

JAMES L. Baldwin

Attorney at law

September 19, 2016

Local Boundary Commission Staff
550 W. 7th Avenue, Suite 1640
Anchorage, AK 99501

Re: RESPONDENTS NATIVE VILLAGES OF EKUK, CLARK'S POINT, AND PORTAGE CREEK, AND CITY OF CLARK'S POINT – SUPPLEMENTARY COMMENTS ON PRELIMINARY STAFF REPORT REGARDING CONSOLIDATED ANNEXATION PETITIONS OF CITIES OF DILLINGHAM AND MANOKOTAK.

Dear Mr. Williams:

This letter will serve as respondents Native Villages of Ekuk, Portage Creek, and Clark's Point and the City of Clark's Point supplementary comments to the preliminary staff report regarding the consolidated annexation petitions of Dillingham and Manokotak.¹ Eastside Respondents submitted comments by the July 15, 2016, the deadline set by the chairman of the Local Boundary Commission. The chair extended the comment period until September 19, 2016. Eastside Respondents reaffirm and supplement their earlier comments on the staff's preliminary report and now additionally address Commissioner Chris Hladick's letter dated July 15, 2016 which was posted on the commission's website along with comments submitted by the public.

1. Commissioner Hladick's letter should be given less weight than the detailed analysis of the commission's own staff.

Commissioner Hladick's letter purports to set out findings and recommendations of the Department of Commerce, Community and Economic Development. The department's regulations provide an opportunity for respondents and interested parties to comment on the department's preliminary report and recommendations before the department issues its final report. But because

¹ We have been referring to this group as the "eastside respondents" to distinguish us from the other respondents in this matter.

Commissioner Hladick's letter was submitted on the last day of the comment period, respondents and members of the public were unable to address his recommendations.

Commissioner Hladick describes his views as the findings and recommendations of the department. The staff, also speaking for the department, recommends denial of both annexation petitions. The commissioner disagrees with the findings and recommendations of the commission's staff, and recommends approval of both petitions but only after Manokotak's is substantially amended. The staff report contains an extensive discussion and analysis in support of its findings and recommendations. The commissioner does not discuss the basis for his recommendations, except to say that he has "familiarity with these issues from a local perspective" since he served as Dillingham's city manager for seven years.

Commissioner Hladick's letter to Chair Chrystal states that he is "providing DCCED's comments" on the pending annexation petitions. Further, he makes his comments, recommendations and findings as the Commissioner of the department. It is difficult to read his letter as anything other than Commissioner Hladick's articulation of the department's recommendation to the Local Boundary Commission. According to regulation, the department's report must contain the department's findings and recommendations regarding petitions.² If the Commissioner's letter had been in agreement with the staff's preliminary report, Eastside Respondents would not be quite so concerned. But in fact, the department's findings and recommendations as stated by Commissioner Hladick are in conflict with the department's findings and recommendations as set out in the staff's preliminary report.

The Commissioner's version of the department's recommendation appears intended to neutralize the preliminary recommendations made by the commission's professional staff and leaves all respondents, and possibly the commission itself, unclear as to the state's position regarding the pending annexation petitions. The commission's regulations are designed so that the preliminary report will contain a definitive statement of the state's position on the consolidated petitions. The state's analysis of the petitions and responding briefs assists the respondents in understanding what issues must be dealt with on the way to a final decision. In this case, there is a substantial failure of the department to adhere to the regulations and to arrive at a single set of findings and recommendations. As a result, without a clear indication of the state's position on the pending petitions, all respondents must devote considerably more time and resources preparing their case for hearing than would otherwise be required.

Eastside Respondents interpret the commissioner's recommendations as counseling the commission to approve Dillingham's petition, meaning that all of 400 square miles of the Nushagak Commercial Salmon District would be annexed by that city. He recommends that the commission amend Manokotak's petition to delete Tract B which contains waters of the Igushik section of the Nushagak Commercial Salmon District. The commissioner reasons that these actions would permit the commission to approve both petitions. His attempt to harmonize the two petitions, however, reflects a lack of understanding of Manokotak's petition and its issues. Removal of Tract B would leave

² 3 AAC 110.530(a).

