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FROM THE DESK OF:
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January 5, 2017

Lynn Chrystal, Chairman
Local Boundary Commission
c/o Brent R. Williams, LBC Staff
Alaska Department of Community,
Commerce and Economic Development
550 West 7th Ave., Suite 1640
Anchorage, AK 99501

Re: Request for Reconsideration of Mankotak Annexation Decision by
Ekuk, et. al.

Dear Mr. Chairman Chrystal:

As you know, I represent the City of Manokotak in its annexation petition. While I have addressed this correspondence to you, care of LBC staff, you may certainly cause it to be distributed to the other Commissioners, in your discretion.

My primary purpose is to request, on behalf of the City of Manokotak, that the Commission act swiftly to either deny or approve Ekuk's reconsideration request, in order to assure that an affirmative annexation decision of the LBC be submitted to the Alaska Legislature no later than January 26, 2017, rather than be delayed a full year until the 2018 session. My reading of LBC regulation 3 AAC 110.580(f) is that if the Commission does nothing in response to the Ekuk request, the request is automatically denied after 30 days - - too late for this year's legislative session. If the Commission acts to deny the request for reconsideration in sufficient time prior to January 26, its annexation decision may be submitted to this year's session. If the Commission decides to grant the requested reconsideration, and enters such order promptly, this may still allow for both (1) the ten days' briefing by petitioners and respondents in response to the request for reconsideration, as authorized by Section .580(f) and (2) time for the Commission to consider these and make a decision upon reconsideration, prior to the January 26 deadline for submission to the Legislature. In short, time is of the essence, particularly if the Commission acts to grant the reconsideration request and therefore trigger the ten-day time for responsive briefs.

The foregoing request is consistent with the Commission's own repeated directives to the parties, during processes preceding the late November hearings, that the these processes not operate to delay submission of any affirmative annexation decision to the Legislature for consideration during its 2017 session. I particularly

recall Commissioner Harrington's firmly expressed position on this matter, which I believe all Commissioners shared.

In order to expedite the Commission's consideration of this matter, I can represent to you that my client, the City of Manokotak, does not itself intend to request reconsideration of either the Manokotak annexation decision or the Dillingham annexation decision. From my conversation with Dillingham's city attorney, Brooks Chandler, it is my understanding that Dillingham similarly will seek no reconsideration. The sole reconsideration request before the Commission will be that of the Ekuk parties.

Because Manokotak will not be permitted to fully weigh in on the merits of Ekuk's reconsideration request unless and until briefing is authorized following a Commission grant of reconsideration, I can only summarize here Manokotak's position on that request. First, the LBC's attorney was correct, and Ekuk's argument erroneous, in stating that the Commission's December 20 meeting to consider a proposed written decision was not a vehicle for then reconsidering its December 1 decision after hearing. Under regulation 110.570(a), the purpose of the December 1 meeting was to reach a "decision" on the proposed annexation. The sole purpose of the December 20 meeting, under regulation 110.570(f), was to issue a written decision "explaining all major considerations leading to the decision". As the AG correctly advised, the December 20 meeting was not an occasion to reach a new decision, but rather to approve a written decisional document explaining the decision previously made. There is a procedure for reconsideration, under regulation 110.580, but, as the Commission was correctly advised, this is triggered only "after a written statement of decision is mailed"; see regulation 110.580(b).

The suggestion that there was a separate procedure for reconsideration under Robert's Rules of Order is a bit of a red herring here. The Commission's regulations do not adopt Robert's Rules, and instead provide their own, specific grounds and procedures for reconsideration. Even if Robert's Rules did apply, the AG was once again correct in stating that such a motion for reconsideration can only be made "on the day the vote to be reconsidered was taken [December 1], or on the next succeeding day, a legal holiday or a recess not being counted as a day". See Robert's Rules, Article VI, Section 36.

In summary, the Commission was correctly advised and correctly acted on December 20 to adopt a written statement of the December 1 decision it had already made, rather than to use this as a premature opportunity for reconsideration.

The remainder of the Ekuk reconsideration request consists of arguments upon which evidence and testimony were presented in support and opposition to Manokotak's annexation petition, and upon which the Commission was correctly advised by its staff as to "controlling principles of law". Dressed up as a request for

reconsideration, the Ekuk parties simply seek a second bite at the apple - - to present arguments they could have made at hearing, on subjects for which the factual and legal issues they now raise were considered and decided upon by the Commission.

In reviewing a similar request for reconsideration under the Alaska Civil Rule which closely resembles the reconsideration rules of the Commission, the Alaska Supreme Court stated:

We refuse to allow a motion for reconsideration to be used as a means to seek an extension of time for the presentation of additional evidence on the merits of the claim. To do so would defeat the limited purpose of Rule 77(k): to remedy mistakes in judicial decision-making where grounds exist, while recognizing the need for a fair and efficient administration of justice. There being no compelling justification for re-opening the merits of Neal's claim, we affirm the superior court's denial of Neal's motion for reconsideration.

Neal and Company, Inc. v. Association of Village Council Presidents Regional Housing Authority, 895 P.2d 497, 506 – 07 (Alaska 1995). The LBC's regulations tightly limit the grounds for reconsideration for the same reason as do court rules: to promote the finality of a decision made after hearing, rather than to open a decision up to endless rehashing of facts and arguments. The arguments raised by the Ekuk parties do not meet the standards of "substantial" procedural error or "failure to address" important facts or legal standards.

Ekuk's argument that the Commission's written decision must perfectly recite all fact findings to support its decision was rejected by the Alaska Supreme Court in Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 97, (Alaska 1974) wherein the court found there was no obligation on the part of the LBC to even make any findings of fact, so long as it is possible from a review of the entire record to determine the basis of the Commission's decision. All that is required by the Commission's own regulation (110.570(f)) is that the written decision explain "all major considerations leading to the decision."

Ekuk's request amounts to a transparent effort to obtain yet another delay in the Commission's handling of this annexation petition. There was plainly no "substantial procedural error" in the Commission's handling of this petition, nor did its decision fail to address a material issue of fact or a controlling principle of law. To the contrary, the Commission, with staff's assistance, adhered to all requisite procedures. As to consideration of material issues of fact, the adversarial nature of this matter, including the hearings, assured that all material facts were considered.

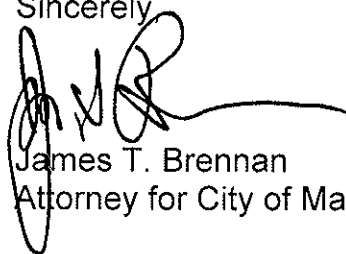
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The Manokotak petitioner was required to rebut opposing arguments of both staff and the respondents, and the Commission carefully weighed all such issues, not the least of which was the size of the annexation area upon which the Ekuk parties now focus.

The City of Manokotak therefore respectfully requests that the Commission forthwith act upon the Ekuk request for reconsideration.

As previously noted, Manokotak reserves the right to more fully respond to the Ekuk parties' assertions, if the Commission grants the reconsideration request.

Sincerely

A handwritten signature in black ink, appearing to read 'JTB', with a long horizontal flourish extending to the right.

James T. Brennan
Attorney for City of Manokotak

cc: Mary Lynn Macasalka, Brooks Chandler, Lea Filippi, Jim Baldwin (via email)
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JTB/rs