



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs

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Susan K. Bell, Commissioner
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Final Report to the Local Boundary Commission

Regarding the proposal
to annex by local option, approximately
396 square miles of water
and 3 square miles of land
to the City of Dillingham

April 2011

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This is the *Final Report to the Local Boundary Commission Regarding the Proposal to Annex Approximately 396 Square Miles of Water and 3 Square Miles of Land to the City of Dillingham*. The report was written by Brent Williams and Don Burrell, staff to the Local Boundary Commission. The staff are part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address:

<http://www.commerce.state.ak.us/dca/lbc/dillingham.htm>

This report is issued in accordance with 3 AAC 110.530(b) which requires Commerce to issue a final report after considering written comments regarding the preliminary report.

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

The maps included in this publication are intended to be used as general reference guides only. Source documents remain the official record and should be reviewed to determine accuracy of the illustrations.

Special thanks to others who provided information or assistance in developing the report: Steve Van Sant - State Assessor, Bill Rolfzen - Local Government Specialist, Lorence Williams - Publication Technician, John Nickels - Local Government Specialist, and others.

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Chapter 1 - Introduction

On January 26, 2011, Commerce issued its preliminary report on Dillingham's annexation petition. The report's 116 pages of background and analysis concluded that the petition met the standards for city annexation. It recommended that the Local Boundary Commission (hereafter "LBC" or "commission") approve the petition to annex the waters of Nushagak Bay and several small islands.

A period for the public to comment on the preliminary report lasted until February 25, 2011. Comments were received from the city, the respondent Native Village of Ekuk, and a number of public members and agencies. This report considers and analyzes those comments and other materials and makes the department's final recommendation to the LBC. The background information about the LBC, the initial comments on the petition and the regulatory standards are found in the preliminary report, and are not repeated in this report.

The report also addresses relevant developments that have occurred since the preliminary report was issued. Those developments are addressed in Chapter 2 of this report.

It should be noted that in part of the preliminary report "LBC staff" was written when the authors intended to write "LBC," or vice versa. This is true on pages 36 to 38 at least. The department apologizes for this error.

Copies of this report will be mailed to the petitioner, the respondent, each LBC member, and others. Copies will be sent to be displayed at Dillingham City Hall, Port of Dillingham Small Boat Office, and the Dillingham Public Library. All materials related to this petition are also available online at <http://www.ci.dillingham.ak.us/>, or <http://www.commerce.state.ak.us/dca/lbc/dillingham.htm>. The LBC chair has scheduled a public hearing on the proposal to begin Monday, April 25th 2011, at 4:00 p.m., in the Dillingham Middle School Multipurpose Gym. A copy of the hearing notice is included in Appendix B. The decisional meeting is scheduled for 4:00 pm in the same location, on April 26.

Under AS 29.06.040, at the decisional meeting "If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change."

Further information is available from:

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LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, however, LBC commissioners serve at the governor's pleasure (AS 39.05.060(d)).

The LBC is comprised of five members. (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.

Alaska law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060(b)). LBC members receive no pay for their service. They are entitled, however, to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

Chapter 2 - Developments Since the Department's Preliminary Report and Future Developments

Preliminary Report Distribution

On January 26, 2011, the department distributed copies of its 116 page *Preliminary Report regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham* to interested parties including the petitioner, respondent, property owners, commenters, Local Boundary Commission members, and others.

Commerce Informational Meeting

Staff scheduled a public meeting in Dillingham for January 19th, 2011, and in the City of Manokotak on January 20th, 2011, in accordance with 3 AAC 110.520. Due to weather, the flight was cancelled and the trip could not be rescheduled, therefore no informational meeting was held.

Receiving Timely Comments on Preliminary Report

The public comment period for the preliminary report was from Wednesday, January 26, 2011, until February 25, 2011. The department received sixteen comments, including comments from the City of Dillingham and from the respondent Native Village of Ekuk. All submitted comments are produced in full as Appendix A of this report.

Notice of Local Boundary Commission Public Hearing and Decisional Meeting

The Local Boundary Commission chair scheduled a public hearing regarding the petition. The hearing will be held on Monday, April 25, 2011, beginning at 4:00 p.m. in the Dillingham middle school multipurpose gym. The public hearing might be continued the following day, April 26, 2011, at 4:00 p.m., if deemed necessary by the Chair. The decisional meeting will occur at the same location on Tuesday, April 26, at 4:00 p.m.

