. Anybody else?


CHAIR CHRYSAL: Okay. I believe yes as well.

Okay. Boundaries, 3 AAC 110.130(d). Does the petition for annexation to the city describe boundaries overlapping the boundaries of an existing organized borough?

COMMISSIONER WILSON: No.

CHAIR CHRYSAL: Okay.

COMMISSIONER HARCHAREK: No.

COMMISSIONER HARRINGTON: Yes.

CHAIR CHRYSAL: We can skip to the next question. If yes, does -- no. Wait. We didn't do that.

MS. COLLINS: Bottom one.

CHAIR CHRYSAL: Yeah. Does the petition for annexation to the city describe boundaries overlapping the boundaries of another existing city?

COMMISSIONER WILSON: Yes, it does now.

CHAIR CHRYSAL: I was just going
CHAIR CHRYSAL: Oh, you're saying yes. Okay. I guess maybe I have a question for our attorney. You know, the answer to this question would be yes if there's a borough getting ready to form or is already in the process. But it may be years and years and years before that happens.

So do we answer the question in today's world or the future? I think, today's world. If we start voting on things that may happen 10, 20, 30, 40 years from now, we'll be in trouble.

COMMISSIONER HARRINGTON: My apologies, Chair.

CHAIR CHRYSAL: Yes.

COMMISSIONER HARRINGTON: Based on the last one, I would have to say the standard is met and the answer is no.

CHAIR CHRYSAL: Okay.

COMMISSIONER HARGRAVES: Mr. Chairman?

CHAIR CHRYSAL: Yes, sir.

COMMISSIONER HARGRAVES: I think what this says is, can these municipal services be provided more effectively and more -- more effectively by the creation or modification of
some other political subdivision? And based on
that, I say yes.

It's clear to me that the creation of a
borough would take care of a lot of the problems
that we've had presented to us in here. It would
be the streamlined, most efficient and, in my
estimation, best interest of the State.

CHAIR CHRystAL: Okay. Anybody
else? I'm not going to bet on the future. I
mean, as far as --

COMMISSIONER WILSON: That's the
thing.

CHAIR CHRystAL: -- way out in the
future, yes, a borough would be better. But it's
not something we're discussing today, I don't
think.

COMMISSIONER WILSON: Yeah.

COMMISSIONER HARGRAVES: But the
question is; can it be?

CHAIR CHRystAL: Yeah, I know. But
can it be -- it can't -- as far as I'm concerned,
it can't be right now because we don't have a
borough, and we don't have a plan for a borough.
So, therefore, we can't do it better. At least
that's the way my mind is going here.
MR. BALDWIN: Yes. I'll try. We would like -- what our exhibits do -- Exhibit 30 describes the exclusions that we asked for from the south boundary of Clark's Point City north to Igushik Point.

And we asked -- except for the exclusion around Clark's Point, what we asked for is waters within statistical area 325-31 and 325-32, all waters which are legal for setnetters to extend their nets seaward from shoreline to the point they can extend their nets seaward.

Then on -- and for your information, the -- and I'm referring to Commissioner Wilson -- the areas that he expressed doubt about are the waters in statistical area 325-31. That's from Queens north to Igushik Point.

As to the next exhibit, what we're requesting is all waters within the statistical areas going south from the south border of the City of Clark's Point down to Etolin Point (phonetic). And those include the waters within statistical area 325-34 and Clark's Point, which is 325-33. So Queens and Combine are in the north. Clark's and Ekuk are in the south.

And, again, the area that you're concerned
MS. COLLINS: Four for and one against.

CHAIR CRYSTAL: Okay. The motion passes. Now we're back to the original motion, which is to approve the Dillingham petition as amended.

MS. COLLINS: Correct.

CHAIR CRYSTAL: And with the stipulation that we put on the amendment that staff and Mr. Baldwin will work together to get those lines squared up in the metes and bounds. So any further questions or comments about the motion, the main motion?

Okay. Can we have a roll call, please?

MS. COLLINS: Chair Chrystal?

CHAIR CRYSTAL: Yes.

MS. COLLINS: Commissioner Wilson?

COMMISSIONER WILSON: Yes.

MS. COLLINS: Commissioner Hargraves?

COMMISSIONER HARGRAVES: Yes.

MS. COLLINS: Commissioner Harcharek?

