

LOCAL BOUNDARY COMMISSION
STATE OF ALASKA

In the matter of the Petition by the City of)
Manokotak to Annex the Weary/Snake River)
Tract, The Snake River Section and Igushik)
Section of the Nushagak Commercial Salmon)
District, and the Igushik Village Tract,)
Altogether Consisting of Approximately 37)
Square Miles of Land and 118 Square Miles)
Of Water, by the Legislative Review Method)
and)
In the matter of the Petition by the City of)
Dillingham to Annex 396 Square Miles of)
Water and 3 Square Miles of Islands)

**COMMENT OF THE CITY OF MANOKOTAK TO THE JUNE 2016
PRELIMINARY REPORT TO THE LOCAL BOUNDARY COMMISSION**

The City of Manokotak (hereinafter "Manokotak") hereby files this written comment to the advisory staff's June 16, 2016 Preliminary Report to the Local Boundary Commission. In the Preliminary Report, staff is recommending that the Local Boundary Commission (LBC) deny Manokotak's petition, claiming that it does not meet certain regulatory standards¹, and that the Commission instead follow its advisory staff's recommendation to incorporate a borough, subject to legislative review, said incorporation to occur unless both houses of the Legislature disapprove by concurrent resolution. The area proposed by the staff covers 25,682 square miles, includes over 5000 people, and would include the cities and villages of Togiak, Manokotak, Dillingham, Aleknagik, Twin Hills, Clark's Point, Ekuk, Ekwok, Portage Creek, New Stuyahok and Koliganek. Under the advisory staff's proposal, this

¹ The report similarly recommends that the LBC deny the pending petition of the City of Dillingham, stating that it did not meet numerous regulatory standards.

borough would be formed without the requirements of submittal of a petition and the significant public notice accompanying that submittal, and without a vote of the residents of that proposed borough.

Manokotak strongly objects to and disagrees with the report's findings and recommendations. The analysis regarding Manokotak's supposed failure to meet the statutory and regulatory standards of annexation is superficial, at best, and the report fails to consider and discuss the large amount of significant and relevant information and data provided to it in Manokotak's petition and its March 18, 2016 Reply Brief.² Instead of being "carefully considered", Manokotak's input is given short shrift in favor of the advisory staff's extensive discussion and recommendation regarding borough incorporation, a matter on which no petition exists. Moreover, advisory staff's recommendation to the LBC to incorporate a borough, subject to legislative review, is flawed and without legal authority or precedent.

I. THE LBC DOES NOT POSSESS THE LEGAL AUTHORITY TO INCORPORATE A BOROUGH IN THE MANNER BEING RECOMMENDED BY LBC ADVISORY STAFF.

Despite recommending that the LBC take action to incorporate a borough in a manner never before utilized in the history of the State of Alaska, the report inexplicably contains almost nothing by way of analysis regarding the proposed methodology. Page 1 of the report states as follows, providing no citations or substantive discussion for its statements:

The Local Boundary Commission has the constitutional authority to submit

² The discussion regarding Manokotak's petition consists of only 12 pages of the 65 page report, and most of those 12 pages is taken up by quotes setting out the applicable standards, and a lengthy, and largely irrelevant, analysis of the petition's eligibility for the legislative review method.

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.^[3]

At page 57, the report briefly revisits the issue, again advocating that the LBC submit a borough incorporation to the legislature, which it refers to as a “local government boundary change”, and citing Oesau v. Dillingham, 439 P.2d 180 (Alaska 1968) for the proposition that the existence of “competing petitions” allows for this.

In short, the report recommends that the LBC, without the benefit of a petition or other petition proceedings, incorporate a borough subject to legislative review under Art. X, § 12, without a vote of the residents of the area to be so incorporated.⁴ However, the Alaska Supreme Court has held that this section of the Constitution does not address borough incorporation, the authority for which derives instead from Art. X, § 3. Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974), which cites Oesau, and the relevant constitutional and statutory provisions directly address this issue, and establish that the preliminary report’s recommendation

³ Art. X, § 12 of the Alaska Constitution reads as follows:

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, which 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.

⁴ The report is not completely specific, but suggests that the submittal be made by the LBC this coming January.

here as to borough incorporation is ill-founded and without legal support.⁵

Mobil Oil addressed a legal challenge made to the formation of the North Slope Borough. In that matter, a petition for incorporation had been filed and an investigation was undertaken by the Local Affairs Agency, the predecessor to the now Division of Community and Regional Affairs (DCRA). Ultimately, the Commission approved the incorporation petition, and a number of interested parties appealed, claiming that the matter involved a “boundary change” which was to be submitted to the Legislature under Art. X, § 12 of the Alaska Constitution. (See, *supra* footnote 3)⁶. The Alaska Supreme Court disagreed, finding that the Legislature’s power to create boroughs derived instead from Art. X, § 3 of the Alaska Constitution, as quoted below, and that the provisions of then Title 7 would govern⁷:

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

⁵ The report suggests the existence of “many comments” recommending borough incorporation and that “the recommendation did not originate with the LBC staff”, rather that the “recommendation is based upon the submitted comments, past borough feasibility studies, and past LBC decisions.” Preliminary Report, pp. 1, 41. In fact, very few comments submitted to the petitions mentioned borough incorporation at all -- of the 37 or so written comments and responsive briefs submitted, the great majority objected to Dillingham’s annexation petition and make no reference to a borough, one recommended studying the feasibility of a borough, one stated opposition to a borough, and one stated in favor of creating a borough. None of the written petition comments recommended that the LBC incorporate a borough, subject to legislative review, without benefit of a petition or regional vote, and the suggestion in the report to the effect that there was a groundswell of public support for the LBC to incorporate a borough is simply not true.

⁶ The appellants argued that incorporation of a borough involved a boundary change because creation of an organized borough changed the boundaries of the unorganized borough. See, Mobil Oil at p. 103.