Manokotak with parcels that are detached from the core area of the city. Moreover, Tract B is an integral part of Manokotak's petition inasmuch as it would provide sales tax revenue to finance the provision of city services for the existing city and the new territory added through annexation.

Eastside Respondents support the staff's preliminary recommendation that both petitions be disapproved. This would avoid dividing Manokotak into disjointed enclaves and prevent the overreach occasioned by Dillingham's petition to obtain over 400 square miles of waters of the region. The staff's preliminary recommendation would preserve the status quo so that the possibility of incorporating a new borough can be considered by the leaders of the region.

Eastside Respondents believe that the support of residents of the region for creation of a borough government is directly linked to whether they perceive it will benefit their communities. Eastside Respondents do not agree with Commissioner Hladick and Dillingham that allowing that city to annex Nushagak Bay and levy a raw fish sales tax provides an incentive to later create a new borough in the region. Eastside Respondents believe that the opposite is true. Dillingham's plan to levy a raw fish sales tax will take the revenues necessary to make a borough feasible, and Dillingham will never surrender the power to levy such a tax in favor of the borough. Eastside Respondents believe that residents of the region will support a *reasonable* amount of taxation to pay for necessary *regional* services. But it is a bitter pill to swallow, making it wise to take this medicine only once, and in a tolerable dosage.

Additionally, Eastside Respondents disagree with Commissioner Hladick's reliance on the commission's December 2011 finding that area sought to be annexed by Dillingham is appropriate for city government because Dillingham is the area's hub and that the annexation would encourage borough formation. Eastside Respondents support the staff's conclusion that the commission must make new findings on all the regulatory standards based on the facts and circumstances presented in the current petitions and on new information and arguments that the commission finds relevant and persuasive.

2. The staff's preliminary finding that territory sought by Dillingham is too large for city government is strengthened by historical precinct boundaries set out in regulation that separate Dillingham from Clark's Point, Ekuk and Portage Creek.

The staff recommends that the petitions be denied because they include territory that is beyond the scope and scale appropriate for the Dillingham and Manokotak city governments. Eastside Respondents agree that at least with regards to Dillingham, the territory proposed for annexation is well beyond what was ever contemplated for city government.³

Dillingham points to other cities that include substantial amounts of water within their boundaries. But none of these examples has as large an area or conflicting territorial claims by other

³ Ekuk et al continues to oppose Manokotak's petition, but primarily because Ekuk believes a borough is the preferred governmental unit for the area. Manokotak's proposed new city boundaries do not necessarily exceed the scope of city government as compared to other cities in the state.

cities, tribes, and persons with shared interests of a regional scale. Dillingham's proposal to annex the entire Nushagak Bay, portions of which abut other communities and are historically, politically and economically associated with other communities, is unprecedented. The scope would have been more reasonable if Dillingham had restricted its proposed new territory to include only the Wood River Special Salmon Harvest Area, for example.

The staff's preliminary report's finding in this area is strengthened by the fact that the proposed Dillingham annexation would move well past established governmental boundaries that distinguish the communities of Dillingham from the communities of Clark's Point, Ekuk, and Portage Creek. The prime example involves the longstanding boundaries of the Clark's Point State of Alaska Voting Precinct No. 37-710.⁴ The boundaries of that precinct are set by 6 AAC 337.710 adopted by the Division of Elections, and provide a clear, long standing demarcation between communities. These precinct boundaries were adopted to implement state redistricting plans and have been in substantially the same location for many election cycles.

At one point the northern boundary of the Clark's Point Precinct was also an election district boundary line between Dillingham and Clark's Point which placed each city and the neighboring villages in different election districts.⁵ The 2012 Amended Proclamation Plan had Clark's Point, Ekuk and Portage Creek in Aleutians/Bethel District 37 while Dillingham and Manokotak were in District 36 Dillingham/Iliamna. Dillingham was reunited with the Nushagak Bay communities in the 2013 redistricting plan, but the precinct boundaries continued to separate the City of Clark's Point from the City of Dillingham. Precinct boundaries between these communities are identical in the 2002, 2012 and 2013 redistricting plans and possibly even earlier election cycles. The precinct boundaries demonstrate that Dillingham and Clark's Point are distinct communities with the waters of the Nushagak River, outer bay and eastern shore consistently considered to be a part of the communities of Clark's Point, Ekuk, and Portage Creek.

