



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

## Department of Commerce, Community, and Economic Development

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# Preliminary Report to the Local Boundary Commission

Concerning the Legislative Review Petition to Annex 396 Square Miles of Water  
and Three Square Miles of Islands to the City of Dillingham

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

June 2016

### Legend

- unorganized borough
- organized boroughs



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This preliminary report was written by staff to the Local Boundary Commission (LBC or commission). The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address:

[www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions/Reports](http://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions/Reports).

In accordance with 3 AAC 110.530(c), the public may review and comment on the report. Comments must be received by 4:30 p.m. on July 15, 2016. The LBC staff will issue a final report after considering written comments on this preliminary report.

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4559, 907-269-4587, or at [LBC@alaska.gov](mailto:LBC@alaska.gov).

**Graphic illustration only:** This publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

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## EXECUTIVE SUMMARY

The City of Dillingham and the City of Manokotak each submitted a petition to the Local Boundary Commission to annex all or part of Nushagak Bay. Both annexation petitions seek to annex waters in order to exploit a fish tax in order to provide income for their respective city budgets. The LBC cannot grant both petitions because their proposed annexations overlap. The LBC staff finds that neither the Dillingham annexation petition nor the Manokotak annexation petition meet all of the annexation standards. For that reason, the LBC staff recommends that the commission deny both petitions.

Several of the public comments received suggested that the LBC consider proposing a borough. The LBC staff concurs with those comments, and accordingly, recommends that the commission propose to the Legislature the formation of a second class borough whose borders generally follow the concurrent land borders of the Dillingham Census Area and the Southwest Region School District. They also include some of the waters of Bristol Bay, including Nushagak Bay.

The recommendation did not originate with the LBC staff. This recommendation is based upon the submitted comments, past borough feasibility studies, and past LBC decisions. It is also based on the potential for a rational, equitable mechanism to share the common regional resource that is the valuable salmon and herring fishery. The recommendation provides a solution to a decades-long inability for these communities to share the valuable regional resource. This recommendation only applies to these petitions which are located in the Dillingham Census Area, which is an administrative boundary used only for statistical purposes as a county-equivalent in Alaska by the U.S. Census Bureau in the absence of a regional government. The staff is not suggesting that the LBC propose forming boroughs elsewhere in the state.

The Local Boundary Commission has the constitutional authority to submit this proposal to the Legislature under article 10, section 12 of the Constitution of the State of Alaska. There is also legal precedent for the LBC to initiate a proposed change. The Legislature may not legally amend the proposed change when submitted, but may disapprove it by a majority of each house within 45 days after presentation.

Local self-empowerment is in the best interests of the state and of the region. The LBC staff finds that the Dillingham Census Area is best empowered through borough formation. Western Bristol Bay and its fish that are a regional resource should be used for the common good. The regional resource can be equitably distributed most effectively through regional governance rather than through single cities dividing the waters.

Borough formation is a way to provide services that benefit an entire region. Individual cities and communities might not be able to provide these services individually. Neither Dillingham nor Manokotak should be the exclusive beneficiary of the fish in these waters.

Borough formation is in the best interests of the state because it would empower the local residents, give them a secure way of financing local services and education, and also save the state money. The proposed borough can be financially viable primarily through levying a tax on fish similar to those in Bristol Bay, Lake and Peninsula, and Aleutians East Boroughs. The LBC has an opportunity to propose a viable solution for an equitable distribution of the many resources found in the region that has eluded this area for many years.

# CHAPTER I. BACKGROUND

## LOCAL BOUNDARY COMMISSION

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### *Local Boundary Commission's Constitutional Foundation*

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission"). It states that:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The commission is responsible for establishing and modifying proposed municipal government boundaries. The framers of the state constitution asserted their belief that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries."<sup>1</sup> Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.<sup>2</sup>

### **LBC Duties and Functions**

The LBC acts on proposals for several different municipal (cities and boroughs) boundary changes. These are:

- Incorporation
- Annexation
- Detachment
- Merger
- Consolidation
- Reclassification; and
- Dissolution.

### **Nature of the Commission**

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska gives the LBC legislative authority to make fundamental public policy decisions. The court stated that:

“[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly,

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<sup>1</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955).

<sup>2</sup> *Id.*

acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence."<sup>3</sup>

### ***Limits on Directly Contacting the LBC***

LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communications with the commission concerning municipal boundary proposals are conducted openly and publicly.

To regulate communications, the commission adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is judicially appealed, the *ex parte* limitation extends to the last date of court ordered proceedings. All communications with the commission must be submitted through its staff.

### ***LBC Membership***

The LBC is an autonomous commission with five members. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.

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<sup>3</sup> *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

## MEMBER BIOGRAPHIES

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### **Lynn Chrystal, Chair, At Large, Wasilla**

Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009, and reappointed him as chair on April 22, 2013. Although recently a Wasilla resident, Mr. Chrystal lived in Valdez for 39 years and served as the mayor of Valdez and as a member of the city council. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2018.



### **John Harrington, First Judicial District, Ketchikan**

Governor Parnell appointed John Harrington of Ketchikan as the member from the First Judicial District on the Local Boundary Commission on September 10, 2009. Governor Parnell reappointed Commissioner Harrington in April of 2011, and Governor Walker reappointed him on March 14, 2015. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington state from 1972-84. He served on the Ketchikan Gateway Borough Assembly 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee, among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2021.



### **Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow**

Governor Knowles appointed Robert "Bob" Harcharek as the member from the Second Judicial District on the Local Boundary Commission on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He serves as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. Commissioner Harcharek was again reappointed by Governor Parnell on May 14, 2014. In 1977, he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. Commissioner Harcharek retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a member of the Barrow City Council for fifteen years, and is currently Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ends January 31, 2019.



**Darroll Hargraves, Third Judicial District, Wasilla**

Governor Parnell appointed Darroll Hargraves of Wasilla to the Local Boundary Commission as the member from the Third Judicial District on June 1, 2013. Mr. Hargraves is a consultant and owner of School and Community Resources. He is a retired school superintendent of the Nome and Ketchikan Gateway Borough school districts, and has served as the executive director of the Alaska Council of School Administrators. Commissioner Hargraves is a charter member of the Alaska Council of Economic Education, Commonwealth North, and the Wasilla Chamber of Commerce. A former member and chair of the LBC, he holds a master's degree in education, an education specialist degree from University of Alaska Fairbanks, and an honorary doctorate of letters degree from Oakland City University. His term ends on January 31, 2017.



**Lavell Wilson, Fourth Judicial District, Tok**

Governor Palin appointed Lavell Wilson, a Tok resident, as the member from the Fourth Judicial District on the Local Boundary Commission, June 4, 2007. Governor Parnell reappointed him on October 6, 2010. Governor Walker reappointed him on September 21, 2015. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. His current term on the LBC ends January 31, 2020.

## LOCAL BOUNDARY COMMISSION STAFF

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### *Constitutional Origin*

The Constitution of the State of Alaska called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as that local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce, DCCED, or department). Commerce serves as staff to the LBC per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. This includes providing staff, research, and assistance to the LBC.

### *LBC Staff Role*

LBC staff is required by law to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public as well. Staff recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

Besides providing support to the commission, the LBC staff also delivers technical assistance to municipalities, to petitioners, to residents of areas impacted by existing or potential petitions, to respondents, to agencies, and to the general public. Assistance the LBC staff provides includes:

- \* Answering citizen, legislative, and other governmental inquiries relating to municipal government issues;
- Writing reports on petitions for the LBC;
- Drafting LBC decisions;
- Traveling to communities to hold meetings and to answer questions about proposed local boundary changes;
- Drafting for the LBC an annual report to the legislature;
- Developing and updating local boundary change petition forms;
- Sending local boundary change forms and materials to interested persons;
- Providing a link between the LBC and the public;
- Maintaining Alaska municipal incorporation and boundary records;
- Coordinating and scheduling LBC public meetings and hearings;
- Developing orientation materials and providing training for new LBC members; and
- Maintaining and preserving LBC records in accordance with Alaska's public records laws.

Two staff members serve the Local Boundary Commission and are located in Anchorage.

Local Boundary Commission staff  
550 W. 7<sup>th</sup> Avenue, Suite 1640  
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## PETITION PROCEDURES

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure a reasonable and timely determination for each petition. The procedures are also intended to ensure that commission decisions are based on applying the standards to the facts.

### *Preparing and Filing a Petition*

The LBC staff offers technical assistance, information, and forms to prospective petitioners. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form or content. If the staff finds that the petition contains the required information, Commerce accepts it for filing.

### *Public Notice and Public Review*

Once a petition is accepted for filing, the staff arranges extensive public notice. This provides ample opportunity for public comment concerning the petition. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief replying to public comments and responsive briefs.

### *Analysis*

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff can conduct public informational meetings. If the petition is for incorporation, the staff must hold at least one public meeting within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report which includes a recommendation to the commission.

The preliminary report is available for public review and comment for a minimum of four weeks. After considering the comments, the LBC staff issues its publically available final report. The final report discusses comments received on the preliminary report, and notes any changes to the staff's recommendation. The final report must be issued at least three weeks prior to the LBC's public hearing.

### *Public Hearings and LBC Decisional Meeting*

Before the hearing, commission members will review the petition, written comments, responsive briefs, reply briefs, and the staff reports. Following extensive public notice, the LBC conducts at least one public hearing. The commission may tour the area before the hearing to understand the area better. Typically, the hearing is in or near the boundaries of the proposed change. Parties may present sworn witnesses, and the public will have a chance to comment.

After the hearing, the LBC holds a decisional meeting. At the decisional meeting, the LBC may act by:

- approving the petition as presented;
- amending the petition (e.g., expanding or contracting the proposed boundaries);
- imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability); and
- denying the petition.

### ***LBC Decisions Must Have a Reasonable Basis***

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.<sup>4</sup> The LBC must proceed within its jurisdiction, conduct a fair hearing and avoid any prejudicial abuse of discretion.

### ***Written Decision***

The LBC must adopt a written decision stating the basis for its decision. Copies of the decision are issued to the petitioner, respondents, and others who request them. At that point, the decision becomes final, but is subject to reconsideration. Within 18 days of the mailing, any person may ask the LBC to reconsider its decision under 3 AAC 110.580. The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

### ***Implementation***

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a legislative review petition, the commission will submit its decision to the Legislature. The Legislature can disapprove the decision by a majority of both houses per article 10, section 12 of Alaska's constitution, or take no action at all. If the LBC approves a local action petition, it typically goes to the voters for approval.<sup>5</sup> A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election is held, it must be certified by the director of elections or the appropriate municipal official. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the changed boundaries of the municipality.

## **CONCLUSION**

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This chapter has described the Local Boundary Commission's background, the role of the LBC staff, and petition procedures. Chapter 2 will discuss this petition's proceedings to date and analysis of the petition.

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<sup>4</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.

<sup>5</sup> Unless it is a local action annexation petition, either with unanimous consent, or if the municipality already owns the land. In those cases, no election is necessary.

## CHAPTER II. ANALYSIS

### INTRODUCTION

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The petition, briefs, and all comments submitted were read and reviewed for this report. These materials are available at:

[www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions](http://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions).

The report uses the term “Commerce” interchangeably with “LBC staff” and “we.” LBC staff works in the Division of Community and Regional Affairs (DCRA) within the Department of Commerce, Community, and Economic Development.

This is a preliminary report. There will be a public comment period on this report until July 15, 2016. After reviewing the comments on the preliminary report, the LBC staff will issue a final report.

Over 1,200 pages of petitions, briefs, and comments were submitted. The LBC staff considered all the written materials.<sup>6</sup> The LBC staff describes its own finding for each standard.

### PETITION PROCEEDINGS THUS FAR

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There are two petitioners—the City of Dillingham and the City of Manokotak. The City of Dillingham submitted a legislative review petition to annex approximately 399 square miles (approximately 396 square miles of water, and 3 square miles of land) on January 22, 2015. After a technical review, the department accepted the petition for filing on June 12, 2015. A public comment period began October 1, 2015.

On September 1, 2015, the City of Manokotak filed an annexation petition to annex 37 square miles of land and 118 square miles of water. It also used the legislative review method. Part of what Manokotak seeks to annex overlaps what Dillingham seeks to annex. After technical review, the department accepted Manokotak’s petition for filing on December 4, 2015.

Manokotak asked that the LBC postpone the Dillingham petition so the two petitions could be considered together. On September 25, 2015, the LBC approved that request. On December 3, 2015, the LBC chair consolidated the two petitions so that they would proceed on the same schedule. The public comment period was extended until February 26, 2016. In that time four responsive briefs, two reply briefs, and numerous comments were submitted regarding the two petitions. All materials are available on the LBC website at: [www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions/PublicCommentsandBriefs](http://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions/PublicCommentsandBriefs).

There are four respondents to the two petitions. One of the respondents is comprised of the Native Village of Ekuk, the Native Village of Clark’s Point, the Native Village of Portage Creek, and the City of Clark’s Point. They are a respondent to both the Dillingham and the Manokotak petitions. The Native Village of Ekuk is composed of and represents Alaskan Natives who formerly lived in Ekuk. Ekuk is on the eastern shore of Nushagak Bay (hereafter also “the bay”), and is southeast of Dillingham. While Ekuk has a fish

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<sup>6</sup> The original petitions, briefs, and comments are the best source to view the arguments presented.

processing plant and a short but busy summer fishing season, only a watchman and his family live there year round now.

The Native Village of Clark's Point is composed of and represents Alaskan Natives who live or who formerly lived in the second class City of Clark's Point. The City of Clark's Point is slightly north of Ekuk on the eastern shore of the bay.

The Native Village of Portage Creek is composed of and represents Alaskan Natives who live or who formerly lived in Portage Creek, which now has a year round population of one person. Portage Creek is on the Nushagak River, which empties into Nushagak Bay.

While the City of Dillingham and the City of Manokotak are petitioners, they are also respondents to each other's petition. The Southwest Region School District is also a respondent to both petitions.

32 comments were received. 22 opposed the Dillingham annexation petition and seven supported it. Two comments supported the Manokotak annexation petition, and one opposed it. Two respondents indicated an interest in the LBC considering a proposal to form a borough. Many of the comments at the Dillingham pre-submission hearing and at the Manokotak pre-submission hearing also indicated an interest in forming a borough.

## **STANDARDS FOR ANNEXING TO CITIES**

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The report will first address the City of Dillingham's petition and then the City of Manokotak's petition. It is important to note that one of the annexation standards is 3 AAC 110.140 Legislative Review. Both of the petitions use the legislative review method.