⁷ The statutory procedures for borough incorporation were then located in Title 7, Chapter 10, of the Alaska Statutes. These were repealed in 1972, and the provisions are now located in Title 29.

population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with commons interest 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.^{8]}

The Court noted the “weakness” of the appellant’s argument equating “the boundary changes contemplated by [Art. X,] section 12 with the unavoidable diminution of the residual unorganized borough whenever a functioning borough government is created.” Mobil Oil at p. 103. Citing Oesau v. Dillingham, *supra*, which involved a boundary dispute between two organized municipalities and not a borough incorporation as contemplated here, the Court noted the different policy issues presented as to controversies over the boundaries of existing municipalities, versus those presented by creation of an organized borough from the unorganized borough. Mobil Oil at pp. 103-104.

Pursuant to the constitutional mandates of Art. X, § 3, the Legislature has established procedures for borough incorporation in Title 29 of the Alaska Statutes, and the LBC’s role in any such incorporation flows from those statutes, not from Art. X, § 12. Generally, borough incorporation is proposed by the filing of a petition with the department. See, 29.05.060, *Petition* (“Municipal incorporation is proposed by filing a petition with the department. ...”) While A.S. 29.05.115, *Incorporation with legislative review*, discusses a (never before used) legislative review method of borough incorporation, it specifically provides that the LBC is not permitted to propose a borough incorporation under Art. X, § 12,

⁸ “By law” refers to the law-making power of the legislature. See, Art. XII, § 11, *Law-Making Power* (“As used in this constitution, the terms ‘by law’ and ‘by the legislature,’ or variations of these terms, are used interchangeably when related to law-making powers. ...”)

This section may not be construed as granting authority to the Local Boundary Commission to propose a borough incorporation under art. X, sec. 12, Constitution of the State of Alaska.

A.S. 29.05.115(b). This same restriction is found in A.S. 44.33.812, which sets out the powers and duties of the Local Boundary Commission. Subsections (a)(3) and (b)(2) of that provision grant authority to the Commission to consider local government boundary changes and present boundary changes to the legislature during the first 10 days of the regular legislative session. However, again, that statute specifically states that a “boundary change’ may not be construed to include a borough incorporation”.

This same analysis of the LBC’s authority and role in borough incorporations is set out in Alaska’s Constitution, A Citizen’s Guide, a seminal work of Alaska constitutional analysis prepared by Gordon Harrison in 1982, under contract with the Alaska Legislature, and now in its fifth edition (2012).

[Section 3] Local petitions to create a borough are made to the local boundary commission created in Section 12 below. (The commission may not create boroughs on its own initiative.)

* * *

[Section 12] The term ‘boundary change’ used in this section refers to changes in established boundaries such as borough annexation and detachment, not to the creation of new cities and boroughs through incorporation. Although the local boundary commission plays a key role in new incorporations and unifications, it does so through authority conferred on it by the legislature under Sections 3 and 7 of this article (which say that cities and boroughs may be incorporated, merged, consolidated, classified, or dissolved in the manner provided by law). The legislature has said that the local boundary commission may not consider the creation of a new borough under this section (AS 29.05.115).

Alaska’s Constitution, A Citizen’s Guide, (2012), pp. 169, 175.

The LBC’s regulations similarly do not contemplate a procedure by which a borough may be incorporated by the LBC by the legislative review method and without

submittal of a petition, or compliance with the myriad of other extensive requirements imposed upon all petitioners. 3 AAC 110.400 states that the provisions of .410-.700 apply to incorporations; specifically, section 3 AAC 110.420 sets out the numerous required components of a petition⁹, which must undergo extensive technical review (3 AAC 110.440), notice (3 AAC 110.450), reporting (3 AAC 110.530), and a hearing (3 AAC 110.550). No specific, separate procedures for legislative review incorporations have been promulgated. (See, 3 AAC 110.425 for legislative review *annexation* petitions).¹⁰

Even if one assumes, *arguendo*, that the Commission possesses the implicit authority to incorporate a borough by legislative review under Art. X, § 12, advisory

⁹ The LBC website contains a number of informational handouts. These include a three-page document entitled Procedures for Borough Incorporation by Legislative Review, which lists "Stage One" as "Filing the Petition".

¹⁰ Another legal issue regarding the incorporation methodology urged by the report would be raised under *Abrams v. State*, 534 P.2d 91 (Alaska 1975). In *Abrams*, the Alaska Supreme Court rejected a legislative enactment which called for a borough incorporation election for the Eagle River-Chugiak area. The Court determined that it constituted a prohibited local or special act under Art. II, § 19, as

there ... exists, a comprehensive statutory system for the incorporation of boroughs, ... The general law scheme for organizing a borough consists of a petition to the Department of Community and Regional Affairs, a review of that petition for form by the Department, public hearings by the Local Boundary Commission, and a decision by the Commission as to whether the standards set out in the statutes have been met. In the event of favorable Commission action, an election can be held within the area proposed for incorporation.

Abrams at p. 93. The Court found nothing specific to the area at issue to justify "a departure from the general law scheme of incorporating a new borough." *Abrams* at p. 95.

Here, similarly, no facts presented in the preliminary report justify a departure from the extensive statutory and regulatory process which exists for borough incorporation. Even worse than the situation presented in *Abrams*, the methodology proposed here would deny area residents a vote on the matter.

staff's recommendation that the LBC do so here, without the presentation of a petition and opportunity for area residents to comment and vote on that petition, is a complete affront to local and public process.

The preparation of a petition for borough formation, as noted in one of the Department's own informational sheets (entitled Borough Incorporation), is a significant commitment of time, money and other resources.¹¹ After the filing, the petition then proceeds through an extensive review, analysis and vetting process, both by LBC staff and the public at large. Proceeding here, as the report recommends, in the absence of a petition, completely evades that process.

Since there is no petition, there is no accurate budget available for such a theoretical borough, either for revenues or operating expenses, nor any budgetary information for the eleven communities located within the proposed borough (seven of which are incorporated); no identification of the specific type(s) or amounts of taxes to be assessed or collected; no setting out of services which the area residents wish the borough to undertake; no analysis regarding the best type of borough to be created; no transition plan, including a plan for undertaking to run a borough-wide school district; no discussion as to the relationship between this new borough and the existing city and village governments which would be located within the borough; no discussion regarding existing debt service, and payment thereof; and no analysis of

¹¹ "Borough incorporation requires a big commitment of time and other resources. Before making a decision to begin work on incorporation, a lot of thought should be given to researching and planning the process. The borough incorporation process follows a set chain of events, which formally begins when a signed petition and other required documents are filed with the Local Boundary Commission (LBC). ... It typically takes several months (in some cases a year or more depending on the local effort) to prepare a proper petition. ... The process for review of the proposal by the LBC typically takes about one year. ..." Borough Incorporation, pp. 1, 3.

the apportionment of the theoretical borough's governing body, including how to address and prevent the potential domination of the borough by the City of Dillingham, whose population nearly equals that of the other 10 communities combined (and whose voter registration exceeds that of the other communities).¹² Some of these significant lapses of information are noted in the report itself:

“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.” Preliminary Report, p. 48.