The staff should recognize these historical boundaries that separate communities, and continue to recommend to the commission that Dillingham's petition to annex all of Nushagak Bay be denied.

3. Recently discovered facts confirm that certain territory in Nushagak Bay must be reserved to protect the taxing power of the City of Clark's point.

Now that the 2016 fishing season has ended, it has become clear that the City of Clark's Point must extend its boundaries to include enough new territory to cover the presumed anchorage for floating processors, which for many years have anchored and processed red salmon within Clark's Point city limits. A state imposed tax on this commercial activity is an important source of revenue for the city of Clark's Point.⁶ City boundaries were originally established to include deep waters to the North of the city which were traditionally used for this purpose, but the effects of erosion and silting has forced a

⁴ Exhibit V is a copy of a map of this precinct which can be found on the Division of Election's webpage under "election resources".

⁵ The 2012 redistricting plan election district and precinct maps and be found at <https://www.elections.alaska.gov/er.php>.

⁶ See AS 43.75.130 refund of fisheries business tax revenue to municipalities in the unorganized borough.

change in anchorage locations for deep draft vessels to the west of the city. If Dillingham's petition is approved, the usable anchorages would be within Dillingham's boundaries, not Clark's Point. These facts could be confirmed only after the end of the 2016 fishing season and after the close of the original comment period on the preliminary report.⁷

Exhibit VII to this document is a map showing the extension of existing city boundaries covering approximately 4.1 square miles of additional water territory to the North and West of Clark's Point. These proposed boundaries would include enough territory to cover the anchorages of floating processors, based on observations taken during the 2016 fishing season. Dillingham has stated that it has no intention of interfering with the taxation powers of Clark's Point. Yet its proposed boundaries will take away substantial Fishery Business Tax revenue from Clark's Point.⁸ Thus, even if the staff considers changing its preliminary report to recommend granting a part of Dillingham's petition, it should not recommend annexation of the area to the west of the City of Clark's Point, which has become the area of deep draft anchorage due to erosion and silting of the anchorage within the city to the north. The petition boundaries should be adjusted to reserve territory for a historically important commercial activity which the City of Clark's Point needs to protect.

4. The department staff should recommend to the commission the one view that all parties share – that the local task force be allowed to complete its study on borough benefits and feasibility.

The one thread of commonality seen in the comments of the petitioners, respondents and the commissioner is that the borough study task force should be allowed to continued its work. In light of this rare alignment of the interested parties, the staff should reconsider its preliminary recommendation that the commission convert the petitions to a legislative review borough petition. The comments brought to light some of the legal and political hurdles posed by such an action, and also reflect the shared view of the importance of allowing the task force work to go forward:

[A] local task force is at work studying the borough form of government. Eastside Respondents are engaged in this effort along with others in the region. The task force was created to provide a means for local leaders of cities, villages, and tribes in the region to learn what is involved in borough formation and how the tribes and a borough could jointly operate.⁹

Dillingham has committed to work with others in the region to examine a borough. Dillingham's commitment included providing funding for the current study along with the Bristol Bay Native Association and the City of Aleknagik. Frankly, Dillingham is skeptical significant regional

⁷ Exhibit VI shows the coordinates of a floating processor in relation to the existing City of Clark's Point boundaries.

⁸ See the past history of such revenue set out in Exhibit VIII which is taken from page 17 of the Fiscal Year 2015 Annual Report on shared taxes prepared by the Alaska Department of Revenue. This report shows little or no revenue paid in FY 15 and FY 14 because that revenue was used by the state to retire bulk fuel loans made to the city.