Formal notice of the hearing has been given by Commerce under 3 AAC 110.550. Commerce published the full notice in a display ad in the *Bristol Bay Times* on March 28, 2011. It was also published April 4th, and will be published April 11th. The notice was also posted on the internet through the state's *Online Public Notice System*, and on the LBC website. Additionally, notice of the hearing was provided to the petitioner's representative Mayor Alice Ruby, and to the respondent's representative James Baldwin. The city has posted the notice where the petition documents are available for public review (Dillingham City Hall,

Port of Dillingham Small Boat Office, and the Dillingham Public Library). A copy of the public notice is included in Appendix B.

Chapter 3 –Department’s Analysis

This report clarifies the points made in the preliminary report, in response to the comments received. A final recommendation to the LBC will appear at the report’s end.

The Local Boundary Commission staff (hereafter “LBC staff,” “staff,” “we,” “our,” or “department”) received sixteen timely received comments to the preliminary report during the public comment period that ended February 25, 2011. The petitioner city’s comments, the respondent Native Village of Ekuk’s comments, and all the public comments have been read, reviewed, and considered by the department in writing this final report. All of comments are attached in Appendix A.

In this section, LBC staff analyzes and responds to the comments in numerical order of the standards. As the preliminary report has already addressed the standards by analyzing the factors which the LBC may consider, the final report does not repeat that analysis. The comments addressed some standards more heavily than others, and the department’s analysis reflects that. The report primarily addresses 3 AAC 110.090(a), 3 AAC 110.110, 3 AAC 110.130, and 3 AAC 110.135.

Although each comment has been read and considered, not every comment is specifically addressed, largely due to similarity of some comments. Also, while the comments are reproduced in their entirety, when analyzing a comment the department quotes or refers to what it feels is the most pertinent part of the comment.

3 AAC 110.090 Need

3 AAC 110.090(a)

3 AAC 110.090(a) states that “[t]he territory must exhibit a reasonable need for city government.” This is an issue that the department thoroughly examined in the preliminary report. We still conclude that the territory exhibits a reasonable need for city government, but the department wishes to further explain its analysis in response to the comments received on the preliminary report. First, the department wishes to address the need for city services exhibited by the fleet in the territory. Secondly, we will address the interpretation of 3 AAC 110.090(a). Finally we will address city infrastructure, and how that affects need.

Need for City Services

We first reexamine whether territory needs city government. The territory is only seasonally populated by the fishing fleet. The fishing season is primarily based on sockeye or red salmon, and lasts for about five weeks. That season centers around July 4th. There is also fishing for other species that last for approximately three months, although the bulk of the fishing is for sockeye during that shorter five week period.¹

Some fishers contend that they do not use the services that Dillingham provides, whether for the harbor, or to go ashore. For example, commercial fisher Tom Henshaw wrote in part that:

1. The majority of the fisherman, and the fish caught, in the Nushagak district store their boats in Naknek and King Salmon, where we already pay substantial property and other taxes.
2. What Dillingham wants seems unnecessary. For example, Naknek has the majority of boats in the Bay stored there, yet it does not have a public dock for boats to tie up to unless you count the barge bulkhead. Many people go into the water and stay there for the season knowing they will never come out until the end. Or even tie up. If going dry is necessary, you can run your boat onto the beach. It sounds like Dillingham wants to tax many fishermen who do not use their infrastructure to pay for a local convenience.
3. I do not, and most boats who fish in the Nushagak District do not, go to Dillingham for services. So not only do we not store our boats there, we do not even visit there. The majority of boats stay off of Clark's Point and Queen's Slough, almost 10 miles away from Dillingham.

This proposal is an attempt to pay for a local "want" by disguising it as a district "need". The fact is that the majority of Nushagak District fishermen do not store their boats in Dillingham or even go to Dillingham. The fishermen that Dillingham are targeting already pay substantial taxes in the Bristol Bay Borough. Dillingham's need for funds should be fixed directly onto those would benefit, perhaps through increased fees of Dillingham harbor users and those who haul out their boats in Dillingham.

Please do NOT support this proposal.

Fisher Chris McDowell wrote that:

¹ Personal communication with John Nickels, DCRA Local Government Specialist, Local Government Assistance/RUBA supervisor, and former commercial fisherman.