It is important to note that the LBC must examine regulatory standards, but also constitutional and statutory standards, particularly for city incorporation and borough incorporation. For that reason, the report must address each constitutional, statutory, and regulatory standard. In addition, many of the regulations have subparts. For the reader's ease, the LBC staff will address each part of a regulation individually. The staff will also address any applicable constitutional or statutory standards. Then the staff will determine whether the overall standard is met or not.

3 AAC 110.140 has standards that only apply to legislative review petitions. 3 AAC 110.140 states that the petition must meet one of eight specified standards. It is not necessary to meet more than one. One of the eight standards (3 AAC 110.140(8)) requires that the proposed annexation must enhance how the existing city meets the incorporation standards. That means that the report must examine all of the incorporation standards for each city. For that reason, the staff has indented its analysis of 3 AAC 110.140(8) so it is more obvious.

Some standards contain factors that commission "may consider" in determining whether the standard is met. As the standards use the word "may," it is not required that the commission (or this report) consider those factors, only that the commission consider whether the standard is met.

## Legal Standards for Annexation to Cities

The criteria to be used by the commission to evaluate the City of Dillingham's and the City of Manokotak's annexation proposals are set out in 3 AAC 110.090-3 AAC 110.140, 3 AAC 110.900 and 3 AAC 110.910.

A summary of the criteria follows:

1. There must be a reasonable need for city government in the territory proposed for annexation.
2. The territory may not be annexed if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.
3. The territory must be compatible in character with the annexing city.
4. The economy in the city's proposed expanded boundaries (territory within existing city, plus territory proposed for annexation) must include sufficient human and financial resources to provide essential city services on an efficient, cost-effective level.
5. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
6. The proposed city boundaries must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.
7. Absent a specific and persuasive showing to the contrary, the LBC will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.
8. The proposed boundaries of the city must be on a scale suitable for city government and include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation.
9. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards, and are otherwise suitable for city government.
10. If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, the petition must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If a petition for annexation describes boundaries overlapping the boundaries of another existing city, the petition must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.
11. The proposed annexation is in the best interests of the state under AS 29.06.040(a).
12. Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110-135 may be annexed to a city by the legislative review process if the LBC also determines that any of the circumstances specified in 3 AAC 110.140 exists. One of those circumstances is whether the proposed annexation how the existing city meets the city incorporation standards.

13. A petition for annexation must include a practical transition plan:
- demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practicable time after the effective date of the proposed boundary change;
  - providing for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, unorganized borough service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. It must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change;
  - providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partly in the boundaries proposed for change. The plan must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities;
  - stating the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.
14. The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
15. If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the community, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.
16. In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.
17. Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

## Analysis of Annexation Standards for Dillingham

### *3 AAC 110.090. Need*

- (a) *The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including*
- (1) *existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;*
  - (2) *existing or reasonably anticipated health, safety, and general welfare conditions;*
  - (3) *existing or reasonably anticipated economic development;*
  - (4) *adequacy of existing services;*
  - (5) *extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and*
  - (6) *whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.*

### **Analysis for Dillingham of 3 AAC 110.090(a)**

After carefully reading and considering the petitions, briefs, and comments, the LBC staff concludes that the territory does exhibit a reasonable need for city government. Nushagak Bay is the territory proposed for annexation. The territory is occupied by fishers for a brief fishing period each summer. Dillingham provides numerous services to the fishers, including docks, a harbor, trash collection, water and ice, public safety, roads, and utilities. Dillingham provides services in the city to fishers who fish in the territory. The services that Dillingham provides are provided within the city, and used by the fishers while in the city. These services would not be available to the fishers unless Dillingham provided them. While the fishers use those services when in the city, their need arises in the territory. As the fishers in the territory rely on city services, the territory exhibits a reasonable need for city government.

Some fishers, including those who set net in Ekuk, commented that they do not use Dillingham services at all. Some Ekuk fishers commented that their supplies come to Ekuk directly from ports other than Dillingham. However, Ekuk fishers are not entirely from out of the area. Data from the Alaska Department of Natural Resources (DNR) indicate that there are 68 permits to set net fish in Ekuk. Eight of those people have two permits, so there are 60 persons with Ekuk set net permits.<sup>7</sup> Using those data, 25 out of 68 permits are from Dillingham, and 25 out of 60 persons reside in Dillingham. Logically this dictates that at least the Ekuk fishers who live in Dillingham use the Dillingham harbor or other city facilities or services to get themselves, their supplies, and their trucks to Ekuk.

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<sup>7</sup> The data are available at <http://dnr.alaska.gov/MapAK/browserlite?set=map&id=1492>. The Alaska Mapper program allows one to click on each shore fishery tract (green rectangles). A box pops up showing the name of the lessee. If one clicks on the ADL number in this box another screen pops up that shows that lessee's address. The permit data are clearer if one clicks only the boxes labeled "PLSS Section Grid" and "Permit or Lease – LE."

There might be some boats or fishers who do not use the services, but many of the fishers, barges, and tenders do use city services. For those reasons, the LBC staff finds that the territory exhibits a reasonable need for city government, and that the standard is met.

*(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.*

#### **Analysis for Dillingham of 3 AAC 110.090(b)**

The LBC staff finds that no other municipality is likely to provide the fishers the services that Dillingham provides. The staff finds that this standard is met.

As both 3 AAC 110.090 (a) and (b) are met, the LBC staff finds that overall 3 AAC 110.090 is met.

#### **3 AAC 110.100. Character**

*The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the*

- (1) land use, subdivision platting, and ownership patterns;*
- (2) salability of land for residential, commercial, or industrial purposes;*
- (3) population density;*
- (4) cause of recent population changes;*
- (5) suitability of the territory for reasonably anticipated community purposes;*
- (6) existing and reasonably anticipated transportation patterns and facilities; and*
- (7) natural geographical features and environmental factors.*

#### **Analysis for Dillingham of 3 AAC 110.100**

Commerce finds that the territory is compatible with the annexing city because people fish in the bay seasonally. The territory is used for fishing by people who live in Dillingham and elsewhere. Dillingham depends on the territory's fish resources because its economy is based on fishing and processing. Bay fishers who live elsewhere use city services or buy supplies in Dillingham. All of these reasons make Dillingham compatible with the territory, which is used for fishing. For those reasons, the LBC staff finds that this standard is met.

#### **3 AAC 110.110. Resources**

*The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the*

- (1) reasonably anticipated functions of the city in the territory being annexed;*
- (2) reasonably anticipated new expenses of the city that would result from annexation;*
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;*

- (4) *feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;*
- (5) *economic base of the territory within the city after annexation;*
- (6) *valuations of taxable property in the territory proposed for annexation;*
- (7) *land use in the territory proposed for annexation;*
- (8) *existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;*
- (9) *personal income of residents in the territory and in the city; and*
- (10) *need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.*

#### **Analysis for Dillingham of 3 AAC 110.110**

Based on its analysis of Dillingham's population data, and the fact that Dillingham already provides services, the LBC staff finds that the economy in the proposed expanded boundaries of the city (the existing city plus the territory that it seeks to annex) has the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. If Dillingham annexes the territory, it will levy a raw fish tax on the fish sold there. Dillingham states that the annexation will allow it to collect the fish tax, and that the tax will enable it to help fund essential municipal services. For that reason, the LBC staff finds that this standard is met.

#### ***3 AAC 110.120. Population***

*The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including*

- (1) *census enumerations;*
- (2) *duration of residency;*
- (3) *historical population patterns;*
- (4) *seasonal population changes;*
- (5) *age distributions;*
- (6) *contemporary and historical public school enrollment data; and*
- (7) *nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

#### **Analysis for Dillingham of 3 AAC 110.120**

Using Alaska Department of Labor and Workforce Development (DOL) data, the LBC staff finds that Dillingham's population is large and stable enough to support extending city government.<sup>8</sup> DOL data indicate population estimates for Dillingham of 2,329 in 2010, 2,375 in 2011, 2,409 in 2012, 2,404 in 2013, 2,447 in 2014, and 2,386 in 2015 (in 2015, the state overall lost population). This indicates to the LBC staff that the

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<sup>8</sup> [laborstats.alaska.gov/pop/popest.htm](http://laborstats.alaska.gov/pop/popest.htm).

population in the proposed expanded boundaries of the city is large and stable enough to warrant extending government. For this reason, the LBC staff finds that this standard is met.

### **3 AAC 110.130. Boundaries**

- (a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*
- (1) land use and ownership patterns;*
  - (2) population density;*
  - (3) existing and reasonably anticipated transportation patterns and facilities;*
  - (4) natural geographical features and environmental factors; and*
  - (5) extraterritorial powers of cities.*

#### **Analysis for Dillingham of 3 AAC 110.130(a)**

The LBC staff finds that the proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. After the proposed annexation, the city would be nearly 435 square miles. As explained above, Dillingham already provides services to the fishers. No showing was made that Dillingham has insufficient land or water necessary to provide those essential municipal services. For these reasons, the LBC staff finds that 3 AAC 110.130(a) is met.

- (b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*

#### **Analysis for Dillingham of 3 AAC 110.130(b)**

The territory proposed for annexation is contiguous to the existing city, and does not create enclaves in the city. For that reason, the LBC staff finds that 3 AAC 110.130(b) is met.

- (c) To promote the limitation of community, the proposed expanded boundaries of the city*
- (1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and*

#### **Analysis for Dillingham of 3 AAC 110.130(c)(1)**

Regarding the first part of 3 AAC 110.130(c)(1), the LBC staff finds that the proposed expanded boundaries of the city are not on scale suitable for city government. The present size of Dillingham is 33.6 square miles of land and 2.1 square miles of water, for a total of 35.7 square miles. The territory proposed for annexation is 3.24 square miles of land and 395.84 square miles of water, for a total of 399.08 square miles. If the annexation were approved, the city would consist of 38.84 square miles of land and 400.04 square miles of water, for a total of 434.78 square miles.

While the LBC has approved other large city annexations, particularly those with fishing grounds, the current largest city is St. Paul, which has a size of 295.5 square miles. Dillingham’s proposed annexation is over 47 percent larger than St. Paul. The second largest city is Valdez is 277.1 square miles. Dillingham would be 57 percent larger than Valdez. The proposed expanded boundaries on the city is not on a scale suitable for city government.

Instead, what Dillingham seeks to annex is more appropriate for a borough. While the LBC staff recognizes that Dillingham spends considerable funds on infrastructure and other services that support the fishers, in this particular case Nushagak Bay is more appropriate as part of a borough. A borough could provide services to the region, given the regional nature of the shared resource.

In the second part of 3 AAC 110.130(c)(1), the phrase “proposed expanded boundaries of the city” refers to the city boundaries after annexation. Within that meaning, there must be an existing community (in this case Dillingham), plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation. Here there is an existing community of Dillingham. There is also growth, development, and public safety needs in the territory. Fish are caught in the bay, and there are fish canneries and fish processing plants in the area. Fishing indicates present resource development, and the processing indicates industrial and commercial development. The LBC staff expects that the development will continue.

As the LBC staff finds that the proposed annexation is not on a scale suitable for city government, the LBC staff finds that overall 3 AAC 110.130(c)(1) is not met.

***(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.***

#### **Analysis for Dillingham of 3 AAC 110.130(c)(2)**

The LBC staff finds that Nushagak Bay is has no year round residents, although it does have fishers in the territory during the short summer fishing season. 3 AAC 110.990(15) defines “area” as the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.” The LBC staff finds that Nushagak Bay, the territory proposed for annexation, is more appropriate as being part of a borough than part of a city.

3 AAC 110.130(c)(2) does allow an exception, in which the proposed expanded boundaries of a city may include entire geographical regions or large unpopulated areas, **IF** [emphasis added] the boundaries are otherwise justified by applying the standards of 3 AAS 110.090 – 3 AAC 110.135, and are otherwise suitable for city government. As the LBC staff finds that not all of the standards of 3 AAC 110.090–3 AAC 110.135 are met, this exception is moot and is of no avail. As the LBC staff finds that the boundaries are not on a scale suitable for city government, the LBC staff finds that 3 AAC 110.130(c)(2) is not met.

***(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the***

*standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.*

**Analysis for Dillingham of 3 AAC 110.130(d)**

The LBC staff finds that the proposed expanded boundaries do not overlap the boundaries of another existing city or an organized borough. For this reason, the LBC staff finds that 3 AAC 110.130(c)(2) is met.

**Conclusion of 3 AAC 110.130 for Dillingham**

The LBC staff finds that 3 AAC 110.130(a), 3 AAC 110.130(b), and 3 AAC 110.130(d) are met. The LBC staff further finds that 3 AAC 110.130(c)(1) and 3 AAC 110.130(c)(2) are not met. All parts of 3 AAC 110.130 must be met for the overall standard of 3 AAC 110.130 to be satisfied. For that reason, the LBC staff finds that overall 3 AAC 110.130 is not met.

**3 AAC 110.135. Best interests of state**

*In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation*

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (2) promotes 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; and*
- (3) will relieve the state government of the responsibility of providing local services.*

**Analysis for Dillingham of 3 AAC 110.135**

The LBC staff finds that if the annexation occurred, then Dillingham would derive considerable income from a raw fish tax. This income would allow Dillingham to pay for municipal services that fishers and other regional residents rely on, and other expense. There is now a way to equitably distribute income raised from the regional resource. It is in the best interests of the state that Dillingham provides those services to the fishers and regional residents because those people depend on those services. It is also in the best interests of the state that Dillingham become more financially viable.

However, the proposed annexation is not in the best interests of the state in other ways. Five years ago the LBC approved Dillingham's local action annexation petition.<sup>9</sup> The LBC found then that the region would benefit from the annexation.<sup>10</sup> Much has changed since 2011. Dillingham is no longer the sole petitioner—Manokotak has also filed an annexation petition. The borders of the two petitions overlap. For that reason, the LBC cannot grant both petitions.

It is no longer a case of a simple “yes” or “no” on Dillingham's annexation petition. As there are two competing petitions, the matter of what is in the best interests of the state is more complex. Those who opposed Dillingham's petition have suggested that Dillingham should share the proceeds from what both the LBC staff and many in the region view as a common resource.<sup>11</sup> The LBC staff finds that the region's residents would benefit from equitably sharing the resource, rather than allocating the resource to one or

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<sup>9</sup> The superior court later overturned the LBC's decision.

<sup>10</sup> The present proposed expanded boundaries are exactly the same as the 2011 proposed expanded boundaries.

<sup>11</sup> They have not, however, advocated sharing the expenses of providing services to the fishers.

more cities. Presently a resource that is valuable to the entire region (a fish tax) is escaping the region's residents. In fifty years, no bay community has been able to realize that tax, except for the brief period when Dillingham was able to levy a fish tax. According to the State Assessor's office, the potential taxes lost over the years amounts to tens of millions of dollars. It makes no sense for the region to have lost tens of millions of dollars that could have benefited the region's residents, whether or not they live in Dillingham. The tax can be imposed on the fish—the common resource that is the region's primary source of income.