⁹ Eastside Respondents' July 15, 2016 comments to the staff's preliminary report at 8.

support for a borough will emerge through this process. But Dillingham is participating in good faith and will continue to do so.¹⁰

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 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.¹¹

Borough formation discussions are proceeding in the region now. This process should be encouraged to proceed and there is no need to impose terms and ideas as to what a Dillingham Census Area Borough should be.¹²

These comments are evidence that a borough will not be readily accepted if imposed unilaterally on the region. The unanimous view is that the completion of the regional task force study is a necessary predicate to the possibility of a successful formation of a borough for the region. This study may provide the best opportunity in decades for the formation of a borough. Eastside Respondent's view is that granting the current annexation petitions will set back the process, perhaps indefinitely.

In summary, Eastside Respondents agree with the staff that borough incorporation should be given a higher priority than city annexation of areas that are of regional significance. Accordingly, we encourage the staff to continue to recommend denial of the pending petitions, and to amend its report to recommend continuation of the task force study and to encourage the region to pursue borough formation voluntarily.

Again, respondents thank the Chairman for allowing this additional opportunity to comment.

Sincerely,



James L. Baldwin

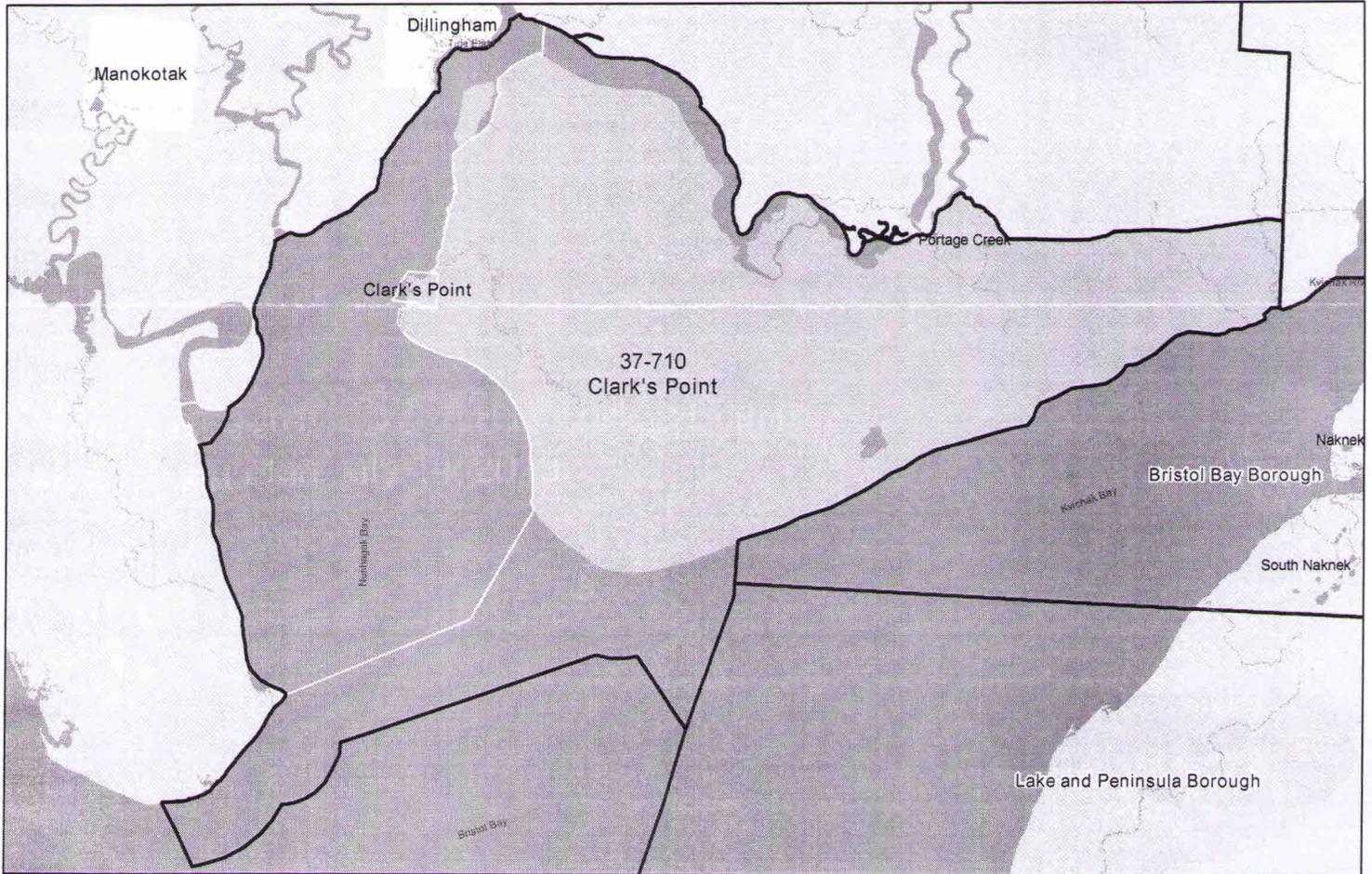
Counsel for Respondents Native Villages of Clark's Point, Ekuk,
and Portage Creek and the City of Clark's Point