“The reasonably anticipated income of the proposed borough cannot be calculated at this time.” Preliminary Report, p. 49.

“As the proposed borough ... would prepare its own budgets, there are no precise budget numbers available.” Preliminary Report, p. 50.^[13]

“Such a borough would determine the extent of its powers, duties, and functions. It would decide what taxes to levy.” Preliminary Report, p. 55.

Other requirements are simply glossed over. (“As no petition was submitted, the LBC staff finds that 3 AAC 110.900 [Transition Plan] is moot.” Preliminary Report, p. 59; “There is no petition, but the recommendation is that the LBC propose a second class borough, not a home rule borough.” Preliminary Report, p. 60).

For its financial analysis, the report relies on a cursory synopsis of six borough feasibility studies to affirmatively declare the financial viability of such a theoretical borough. Preliminary Report, p. 51. In fact, four of the studies are between twenty-two

¹² Per the State of Alaska, Division of Elections, November 4, 2014 General Election information, the City of Dillingham had 1560 registered voters, with 727 votes cast. The communities of Aleknagik, Clark's Point, Ekwok, Koliganek, Manokotak, New Stuyahok and Togiak (which includes Twin Hills) together had a cumulative total of 1545 registered voters, with 599 votes cast. See, <http://www.elections.alaska.gov/results/14GENR/data/sovc/hd37.pdf>

¹³ Despite the lack of a budget for this theoretical borough, including estimated revenue and expense figures, and the lack of any specification of the municipal services to be provided, the report somehow finds that the borough possesses the financial resources to provide for “municipal services on an efficient, cost-effective level.” Preliminary Report, p. 50.

and twenty-eight years old, the fifth study didn't include the cities of either Togiak or Manokotak, the second and fourth largest cities, respectively, which would be located within this theoretical borough, and the analysis contained in the sixth, and most recent, study (2012, Waring and Smythe) is certainly more uncertain and complex than is described in the preliminary report.¹⁴

Perplexingly, the preliminary report fails to cite to the LBC's own comprehensive report, created in 2003 at the direction of the Alaska Legislature to review and report upon the areas of the unorganized borough which met the standards for borough incorporation.¹⁵ After studying in depth the financial feasibility and economic capacity of the areas, the LBC found that the Aleutians West Model Borough, Upper Tanana Model Borough, Copper River Basin Model Borough, Prince William Sound Model Borough, Glacier Bay Model Borough, Chatham Model Borough, and Wrangell-Petersburg Model Borough would all meet borough incorporation standards.¹⁶ The report did not find the Western Bristol Bay area met borough incorporation standards.¹⁷

¹⁴ "The findings of this preliminary fiscal feasibility study are necessarily qualified by the time constraints under which it was prepared. Many assumptions were made, much information was quickly compiled and analyzed, and some 'guesstimates' were made. Inevitably, a more thorough and leisurely analysis could refine the assumptions, add factual detail, and narrow the range of uncertainty about the major findings. Moreover, different assumptions, about such key factors as borough service levels or future revenues, might alter the findings." Preliminary Assessment, Fiscal Feasibility of a Potential Western Bristol Bay Borough, February, 2012, Waring and Smythe, p.1.

¹⁵ Unorganized Areas of Alaska that Meet Borough Incorporation Standards, February 2003.

¹⁶ The Petersburg and Wrangell boroughs have since been formed, via local action.

¹⁷ Since 2003, as far as petitioner is aware, the LBC has not initiated any action to create boroughs in the areas which it found met incorporation standards in this report, via local action or any other method. The advisory staff is now urging the LBC to skip over these remaining six areas it found met borough incorporation standards, in order to propose a petition-free

Lastly, the petition-free methodology proposed here virtually ensures that not all interested parties will be provided adequate public notice of or due process in potential borough incorporation. This report recommends that the Commission, in connection with the pending annexations and in the absence of any borough petition, incorporate a borough subject to review by the Alaska Legislature in January (barely six months from now), which will automatically come into existence unless both houses of the Legislature concur in rejecting it. The public is given 28 days to respond to the report, by July 15th, in the midst of the Bristol Bay fishing season. Two of the communities proposed for inclusion in this theoretical borough (Togiak and Twin Hills) are not even included in the notice list for the pending petitions. The opportunity of many other affected parties to comment on this borough incorporation proposal – including neighboring municipal and tribal governments, regional service organizations, state and federal agencies, Native corporations, the fish industry and other economic interests – would be severely curtailed. Any suggestion that ample public notice is being provided here is simply not well founded.¹⁸

In short, in the absence of a petition, and the regulatorily adopted petition process, there has been a complete absence of the vigorous study and analysis that the contents of such a petition would generally undergo. Such requirements are imposed on every single petitioner that comes before the LBC, and yet the advisory staff, in their preliminary report, inexplicably urges that the Commission itself proceed

borough incorporation of an area which the LBC found did not meet the standards.

¹⁸ The report (at p. 55) ironically touts the notice being provided here, comparing it favorably to a legislatively-mandated borough (which hasn't occurred in the State since 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." Emphasis in original).

without such requirements being fulfilled, and in a manner which denies adequate public input and comment. Nevertheless, the report, which recommends incorporation of a borough, finds its recommended theoretical borough to meet incorporation standards. The fact that the report finds such statutory and regulatory standards to have been met in the absence of almost all of the data and information generally required to be contained in a petition, calls into question the true impartiality and informed judgment behind the preliminary report and its findings.