The LBC staff finds that neither the Dillingham annexation nor the Manokotak annexation is in the best interests of the state. If the bay is viewed as a regional resource, it should not be divided between two or more cities. It would be inequitable if Dillingham had part of the bay, and Manokotak had part, but the other communities had none of the bay. If the bay and its fish are a regional resource, then they should be used for the common good. The LBC staff finds that granting Dillingham's annexation petition is not in the best interests of the state. For that reason, the LBC staff finds that 3 AAC 110.135 is not met.

### **3 AAC 110.140. Legislative review**

3 AAC 110.140 has eight specified factors. At least one of the eight below specified factors (one was repealed) must be met in order for a petition to meet the standard of 3 AAC 110.140. It is not necessary to meet more than one. The analysis will address (1)–(9) individually.

*Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:*

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

#### **Analysis for Dillingham of 3 AAC 110.140(1)**

The LBC staff finds that the territory proposed for annexation is not wholly or substantially surrounded by the annexing city. For that reason, the LBC staff finds that 3 AAC 110.140(1) is not met.

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

#### **Analysis for Dillingham of 3 AAC 110.140(2)**

The LBC staff finds that the general welfare of Dillingham's residents is and will be endangered by conditions existing and potentially existing in the territory proposed for annexation. The conditions are the fishers' need for services at considerable expense to Dillingham. It is financially detrimental to Dillingham to provide services to the fishers without commensurate tax contributions from the fishers. Although the fishers receive services in Dillingham, the conditions arise in the territory. For this reason, the LBC staff finds that 3 AAC 110.140(2) is met.

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

### **Analysis for Dillingham of 3 AAC 110.140(3)**

The LBC staff finds that although the fishers receive services in Dillingham, the services will not be extended into the territory. For this reason, the LBC staff finds that this standard is not met.

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

### **Analysis for Dillingham of 3 AAC 110.140(4)**

The LBC staff finds that boat owners and permit holders have received and presently receive the benefit of Dillingham city services without commensurate contributions to fund those services. The LBC staff further finds that the harbor fees are insufficient to pay for the costs of the harbor and port, and that those costs are expended partly to support the fishers. The LBC staff further finds that the fees cannot be increased sufficiently to pay for such costs as the city's share of dredging expenses. Notwithstanding, the LBC staff finds that the fishers are neither permanent residents nor property owners in the territory proposed for annexation.<sup>12</sup> For this reason, the LBC staff finds that this standard is not met.

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

### **Analysis for Dillingham of 3 AAC 110.140(5)**

The LBC staff finds that the proposed annexation will not allow Dillingham to plan growth or development in the territory. For this reason, the LBC staff finds that this standard is not met.

*(6) Repealed 5/19/2002*

*(7) annexation of the territory will promote*

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

### **Analysis for Dillingham of 3 AAC 110.140(7)(A)**

3 AAC 110.140(7)(A) states that annexation of the territory must promote maximum local self-government, *as determined under 3 AAC 110.981* [emphasis added]. 3 AAC 110.981(7) states that the commission will consider whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists. The two regulations together create an imperative that the territory proposed for annexation must have a population. The superior court stated in its opinion that no seasonal population could be considered a population (at least for voting purposes).<sup>13</sup> The LBC staff finds that the territory proposed for annexation does not have a permanent population, and hence does not

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<sup>12</sup> 3 AAC 110.900(12) defines "property owner" as one who owns real property. As the boats and their equipment are personal property, the fishers cannot be considered property owners in that context.

<sup>13</sup> Native Village of Ekuk v. Local Boundary Commission and City of Dillingham, Alaska Superior Court, Case No. 3DI-12-22CI (2014).

promote maximum local self-government. For this reason, the LBC staff finds that 3 AAC 110.140(7)(A) is not met.

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

#### **Analysis for Dillingham of 3 AAC 110.140(7)(B)**

The LBC staff finds that the proposed annexation would promote a minimum number of local government units because no new local government units would be formed, and because the annexation would not create overlapping local government services. For this reason, the LBC staff finds that 3 AAC 110.140(7)(B) is met.

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

3 AAC 110.140(8) requires that the proposed annexation must enhance how the existing city meets the incorporation standards. That means that the report must examine all of the incorporation standards for each city. There are constitutional, statutory, and regulatory incorporation standards. Due to the length of reviewing 3 AAC 110.140(8), the staff has indented 3 AAC 110.140(8) so it is easier to discern from the rest of 3 AAC 110.140. The standard refers to “the proposed city,” as if Dillingham were incorporating for the first time. For brevity’s sake, the text of the constitutional, statutory, and regulatory incorporation standards are not listed here.

#### **Analysis for Dillingham of 3 AAC 110.140(8)**

##### **Constitutional Incorporation Standards**

The LBC staff finds that the proposed annexation would enhance the extent to which Dillingham meets the city incorporation standards in art. X, sec. 1 of the state constitution. The proposed annexation would promote a minimum number of local government units because it adds no new units, and avoids overlapping of services on a city level. In this sense, only it also promotes maximum local self-government because it strengthens the financial ability of Dillingham. For these reasons, the LBC staff finds that this constitutional standard is met.

##### **AS 29.05.011 and AS 29.05.021 Statutory Incorporation Standards**

The LBC staff finds that the Dillingham annexation petition meets the AS 29.05.011 incorporation standards because it has a population over 400 permanent residents, and the population is sufficiently stable to support city government; because the proposed annexation will expand the tax base necessary to provide municipal services on an efficient scale; because Dillingham has the human and financial resources necessary to provide municipal services; and because there has historically been a need for city government in Dillingham.

Under AS 29.05.021(a), the LBC staff finds that the services cannot be provided by annexation to an existing city. For this reason, the LBC staff finds that this standard is met. The LBC staff finds that AS 29.05.011 and AS 29.05.021 are both met.

##### **Regulatory Incorporation Standards** *(An asterisk indicates each of the regulatory standards.)*

\* In addressing the incorporation regulations, the LBC staff finds that Dillingham comprises a

community under 3 AAC 110.005, 3 AAC 110.920, and 3 AAC 110.990(5) because it is a community of over 25 permanent residents. The LBC staff further finds that annexing the territory enhances how Dillingham meets the community standard because Dillingham would have more financial resources to provide essential municipal services. For this reason, the LBC staff finds that 3 AAC 110.005 is met.

- \* Under 3 AAC 110.010(a), the LBC staff finds that Dillingham demonstrates a reasonable need for city government in Dillingham due to the size of its population, and their need for city services. For this reason, the LBC staff finds that 3 AAC 110.010(a) is met.

Under 3 AAC 110.010(b), the LBC staff finds that Dillingham's essential municipal services cannot be better met by annexation to an existing city. For this reason, the LBC staff finds that 3 AAC 110.010(b) is met, and that 3 AAC 110.010 overall is met.

- \* In analyzing the numerous factors of 3 AAC 110.020 (in accordance with AS 29.05.011(a)(3)), under 3 AAC 110.020(A), the LBC staff finds that the city will have the same functions as it does today – education, public safety, public works, and many others, and that it has the human and financial resources to provide them. Under 3 AAC 110.020(B),(C), and (D), the LBC staff finds that the proposed annexation will help the city provide those services because it will have more revenue as a result, and will have the ability to collect that revenue. Under (E), the proposed annexation and resulting fish tax revenue would help the city to meet its expenses. Dillingham will have a projected deficit without that fish tax. Under (F), the LBC staff finds that Dillingham's economic base is based on fishing predominately, although government, health care, and tribal entities also contribute to the base. Under (G), the LBC staff finds that Dillingham has a property tax mil rate of 13, and a six percent general sales tax, a 10 percent hotel tax, a 10 percent sales tax on liquor, and a six percent sales tax on gaming. This results in one of the highest municipal tax rates in the state.<sup>14</sup> It has an estimated or locally assessed real property value of \$ 121.4 million, and a full and true value of \$152.4 million. Dillingham has assessed personal property value of \$40 million, and a full and true value of \$53.6 million. Under (H), there is fish processing in the city, and fish in the territory proposed for annexation. The fish processing indicates industrial, commercial, and resource development in the city. Under (I), 2009-2013 census data indicate that the per capita income was \$31,870 with a margin of error of \$2,794, and the median household income is \$68,036, with a margin of error of \$15,353.

After reviewing the factors that the LBC must consider under 3 AAC 110.020 (which included the standards of AS 29.05.011(a)(3), so it is unnecessary to separately analyze AS 29.05.011(a)(3)), the LBC staff finds that the annexation would bring additional revenue to the city, and thus strengthen the resources necessary to provide essential municipal services. The LBC staff finds that the economy has the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. For this reason, the LBC staff finds that 3 AAC 110.020 is met.

- \* Under 3 AAC 110.030, the LBC staff finds that the city population is sufficiently large and stable to

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<sup>14</sup> According to *Alaska Taxable 2015*, on a per capita basis, Dillingham ranked 17 out of 164 municipalities that levy taxes and reported them to the state assessor.

support the proposed city government. The LBC staff finds that 3 AAC 110.030 is met.

- \* Under 3 AAC 110.040(a), the LBC staff finds that the boundaries of the proposed city do include all land and water necessary to provide essential municipal services on an efficient, cost effective level. For that reason, the LBC staff finds that the petition meets 3 AAC 110.040(a).

Under 3 AAC 110.040(b)(1), the LBC staff finds that the proposed incorporation does not enhance how the present City of Dillingham meets the incorporation standards, because the annexation would result in a city that was not on a scale suitable for city government. For that reason, the LBC staff finds that the petition does not meet 3 AAC 110.040(b)(1).

Under 3 AAC 110.040(b)(2), the LBC staff finds that the proposed incorporation does not enhance how the present City of Dillingham meets the incorporation standards. Under *Analysis for Dillingham of 3 AAC 110.130(c)(2)* above, the LBC staff found that the bay is unpopulated with year round residents, although it does have fishers in the territory during the short summer fishing season. 3 AAC 110.990(15) defines “area” as the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough.” the LBC staff finds that Nushagak Bay, the territory proposed for annexation, is more appropriate as part of a borough than part of a city.

3 AAC 110.040(b)(2) does allow an exception, in which the proposed expanded boundaries of a city may include entire geographical regions or large unpopulated areas, **IF** [emphasis added] the boundaries are otherwise justified by applying the standards of 3 AAC 110.005 – 3 AAC 110.042, and are otherwise suitable for city government. As the LBC staff finds that not all of the standards of 3 AAC 110.005 – 3 AAC 110.042 are met, this exception is moot.

The LBC staff finds that 3 AAC 110.130(b)(2) is not met.

Under 3 AAC 110.040(c), the LBC staff finds that the territory is contiguous and does not include enclaves. For these reasons, the LBC staff finds that 3 AAC 110.040(c) is met.

Overall, the LBC staff finds 3 AAC 110.040(a) and 3 AAC 110.040(c) are met, but that 3 AAC 110.040(b)(1) and (2) are not met. Overall, the LBC staff finds that 3 AAC 110.040 is not met.

- \* Under 3 AAC 110.042, the LBC staff finds that the proposed annexation would not help Dillingham meet the city incorporation standards because Nushagak Bay and its fish are a regional resource, and are not appropriate for city governance. For these reasons, the LBC staff finds that overall 3 AAC 110.042 is not met.

In conclusion, to meet the standard of 3 AAC 110.140(8), all of its standards must be met. the LBC staff finds that some but not all of the 3 AAC 110.140(8) standards are met. For that reason, the LBC staff finds that 3 AAC 110.140(8) is not met.

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

### **Analysis for Dillingham of 3 AAC 110.140(9)**

Under 3 AAC 110.140(9), the LBC staff finds that the policies set out in Alaska's constitution, AS 29.04, AS 29.05, and AS 29.06 are best served by annexing through the legislative process. This is because the superior court struck down the local action process. The court did so because it found that the local action process infringed on due process rights. The court ordered that the legislative review process was proper, and ordered that it be used instead.

The LBC staff finds that the proposed annexation is not in the best interests of the state because a borough is more appropriate and in the state's best interests. For these reasons, the LBC staff finds that overall 3 AAC 110.140(9) is not met.

### **Conclusion of 3 AAC 110.140 for Dillingham**

In conclusion, for 3 AAC 110.140, only one of the eight standards in 3 AAC 110.140 needs to be met. The LBC staff finds that while the petition does not meet several of the standards, that the petition does meet one of them. Specifically, the LBC staff finds that the petition meets 3 AAC 110.140(2). For that reason, the LBC staff finds that overall 3 AAC 110.140 is met.

## **GENERAL PROVISIONS**

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### **3 AAC 110.900. Transition**

- (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*
- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*
- (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the*

*boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*

- (e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*
- (f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

#### **Analysis for Dillingham of 3 AAC 110.900**

The LBC staff finds that Dillingham has a valid transition plan under 3 AAC 110.900. The services are already being extended, and will continue to be extended upon the effective date of annexation. The city has the capacity to extend municipal services. There are no assets and liabilities to transfer or integrate. The LBC staff notes, however, that the city has not reached an agreement with the Alaska State Troopers (AST) for the AST to be the first responder in the territory proposed for annexation. In 2013, the AST declined to assume that role.

#### **3 AAC 110.910. Statement of nondiscrimination**

*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

#### **Analysis for Dillingham of 3 AAC 110.910**

The LBC staff finds that the proposed annexation will not deny any person the enjoyment of his or her civil or political rights. The LBC staff finds that 3 AAC 119.020 is met.

#### **3 AAC 110.970. Determination of essential municipal services [(c) and (d) apply to cities]**

...

- (c) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that
  - (1) are reasonably necessary to the community;*
  - (2) promote maximum, local self-government; and*
  - (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.**
- (d) The commission may determine essential municipal services for a city to include*

- (1) *levying taxes;*
- (2) *for a city in the unorganized borough, assessing the value of taxable property;*
- (3) *levying and collecting taxes;*
- (4) *for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;*
- (5) *public safety protection;*
- (6) *planning, platting, and land use regulation; and*
- (7) *other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

#### **Analysis for Dillingham of 3 AAC 110.970(c)**

The LBC staff finds that Dillingham provides education, utilities, public works, a port and harbor, taxation, public safety, and planning. The LBC staff finds that these services are reasonably necessary to the community, and that they promote maximum local self-government because they allow the people of Dillingham to govern themselves by increasing their means to provide and pay for their own services. The LBC staff also finds that these city services cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. For these reasons, the LBC staff finds that 3 AAC 119.970 is met.

