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September 14, 2015

Via Electronic Mail

Brent Williams
Local Government Specialist
State of Alaska
Local Boundary Commission
550 W. 7th Ave., Suite 1640
Anchorage, AK 99501

RE: Local Boundary Commission Meeting of September 16, 2015

Dear Brent:

We have been authorized by the city council of the City of Dillingham to submit these comments on posted agenda items listed in the public notice of the above-referenced meeting. Please distribute to the Commissioners.

- 1. Consider designating a person as defined by AS 01.10.060 to bring forward a petition for borough incorporation in the Dillingham Census Area**

The City has long been supportive of borough incorporation. The City has recently participated in efforts to discuss borough formation coordinated by the Bristol Bay Native Association (BBNA). The cities of Dillingham and Aleknagik both pledged funds towards a local "match" in support of a grant request prepared by BBNA for funding to be used to support this effort. Assuming the person designated was ready willing and able to promptly prepare a petition the City would not oppose such a designation under 3 AAC 110.410 and would cooperate with whoever was designated to make information available as requested.

The City presumes such a designation would not be indicative of the Commission having already determined borough formation should be approved and the City's annexation petition denied. The City does not view borough formation as mutually exclusive with City annexation. The City has consistently stated that efforts to consider borough formation were not a valid reason to delay consideration of Dillingham's petition. The Commission has previously agreed that a possibility of borough formation was not a sufficient reason to deny Dillingham's annexation petition.

2. Consider consolidating any such petition with the City of Dillingham's annexation petition.

The City opposes any consolidation of a borough incorporation petition that would delay consideration of Dillingham's annexation petition. The City would not agree to delay consideration of the remanded annexation petition initially filed in 2010¹ pending consideration of any borough incorporation petition. Postponement of Dillingham's annexation petition due to an anticipated borough incorporation petition would not be allowed under the Commission's own regulations. 3 AAC 110.640(c). Dillingham's petition is currently on schedule to have completed proceedings before the Commission in time for submission of a proposed boundary change to the Legislature in January 2017. Failing to stay on that schedule results in the loss of an estimated annual fish tax revenue of \$750,000 at a time when the need for revenue is more urgent than ever. The City would much rather adjust boundaries in the future to accommodate an approved borough incorporation than continue to watch a significant immediate source of an expanded tax base swim away.

It is also premature for the Commission to consider consolidation of Dillingham's petition with one yet-to-be-filed for borough formation. The Commission's own regulations do not allow the Commission to make decisions on consolidation until a petition is "pending action by the Commission". 3 AAC 110.430. Until a borough incorporation petition is actually both submitted and accepted for filing the petition is not "pending action by the Commission".

3. Request for consolidation of an annexation petition from the City of Manokotak with the City of Dillingham's annexation petition.

For the same reasons stated above, it is premature for the Commission to consider consolidation of the yet to be accepted Manokotak petition with the Dillingham annexation petition. Until the Manokotak petition is accepted for filing by staff it is not "pending action by the Commission".

It is not premature for the Commission to consider Manokotak's request to postpone consideration of Dillingham's annexation petition. 3 AAC 110.640(c). Assuming that topic may also be discussed even though not listed on the draft agenda the City opposes postponement. The City believes postponement at this time seriously jeopardizes completion of Commission action on the Dillingham annexation petition by December of 2016. Just to provide one example-staff might require revisions to the Manokotak petition which would result in an indefinite delay in actual filing and acceptance of the petition.

¹ The Commission is proceeding with Dillingham's petition as a "new" petition but that does not change the fact Dillingham filed in 2010. Dillingham's 2010 petition proceeded to a full hearing and final Commission decision approving annexation. Dillingham would not be before the Commission today had the City been told in 2010 the legislative review method was the only available annexation process.

Manokotak implies that Commission staff and the Commission were previously “driven” by the City of Dillingham because Dillingham initially filed the pending annexation petition using the local option method. Dillingham’s annexation petition was thoroughly and carefully reviewed by DCCED staff. A process virtually identical to what is about to be repeated was undertaken. The petition was vigorously opposed by the Native Village of Ekuk. The Commission clearly considered public input from area residents including residents of Manokotak and the City of Manokotak. The Commission first conditioned approval of annexation on additional consultation undertaken by Dillingham and then finally approved annexation. All applicable legal standards for annexation were considered by the Commission and found to be met. Annexation was found to be in the best interests of the State of Alaska. Postponement is not required to avoid Dillingham “driving” the Commission’s consideration of its proposed annexation.

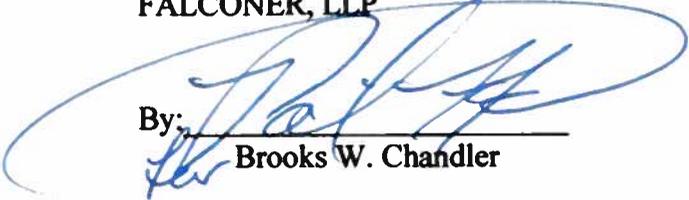
The interests of the City of Manokotak regarding proposed overlapping boundaries can be fully and fairly considered under 3 AAC 110.430. (“the commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition”). This is precisely what the Commission did recently when faced with competing petitions from the City and Borough of Juneau and the proposed Petersburg borough. Staff evaluated the overlapping boundaries when completing the staff report on the Petersburg borough. The Commission considered the competing boundaries when rendering its decision on incorporation of the Petersburg borough.

A similar process could be used here without postponement of consideration of the Dillingham annexation petition. There are multiple opportunities for Manokotak to participate in the decision making process on Dillingham’s petition.

Thank you for your consideration of the City’s comments.

Sincerely,

BOYD, CHANDLER &
FALCONER, LLP

By: 
Brooks W. Chandler

BWC/ms

cc: Rose Loera (via electronic mail)
LBC Distribution List (via electronic mail)