While 3 AAC 110.435 specifically prohibits LBC advisory staff from acting in an "advocacy capacity" as a petitioner¹⁹, that is in essence exactly what is occurring here. The preliminary report, instead of seriously evaluating the Manokotak proposal and the multitude of information provided, instead advocates for its own borough incorporation proposal, recommending an ill-founded and inappropriate methodology, and relying heavily upon its own preferences about debated policy issues such as "local self-empowerment", "allocation of regional resources", "collective voice", and "dwindling state resources". Such policy determinations are generally not viewed as within the purview or role of advisory staff, whose proper role is to thoroughly and fairly evaluate submitted petitions submitted on the basis of the statutory and regulatory standards. Manokotak's petition received no such treatment, and the preliminary report is basically an inappropriate evaluation of and advocacy for advisory staff's own petition-free incorporation proposal.²⁰

¹⁹ LBC advisory staff is also not a permitted petitioner under 3 AAC 110.410(a).

²⁰ It should be noted that the City of Manokotak is participating in Bristol Bay Native Association's current borough study. The City understands and sees the need to learn more about what a borough might mean for its community and the region. However, the City is

II. THE PRELIMINARY REPORT IS IN ERROR IN FINDING THAT THE PENDING PETITION FILED BY THE CITY OF MANOKOTAK DOES NOT MEET THE STATUTORY AND REGULATORY STANDARDS FOR ANNEXATION.

The report claims that Manokotak's petition does not meet several regulatory standards, specifically: 1) that the territory sought by the City does not demonstrate a reasonable need for city government (despite finding, in relationship to the City of Dillingham's petition, that the whole of Nushagak Bay, which includes the Igushik Section sought by Manokotak, does in fact demonstrate a need for city government), 2) that the City doesn't have the human resources to provide essential services (based upon the sales tax delinquency of one entity), 3) that the City, after annexation, would be too large (despite numerous similarly sized cities throughout Alaska, especially those with large adjacent fishing grounds), and 4) that annexation, in general, would not be in the best interests of the State because a borough should be formed instead. The analysis set forth for these findings in the report is often superficial, and in some cases, nonexistent. Very little use is made of the voluminous information that has been provided to the Department by the City of Manokotak in its filings.

- A. The territory sought by the City exhibits a reasonable need for City Government, and the levy and collection of taxes is a necessary governmental service.

Manokotak divided the single territory proposed for annexation into three tracts for purposes of discussion in its petition -- Tracts A, B and C. Tract A is the Weary/Snake River Tract, which consists of the river corridor and uplands from the

absolutely opposed to entrusting its community's schools to any proposed borough until there is a rigorous, convincing fiscal analysis that demonstrates a borough's long-term capability to operate a well-funded school system.

City's boundary to the mouth of the Snake River. This is the most heavily traveled route between Manokotak and the Igushik Section of Nushagak Bay. It also contains the much utilized Weary River Road and boat landing, maintained by the City. Tract B is the Snake River and Igushik Sections of the Nushagak Commercial Salmon District. Tract B is the water bridge between the City of Manokotak and Igushik Village, which is the home base for Manokotak's set net and drift net fishermen, who are the primary users of the Igushik Section, Manokotak's single most important commercial and subsistence harvest location. Tract C contains Igushik Village, the seasonal home for more than 75% of Manokotak residents at their summer fish camps.

Manokotak has filed a single petition to annex a single territory in its entirety, not three separate territories. The petition's subdivision of the territory into three interdependent tracts facilitates an orderly narrative of facts and clarifies the unifying interrelationships within a complex territory. The petition does not propose to annex three separable territories. Manokotak's petition and supporting brief extensively discussed and demonstrated that the territory as a whole has a reasonable need for city government based on:

1. Existing social and economic conditions and existing residential growth;
2. Existing health, safety and general welfare conditions;
3. Existing economic development;
4. The inadequacy of existing services;
5. The impracticality of extraterritorial powers to meet existing needs; and
6. The benefits already received by seasonal and transient occupants of the territory.

In short, the petition satisfies all six factors enumerated in 3 AAC 110.090.

The report concedes that Tracts A and C of the territory need essential municipal services, and explicitly finds that “no other municipality is likely to provide the services that Manokotak proposes...” Preliminary Report, p. 29.²¹ However, the report goes on to state, citing no evidence whatsoever, that Tract B does not show a reasonable need for city government and extrapolates from that finding to conclude that “overall the territory does not exhibit a reasonable need for city government, and that the standard is not met.” Preliminary Report, p. 28.²²

The report’s application of this standard to Manokotak’s petition is flawed and its conclusion is invalid. All regulatory standards for city annexations clearly state that the standards are to be applied either to “the territory” or to “the proposed expanded boundaries” of the city. By regulation, “‘territory’ means the geographical lands and submerged lands forming the boundaries in a petition regarding a city government or forming the boundaries of an incorporated city;”. See, 3 AAC 110.990(32). Consistent with the clear language of the regulatory standard, the report should have assessed whether the territory, taken as a whole, meets the standard. Under its flawed reasoning, if any remote, isolated part of a territory, small or large, did not have a reasonable need for city government, then the entire territory would fail to meet the

²¹ These services include road maintenance, search and rescue services, sanitary facilities, potable water and planning.

²² The total of the report’s “analysis” as to Tract B consists of one conclusory statement at p. 28 (“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 report sets out no facts to support this conclusion, and contains only a limited discussion regarding the services that are already provided, and those strongly needed, in the territory, including Tract B.

standard. As far as Manokotak is aware, the LBC has never before used such reasoning, requiring every part of a territory sought to be separately analyzed and separately exhibit a need for government.²³

Furthermore, as noted in Manokotak's petition, Tract B is in fact an integral part of the territory as a whole and demonstrates a need for government. The salmon bounty of the Igushik River system is the reason for being of the historic and modern settlement at Igushik Village, and for Manokotak itself. The Igushik River system supports both the set net fishery on Igushik beach and the offshore drift net fishery. These Igushik Section fisheries are the economic mainstay of Igushik Village and of Manokotak. The Igushik Section fisheries drive the need for local government and municipal services at Manokotak and in the territory, whether onshore at Igushik beach, offshore in the Igushik Section, or along the Weary/Snake River Tract. The Igushik Section is not just an indispensable part of the territory; it is the lifeblood of the territory, and of Manokotak as well.