#### ***3 AAC 110.981. Determination of maximum local self-government***

- (7) *for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory or population of the unorganized borough where no local government currently exists*

#### **Analysis for Dillingham of 3 AAC 110.981**

The LBC staff finds that in considering whether a proposed annexation promotes the constitutional standard of maximum local self-government under 3 AAC 110.981, that the LBC *must consider* [emphasis added] under 3 AAC 110.981(7) whether the proposed annexation would extend local government to territory or population where no local government currently exists. As opposed to the situation in AAC 110.140(7)(A) above, here the LBC must only *consider* 3 AAC 110.981(7) in determining whether the proposed annexation promotes maximum local self-government. It is not required to follow 3 AAC 110.981(7), just to consider it.

After considering whether the proposed annexation would extend local government to territory or population where no local government currently exists, the LBC staff finds that the proposed annexation nonetheless promotes maximum local self-government in this sense only because it strengthens the financial ability of Dillingham, and its ability to provide services. These are hallmarks of a maximum local self-government – the ability to provide for oneself. For these reasons the LBC staff finds that 3 AAC 110.981 is met.

#### ***3 AAC 110.982. Minimum number of local government units***

- (7) *for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area*

#### **Analysis for Dillingham of 3 AAC 110.982**

In considering where the proposed annexation promotes a minimum number of local government units, the LBC must consider under 3 AAC 110.982(7) whether the boundaries of an existing city are being enlarged,

rather than promoting the incorporation of a new city or creation of a new borough service area. The LBC staff finds that Dillingham's proposed annexation would promote a minimum number of local government units because it adds no new units, and avoids overlapping of services on a city level. The proposed annexation does not promote the incorporation of a new city or creation of a new borough service area. For those reasons, the LBC staff finds that 3 AAC 110.982 is met.

### **Dillingham Annexation Petition Conclusion**

After carefully reviewing the evidence before it (petitions, briefs, and comments), the LBC staff concludes that the Dillingham annexation petition meets all of the annexation standards except for 3 AAC 110.130 (Boundaries) and AAC 110.135 (Best Interests of the State). As all of the standards need to be met, the LBC staff recommends that the commission deny the Dillingham annexation petition. It instead recommends that the LBC use its constitutional powers to consider a proposal to form a borough.

## **Analysis of Annexation Standards for Manokotak**

The report will now address the City of Manokotak's petition. It is important to note that one of the standards is 3 AAC 110.140 Legislative Review. Both of the petitions are using the legislative review method. 3 AAC 110.140 has standards that only apply to legislative review petitions. 3 AAC 110.140 states that the petition must meet one of eight specified standards. It is not necessary to meet more than one. One of the eight standards (3 AAC 110.140(8)) requires that the proposed annexation must enhance how the existing city meets the incorporation standards. That means that the report must examine all of the incorporation standards for each city. For that reason, the staff has indented 3 AAC 110.140(8) so it is clearer to the reader.

### ***3 AAC 110.090. Need***

***(a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including***

- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;***
- (2) existing or reasonably anticipated health, safety, and general welfare conditions;***
- (3) existing or reasonably anticipated economic development;***
- (4) adequacy of existing services;***
- (5) extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and***
- (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.***

### **Analysis for Manokotak of 3 AAC 110.090(a)**

The LBC staff finds that Tract A (the Snake and Weary Rivers Tract) needs city government, as Manokotak already provides services there such as road maintenance and search and rescue service. Tract A will continue to need those services, and thus exhibits a reasonable need for city government. The LBC staff finds that Tract B (the Igushik Section of the Nushagak Commercial Salmon District), while an important source of revenue to Manokotak, does not show a reasonable need for city government. The LBC staff finds that Tract C (Igushik Village) shows a reasonable need for city government because the sanitary facilities in Tract C are inadequate. The LBC staff finds that there is not a reliable water source in Tract C, and no ordinances to regulate the sanitary conditions. Manokotak has no ordinances for planning in the territory. Although Tract A and Tract C show a reasonable need for city government, Tract B does not. For that reason, the LBC staff finds that overall the territory does not exhibit a reasonable need for city government, and that the standard is not met.

***(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.***

### **Analysis for Manokotak of 3 AAC 110.090(b)**

The LBC staff finds that no other municipality is likely to provide the services that Manokotak proposes the LBC staff finds that 3 AAC 110.090(b) is met.

Overall, the LBC staff finds that 3 AAC 110.090 is not met because not all of the standards were met.

### **3 AAC 110.100. Character**

*The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the*

- (1) land use, subdivision platting, and ownership patterns;*
- (2) salability of land for residential, commercial, or industrial purposes;*
- (3) population density;*
- (4) cause of recent population changes;*
- (5) suitability of the territory for reasonably anticipated community purposes;*
- (6) existing and reasonably anticipated transportation patterns and facilities; and*
- (7) natural geographical features and environmental factors.*

### **Analysis for Manokotak of 3 AAC 110.100**

The LBC staff finds that the territory is compatible with Manokotak because Manokotak residents use Tract A to reach Igushik Beach (Tract A), where they collectively move to in the summer. Tract A provides transportation to the bay, and the city provides road maintenance, a boat landing, and search and rescue services there. The LBC staff finds that Manokotak is compatible in character with Tract B because its residents fish in the bay. The LBC staff also finds the territory is compatible with Manokotak because of the long ties between Tract C and Manokotak since Manokotak was founded in the 1940s. For those reasons, the LBC staff finds that 3 AAC 110.100 is met.

### **3 AAC 110.110. Resources**

*The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the*

- (1) reasonably anticipated functions of the city in the territory being annexed;*
- (2) reasonably anticipated new expenses of the city that would result from annexation;*
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;*
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;*
- (5) economic base of the territory within the city after annexation;*
- (6) valuations of taxable property in the territory proposed for annexation;*
- (7) land use in the territory proposed for annexation;*
- (8) existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;*

- (9) personal income of residents in the territory and in the city; and*
- (10) need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.*

### **Analysis for Manokotak of 3 AAC 110.110**

The LBC staff does not find that Manokotak has the human resources to provide essential municipal services. The LBC staff finds that Manokotak's population is nearly 500 people, and that the population is growing. The petitioner states that if it annexes the territory, it will levy a fish tax in Tract B. The LBC staff is concerned about the city's capacity to collect the taxes it proposes to levy. Currently, the city is having difficulty collecting back sales taxes. It is not clear to the LBC staff that city would not have the same problem collecting fish taxes. The LBC staff finds that 3 AAC 110.110 is not met.

### **3 AAC 110.120. Population**

*The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including*

- (1) census enumerations;*
- (2) duration of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

### **Analysis for Manokotak of 3 AAC 110.120**

DOL data indicate population estimates for Manokotak of 442 in 2010, 446 in 2011, 449 in 2012, 492 in 2013, 502 in 2014, and 482 in 2015 (in 2015, the state overall lost population). The LBC staff finds that this Manokotak's growth is a positive development, given that many rural Alaska communities are losing population. Manokotak's population is large and stable enough to support extending city government. For this reason, the LBC staff finds that 3 AAC 110.120 is met.

### **3 AAC 110.130. Boundaries**

*(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*

- (1) land use and ownership patterns;*
- (2) population density;*
- (3) existing and reasonably anticipated transportation patterns and facilities;*
- (4) natural geographical features and environmental factors; and*
- (5) extraterritorial powers of cities.*

### **Analysis for Manokotak of 3 AAC 110.130(a)**

The LBC staff finds that the proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. No showing was made that Manokotak has insufficient land or water to provide those services. The LBC staff finds that 3 AAC 110.130(a) is met.

*(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*

### **Analysis for Manokotak of 3 AAC 110.130(b)**

The LBC staff finds that the territory proposed for annexation is contiguous to the existing city, and does not create enclaves in the city. For that reason, the LBC staff finds that 3 AAC 110.130(b) is met.

*(c) To promote the limitation of community, the proposed expanded boundaries of the city*  
*(1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and*

### **Analysis for Manokotak of 3 AAC 110.130(c)(1)**

The LBC staff finds that Manokotak is a community. The LBC staff further finds that, and because there is predictable growth, development, and public safety needs in the territory proposed for annexation, due to the river and road traffic in Tract A, the commercial fishing activity in Tract B, and the subsistence fishing and other activities in Tract C. The LBC staff finds, however, that the proposed expanded boundaries are not on a scale suitable for city government, as the proposed size of nearly 191 square miles far larger than all but a few cities. Further, the scale, particularly for Tract B, is more suitable for a borough. For those reasons, the LBC staff finds that overall 3 AAC 110.130(c)(1) is not met.

*(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.*

### **Analysis for Manokotak of 3 AAC 110.130(c)(2)**

The LBC staff finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. The LBC staff, however, finds that the proposed expanded boundaries are not suitable for city government because they are more appropriately in a borough. For this reason, the LBC staff finds that 3 AAC 110.130(c)(2) is not met.

*(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the*

*standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.*

#### **Analysis for Manokotak of 3 AAC 110.130(d)**

The LBC staff finds that the proposed expanded boundaries do not overlap the present boundaries of another existing city or an organized borough. For this reason, the LBC staff finds that 3 AAC 110.130(d) is met.

#### **Conclusion of 3 AAC 110.130 for Manokotak**

The LBC staff finds that 3 AAC 110.130(a), 3 AAC 110.130(b), and 3 AAC 110.130(d) are met. The LBC staff further finds that 3 AAC 110.130(c)(1) and 3 AAC 110.130(c)(2) are not met. All parts of 3 AAC 110.130 must be met for the overall standard of 3 AAC 110.130 to be satisfied. For that reason, the LBC staff finds that overall 3 AAC 110.130 is not met.

#### ***3 AAC 110.135. Best interests of state***

*In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation*

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (2) promotes 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; and*
- (3) will relieve the state government of the responsibility of providing local services.*

#### **Analysis for Manokotak of 3 AAC 110.135**

The LBC staff finds that the Manokotak annexation is not in the best interests of the state. If the bay is viewed as a regional resource, it should not be divided between two or more cities. Instead, the bay and its fish that are a regional resource should be used for the common good. The LBC staff finds that 3 AAC 110.135 is not met.

#### **3 AAC 110.140. Legislative review**

3 AAC 110.140 has eight specified factors. At least one of the eight below specified factors (one was repealed) must be met in order for a petition to meet the standard of 3 AAC 110.140. It is not necessary to meet more than one. The analysis will address (1) – (9) individually.

*Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:*

- (1) the territory is wholly or substantially surrounded by the annexing city;*

#### **Analysis for Manokotak of 3 AAC 110.140(1)**

The LBC staff finds that the territory proposed for annexation is not wholly or substantially surrounded by the annexing city. For that reason, the LBC staff finds that 3 AAC 110.140(1) is not met.

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

**Analysis for Manokotak of 3 AAC 110.140(2)**

The LBC staff finds that the water and sanitation in the territory proposed for annexation (at least in Tract C) is inadequate. The LBC staff finds that if a city existed in the territory the city could pass ordinances and levy taxes to raise funds to combat the problem. The LBC staff further finds that most (roughly 400 people) of Manokotak moves to the territory for part of the summer, and that therefore their health, safety, and welfare are endangered by the conditions that exist there. For that reason, the LBC staff finds that 3 AAC 110.140(2) is met.

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

**Analysis for Manokotak of 3 AAC 110.140(3)**

The LBC staff finds that Manokotak would realize \$93,000<sup>15</sup> in tax revenue from annexing Tract B. That money would help to pay for services in the territory. One goal of the annexation is to enforce laws in the territory. The city could not enforce city ordinances in the territory unless the territory was in the city. The LBC staff finds that it is impractical for the city to extend services unless the territory is within the city. For this reason, the LBC staff finds that 3 AAC 110.140(3) is met.

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

**Analysis for Manokotak of 3 AAC 110.140(4)**

The LBC staff finds that residents or property owners within the territory do not receive, and are not reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions. The LBC staff finds that for that reason, 3 AAC 110.140(4) is not met.

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

**Analysis for Manokotak of 3 AAC 110.140(5)**

The LBC staff finds that annexing the territory would allow the city to plan growth and development. As many city residents inhabit Igushik Beach part of the summer, the territory grows and develops seasonally. As noted above, the sanitary conditions are inadequate. Manokotak can plan and control those conditions if the

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<sup>15</sup> The petition stated both \$55,000 on page 62 of its petition, and \$93,000 on page 31 of its responsive brief. Manokotak Mayor Melvin Andrew clarified that the correct figure was \$93,000.

territory is in the city. Manokotak plans to provide solid waste management, develop a reliable potable water source, and design improvements for Igushik Village. For these reasons, the LBC staff finds that 3 AAC 110.140(5) is met.

*(6) repealed 5/19/2002;*

*(7) annexation of the territory will promote*

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

#### **Analysis for Manokotak of 3 AAC 110.140(7)(A)**

3 AAC 110.140(7)(A) states that annexation of the territory must promote maximum local self-government, *as determined under 3 AAC 110.981* [emphasis added]. 3 AAC 110.981(7) states that the commission will consider whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists. The two regulations together make it imperative that the territory proposed for annexation must have a population. The superior court stated in its opinion that no seasonal population could be considered a population (at least for voting purposes). The LBC staff finds that the territory proposed for annexation does not have a permanent population, and hence, does not promote maximum local self-government. For this reason, the LBC staff finds that 3 AAC 110.140(7)(A) is not met.

*(B) 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;*

#### **Analysis for Manokotak of 3 AAC 110.140(7)(B)**

The LBC staff finds that the proposed annexation would promote a minimum number of local government units because no new local government units would be formed, and because the annexation would not create overlapping local government services. For this reason, the LBC staff finds that 3 AAC 110.140(7)(B) is met.

The LBC staff finds that overall 3 AC 110.140(7) is not met.

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

3 AAC 110.140(8) requires that the proposed annexation must enhance how the existing city meets the incorporation standards. That means that the report must examine all of the incorporation standards for each city. There are constitutional, statutory, and regulatory incorporation standards. Due to the length of reviewing 3 AAC 110.140(8), the staff has indented 3 AAC 110.140(8) so it is easier to discern from the rest of 3 AAC 110.140. The standard refers to “the proposed city,” as if Manokotak were incorporating for the first time. For brevity’s sake, the text of the constitutional, statutory, and regulatory incorporation standards are not listed here.

#### **Analysis for Manokotak of 3 AAC 110.140(8)**

##### ***Constitutional Incorporation Standards***

Under 3 AAC 110.140(8), the LBC staff finds that the proposed annexation would enhance the extent to which Manokotak meets the city incorporation standards in the state constitution. The

proposed annexation would promote a minimum number of local government units because it adds no new units, and avoids overlapping of services on a city level. In this sense, only it also promotes maximum local self-government because it strengthens the financial ability of Manokotak to provide services. For these reasons, the LBC staff finds that this constitutional standard is met.