¹⁰ Dillingham's July 14, 2016 comments to the staff's preliminary report at 18.

¹¹ Manokotak's July 14, 2016 comments to the staff's preliminary report at 12-13, n. 20.

¹² Commissioner Hladick's July 15, 2016 letter to LBC Chair Lynn Chrystal at 2..

Voting Precinct 37-710 Clark's Point Redistricting Plan July 14, 2013



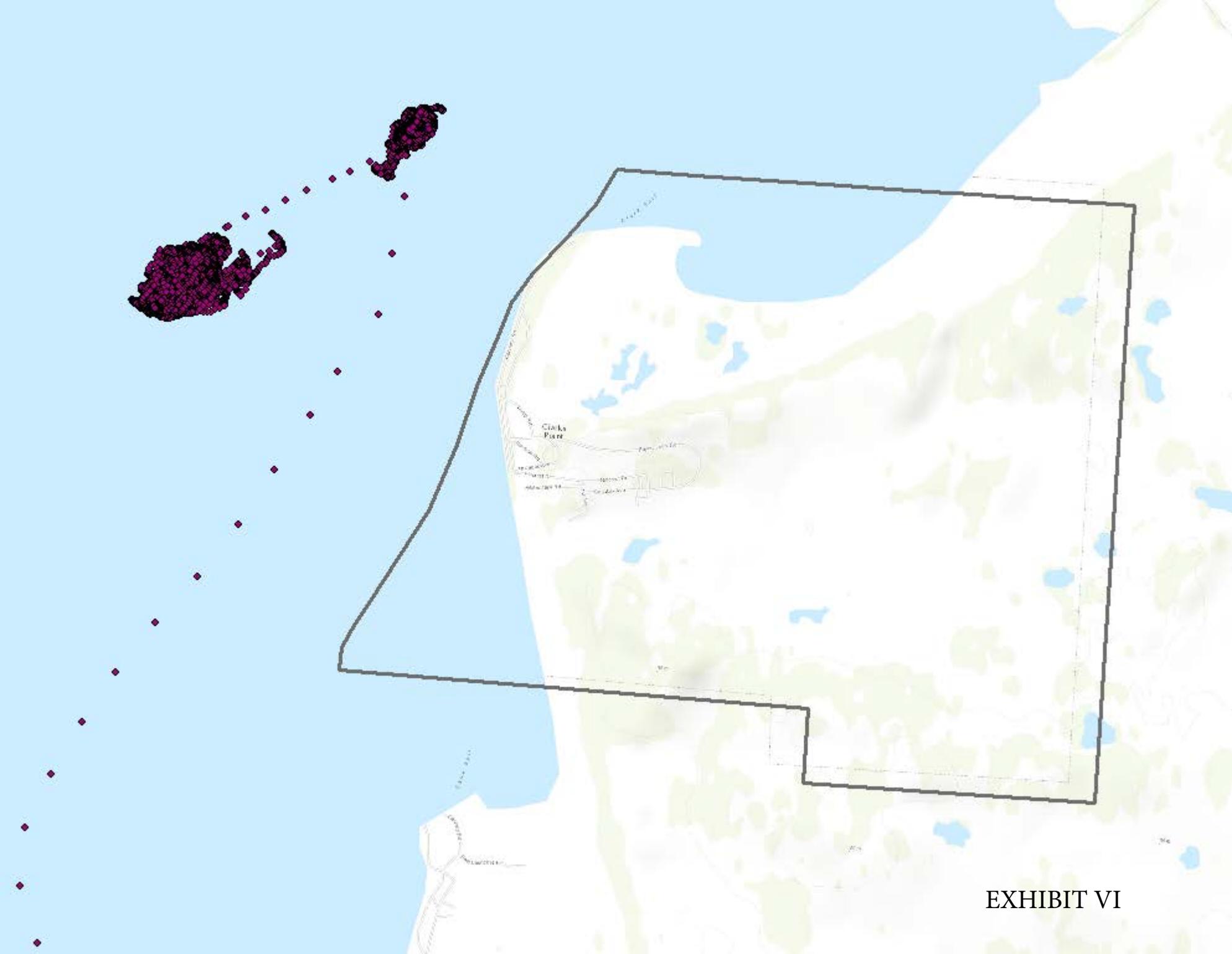


EXHIBIT VI

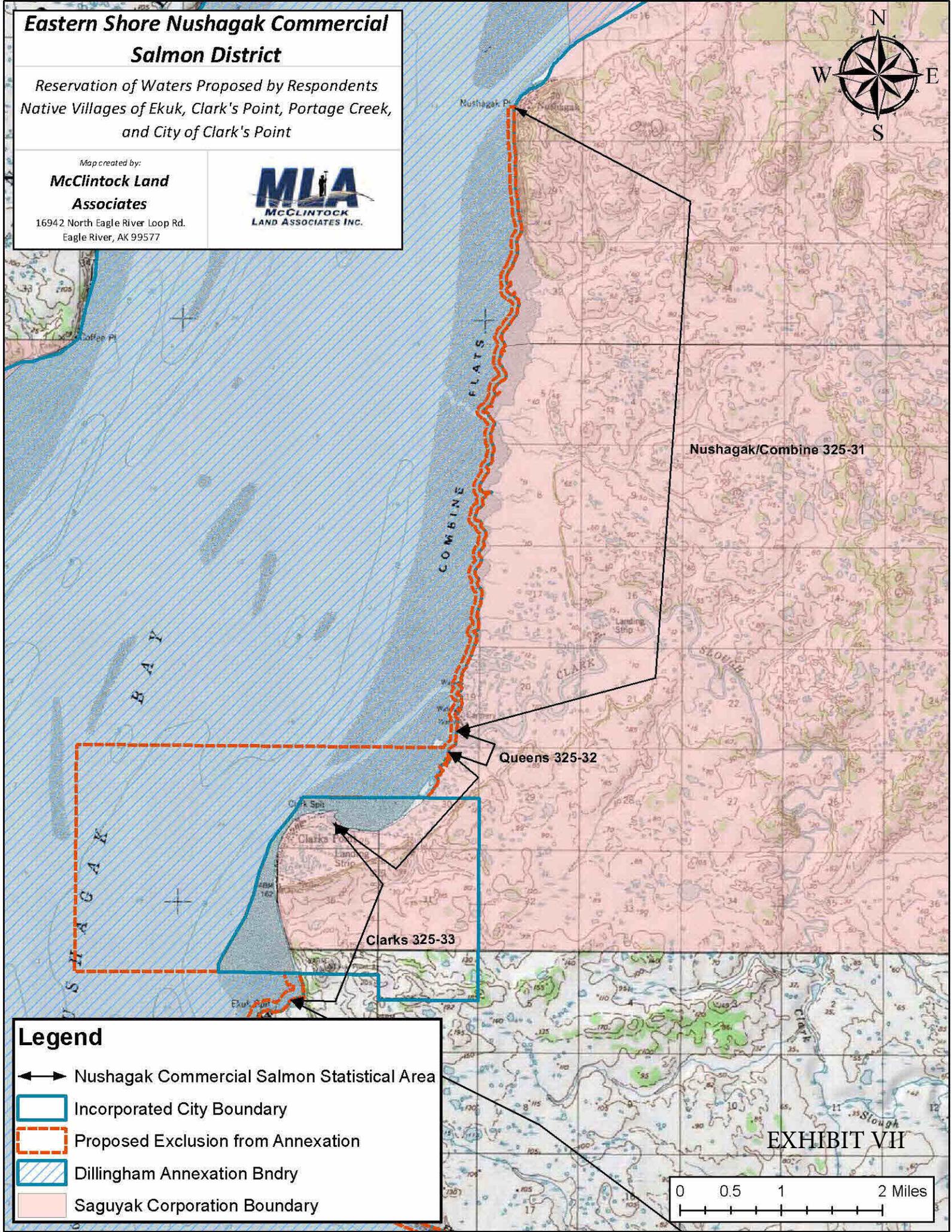
Eastern Shore Nushagak Commercial Salmon District