COMMISSIONER HARCHAREK: Yes.

MS. COLLINS: Commissioner
Harrington?

COMMISSIONER HARRINGTON: Yes.

MS. COLLINS: Five in favor.

CHAIR CHRYSAL: Okay. Motion for

the City of Dillingham is approved, and we'll look

forward to those metes and bounds to be exact

before we have our final written statement. And

that will be somewhere -- we don't have that

scheduled yet, do we?

MS. COLLINS: No. But we could do

that in this meeting.

CHAIR CHRYSAL: What? Schedule

the --

MS. COLLINS: The next one.

CHAIR CHRYSAL: Well, we'd have to

make sure that we've got all the information

beforehand.

MS. COLLINS: Right. But we have a

very strict deadline. So either we --

CHAIR CHRYSAL: Well, it's 30

days. Yeah.

MS. COLLINS: Christmas.

MS. MACSALKA: Yeah. I would

recommend going ahead and setting that. And you

can set it as close to the 30 days as you wish,
LOCAL BOUNDARY COMMISSION
PUBLIC HEARING

November 30, 2016
9:00 a.m.

Taken at:
Dillingham, Alaska

Commissioners Attending:
Lynn Chrystal, Chairman
Darroll Hargraves
Lavell Wilson
John Harrington (via telephone)
Robert Harcharek (via telephone)

Staff Attending:
Eileen Collins
Brent Williams
average local fish tax that fishermen are paying elsewhere in Bristol Bay. This analysis showed that it varies from fishermen paying an average of $570 in fish taxes in the Togiak fishing district to Togiak for their local fish tax, to the average fisherman in Egegik who pay $2,000 to a combination of Egegik and Lake and Peninsula Borough.

If the Dillingham annexation is approved, Nushagak Bay fishermen would be paying local fish taxes in the low to mid-range compared to other Bristol Bay fisheries.

The obvious next question is: Well, what if Nushagak fishermen have to pay both the Dillingham and the future borough local fish tax? Staff suggests on page 2 of the final report that, quote, unquote: 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 State's best interest, end quote. This is simply not true. I was
surprised that the staff report offered no
data or analysis to back this statement up,
and we've heard several in their testimony
comment about this burden and what the
implications are for being able to have a
future borough. Without this backup, this is
simply an opinion, though, and I'm going to
show that the data does not support this
opinion.

The State's 2015 Alaska taxable
shows that there are seven places in Western
Alaska where both the city and the borough
levy a local fish tax, and combined rates
vary from 3-and-a-half percent to 5 percent.
Assuming a combined City of Dillingham and
future borough fish tax rate of 4 percent and
using the CFEC five-year averages for the
Nushagak fishing district, this would result
in an average tax burden of 1,830 per
fisherman at 4 percent. This would be on the
high end for Bristol Bay, but at 4 percent
it's still less than those fishing in the
Egegik District pay on average.

Keep in mind that this is before
any low income or dual taxpayer rebates are
taken. Also, just to remember that these
local taxes are deductible on fishermen's
federal income tax returns.

I do want to note that my look at
the average tax burden on fishermen suggests
that the combined City of Dillingham and a
future borough local fish tax rate not exceed
4 percent or 4-and-a-half percent maximum.
The question becomes: If a 2 percent future
borough fish tax is reasonable, can this
raise enough revenue to run a future borough?
Again, the answer is yes.

As you've heard, there's a
regional government study going on now. This
month the McDowell Group issued one product
from that work for the regional tax portion.
That's the Dillingham Census Area Borough
Feasibility Study. The McDowell Group
report -- and also we've heard testimony, I
think, from Mr. Anderson yesterday about this
dollar amount. The McDowell Group report
estimates how much a variety of different
taxes in the region could generate and they
developed three different future Dillingham
census area borough budgets. The total
borough revenue that they show can be
generated varies from 2-and-a-half to
$3 million in these scenarios. I believe
Mr. Anderson yesterday talked about 2.7
million.

This could be generated by a
combination of 2 to 3 percent fish tax and
alcohol sales and lodging taxes and also
state community assistance revenue. Each
budget provides the three mandatory borough
services and has a small surplus.

In conclusion, I hope that my
comments show a path for you to find that it
is in the state's best interest to allow the
Dillingham annexation and that this will not,
quote, cripple a future borough, end quote.