***AS 29.05.011 and AS 29.05.021 Statutory Incorporation Standards***

The LBC staff finds that the Manokotak meets the AS 29.05.011 incorporation standards because it has a population over 400 permanent residents, and the population is growing and sufficiently stable to support city government; because the proposed annexation will expand the tax base that is necessary to provide municipal services on an efficient scale; because Manokotak has the human and financial resources necessary to provide municipal services; and because Manokotak has historically had a need for city government.

Under AS 29.05.021(a), the LBC staff finds that the services cannot be provided by annexation to an existing city, as there is no other nearby city. For this reason, the LBC staff finds that this standard is met. The LBC staff finds that AS 29.05.011 and AS 29.05.021 are both met.

***Regulatory Incorporation Standards (An asterisk indicates each of the regulatory standards.)***

- \* In addressing the incorporation regulations, the LBC staff finds that Manokotak comprises a community under 3 AAC 110.005, 3 AAC 110.920, and 3 AAC 110.990(5) because it is a community of over 25 permanent residents. The LBC staff further finds that annexing the territory enhances how Manokotak meets the community standard because Manokotak would have more financial resources to provide essential municipal services. For this reason, the LBC staff finds that 3 AAC 110.005 is met.
- \* Under 3 AAC 110.010(a), the LBC staff finds that Manokotak demonstrates a reasonable need for city government in Manokotak due to the size of its population, and their need for city services. For this reason, the LBC staff finds that 3 AAC 110.010(a) is met.
- \* Under 3 AAC 110.010(b), the LBC staff finds that Manokotak's essential municipal services cannot be better met by annexation to an existing city. For this reason, the LBC staff finds that 3 AAC 110.010(b) is met, and that 3 AAC 110.010 overall is met.
- \* In analyzing the numerous factors of 3 AAC 110.020 (in accordance with AS 29.05.011(a)(3)), under 3 AAC 110.020(A), the LBC staff finds that the city will have the same functions as it does today – trash collection, landfill, a water and sewer utility, public works, and many others, and that it has the human and financial resources to provide them. Under 3 AAC 110.020(B),(C), and (D), the LBC staff finds that the proposed annexation will help the city provide those services because it will have more revenue as a result, and will have the ability to collect that revenue. The LBC staff notes that the city has been unable to collect the sales tax from a store within its borders, and that doing so would bring more revenue to the city. Under (E), Manokotak presently has a surplus. Under (F), the LBC staff finds that Manokotak's economic base is primarily based on fishing and subsistence. Under (G), the LBC staff finds that Manokotak has a two percent general sales tax, and that there is no property tax. Under (H), The LBC staff is unaware of existing or reasonably anticipated industrial, commercial, and resource development in the proposed city.

Under (I), the available data have too great a margin of error to be reliable, but it they indicate that poverty exists in Manokotak, and that subsistence is part of the residents' income (or a substitute for it).

After reviewing the factors that the LBC must consider under 3 AAC 110.020 (which includes the standards of AS 29.05.011(a)(3), so it is unnecessary to separately analyze AS 29.05.011(a)(3)), the LBC staff finds that the economy has the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. For this reason, the LBC staff finds that 3 AAC 110.020 is met.

- \* The LBC staff finds that the city population is sufficiently large and stable to support the proposed city government. Manokotak has a growing population. For those reasons, the LBC staff finds that 3 AAC 110.030 is met.
- \* Under 3 AAC 110.040(a), the LBC staff finds that the boundaries include all land and water necessary to provide essential municipal services on an efficient, cost-effective level.

Under 3 AAC 110.040(b)(1), the LBC staff finds that the proposed incorporation does not enhance how the present City of Manokotak meets the incorporation standards, because the annexation would result in a city not on a scale suitable for city government. As stated above, The LBC staff finds that the proposed boundaries are too large to be on scale suitable for city government. For that reason, the LBC staff finds that the petition does not meet 3 AAC 110.040(b)(1).

Under 3 AAC 110.040(b)(2), the LBC staff finds that the proposed boundaries are more suitable as part of a borough than part of a city. For that reason, the LBC staff finds that the proposed boundaries are not otherwise suitable for city government. The LBC staff finds that 3 AAC 110.040(b)(2) is not met.

Under 3 AAC 110.040(c), the LBC staff finds that the territory is contiguous and does not include enclaves.

For these reasons, the LBC staff finds that overall 3 AAC 110.040 is not met.

The LBC staff finds that the proposed annexation would not help Manokotak meet the city incorporation standards because the water that it seeks to annex is more appropriate for a borough. The water and the fish within it are a regional resource instead. For that reason, the proposed annexation does not help Manokotak to meet the incorporation standards. The proposed incorporation is not in the best interests of the state. For these reasons, the LBC staff finds that 3 AAC 110.042 is not met.

For those reasons, the LBC staff finds that not all of the 3 AAC 110.140(8) standards are met. For that reason, the LBC staff finds that 3 AAC 110.140(8) is not met.

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

#### **Analysis for Manokotak of 3 AAC 110.140(9)**

Under 3 AAC 110.140(9), the LBC staff finds that the policies set out in Alaska's constitution, AS 29.04, AS 29.05, and AS 29.06 are best served by annexing through the legislative process, as legislative review is the method specified in the state's constitution. However, the LBC staff finds that annexation is not in the best interests of the state because Nushagak Bay and its fish are a regional resource and should not be divided among cities. For that reason, the LBC staff finds that overall 3 AAC 110.140(9) is not met.

#### **Conclusion of 3 AAC 110.140 for Manokotak**

Only one of the eight standards in 3 AAC 110.140 needs to be met. the LBC staff finds that while the petition does not meet all of the standards, that the petition does meet three of them. Specifically, the LBC staff finds that the petition meets 3 AAC 110.140 (2), (3), and (5). For that reason, the LBC staff finds that overall 3 AAC 110.140 is met.

## **GENERAL PROVISIONS**

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### *3 AAC 110.900. Transition*

- (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*
- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*

- (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*
- (e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*
- (f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

**Analysis for Manokotak of 3 AAC 110.900**

The LBC staff finds under 3 AAC 110.900 that Manokotak works closely with the Manokotak Village Council and Manokotak Natives Limited for the benefit of the community, and that this cooperation and commitment demonstrates the capacity of the city to extend essential municipal services into the territory proposed for annexation. The LBC staff further finds that there is no existing local government in the territory proposed for annexation, and so the city does not need to assume any powers, duties, rights, functions, assets, or liabilities. For that reason, no formal transition is required. The LBC staff finds that Manokotak has a valid transition plan under 3 AAC 110.900.

***3 AAC 110.910. Statement of nondiscrimination***

*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

**Analysis for Manokotak of 3 AAC 110.910**

The LBC staff finds that the proposed annexation will not deny any person the enjoyment of his or her civil or political rights. The LBC staff finds that 3 AAC 110.920 is met.

***3 AAC 110.970. Determination of essential municipal services [(c) and (d) apply to cities]***

...

*(10) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*

- (1) are reasonably necessary to the community;*

- (2) *promote maximum, local self-government; and*
  - (3) *cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.*
- (11) *The commission may determine essential municipal services for a city to include*
- a. *levying taxes;*
  - b. *for a city in the unorganized borough, assessing the value of taxable property;*
  - c. *levying and collecting taxes;*
  - d. *for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;*
  - e. *public safety protection;*
  - f. *planning, platting, and land use regulation; and*
  - g. *other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

**Analysis for Manokotak of 3 AAC 110.970**

The LBC staff finds that Manokotak provides trash collection, landfill, a water and sewer utility, public works, and other services, and that it has the human and financial resources to provide them. The LBC staff finds that these services are reasonably necessary to the community, and that in this sense only they promote maximum local self-government because they allow the people of Manokotak to govern themselves by providing their own services. However, the LBC also finds that some services, such as planning, could be provided more efficiently and more effectively by a borough. For that reason, the LBC staff finds that 3 AAC 119.970 is not met.

**3 AAC 110.981. Determination of maximum local self-government**

- (7) *for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory or population of the unorganized borough where no local government currently exists*

**Analysis for Manokotak of 3 AAC 110.981**

3 AAC 110.140(7)(A) states that annexation of the territory must promote maximum local self-government, *as determined under 3 AAC 110.981* [emphasis added]. 3 AAC 110.981(7) states that the commission will consider whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists. Overall, however, the commission must determine whether the proposed annexation promotes maximum local self-government. The LBC staff finds in this sense only that it does because it further strengthens the ability of the people of Manokotak to govern themselves. For this reason, the LBC staff finds that 3 AAC 110.140(7)(A) is met.

**3 AAC 110.982. Minimum number of local government units**

- (7) *for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area*

**Analysis for Manokotak**

In considering where the proposed annexation promotes a minimum number of local government units, the LBC must consider under 3 AAC 110.982(7) whether the boundaries of an existing city are being expanded,

rather than promoting the incorporation of a new city or creation of a new borough service area. The LBC staff finds that Manokotak's proposed annexation would promote a minimum number of local government units because it adds no new units, and avoids overlapping of services on a city level. The proposed annexation does not promote the incorporation of a new city or creation of a new borough service area. For those reasons, the LBC staff finds that 3 AAC 110.982 is met.

### **Manokotak Annexation Petition Analysis Conclusion**

After carefully reviewing the evidence before it (petitions, briefs, and comments), the LBC staff concludes that the Manokotak annexation petition meets several but not all of the annexation standards. It concludes that the Manokotak does not meet the standards of 3 AAC 110.090 (Need), 3 AAC 110.110 (Resources), 3 AAC 110.130 (Boundaries), 3 AAC 110.135 (Best Interests of the State), and 3 AAC 110.970 (Determination of Essential Municipal Services). As all of the standards need to be met, the LBC staff recommends that the LBC deny this petition. The LBC staff instead recommends that the LBC propose a borough using its constitutional powers.

## BOROUGH INCORPORATION

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As many comments suggested borough formation, because past studies have found a borough to be feasible (please see a synopsis of the studies under 3 AAC 110.055 below), and because the Dillingham Census Area is best empowered through borough formation, the LBC staff recommends that the LBC propose borough formation to the Legislature. Western Bristol Bay and its fish that are a regional resource should be used for the common good. The staff's analysis of the applicable standards is below.

### 3 AAC 110.045. Community of interests

#### *Article X, section 3 – Boroughs*

*The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.*

#### **Constitutional Analysis for a Possible Borough**

For many years, borough formation has been discussed and studied in the western Bristol Bay region—an area that coincides with the boundaries of the Southwest Region School District and the Dillingham Census Area. The census area includes Ekuk, Clark's Pont, Dillingham, Portage Creek, Ekwok, New Stuyahok, Koliganek, Aleknagik, Manokotak, Twin Hills, and Togiak.

Article X, section 3 of the constitution, 3 AAC 110.045(a) states that the “social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated in accordance with AS 29.05.031 (a)(1) and art. X, sec. 3, Constitution of the State of Alaska.” Article X, section 3 of Alaska's constitution also states that, “[e]ach borough shall embrace an area and population with common interests to the maximum degree possible.”

The LBC staff finds that the proposed borough does “embrace an area and population with common interests to the maximum degree possible” for many reasons. Above all, fishing unites the people of this region. Many of its people commercially fishing or rely on subsistence fishing. There are commercial fish processors in the area. Every year a fleet of commercial fishers come to Nushagak Bay to fish. Many businesses support the fishing industry. Without fish, the area would be less populated because the people depend on fish to eat, sell, and process. Further, a raw fish tax would support the borough, as is shown below under the “Resources” section.

The proposed borough consists of people who live closely with the land. They are predominately Alaska Native (Yupik). Over half of them live in villages outside of the City of Dillingham. The people of the proposed borough engage in subsistence activities including fishing, hunting moose, caribou, marine mammals, and bird, picking berries, and other endeavors. The subsistence activities are a large part of their lives, not only to put food on the table, but as a shared culture and lifestyle, regardless of ethnic background. Commercial fishing is also an important part of the lives of the people and the economy of the proposed borough.

The proposed borough would consist of many villages, some of which are large, particularly Togiak, Manokotak, and New Stuyahok. These predominately Yupik villages have much in common with each other. The U.S. Census data indicate that the people of the proposed borough are over 71 percent American Indian and Native Alaskan. The proposed borough would strongly reflect a shared Yupik culture and heritage.

The standard does not require that all in a proposed borough live the same lifestyle or have the same philosophy. In a state as diverse as Alaska, that would be difficult to attain. The standard does not require that the borough be homogeneous, merely the proposed borough “embrace an area and population with common interests to the maximum degree possible.” It is not necessary that everyone to possess the same interest. Otherwise, boroughs would need to be drawn with surgical precision, for fear of including any group with a different interest.

For reasons of lifestyle, travel, and philosophy, some non-Dillingham residents might feel that they do not have much in common with Dillingham. Although they might use Dillingham’s services more sparingly than city residents might, non-Dillingham residents do use them for many purposes. Aleknagik residents use Dillingham’s landfill. Students from Clark’s Point and Aleknagik currently attend the Dillingham high school. Area residents also use Dillingham city streets to get to the airport, use the docks and harbor, and public safety services when in Dillingham. Many area residents shop in Dillingham. In addition, the SRSD and many regional Native associations and organizations are headquartered in Dillingham. The region’s AST post is headquartered there. The regional hospital is there as well. Most flights to the regional communities are routed to Dillingham. Dillingham is the transportation center of the area. To visit the region, one is most likely to go through Dillingham. Dillingham and the communities in the region are linked and interdependent by economic, geographic, and cultural ties.

The LBC staff finds that the proposed borough embraces an area and population with common interests to the maximum degree possible. The proposed borough shares strong economic and cultural ties.

For the reasons stated above, the LBC staff finds that the proposed borough meets the requirements of article X, section 3, because it embraces an area and population with common interests to the maximum degree possible.

***Sec. 29.05.031. Incorporation of a borough or unified municipality***

***(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:***

***(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;***

**Statutory Analysis for a Possible Borough**

Under AS 29.05.031(a)(1), the social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. The LBC staff finds that the social and cultural characteristics and activities are interrelated and integrated. Subsistence fishing and hunting, and other subsistence activities also bind the people of the area. For many, it is a shared cultural heritage that crosses centuries. Commercial fishing ties together the social, cultural, and economic characteristics and activities of the people of the proposed borough. If they do not fish themselves, they live in an area whose economy is based upon fishing.

Regarding AS 29.05.031's other requirements that the population of the area must large and stable enough to support borough government, the LBC staff finds that the requirement is met. Please see the discussion of 3 AAC 110.050 *Population* below.