Reservation of Waters Proposed by Respondents
Native Villages of Ekuk, Clark's Point, Portage Creek,
and City of Clark's Point

Map created by:

**McClintock Land
Associates**

16942 North Eagle River Loop Rd.
Eagle River, AK 99577



Legend

- Nushagak Commercial Salmon Statistical Area
- Incorporated City Boundary
- Proposed Exclusion from Annexation
- Dillingham Annexation Bndry
- Saguyak Corporation Boundary

EXHIBIT VII

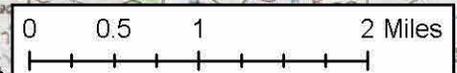


Table 6
Fisheries Business Tax

	<i>FY2015</i>	<i>FY 2014</i>	<i>FY 2013</i>	<i>FY 2012</i>	<i>FY 2011</i>	<i>Total All Years</i>
Municipality						
Anchorage	\$202,096	\$181,607	\$221,337	\$170,617	\$119,063	\$894,720
Juneau	\$364,624	395,010	384,415	422,230	430,561	\$1,996,840
Sitka	\$1,009,033	1,127,772	1,183,956	1,256,103	1,199,333	\$5,776,197
Wrangell	\$0	0	0	380,741	265,498	\$646,239
Total Municipalities	1,575,753	1,704,389	1,789,708	2,229,691	2,014,455	9,313,996
Borough						
Aleutians East	2,067,182	1,769,278	1,869,127	2,033,097	1,664,919	\$9,403,603
Bristol Bay	2,809,548	2,010,471	1,868,574	2,130,832	2,230,586	\$11,050,011
Denali	0	0	0	0	0	\$0
Fairbanks North Star	0	195	0	118	88	\$401
Haines	212,855	438,390	172,511	326,813	121,651	\$1,272,220
Kenai Peninsula	629,725	919,123	774,646	952,078	1,004,361	\$4,279,933
Ketchikan Gateway	238,773	783,700	709,134	666,360	539,797	\$2,937,764
Kodiak Island	1,301,537	1,561,675	1,546,308	1,647,025	1,405,360	\$7,461,905
Lake and Peninsula	352,016	556,758	382,147	385,759	255,093	\$1,931,773
Matanuska-Susitna	254	112	126*	65	110	\$667
Northwest Arctic	0	371	0	0	0	\$371
Petersburg*	820,118	1,249,730	760,516	0	0	\$2,830,364
Yakutat	191,216	250,998	202,334	254,820	390,043	\$1,289,411
Total Boroughs	8,623,224	9,540,801	8,285,423	8,396,967	7,612,008	42,458,423
City						
Adak	67,968	122,489	168,370	75,469	143,848	578,144
Akhiok	0	0	0	110	58	168
Akutan	943,814	877,450	1,028,308	990,609	689,120	4,529,301
Aleknagik	4,676	0	0	0	0	4,676
Atka	34,706	29,615	54,710	51,168	57,861	228,060
Bethel	0	2,632	0	3,937	3,752	10,321
Chefornak	0	1,823	542	2,220	1,119	5,704
Chignik	62,800	310,422	154,944	203,950	109,727	841,843
Clark's Point	24	0	2,227	45,322	50,510	98,083

EXHIBIT VIII