The Igushik fishery is mainly conducted by Manokotak residents, who would be the primary beneficiaries of the annexation and bear most of the raw fish tax burden.²⁴ Proposed municipal services include search and rescue services for fishermen, emergency health care services, public safety including enforcement of city

²³ Contrary to how it addressed Manokotak, the report dealt with the 'need' standard in the City of Dillingham's petition in a unified manner, finding that the territory sought by Dillingham, which includes the waters of Nushagak Bay (which in turn includes the Igushik Section which is also included in Manokotak's petition (Tract B)), exhibits a reasonable need for city government. In other words, the report inconsistently finds that the overlapping territory exhibits a reasonable need for city government, in the case of Dillingham's petition, but finds that that same territory does not exhibit a reasonable need for city government, in the case of Manokotak's petition.

²⁴ At page 29, the report acknowledges that the residents of Manokotak fish within Tract B.

ordinances²⁵, pure water, sanitary facilities, ice supply, tax collection, and small boat landing and storage for use of fishermen active in the Igushik fishery.

Some services would be based within Tract A (the main transportation corridor to other portions of the territory to be annexed) but available to fishermen and others active in Tracts B and C. Some services would be based within Tract C but available to fishermen and others active in Tract B. Some services would be provided within Tract B to fishermen and others active there. Some services would be based within the existing City of Manokotak, but available to fishermen and others conducting operations in Tracts A, B and C.

Even as the report acknowledges that the Igushik Section is “an important source of revenue to Manokotak” (Preliminary Report, p. 28), it denies the corollary that the Igushik Section is also a needed and appropriate source of tax revenues to fund municipal services in the territory. However, in other reports on city annexations, advisory staff has expressly stated that levy and collection of taxes is in itself an essential municipal service provided by and needed for city government, without which a municipality cannot function. See, DCRA Report – City of Akutan Annexation by Local Action Unanimous Consent Method, March 2012, p. 34 (emphasis added):

Commerce finds that the essential municipal services related to this petition are fire fighting because that protects life and property, and so is reasonably necessary to the community. Commerce also finds the levying and collection of taxes to be an essential municipal service because without it, a municipality cannot function. For that reason it is reasonably necessary to the community.

And the Preliminary Report to the Local Boundary Commission concerning the

²⁵ Manokotak has a well-established group that has provided important safety assistance to both residents and fishermen (set netters and drift netters) in the Igushik locale (both Tracts B and C).

petitions for incorporation of Big Lake as a second class city, and for annexation to the City of Houston, December, 2014, p. 34 (emphasis added):

Regarding 3 AAC 110.970(c)(1) for Houston, *the essential municipal services include levying taxes because without revenue, a municipality cannot function.* Tax levying and collection are reasonably necessary.

The LBC Decisions on these petitions concurred in these statements.²⁶

Here, without annexation of Tract B, and jurisdiction to levy and collect a raw fish tax, the City will not have sufficient financial resources or jurisdiction to provide and deliver what the report otherwise acknowledges are essential services in Tract A, B, or C.²⁷

In short, the territory as a whole is one integral unit, and it demonstrates significant need for city governmental services. Without the territory as a whole, Manokotak will not have jurisdiction to deliver any needed services, in an efficient manner, that no other municipality can provide.²⁸ The territory proposed for annexation by the City of Manokotak's petition fully and clearly meets the 'need' standard set out in 3 AAC 110.090.

²⁶ "The commission finds that 3 AAC 110.970(d) includes "levying and collecting taxes" and "public safety protection" as services which the LBC can consider to be essential municipal services in this petition." LBC Decision on the City of Akutan Annexation Petition, p. 13; "The commission determines essential municipal services for Houston to include the levying and collection of taxes. That function is reasonably necessary because without it a municipality cannot operate." LBC Decision on the City of Houston Annexation Petition, p. 6.

²⁷ The LBC has previously found "a reasonable need for city government" in its incorporation or annexation decisions for small cities whose proposed boundaries included extensive, unpopulated fishing waters that were an important source of revenue to them. See, discussion in section II(C) below.

²⁸ Dillingham has not offered to provide the necessary services at Igushik Village or in the Igushik Section, and it cannot provide those services in a cost-effective and efficient manner to territory which is so distant to Dillingham.

B. The City possesses the human and financial resources to provide essential municipal services.

3 AAC 110.110 requires that the economy within the proposed expanded boundaries of the city include the human and financial resources necessary to provide municipal services, taking into account a number of different factors, including anticipated functions, anticipated expenses, actual and anticipated revenues, and feasibility of proposed budgets. The entirety of the preliminary report's analysis on this is three short, conclusory sentences, at page 30:

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 [the] city would not have the same problem collecting fish taxes.

The report contains no analysis of Manokotak's current and transition budgets, or past budgets and financial statements; no discussion of the functions to be performed within the expanded boundaries, and the costs of those services and functions; no explanation of the services which Manokotak is already providing to the territory, and the costs it is expending to do so; no setting out of the existing City staff, and their experience; no examination of the City's past financial filings and other compliance matters; and no analysis as to the portion of anticipated revenues which the referenced sales taxes bear to the total city revenues. In short, the section contains none of the analysis that one would expect or anticipate to accompany such a "finding".

Contrary to, and completely ignored by, the preliminary report, Manokotak's petition presents plentiful evidence that the City has performed effectively for years, and has the staff and budget plans to extend essential municipal services within its

proposed expanded boundaries. As documented in its petition, the City has for years ably provided water and wastewater utilities, refuse collection and landfill activities, road maintenance, public safety (in the form of supporting a VPSO position), provision of equipment and personnel for fire-fighting and search and rescue activities, comprehensive planning, and road maintenance and boat landing maintenance in the Weary River locale.

Furthermore, the competence and sufficiency of the City's human resources is manifest in DCRA's own Community Status Report which reports that the City of Manokotak is current in all respects tracked:

- Financial documents are filed
- Municipal elections have been held on schedule
- There are no liens on the City
- Workman's compensation coverage is current
- There are no outstanding fuel loans
- The City has no delinquent audits

Additionally, the City's Certified Financial Statements, again available on DCRA's own website, consistently show the City's ending each fiscal year with a positive cash balance.