- (a) On a regional scale suitable for borough government, the social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated in accordance with AS 29.05.031(a)(1) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including the*
- (1) compatibility of urban and rural areas within the proposed borough;*
  - (2) compatibility of economic lifestyles and industrial or commercial activities;*
  - (3) existence throughout the proposed borough of customary and simple transportation and communication patterns;*
  - (4) extent and accommodation of spoken language differences throughout the proposed borough; and*
  - (5) existence throughout the proposed borough of organized volunteer services such as fire departments or other emergency services.*

### **Regulatory Analysis for a Possible Borough**

The proposed borough must of a regional scale suitable for a borough government. No standard defines a precise area as being appropriate for a borough. At 25,682 square miles, the region is of a size appropriate for a borough and would be larger than most of the state's boroughs. As shown in 3 AAC 110.050 *Population* below, the region has a population appropriate for a borough. The LBC staff finds in 3 AAC 110.055 *Resources* below that the region has sufficient human and financial resources for a borough. For those reasons, the LBC staff finds that the region is of a scale appropriate for a borough.

3 AAC 110.045(a)'s social, cultural, and economic characteristics and activities of the people standard was addressed in the statutory standard discussion above. It was found to be met. The LBC staff finds that the scale is suitable for borough government. For those reasons, the LBC staff finds that 3 AAC 110.045(a)'s standards are met.

*(b) Repealed 1/9/2008.*

### **Article X, section 3 - Boroughs**

*The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.*

### **Constitutional Analysis for a Possible Borough**

The relevant part of article X, section 3 of the constitution states that "[t]he standards shall include population, geography, economy, transportation, and other factors." Here we examine transportation (and communication) below.

***Sec. 29.05.031. Incorporation of a borough or unified municipality.***

***(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:***

***(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.***

**Statutory Analysis for a Possible Borough**

The proposed borough's transportation and communication allows for the communication and exchange necessary to develop an integrated borough government. Most of the communities are near each other. The proposed borough is similar to many other boroughs as it has a limited road system (only Dillingham and Aleknagik are connected by road, although there may be a future road connecting Manokotak and Dillingham). Most of the proposed borough's residents live on Nushagak Bay or on rivers that empty into Nushagak Bay.

As a result, most communities are only accessible by boat and airplane. This is not a situation unique to the proposed borough. Lake and Peninsula Borough residents can only reach the borough seat of King Salmon by plane or boat. Their borough seat is located in another borough (the Bristol Bay Borough). The Kodiak Island Borough communities are only accessible to each other by plane or boat.

The region's communities are linked by air through Dillingham, and the flights from Dillingham to any other community are short. Grant Aviation flies from Dillingham to all of those communities, except Ekuk, which is predominately populated only in the summer, and Portage Creek, which has a population of one. Grant Air also offers charter services. Dillingham is linked to Anchorage by Pen Air and Alaska Airlines.

Many of the communities are linked by water. Koliganek, New Stuyahok, Ekwok, Portage Creek, and Dillingham are all on the Nushagak River (Dillingham is at the river's mouth). Ekuk and Clark's Point are close to Dillingham on Nushagak Bay. Togiak and Twin Hills are very near each other, and are linked to Dillingham by plane.

All of these facilities allow the communication and exchange necessary to develop an integrated borough government. For the above reasons, the LBC staff finds that AS 29.05.031(a)(4) is met.

***(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government in accordance with AS 29.05.031(a)(4) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including***

- (1) transportation schedules and costs;***
- (2) geographical and climatic impediments;***
- (3) telephonic and teleconferencing facilities; and***
- (4) electronic media for use by the public.***

**Regulatory Analysis for a Possible Borough**

While AS 29.05.031 only discusses transportation, 3 AAC 110.045(c) also discusses communication media. The communications media throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. The LBC staff finds that the

communication media in the proposed borough is effective. Many people in the area listen to the NPR affiliate station KDLG. The station broadcasts from Dillingham and reaches much of the area. It can be heard in Togiak and Twin Hills. KDLG also has a popular program known as “Open Line.” It allows listeners from Bristol Bay, Unalakleet and around the world to keep in contact with one another through the radio. Some other Alaska radio stations air similar shows called "Bushlines."<sup>16</sup> The weekly *Bristol Bay Times* covers the region.

Overall, the communication media is adequate to allow for the development of an integrated borough government available. For that reason, the LBC staff finds that 3 AAC 110.045(c) is met. Overall, the LBC staff finds that the standards of art. X, sec. 3, AS 29.05.031(a)(1) and (a)(4), and 3 AAC 110.045 are met.

*(d) In determining whether communications and exchange patterns are sufficient, the commission may consider whether*

- (1) all communities within a proposed borough are connected to the proposed borough seat by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, other customary means of travel including boats and snow machines, or sufficient electronic media communications; and*
- (2) communications and exchange patterns will adequately facilitate interrelationships and integration of the people in the proposed borough.*

#### **Regulatory Analysis for a Possible Borough**

Please see above under 3 AAC 110.045(a) and (c).

#### ***3 AAC 110.050 Population***

- (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government in accordance with AS 29.05.031 (a)(1) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including*
- (1) census enumerations;*
  - (2) durations of residency;*
  - (3) historical population patterns;*
  - (4) seasonal population changes;*
  - (5) age distributions;*
  - (6) contemporary and historical public school enrollment data; and*
  - (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

#### ***Article X, section 3—Boroughs***

*The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall*

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<sup>16</sup> [kdlg.org/programs/open-line-1-800-478-5354#stream/0](http://kdlg.org/programs/open-line-1-800-478-5354#stream/0).

*include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.*

***Sec. 29.05.031. Incorporation of a borough or unified municipality***

***(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:***

***(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;***

**Constitutional Analysis for a Possible Borough**

3 AAC 110.050(a) refers to art. X, sec. 3, Constitution of the State of Alaska. The relevant part of section 3 states that “[t]he standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible.” We have analyzed the second sentence above and found that it was met. Here we examine the first sentence, specifically population, through the statutory and regulatory analysis below.

**Statutory Analysis for a Possible Borough**

Under AS 29.05.031(a)(1), the population of the area must be interrelated and integrated as to its social, cultural, and economic activities, and large and stable enough to support borough government. The LBC staff found above that the population is interrelated and integrated as to its social, cultural, and economic activities.

We now analyze the second point, whether the population is large and stable enough to support borough government. According to U.S. Census data, the Dillingham Census Area’s population in 1970 was 3,485. In 1980, it was 3,232. In 1990, the population was 4,012. In 2000, the population was 4,922. In 2010, the population was 4,847.

The data from the Alaska state demographer indicate estimated populations for the Dillingham Census Area of 4,940 in 2011, 4,978 in 2012, 5,022 in 2013, 5,063 in 2014, and 5,007 in 2015. During the period of 2010 to 2015, the area’s population grew by .62 percent. Statewide the population increased by .72 percent. The area’s growth compares favorably with the state population increase. Population data indicates a stable and growing population. On the other hand, many existing boroughs are projected to decrease during that time (e.g. Denali, Yakutat, Haines, and others).

The population estimates are not a correction of the 2010 census figures, but are based on the 2010 census and on administrative record data (primarily data from the Alaska Permanent Fund).<sup>17</sup> The state demographer has predicted population estimates of 5,156 in 2020, 5,289 in 2025, and 5,420 in 2030, 5,556 in 2035, 5,747 in 2040 and 5,984 in 2050.

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<sup>17</sup> Based on communications with state demographer Eddie Hunsinger.

In conclusion, given historical and expected growth, the LBC staff finds that the proposed borough population is large and stable enough to support borough government. The LBC staff finds that AS 29.05.031(a)(1) is met.

### **Regulatory Analysis for a Possible Borough**

The language of 3 AAC 110.050 (a) is nearly identical to that of AS 29.05.031(a)(1). There is no need to repeat the regulatory analysis.

*(b) In determining whether the population of a proposed borough is sufficiently large and stable to support the proposed borough government, the commission will presume that a minimum of 1,000 permanent residents is required unless specific and persuasive facts are presented showing that a lesser number is adequate.*

The 2015 estimated population for the proposed borough was 5,007. AAC 110.050(b) has a presumption that 1,000 permanent residents are needed to form a borough. As 5,007 far exceeds 1,000, the LBC staff finds that this requirement is met.

For the above reasons, the LBC staff finds that 3 AAC 110.050 is met.

Overall, the LBC staff finds for the reasons stated above that art. X, sec. 3, AS 29.05.031(a)(1), and 3 AAC 110.150 are met.

### **3 AAC 110.055 Resources**

#### *Article X, section 3—Boroughs*

*The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.*

### **Constitutional Analysis for a Possible Borough**

As the regulatory standards are much broader than the statutory or constitutional standards, and include both of them, we will examine the regulatory analysis.

#### *Sec. 29.05.031. Incorporation of a borough or unified municipality.*

*(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:*

*(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;*

### **Statutory Analysis for a Possible Borough**

As the regulatory standards are much broader than the statutory or constitutional standards, and include both of them, we will analyze the regulations. The factors of 3 AAC 110.055 (1)(A) – (J) are factors that the commission will consider in determining whether the overall standard of 3 AAC 110.055 is met. The factors of 3 AAC 110.055 (1)(A) – (J) are not imperatives in themselves.

### **Regulatory Analysis for a Possible Borough**

*In accordance with AS 29.05.031 (a)(3), the economy of a proposed borough must include the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, In this regard, the commission*

*(1) will consider*

*(A) the reasonably anticipated functions of the proposed borough;*

In determining what the essential municipal services are, please see the analysis of 3 AAC 110.970, *Determination of Essential Municipal Services*. There the LBC staff finds that any borough's essential municipal services include the assessing, levying, and collection of taxes, without which a municipality cannot function. Another essential municipal service is providing education in the borough. A borough provides land use, planning, and platting.

In analyzing 3 AAC 110.055(1)(A), the standard addresses whether the proposed borough would provide more functions that its human and financial resources can handle. For the most part, a borough can choose what services it will provide. All boroughs are required to provide for education. All boroughs must also assess and collect taxes that are levied in its boundaries. A borough need not levy any taxes—it just has the power to do so. All boroughs shall provide for planning, platting, and land use regulations. The extent of the planning and regulations is left to the borough.

*(B) the reasonably anticipated expenses of the proposed borough;*

As said above, the borough must provide education. Presently there are two school districts in the proposed borough—the SRSD and the Dillingham City School District. If a borough were formed, there would only be one boroughwide school district. A borough would realize savings from only having one school district instead of the present two.

The LBC staff is recommending that the LBC propose forming a borough. As a proposed borough would need to determine its preferred levels of service, it is unwise to project accurately specific numbers for the proposed borough.

*(C) the ability of the proposed borough to generate and collect revenue at the local level;*

The proposed borough has both the ability to collect and generate revenue at the local level. The primary source of revenue would likely be generated from taxing fish caught in borough waters. Neighboring Bristol Bay Borough and Lake and Peninsula Borough levy fish taxes, and use that to support their governments. Many boroughs or potential boroughs do not have such a resource.

The proposed borough can also levy a bed tax as an additional source of revenue. Neighboring Bristol Bay Borough and Lake and Peninsula Borough also levied such a tax. According to *Alaska Taxable 2015*, the Bristol Bay Borough levies a 10 percent bed tax, which in 2015 earned it \$96,991. The Lake and Peninsula Borough levied a six percent tax, which garnered it \$203,579 in 2015.

Other possible revenue sources include a borough-wide sales tax, although some of the cities in the potential borough already have a sales tax, and a borough might not want a borough sales tax. The proposed borough could levy a borough-wide property tax. Such a decision would be up to the borough, but the LBC staff respectfully points out that there would be a large number of nontaxable properties such as native allotments, and federal and state lands. This could result in a higher mil rate for those properties that would be taxed, which would be inequitable. This also saves the potential borough the expense of assessing the entire borough. A borough could also sell lands that the borough would receive after incorporation: A new borough can receive 10 percent of available state land not already reserved by the state. The amount of that land, its potential value, and how much the borough would choose to sell cannot be calculated at this time.

The tax revenue available to the proposed borough indicates the borough's ability to generate and collect revenue at the local level. Many of the communities are incorporated cities, and have experience in levying and collecting taxes. In particular, Dillingham has experience in levying a raw fish tax which would be beneficial to the proposed borough.

***(D) the reasonably anticipated income of the proposed borough;***

The reasonably anticipated income of the proposed borough cannot be calculated at this time. However, as stated above, there are a number of local revenues available to the borough. Other possible revenues include federal payment in lieu of taxes (PILT), Community Revenue Sharing (CRS), the \$600,000 organization grant, and the state shared fisheries business fish tax.<sup>18</sup>

Levying a raw fish tax would allow the borough to capture revenue from their primary source of income. This would be assessed on all fishers regardless of whether they live in the proposed borough boundaries. Most of the fishers live outside the area. The borough would also be free to create exemptions such as for low-income residents, as Dillingham did.

***(E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed borough through the period extending one full fiscal year beyond the reasonably anticipated date***

***(i) for receipt of the final organization grant under AS 29.05.190;***

***(ii) for completion of the transition set out in AS 29.05.130 - 29.05.140 and 3 AAC 110.900; and***

***(iii) on which the proposed borough will make its first full local contribution required under AS 14.17.410 (b)(2);***

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<sup>18</sup> PILT is for counties, not cities. In Alaska, it goes to boroughs. In the unorganized borough, it is distributed to communities in a particular census area.

As the proposed borough, if formed, would prepare its own budgets, there are no precise budget numbers available. If the proposed borough were formed, the borough would receive grants for three years totaling \$600,000. Within three years, the transition grants would end.

***(F) the economic base of the area within the proposed borough;***

The economic base of the area is related to fishing. This is addressed in (C) above.

***(G) valuations of taxable property within the proposed borough;***

As part of the unorganized borough, the region pays no property tax, except for Dillingham. The region is not required (outside of Dillingham) to make a required local contribution (RLC) to pay for education. For those reasons, the area's property has not been assessed, and has not undergone a full value determination. No valuations of property are available in the proposed borough outside of the City of Dillingham. A potential borough may levy a property tax but given land use, ownership, and the cost of appraisal, administering a property tax may be cost-prohibitive.

***(H) land use within the proposed borough;***

Land outside the cities in the proposed borough is mostly unsettled. It consists primarily of native lands, federal lands, and state lands. In some cases, it is designated as wilderness. It includes Wood-Tikchik State Park and Togiak National Wildlife Refuge. It consists of several communities.<sup>19</sup> There is little population or development outside of the communities. The land is partly owned by Native corporations, and is used for subsistence activities.

***(I) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and***

Fish are caught in the bay, and there are fish canneries and fish processing plants in the area. Fishing indicates present resource development, and the processing indicates industrial and commercial development. The LBC staff expects that the development will continue.

***(J) personal income of residents within the proposed borough***

The 2010 U.S. Census data indicated a per capita income of \$21,498, with a margin of error of \$1,380. The same data indicated a median household income of \$54,150, with a margin of error of \$4,047, and a median family income of \$56,089, with a margin of error of \$4,724.