My testimony, which used CFEC, DCRA, and
Department of Revenue data that's in the
record, as well as information from that
November McDowell Group report for the
regional borough study group shows that, one,
the level of harvest by regional fishermen in
the Nushagak Bay is quite similar to the
level of regional harvest in the Egegik,
Ugashik, Naknek/Kvichak, and Togiak
Fish & Game during the commercial salmon fishery. I was not prepared to speak off the cuff, and so if you can bear with me, I will --

CHAIR CHRYSAL: Now, that's not the letter right there, is it? Yeah, please get it out of the way.

MS. BRIDO: So what you're looking at here in front of you is the Alaska Department of Fish & Game's map of the commercial salmon district boundaries. This map is used by the Alaska Department of Fish & Game during the commercial salmon fishery to tell where salmon are caught and delivered and provide openers during the commercial salmon fishery.

The stat codes that are along the sides, 32535, 32531, 32 -- there we go -- 32333 and 34, as well as over here, 32511, are the setnet stat codes. So those are used for the setnet fissures who are fishing their setnets off of the beach. When they deliver their fish to the processor who's buying their salmon, the processor registers those fish as caught by a setnetter in these
statistical areas. So if your setnet is located here along the Ekuk beach, and you deliver to Ekuk cannery, those fish are recorded by the processor for the Alaska Department of Fish & Game under the stat code 32534, et cetera, for the other setnet districts. If you're going to move between setnet districts, you have to wait 48 hours and then move your setnet site, which doesn't happen very frequently for setnetters.

When the drift fishermen participate in the commercial fishing in the Nushagak District, there are actually three stat codes that they can fish under. When the whole district is open from this red line, this red line south to the south line here, the whole stat code used is 32500. So when the entire bay is open for drift salmon fishing, and a drift fisherman takes their fish to deliver to the processor, the fish caught are registered on a fish ticket under the stat code 32500. There's no way to tell under that stat code where within the district that drift fisherman has caught those salmon. They could have caught some of
them in the mouth of the Igushik River and they could have caught some of them down at the south line by Etolin Point. There's no way to determine where that fisher has been fishing as a drifter.

However, sometimes at the Department's discretion they open parts of the drift fishing district at one time. This stat code here, 32510, is the Igushik section, which is separated by this vertical line. So anything west of that vertical line when just that section is open, the Department can tell that drift salmon are caught in the Igushik section. At times they open just the Nushagak section, which is this stat code here, 32530. That's when this side of the district is open independently.

The Department will decide to open parts of the Nushagak District based on escapement with the three main tributaries within the bay. The Nushagak River, the Wood River are on this east side of the bay, and if their escapement is doing well, but the Igushik River's escapement is not, the Department will choose to close the Igushik
section and allow just fishing to occur in
the Nushagak section. Alternatively, if the
Igushik River's escapement is doing well,
they'll choose just to open that section.

Most of the season the drift
fishing is prosecuted with the stat code
32500. So the entire drift district is open.
I believe the City's point in asking someone
to testify about these statistical codes
is -- and the Department has also put forth
the opinion that when the entire district is
open and they're using the statistical area
code 32500, there is no way to tell if the
drift fisherman is fishing in the Igushik
section and that tax base should go to the
City of Manokotak, or if that drift fisherman
has been fishing in the Nushagak section, and
that tax base should go to Dillingham should
the annexation proceed through.

So my testimony is just to show
the district is quite large, and when you're
using the stat codes, it's unrealistic to
apportion out how much of that raw fish tax
would go to the City of Manokotak and how
much would go to the City of Dillingham using
32500 as a drift fisherman.

It is also unreasonable to have both of those districts open at one time and have them deliver based on where they're fishing. So let's say both the Igushik section and the Nushagak section are open concurrently, and the Department says because of annexation, if you've fished on the Nushagak side, you must deliver your fish to 32530. If you fished on the Igushik side, you must deliver to 32510, well, there's not a whole heck of a lot of tenders that sit over here in the Igushik section.

You may be fishing along the south line and drifting and you're going to deliver your fish just below the south line. There's not really a way to say, okay, one of my brailer bags was caught in 32510 and one of my brailer bags was caught in 32530, so let's split these fish between the sections and give our raw fish tax to each area.