Notwithstanding this compelling evidence, demonstrating that Manokotak has, for years, successfully managed, financed, and delivered essential municipal services to its residents, the report "does not find that Manokotak has the human resources to provide essential municipal services." See, Preliminary Report, p. 30. The only evidence that is referenced is the failure of a single entity to timely forward sales tax

receipts due to the City.

The entity in question operates the local store. For a period of time, that entity did not possess adequate staff to timely file monthly sales tax returns. The City took appropriate and consistent efforts to bring that delinquency current, and the delinquency was in fact cured, in full, last year. The entity has unfortunately once again fallen behind, however, again, the City has been actively pursuing discussions with the entity to once again achieve full compliance.

The sales tax in question totals approximately \$20,000 on an annual basis, or approximately 2% of the total anticipated revenues for the Transition budget, years one and two (or less than 4% of the total non-capital grant revenues for that same period). During the past periods of delinquency, the City continued to fully perform its functions, pay its bills, and finish the applicable fiscal years in the black, and there is absolutely no evidence to suggest that the delinquency is not being dealt with appropriately by City officials or that it has in any way interfered with the City's operations. Yet, based upon this singular issue, with no further explanation, the report concludes that the City fails to meet the 'human and financial resources' standard, with its double-negative conclusion: "It is not clear to the LBC staff that the city would not have the same problem collecting fish taxes."

This unsupported and conclusory statement disregards the historical evidence, supported by DCRA's own documents, that the City has, for years, successfully managed, financed, and delivered essential municipal services to its residents, and ignores the information provided by the City as to the feasibility of imposition and collection of the anticipated raw fish tax. See, Manokotak's Reply Brief, pages 17-21.

It is hard to imagine that all other municipalities within Alaska have a 0% delinquency rate on their sales tax collections, or do not experience, from time to time, difficulty with certain collections. In fact, State of Alaska agencies, have, from time to time, had difficulty timely collecting hundreds of millions of dollars owed from oil revenues, loan payments and other debts. The advisory staff's conclusion that Manokotak does not possess the necessary financial or human resources to operate effectively and efficiently, based upon one sales tax delinquency, is wholly without substance or merit. The City's record of providing effective local government since its inception overwhelmingly support a finding that Manokotak's petition meets this standard.

C. The City meets the boundaries standards of 3 AAC 110.130(c)(1).

Again, completely without substantive support and in a conclusory fashion, the report claims that the size of the expanded city boundaries (approximately 191 square miles) are "not on a scale suitable for city government", as the scale is "more suitable for a borough." The conclusion that the city is 'too big' is completely inconsistent with past findings and conclusions by advisory staff and the LBC in similar proceedings, and thus appears wholly driven by the borough incorporation proposal advocated by the report.

The key regulatory term on which the report rests -- "the proposed expanded boundaries of the city . . . must be on a *scale suitable for city government* . . ." -- is not further defined in LBC regulations, and the regulations do not specify a particular numerical size or size range as "a scale suitable for city government". Lacking specific regulatory guidance, the most authoritative guidance can be found in the LBC's

application of the term “a scale suitable for city government” in past annexation proceedings. The staff report findings and conclusions on the scale of the recent City of Akutan annexation petition, affirmed in the LBC’s decision on the matter, are a recent and pertinent example.

For 3 AAC 110.130(c)(1), the proposed post-annexation city size would consist of 65.58 square miles of land, and 82.33 square miles of water, or 147.91 total square miles. While this is larger than many cities, Commerce finds that it is still on a scale suitable for a city.

As Commerce found with the Dillingham petition, other Alaskan municipalities are reasonably large, but still on a scale suitable for city government. St. Paul, for example, has 40 square miles of land, and 255.2 of water, for a total city size of 295.2 square miles. Togiak has 45.2 square miles of land, and 183.3 of water, for a total city size of 228.5 square miles. Valdez has 222 square miles of land, and 55.1 square miles of water, totaling 277.1 square miles. Skagway has 464.3 municipal square miles, which was the total municipal size when it was a city, as well as the size after the city was dissolved and incorporated as a borough. The LBC recently approved a Dillingham annexation petition that brought that city’s size to over 400 square miles of land and water. This shows that Akutan’s size is comparable to other cities, and is of a scale suitable for city government.

DCRA Report – City of Akutan Annexation by Local Action Unanimous Consent Method, March 2012, p. 29 (footnote omitted). The advisory staff similarly found the City of Dillingham’s proposed post-annexation size (36.84 square miles of land and 397.94 square miles of water, for a total of 434.78 square miles, or over twice the size of Manokotak’s proposed post-annexation size) consistent with the boundaries regulatory standard in Dillingham’s previous annexation proceeding. See, LBC Preliminary Report – City of Dillingham Local Action Petition to Annex Territory, January 2011, p. 57.²⁹

²⁹ The matter was overturned on appeal on procedural grounds, and did not address any of the LBC’s substantive findings and conclusions.

In addition to Akutan, St. Paul, Togiak, and Valdez, the LBC has previously approved the cities of:

Unalaska (111 square miles of land and 101.3 square miles of water, for a total of 212.3 square miles);

St. George (34.8 square miles of land and 147.6 square miles of water, for a total of 182.4 square miles);

Pilot Point (25.4 square miles of land and 115.1 square miles of water, for a total of 140.5 square miles); and

Egegik (32.8 square miles of land and 101.2 square miles of water, for a total of 134 square miles).

Manokotak's post-annexation size, if analyzed on a population per square mile basis, would also be commensurate with a number of other cities previously approved by the LBC:

<u>City</u>	<u>Population</u>	<u>Sq. Miles</u>	<u>Population Per Sq. Mile</u>
<u>St. George</u>	<u>82</u>	<u>182.4</u>	<u>.45</u>
<u>Pilot Point</u>	<u>76</u>	<u>140.5</u>	<u>.54</u>
<u>Egegik</u>	<u>104</u>	<u>134.0</u>	<u>.77</u>
<u>St. Paul</u>	<u>427</u>	<u>295.5</u>	<u>1.45</u>
<u>Adak</u>	<u>275</u>	<u>127.3</u>	<u>2.16</u>
<u>Manokotak</u>	<u>482</u>	<u>190.7</u>	<u>2.52</u>

Source: DCRA Online Community Information Database, containing square mile land/water information, and 2015 DCCED Commissioner certified population figures.