In conclusion, the LBC staff finds that the proposed borough will have the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level. For

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<sup>19</sup> Although the report identifies those places as communities, all of them do not necessarily meet the regulatory definition of community. One of those eleven communities is Portage Creek, with a permanent population of one person. Another community is Ekuk, which year round only has a watchman and his family, but briefly has more people during the short summer fishing season.

those reasons, the LBC staff finds that the standards of art. X, sec. 3, AS 29.05.031, and 3 AAC 110.055 are met.

The human and financial resources for a potential borough have been examined before. For a long time borough formation has been discussed and studied in the Dillingham Census Area—an area that coincides with the boundaries of the Southwest Region School District. The census area includes Ekuk, Clark’s Point, Dillingham, Portage Creek, Ekwok, New Stuyahok, Koliganek, Aleknagik, Manokotak, Twin Hills, and Togiak. Several borough formation studies have been done over the years. All have found that a borough could be financially viable. The studies are summarized below.

In 1988, DCRA analyzed borough formation for an area combining the Southwest Region School District (SRSD) and the City of Dillingham. The study occurred after the LBC denied annexation petitions from the cities of Clark’s Point and Dillingham. The two petitions had each sought to annex a large part of Nushagak Bay. The study found that a borough was “financially feasible” if it levied one percent sales and use tax (and received increased state aid). The taxes were general, but also included commercial and recreational fisheries. No property tax was included.

In 1992, DCRA examined borough formation options in the Bristol Bay region, but came to no definite conclusions about the financial feasibility of a Dillingham Census Area borough.

In 1993, consultant Lamar Cotten wrote a borough feasibility study for the Bristol Bay Coastal Resource Service Area. The prospective borough consisted of the SRSD and the City of Dillingham. The study found that a borough was feasible at a two percent fish tax at \$0.65/lb. [\$1.08 in 2016], and a two percent bed tax. The study found that with those two taxes a borough property tax would be unnecessary.

In 1994, DCRA performed a study based on sockeye salmon prices of \$0.35 per pound [0.57 in 2016 dollars], \$0.45 per pound [\$0.73 in 2016 dollars], and \$0.65 per pound [\$1.05 in 2016 dollars]. The study found that at a two percent sales fish tax and a two percent lodge tax, a borough was not financially feasible at any of the three prices. At a four percent fish tax and a four percent lodge tax, a borough was only financially viable at \$0.65 per pound. At a two percent fish lodge, *and* a two percent general sales tax, a borough was viable at any of the three prices.

In 2003, the City of Dillingham commissioned consultant Barbara Sheinberg to conduct a study. The study analyzed two different possible borough scenarios. One scenario included the communities of Koliganek, New Stuyahok, Ekwok, Dillingham, and Portage Creek. A second scenario included those communities and also Clark’s Point and Ekuk. Neither prospective borough included Manokotak, Twin Hills, or Togiak. The study found a borough to be viable with a three percent tax on fish lodges, and a five percent general sales tax for education, but no borough fish tax.

In 2012, Kevin Waring and Gillian Smythe wrote a borough feasibility study. The study concluded that a borough would be viable with a four percent raw fish tax, and a 10 percent bed tax outside of Dillingham. There would be no borough sales or property taxes, although individual cities would continue to levy those taxes. Without annexation, the city of Dillingham would not be able to levy a raw fish tax, but it would come out ahead financially if a borough were formed, mainly because it would no longer have to pay for education. The study concluded that under those conditions, a borough would not be viable with a three or four percent

raw fish tax, but would be viable under a five percent raw fish tax. The borough expenses also included a “hold harmless” provision in which the borough would compensate Dillingham for lost contributions to its former schools, and an offset by the borough to Togiak and other communities for lost federal PILT payments, raw fish taxes, and other revenues. Without those expenses, a borough would be viable at a three or four percent raw fish tax.

### 3 AAC 110.060 Boundaries

#### *Article X, section 3 - Boroughs*

*The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.*

#### Constitutional Analysis for a Possible Borough

As the constitution speaks broadly about “geography,” and as more detailed standards is set out in the statute and regulations, we will examine those standards.

#### *Sec. 29.05.031. Incorporation of a borough or unified municipality.*

*(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:*

*(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;*

#### Statutory Analysis for a Possible Borough

As the regulation includes the statutory standards, we will proceed to the regulatory analysis.

- (a) *In accordance with AS 29.05.031 (a)(2) and art. X, sec. 3, Constitution of the State of Alaska, the boundaries of a proposed borough must conform generally to natural geography, must be on a regional scale suitable for borough government, and must include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*
- (1) land use and ownership patterns;*
  - (2) ethnicity and cultures;*
  - (3) repealed 1/9/2008;*
  - (4) existing and reasonably anticipated transportation patterns and facilities;*
  - (5) natural geographical features and environmental factors;*
  - (6) repealed 1/9/2008; and*
  - (7) existing and reasonably anticipated industrial, commercial, and resource development within the proposed borough.*

## **Regulatory Analysis for a Possible Borough**

Under 3 AAC 110.060(a), the LBC staff finds that the boundaries of the proposed borough are appropriate. The boundaries follow natural geography in that they include Nushagak and Togiak Bays and the Tikchik Lakes as well. They further follow natural geography because they include Hagemeister Island and the Walrus Islands. The proposed borough conforms almost entirely to geographic and hydrologic units, except for the upper Nushagak-Mulchatna drainage, which, since 1975, has remained in the boundaries of first the Lake and Peninsula REAA, and later the Lake and Peninsula Borough.

The proposed borough is on a regional scale suitable for a borough government. No standard defines a precise area as being appropriate for a borough. At 25,682 square miles, the region is of a size appropriate for a borough and would be larger than most of the state's boroughs. As shown in *3 AAC 110.050 Population* above, the region has a population appropriate for a borough. The LBC staff found in *3 AAC 110.055 Resources* above that the region has sufficient human and financial resources for a borough. For those reasons, the LBC staff finds that the region is of a scale appropriate for a borough.

*Under 3 AAC 110.990(29) "regional" means having the characteristics of a region. Under 3 AAC 110.990(28) "region":*

- (A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;*
- (B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section;*

As shown above under 3 AAC 110.045, the proposed borough meets the criteria of (A). It meets the criteria of (B) as it includes a Regional Education Attendance Areas (REAA).

Lastly, the proposed borough includes all land and water to provide the full development of essential municipal services on an efficient, cost-effective level. The proposed borough includes about 25,682 square miles of land and water. It includes part of Bristol Bay, several rivers, and many lakes. It also includes communities that are experienced in providing municipal services.

For all those reasons, the LBC staff finds that the proposed borough meets the standards of 3 AAC 110.060(a).

- (b) When reviewing the boundaries proposed in a petition for borough incorporation, the commission may consider*
  - (1) model borough boundaries for the area within the proposed borough;*
  - (2) regional boundaries, including*
    - (A) boundaries of one or more regional educational attendance areas existing in that proposed borough area;*
    - (B) federal census area boundaries;*
    - (C) boundaries established for regional Native corporations under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act); and*
    - (D) boundaries of national forests;*
  - (3) whether the proposed borough will embrace an area and population with common interests to the maximum degree possible;*

- (4) whether the proposed borough promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (5) whether the proposed borough promotes 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; and*
- (6) whether the proposed borough boundaries are the optimum boundaries for that region in accordance with art. X, sec. 3, Constitution of the State of Alaska.*

Under 3 AAC 110.060(b), the boundaries of the proposed borough largely coincide with the boundaries of both the SRSD and the Bristol Bay Native Corporation. The eastern border follows the borders of the Lake and Peninsula Borough and the Bristol Bay Borough. The boundaries follow the borders of the SRSD; different boundaries would mean changing the borders of two adjoining REAAs. The boundaries also follow that of the Model Borough Boundaries.

*(c) Repealed 1/9/2008.*

*(d) Absent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.*

In analyzing (d), the LBC staff finds that the proposed borough is contiguous. It does not contain enclaves. Further, the LBC staff found above that the area proposed for incorporation does include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.

*(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping boundaries from the existing organized borough. The commission will consider that petition for incorporation as also being a detachment petition.*

In analyzing (e), the petition for incorporation of a proposed borough does not describe boundaries overlapping the boundaries of an existing organized borough. Therefore, the petition need not address detachment as well.

*(f) The boundaries of a borough may not include only a portion of the territory of an existing city government.*

In analyzing (f), the boundaries of this proposed borough do not include only a portion of the territory of an existing city government. Subsection (f) is therefore met.

*(g) Requirements relating to limitation of community, as set out in 3 AAC 110.040(b), do not apply to boroughs*

In conclusion, for the above reasons, the LBC staff finds that 3 AAC 110.060 is met.

### 3 AAC 110.065 Best Interests of State

*In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100 (a), the commission may consider relevant factors, including whether incorporation*

*(1) promotes maximum local self-government, as determined under 3 AAC 110.981;*

*(2) promotes 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;*

*(3) will relieve the state government of the responsibility of providing local services; and*

*(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.*

Borough formation is in the best interests of the state because it would empower the region's residents, captures lost revenue, provide cohesiveness, and is now appropriate for the region. Those areas are further discussed below.

#### ***Empowerment***

Local self-empowerment is in the best interests of the state. The LBC staff finds that the Dillingham Census Area is best empowered through borough formation. Neither the Dillingham proposed annexation nor the proposed Manokotak annexation is in the best interests of the state. If the bay is viewed as a regional resource, it should not be divided between two or more cities. Instead, the bay and its fish that are a regional resource should be used for the common good. Regional governance will allow for equitable distribution.

Several of the public comments suggested that the LBC consider proposing a borough. The LBC staff concurs with those proposals, and accordingly recommends that the LBC propose to the Legislature the formation of a second class borough generally following the land borders of the Dillingham Census Area, and the Southwest Region School District. The boundaries would include fishing grounds.

Such a borough would determine the extent of its powers, duties, and functions. It would decide what taxes to levy. It could work with entities such as the Bristol Bay Area Health Corporation, the Bristol Bay Economic Development Corporation, the Bristol Bay Housing Authority, and the Bristol Bay Native Association for the region's benefit. Borough formation would promote maximum self-government because residents of the proposed borough would be able to determine and decide regional issues on a regional basis. Right now, any decisions falling outside of city authority are made by the state, so the residents have no control over those decisions.

A further advantage is the ability to have a collective voice. A borough could be an effective advocate for the region to the legislature, governor and the federal government. If a borough were formed, there could be resources to combat problems such as recent tundra fires outside of Togiak—or at least the ability to ask for assistance in fighting fires that fall outside of city boundaries.

As state resources dwindle, it is merely a matter of time before the Legislature asks itself why the state is paying for schools and other services in parts of the state that could support themselves. It might then mandate borough formation, as it did in 1963. It would be far better for the region to form as a borough now, when it can give public comment and influence the process, rather than wait until it *has to* with less input and influence.

In an era of declining state revenue and reduced state budgets, no part of the state can expect to receive the largess from Juneau that it formerly did. It is particularly harmful if there is no local income to insulate the local people from that reduced spending. If the region has its own government, and can levy a tax that would largely fall upon people who do not live there, then the people can make their own choices and decisions. They can decide what kind of government to have. If a borough were the taxing authority, then all the region's residents would have a voice in choosing how the funds were allocated. Residents of the proposed borough would likely feel better about paying fish taxes if the taxes went to the proposed borough, rather than the City of Dillingham (or Manokotak).

The Legislature dismantled the Coastal Management Program in 2011, essentially removing the ability of communities in the unorganized borough along coastal areas to have a voice in development and management of coastal resources. Unifying the federally-created census area boundary into a locally governed body, and enabling planning powers as a borough, would empower the region to have a more decisive and influential role in the management of coastal resources in Bristol Bay.

Many commenters said that the bay and its fish are a regional resource, and should not belong to a particular city. The LBC staff finds that if all or parts of the bay become part of a city or cities, then the bay or its fish is no longer a regional resource. At the same time, if the status quo remains, the bay and the Dillingham Census Area remain part of the unorganized borough. In that case, the bay and its fish are not a regional resource either. It can hardly be claimed that the bay and the fish belong to the people of the region if those people allow others to reap the benefits of fishing the resource, without paying them for it. However, that can best be done if a borough is formed. A borough can equitably distribute revenue generated from a shared resource.

### *Cohesiveness*

Such a borough would be cohesive. According to data from the state demographer, it would have an estimated population of 5,007. It would be overwhelming Yupik, including in Dillingham. Roughly 2,621 or about 52 percent of people would live in the villages, and 2,386 or about 48 percent would live in Dillingham. The majority of the population would live in the villages. The population of the villages is increasing faster than the rate of growth of Dillingham. Further, there are family, economic, ethnic, and cultural ties that bind all of the communities in the proposed borough together. Many of Dillingham's residents used to live in the villages, and have family and cultural contacts to Dillingham. For those reasons, there is a considerable connection between Dillingham and the villages.

Many comments indicated that the culture is one of sharing. A borough can enable the people of the proposed borough to share the wealth and income that can be derived from taxing the fish.

### *Economy*

A borough could largely be funded by taxing the fish caught in the bay. Most of the people who would pay the tax would live outside the prospective borough. The fishers definitely contribute to the region's economy, but it is common in most of Bristol Bay to levy a local fish tax. In over fifty years, no bay community has been able to realize much of that tax, except for the brief period when Dillingham was able to levy a fish tax.

Presently a resource is escaping the region's people. This resource could be used to better the lives of the region's people.

If a borough was formed, the borough would be responsible for the education in the borough, and the SRSD would dissolve. The borough could have more money for its schools. It would save money by having one school system instead of two. The City of Dillingham would no longer have to pay for its own school system, and have more money for its other expenses. A borough school district would have access to tax revenue which the SRSD does not.

### ***History of Annexation Petitions***

In the 1980s, both Dillingham and Clark's Point sought to annex large portions of the bay. The LBC did not approve any of the petitions, finding instead that the bay was of a regional resource and inappropriate to be governed by a city. Five years ago, the LBC approved the Dillingham petition, largely because it felt that the annexation was acceptable in the absence of any interest of forming a borough. However, things have changed since 2011. First, there are two competing annexation petitions. The LBC cannot grant both of them because their proposed boundaries overlap. Second, the state's fiscal situation has changed dramatically since 2011. Simply put, the region cannot count on the state providing as much money as it did before. The Legislature is looking at ways to cut state spending. It is in the region's best interest that it be as self-sufficient as possible.

### ***It's time***

The LBC's function is to make statewide decisions with long-term vision. The staff recommends that the commission deny both the Dillingham and Manokotak annexation petitions because each would divide a regional resource. Nor should the LBC or the people be content with the status quo because revenue and self-empowerment will continue to elude the region. The bay and its fish are a regional resource that should be used for the common good.