So it would just be something that would be difficult for the Department to do as far as tell when the whole district was open where those drift fish were caught.
So I hope that made sense. It
was much more eloquently put by Mr. Sands,
hopefully I haven’t given you a whole
soup of numbers there that are unusable.

CHAIR CHRYSAL: I do have a
question. When you have a driftnetter and a
setnetter both fishing in the same area, can
the driftnetters come in and infringe on the
area of the setnetter?

MS. BRIDO: No, there are laws --
well, there’s regulations under Alaska
statutes and through the Board of Fisheries
that have set up legal distances between gear
types. So you have to be a certain distance
away from a setnet operation if you’re a
drifter and vice versa.

CHAIR CHRYSAL: Okay. And you
can’t claim, gee, I was lost in the fog and I
drifted in by mistake?

MS. BRIDO: Well, I think you
could try that with the troopers, but it
probably wouldn’t work out for you.

CHAIR CHRYSAL: Okay. Anybody
else got any questions?

COMMISSIONER HARGRAVES: Mr.
So the Commission had this sort of dilemma. How does that work to have a borough that really wants some property that happens to be owned by that area's regional corporation to be included in a new borough?

So they did two things. Two separate actions, two separate petitions.

One was it allowed a region to vote for a borough and it was conditioned about, that vote, in fact, that Red Dog property that was in the North Slope Borough would be detached and included with this new petition. And in advance of the petition for the legislative review at the same time, or roughly the same time but a separate action instead it said: We're going to detach part of your property within the North Slope Borough and it will be detached conditioned upon people voting for a borough, okay.

So how does that relate to this? It's been mentioned by staff and a number of people that come up to testify that somehow if you have an existing city, you would prevent or discourage or financially make it difficult for a future borough. Through
MAYOR RUBY: So, Mr. Chairman, I apologize. I did have one more item to cover. You had asked or somebody had asked a question yesterday about the size of our geographic city after annexation. So I wanted to respond to that.

So I used the DCCED community -- it's listed on the top of this -- Community Information Database on the web and pulled up random communities that I could think of to use as comparisons. So what I would actually direct your attention to is the population per square mile. If you look at the -- some of the comparables would probably be Egegik.

As you can see, the square miles of water within their community, 101 square miles based on their population of 109 people. They've, you know, got .7 persons per square mile.

Also, the communities of St. Paul is probably a comparable, and St. George, and interesting because they're side by side. So St. Paul has a total square miles of 295; 255 of that is water. St. George, 147 square miles of water, giving them under 1 person
per square mile in their boundaries.

When I looked at the DCCED website, too, they're still showing the data for Dillingham from 2013. So the data you're seeing here is what existed when our annexation had gone through last time. So showing the Dillingham boundaries as they will be if you approve this annexation, which is 397 square miles of water, it works out to be about 5.4 persons per square mile within our city.

CHAIR CHRYSSTAL: I've got a question.

MAYOR RUBY: Part of that's the geography. I'm sorry?

CHAIR CHRYSSTAL: Why did you pick those particular cities? I know like -- why wouldn't you pick Juneau? I know Juneau is a huge geographic area. Of course it's a bigger city, but the geographic area is huge.

MAYOR RUBY: Well, without knowing population numbers, I mean, I did this in like 30 minutes last night at about 11:30. So I didn't -- wasn't able to put a lot of thought into picking communities.
What I tried to do was pick coastal -- what I
thought would be like coastal communities,
small populations. Maybe some at least that
relied on fishing because obviously if it's a
coastal fishing community, at least in my
thinking, the boundary is going to be bigger
because fish is what matters and fish are not
on shore. So that's why I picked some of
these. You are right, I didn't include, I
don't think, any Southeast communities. I
probably should have.

CHAIR CHRYSTAL: Well, or even in
the -- where Darroll and I live in the Mat-Su
Valley Borough. You talk about huge. It's
over 100 miles from one end to the other.

MAYOR RUBY: I didn't include
that one either. This was just a
demonstration, and so I just wanted to answer
the question you had about --

CHAIR CHRYSTAL: Well, you're
trying to compare oranges and oranges, I
guess.

MAYOR RUBY: Yeah. Well, oranges
and apples maybe.

COMMISSIONER HARGRAVES: Mr.