Manokotak's decision to seek annexation of the Igushik Section is not arbitrary. The shape and size of the Igushik Section reflects the Department of Fish and Game's professional judgment as to the appropriate management boundary of the Igushik River system-related fisheries so closely associated with Manokotak. As noted in Manokotak's petition, at p. 23,

The Igushik Section is a discrete management sub-area of the Nushagak Commercial Salmon District. ADF&G has a specific management plan and goals for the Igushik River system sockeye salmon run. ...

'Igushik River sockeye salmon will be managed independently of the Nushagak-Wood River sockeye salmon stocks.'

Manokotak is the only community on or near the Igushik River, and the community primarily engaged in and most dependent on the Igushik Section fisheries. Here, Manokotak's petition to annex the Igushik Section closely resembles in scale previous petitions, both approved by the LBC, by the cities of Egegik and Pilot Point, to incorporate the fishing grounds most closely associated with the river systems (Egegik and Ugashik Rivers, respectively) on which their communities were situated and on which their livelihoods depended.

Furthermore, the report's statement that the territory proposed for annexation is of a size "more suitable for a borough" is completely inconsistent with the general size and intent of boroughs in Alaska. The territory proposed for annexation is approximately 157 square miles, barely one-half of one percent of the staff's conjectured borough, and a fraction in size of the typical borough within the State. Most boroughs are, at a minimum, several thousand square miles in size.

In sum, Manokotak's "proposed expanded boundaries" are "on a scale suitable

for city government” when compared to boundaries the LBC has approved for other cities in similar circumstances, that is, cities heavily dependent on nearby commercial fisheries for their economic and revenue base, and Manokotak’s proposed expanded boundaries meet this standard.

D. The City meets the boundaries standards of 3 AAC 110.130(c)(2).

The preliminary report’s finding on this standard, -- which states that the proposed expanded boundaries of the city may not include “entire geographical regions or large unpopulated areas” – is somewhat puzzling. The report, at p. 31, first determines that the City meets this standard:

The LBC staff finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas.

This finding is entirely consistent with application of the standard in previous proceedings, including the Akutan annexation petition.

For 3 AAC 110.130(c)(2), Commerce finds that the proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas. The terms ‘region’ and ‘area’ apply to boroughs. 3 AAC 110.990(28) states that ‘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.’

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.’

Commerce finds that as the terms 'region' and 'area' apply to boroughs, they are not pertinent here. Akutan is not attempting through its annexation proposal to be the size of a borough.

DCRA Report – City of Akutan Annexation by Local Action Unanimous Consent Method, March 2012, pp. 29-30.³⁰ In short, based on the LBC's established regulatory interpretation and application, Manokotak's proposed expanded boundaries do not encompass an 'area' or 'region' suitable for a borough.

However, the report then goes on to state, to the contrary, that the standard *isn't* met as the boundaries are not suitable "because they are more appropriately in a borough." Preliminary Report, p. 31. This statement wholly ignores Alaska's constitutionally-established structure of local government, whereby territory can, at once, be in both city and borough jurisdictions. Alaska's State Constitution and Title 29 clearly permit overlapping city and borough governmental jurisdictions, and the LBC has approved overlapping boundaries for 49 existing cities located within 11 organized boroughs. Alaska Taxable, 2015, pp. 20-21. Here, Manokotak's proposed expanded boundaries are not inconsistent with inclusion in a later larger borough, should one be incorporated in the future, and the report's proffered rationale is contrary to both the constitutional structure of Alaska's local government system and past LBC's decisions. Consistent with the rationale in the LBC's recent decision approving the City of Akutan annexation and consistent with the LBC'S long history of approving city incorporations and annexations within boroughs, 3 AAC 110.130(c)(2) does not present an impediment to Manokotak's petition.

³⁰ The LBC Decision on the Akutan Annexation Petition, at p. 9, concurred with the report's conclusion that the "proposed expanded boundaries of the city do not include entire geographical regions or large unpopulated areas."

E. The City meets the “best interests of the state” standard set out in 3 AAC 110.135.

In considering whether a petitioner meets the “best interests” standard of A.S. 29.06.040(a), the Commission may, under 3 AAC 110.135, consider if the annexation would promote maximum local self-government, minimize the number of local governmental units and relieve the state government of the responsibility of providing local services.³¹ Manokotak’s annexation petition presents evidence that the petition meets all three of these regulatory factors. See, Manokotak Petition, pp. 81-82. The preliminary report does not dispute Manokotak’s petition on these points, and indeed appears to concur on points (a) and (b), and makes no comment on point (c). Preliminary Report, pp. 32, 39.

Instead, the report invents a novel factor, not found in the standard and not rationalized by any reference to the standard, to conclude the “best interests” standard is not met -- that Manokotak’s petition does not meet the “best interests” standard because “[Nushagak Bay] and its fish that are a regional resource should be used for the common good” and “not be divided between two or more cities.” Preliminary Report, p. 32. This premise -- that all of Nushagak Bay’s fisheries resource should be grouped together and reserved exclusively for some future borough -- has no foundation in the standard, in fact or in LBC precedent.

To the east of Nushagak Bay, the Bristol Bay fisheries are both regional and local fisheries. There, both boroughs (Bristol Bay and Lake and Peninsula Borough)

³¹ These are optional factors, in that the regulation states that the commission “may” consider the three factors in determining whether annexation to a city is in the best interest of the State under A.S. 29.06.040(a).

as well as three Lake and Peninsula Borough cities (Chignik, Egegik, and Pilot Point) impose and collect raw fish taxes. The commercial fisheries in the Aleutians East Borough are also both regional and local fisheries. The Aleutians East Borough and four of its cities (Akutan, False Pass, King Cove, and Sand Point) all levy and collect raw fish taxes in their jurisdictions. See, Alaska Taxable, 2015, p. 20. In all of these jurisdictions, raw fish taxes are imposed by and shared amongst the borough and its cities. The LBC approved the jurisdictions for all of these cities and boroughs.