Under article X, section 12, the LBC may consider any proposed local government boundary change. Many of the commenters, including respondents and a petitioner, suggested that the LBC consider proposing a borough. The LBC staff concurs with those suggestions, and recommends that the LBC consider proposing borough formation for the Dillingham Census Area.

The fact that there are competing petitions allows the LBC to look at the history and make a decision that is right. There is precedent for this. In *Oesau v. Dillingham*,<sup>20</sup> the City of Dillingham and the then City of Wood River had incorporated in 1963 within a few days of each other. Their boundaries (as the Dillingham and Manokotak petitions do) overlapped. The LBC stated that if the two cities did not take steps to either form a borough or a single city, the commission would propose a solution. No action was taken by the cities. Therefore, the LBC recommended to the Legislature that the City of Wood River be dissolved, and its boundaries be included within the City of Dillingham. The Legislature did not disapprove of the commission's recommendation, and so the recommendation became law by virtue of the state constitution. The Alaska Supreme Court upheld the boundary change.

The LBC staff finds that the incorporation would promote maximum local self-government, as it would give people a voice in local affairs that affect them. They could voice opinions, speak to their borough assembly members, and hold office themselves.

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<sup>20</sup> 439 P.2d 180 (1968).

For the above reasons, the LBC staff finds that the proposed incorporation is in the best interests of the state, and that 3 AAC 110.065 is met.

### 3 AAC 110.900. Transition

*(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*

*(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*

*(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*

*(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*

*(e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*

*(f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

### **Analysis for a Possible Borough of 3 AAC 110.900**

As no petition was submitted, the LBC staff finds that 3 AAC 110.900 is moot. If the LBC did propose a borough, and the Legislature did not disapprove it, then a transition to establish new borough would be necessary. This would include the dissolution of the SRSD and the formation of a borough school district.

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

*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

Nothing suggests that the proposed incorporation will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. LBC staff finds that the standard of 3 AAC 110.910 is met.

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

*(a) If a provision of this chapter calls for the identification of essential municipal services for a borough, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*

*(1) are reasonably necessary to the area; and*

*(2) promote maximum local self-government.*

*(b) The commission may determine essential municipal services for a borough to include*

*(1) assessing the value of taxable property if the proposed or existing borough proposes to levy or levies a property tax;*

*(2) levying and collecting taxes if the proposed or existing borough proposes to levy or levies taxes;*

*(3) establishing, maintaining, and operating a system of public schools on an areawide basis as provided in AS 14.14.065;*

*(4) planning, platting, and land use regulation; and*

*(5) other services that the commission considers reasonably necessary to meet the borough governmental needs of the residents of the area*

LBC staff finds that education, land use, planning, and platting, and levying and collecting taxes are essential municipal services. The borough will offer these and other services that it deems appropriate. Taxing the regional resource (fish) is an essential municipal service that can be best provided by creating a borough, a political subdivision of the state.

### 3 AAC 110.981 Determination of Maximum Local Self-Government

*In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

*(1) for borough incorporation, whether the proposal would extend local government on a regional scale to a significant area and population of the unorganized borough;*

The LBC staff finds that if formed, a borough would extend local government on a regional scale to a significant area and population of the unorganized borough. The LBC staff finds that a borough would promote maximum local self-government because it would greatly empower the people of the region.

**(14) whether the petition proposes incorporation of a home rule municipality.**

There is no petition, but the recommendation is that the LBC propose a second class borough, not a home rule borough. The LBC staff finds that 3 AAC 110.981 is met.

### 3 AAC 110.982 Minimum Number of Local Government Units

*Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

**(1) for borough incorporation, whether a new borough will be created from the unorganized borough and whether the proposed boundaries maximize an area and population with common interests;**

The proposed borough is currently in the unorganized borough and would form where no borough currently exists. As was found in the analysis of 3 AAC 110.045, the proposed boundaries maximize an area and population with common interests. For those reasons, the LBC staff finds that 3 AAC 110.982 is met.

### Conclusion

LBC staff finds that the borough incorporation standards are met.

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- A. Public Notice of Preliminary Report
- B. Map of Proposed Dillingham Annexation
- C. Map of Proposed Manokotak Annexation
- D. Map of Recommended Borough

## A. PUBLIC NOTICE OF PRELIMINARY REPORT

### **Notice of Preliminary Report Concerning the Consolidated Annexation Petitions from the City of Dillingham and City of Manokotak**

The Local Boundary Commission (LBC) staff will issue a preliminary report June 3, 2016 regarding the consolidated legislative review annexation petitions from the City of Manokotak and the City of Dillingham. The report, both petitions, and all related materials will be available on the LBC website:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofDillinghamandCityofManokotakAnnexationPetitions.aspx>

Standards governing the annexation to cities are established in AS 29.06.040-060; 3 AAC 110.090-140; and 3 AAC 110.900-990. Procedures governing city annexation by the legislative review method are set out in AS 29.06.040 and 3 AAC 110.400-700.

The publication of this report opens a public comment period. Any interested persons or entities may file written comments with the LBC regarding this preliminary report. Comments should also be sent to the petitioners. Comments sent to LBC staff should be accompanied by a statement that the comment was also submitted to the petitioners, or the commenter should notify LBC staff of an inability to send a comment to both petitioners. Public comments must be filed and sent in accordance with 3 AAC 110.480. The LBC has waived the requirement that commenters send a paper original of a comment submitted electronically. The deadline for receipt of all comments is **4:30 p.m., Friday, July 15, 2016** at the address below:

#### **LBC staff**

550 W. 7<sup>th</sup> Avenue, Suite 1640  
Anchorage, AK 99501  
Phone: 907-269-4559/4587  
Fax: 907-269-4563; Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Please also submit comments to both entities listed below:

#### **City of Dillingham**

Attn: Janice Williams, City Clerk  
Box 889, Dillingham, AK 99576  
Phone: 907-842-5211; Fax: 907-842-2060  
Email: [cityclerk@dillinghamak.us](mailto:cityclerk@dillinghamak.us)

#### **City of Manokotak**

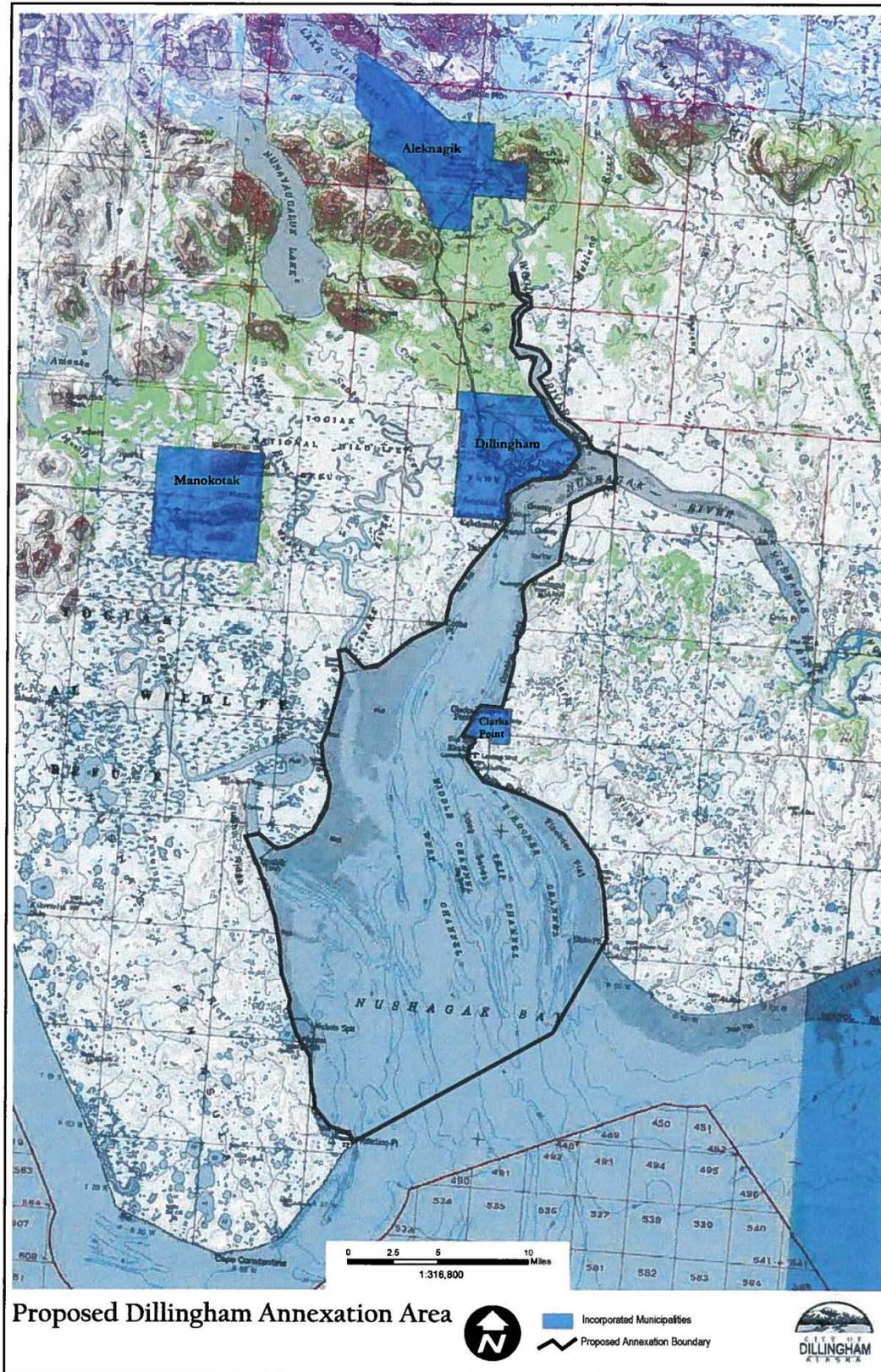
Attn: Nancy George, City Administrator  
Box 170, Manokotak, AK 99628  
Phone: 907-289-1027; Fax: 907-289-1082  
Email: [panilkuk@yahoo.com](mailto:panilkuk@yahoo.com)

Following receipt and consideration of comments on this preliminary report, LBC staff will issue a final report. Procedures governing departmental reports are set out in 3 AAC 110.530. The LBC will then hold at least one local public hearing on the proposal. If approved by the LBC, the annexation(s) will be submitted during the first 10 days of a regular session of the Legislature. If it is not disapproved, it takes effect in 45 days after submission.

Questions may be directed to LBC staff at the mailing address, email address, or fax number listed above. Additionally, inquiries may be directed to LBC staff by calling 907-269-4559 or 907-269-4587.

It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/soalists/DCED-LocalBoundaryCommission/jl.htm>, and following the instructions.

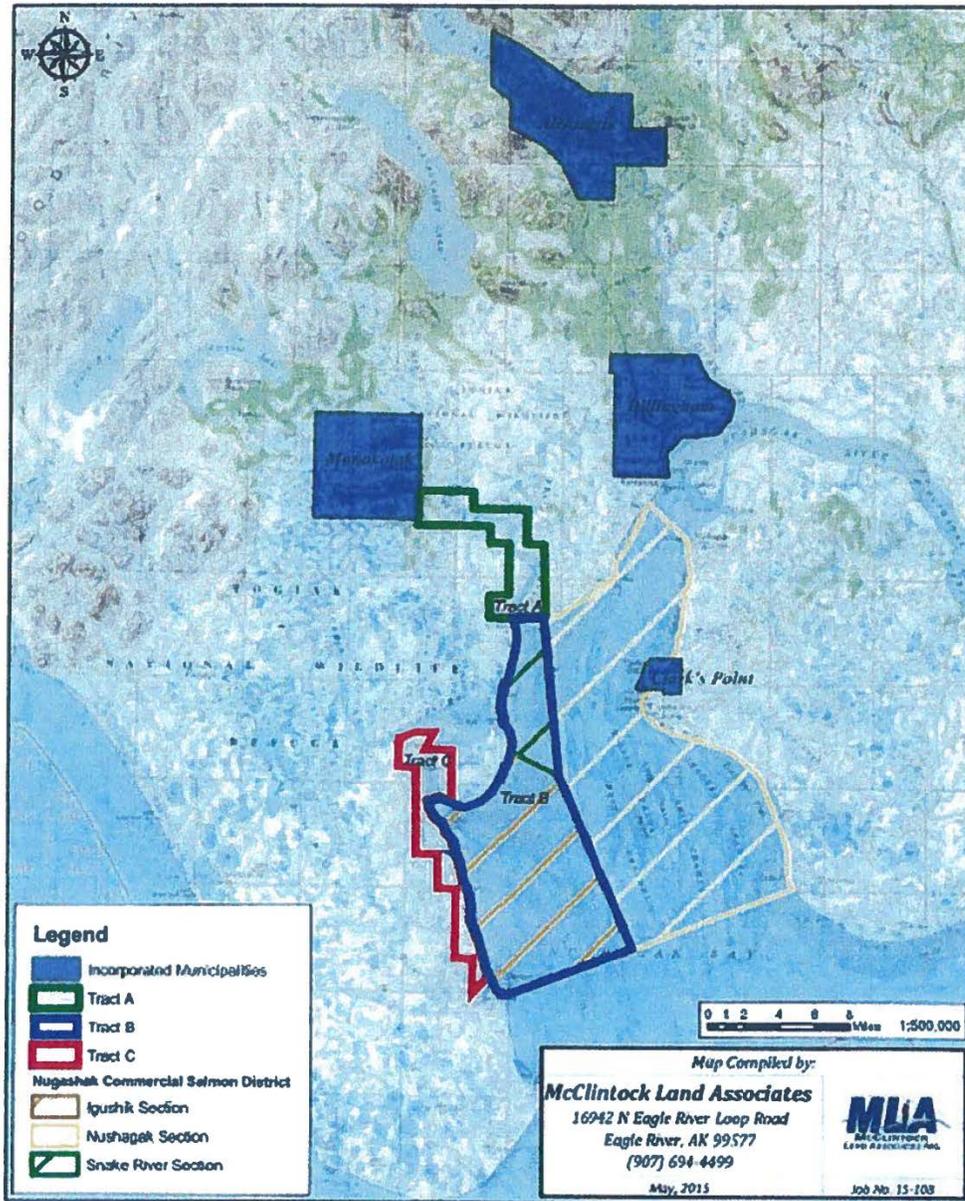
## B. MAP OF PROPOSED DILLINGHAM ANNEXATION



# C. MAP OF PROPOSED MANOKOTAK ANNEXATION

City of Manokotak  
Annexation Petition  
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**Exhibit A-4.1 City of Manokotak and Territory Proposed for Annexation**



# D. MAP OF RECOMMENDED BOROUGH