Many cities in the unorganized borough also levy and collect fish taxes within their jurisdictions, e.g., Adak, Atka, Gustavus, St. Paul, Togiak, and Unalaska. See, Alaska Taxable, 2015, pp. 22-24. That these cities in the unorganized borough might someday share jurisdiction with some potential future borough was not an impediment to the LBC's granting them jurisdiction such as to tax their fisheries. It was also apparently not an impediment to the LBC's approval of Togiak's annexation of Togiak Bay, presumably also part of some future Western Bristol Bay borough's regional fisheries resource.

Cities in organized boroughs share jurisdiction and power to levy and collect taxes within their boroughs. Currently, 23 cities in boroughs levy and collect various taxes their boroughs also collect, including real and personal property tax, sales tax, bed tax, alcohol tax, raw fish tax, or tobacco tax. See, Alaska Taxable, 2015, pp. 16-21. Shared jurisdiction and collection of taxes, including raw fish taxes, is commonplace.

Unlike Dillingham, Manokotak is not seeking to annex the entirety of Nushagak Bay, but only the Igushik Section. Nushagak Bay is made up of distinct and different

fisheries, and the Igushik River fishery is a discreet fishery location with close ties to the City. The report fails to note this distinction, and inappropriately sweeps Manokotak into a discussion regarding the whole of the Bay. The City's annexation of the Igushik Section of Nushagak Bay, containing the fishery which is intimately tied to Manokotak, would be no different should a borough be formed in the future.

Furthermore, nothing in Manokotak's annexation would be an impediment to future borough incorporation, should the residents of the area wish that to happen. In both the Aleutians East Borough and the Lake and Peninsula Borough, overlapping boundaries with pre-existing incorporated cities did not prevent voluntary borough formation. And, as noted in the staff's preliminary report on the first Dillingham petition in regard to annexation versus future borough formation, "approving the annexation petition does not remove any present or future fish tax revenue for existing communities, *or a future borough.*" LBC Preliminary Report – City of Dillingham Local Action Petition to Annex Territory, January 2011, p. 65.

LBC staff does not see that approving the annexation would decrease the odds of a borough being formed. Instead, LBC staff finds that approving the annexation would increase the odds of a borough being formed. As the city pointed out ..., if the annexation is approved, the region would see the benefits of the resulting severance or sales tax revenue, and how it could help a borough. That realization of benefits could spur borough formation.

Id. at p. 67, emphasis in original.

In sum, the facts cited here and in the record refute the report's rationale for concluding that the "best interests of the state" standard is not met.

F. 3 AAC 110.970 – Determination of essential municipal services.

The preliminary report recognizes that Manokotak currently provides trash

collection, landfill services, water and sewer utilities, public works and other services, “that it has the human and financial resources to provide them”, and that “these services are reasonably necessary to the community,” Preliminary Report, p. 39. However, the report goes on to state, without support or analysis, that “some services, such as planning,” could be provided more efficiently by a borough. Based upon that “finding”, advisory staff states that 3 AAC 119.970 is not met.

It is not clear that this section actually establishes a true “standard” that a petition must meet, but rather it simply defines how the term “essential municipal services” is to be understood as it is used in other standards applicable to the petition. See, 3 AAC 110.970(c) (which provides in part, the rules by which the commission will determine what “essential municipal services” consist of for a city) and 3 AAC 110.970(d) (which sets out the essential municipal services the LBC can determine to be applicable). Accepting, *arguendo*, the report’s finding, apparently relying on 3 AAC 110.970(c)(3), that “some services, such as planning, could be provided more efficiently and more effectively by a borough”³², that is just a basis for a conclusion that “some services, such as planning” are not “essential municipal services” for the City of Manokotak. It is not a basis for a finding that the city is not otherwise providing “essential municipal services”.

Even if viewed as a standard to be met, the report’s finding is contradicted elsewhere in the report, and is not supported by any evidence. The report earlier finds, in connection with 3 AAC 110.090(b), that in fact, “no other municipality is likely to

³² The report does not identify any of the “some services”, other than planning, that it claims could be better provided by a borough.

provide the services that Manokotak proposes ...” Preliminary Report, p. 29. The report identifies some of the services that Manokotak now provides, and some of these services, and several additional services, would be extended to the territory to be annexed. These are the sort of local services typically provided by city government, not borough government, because they can be provided “more efficiently and more effectively” at the city scale.

Although planning is an optional city power, Manokotak’s petition and responsive brief demonstrate and document that the City has a longstanding history of providing exceptional city planning services in its current jurisdiction. See, Manokotak’s petition, page 73, footnote 22 (noting that the City has recently adopted its *third* comprehensive plan); Manokotak Reply Brief, p. 14. Mandatory borough-wide planning is not the same as city or community planning. Boroughs plan; so do cities. Some boroughs that contain cities do not provide city planning services, instead delegating city planning powers to their cities, and the report presents no evidence as to whether or when a theoretical borough could afford or would provide, on a borough-wide basis, the city planning services or any other city services that Manokotak now provides and proposes to provide to the territory.

III. CONCLUSION

Very little use was made by advisory staff of the extensive information and data provided by Manokotak in its filings. The report barely addresses the specifics of the Manokotak petition, and contains superficial and conclusory analyses. It completely fails to analyze the Igushik Section information provided. The primary purpose of the report appears to be advocacy for the staff’s ill-founded recommended borough

incorporation proposal, for which there is no petition and no petitioner.

The report's opening statement – the premise for the report's detour away from the bona fide petitions – is that the Commission “cannot grant both petitions because their proposed annexations overlap.” Preliminary Report, p. 1. This is easily addressed. The LBC can simply amend one petition to remove the overlap, approving the annexation of the disputed territory to the petitioner with the closest ties to it, and approve both petitions – a path it has taken a number of times before in connection with competing petitions, including the overlapping petitions from the City of Houston and Big Lake, and the overlapping petitions from the City of Wrangell and the Ketchikan Gateway Borough.

The preliminary report wrongly relies upon its predisposition to recommend a borough as its primary ground for finding that Manokotak has not met the statutory and regulatory standards for city annexation. Manokotak has gone to great lengths to demonstrate that its annexation petition meets all applicable standards, and it is entitled to be fairly judged on this basis.

Dated this 14th day of July, 2016.



Sara E. Heideman, Attorney for
the City of Manokotak