I am writing to oppose the City of Dillingham's petition to annex waters of Bristol Bay including the Nushagak fishing district. My understanding is that Dillingham's intent is to generate tax revenue to offset municipal spending associated with seasonal use of its harbor and other infrastructure by the non-local segment of the Nushagak salmon fleet.

My experience is that the non-local segment of the fleet seldom uses Dillingham harbor or goes ashore in Dillingham. I have owned and operated a Bristol Bay drift gillnet vessel since 2000 and fished most or all of my salmon season in the Nushagak district for 7 of the last 11 years. During that time I used the Dillingham harbor only twice. I work with a group of nine partner boats, and their experience in the Nushagak district is very similar.

My fishing operation is based in Naknek, where I pay a substantial property tax on my assets to fund borough infrastructure such as roads, fire protection and port facilities. Like most Naknek-based boats fishing the Nushagak district, I operate South of Clark's point and get all my fuel, potable water, food, nets, parts and other supplies from my [Naknek-based] processor's tender fleet. There is a substantial fleet of Naknek-based driftnet boats with the same operating program in the Nushagak district; well over 200 and likely closer to 300 vessels.

Dillingham harbor is several miles upstream from the fishing district and not easily accessible. Nushagak district salmon openings usually occur on short notice and considering the extreme tides and distance involved, most fishermen consider it impractical to use Dillingham harbor between openings. Judging from the crowded anchorages throughout the season, most of the fleet spends down-time between openings anchored in the fishing district, miles from Dillingham harbor.

Under the proposed annexation and 2.5% tax, the non-local segment of the fleet would experience a significant operating cost increase with little or no associated benefit in the form of improved services or infrastructure. Most of us operate out of Naknek. We seldom go to Dillingham, rarely use Dillingham harbor and do not regularly use or depend upon any services provided by the city of Dillingham.

Dillingham's proposed annexation of the Nushagak district is unnecessary. The city of Dillingham has taxing authority and could potentially meet its needs by alternate means; increasing existing fees for vessels that use local facilities, or through property tax on local commercial fishing assets, as in the Bristol Bay Borough.

On the other hand, Dillingham resident Paul Liedberg wrote in part that:

Having lived in two other rural hub communities in the state (Galena and Bethel) I've had some exposure to the regional role that these communities play. Dillingham, in my view, is exposed to even more demands than the other hubs mentioned because of the services and infrastructure in place to support the fishing industry in Nushagak Bay. Dillingham certainly benefits from the fishing industry. But without question there is also a high cost to the city in support of this fishery and those costs should logically be shared with the beneficiaries of the industry.

As a homeowner and taxpayer in Dillingham, I have no problem helping to support many of the services provided by the city even though I may not personally use those services to any degree. I don't have children in school but I recognize the financial contribution each of us has to make in the school system for the future of our next generation. I am not a senior citizen but the facility that we have for seniors is a tremendous asset. I make only limited use of the city library and museum but I know that they provide important benefits for residents and visitors.

The city functions mentioned above have virtually no other means of revenue locally except for our real, personal and sales taxes. But for the services provided by the city to support the fishing industry and associated infrastructure - much of which is used by non-Dillingham residents - there is an opportunity to recoup some of those costs. The annexation proposal with the associated fish tax provides that opportunity and that is why I support the initiative. It seems logical and necessary for rural communities in Alaska to make wise and strategic decisions on revenue. I believe this proposal is

strategic, and will more equitably share the responsibility for funding local governance among the recipients of services.

Dillingham resident Mark Lisac wrote in part that:

I support the City of Dillingham's petition to annex portions of Nushagak Bay & Wood River for the following reasons:

1. Harvesters of a public resource should help support the public infrastructure and facilities that they depend on.
2. Harvesters can fish in other districts of Bristol Bay if they disagree with the proposed 2.5% raw fish tax.
3. Dillingham is the only municipality that does not currently receive a raw fish sales tax.
4. Local residents pay City property tax and local sales tax to support City infrastructure and facilities that are vital to the commercial fishing fleet of Nushagak Bay.
5. Residents from outside the City (regional, state and out of state) use Dillingham facilities and strain our limited resources for public safety, fire, ambulance, land fill and boat harbor during the annual commercial fishing season.
6. The Dillingham boat harbor operates at a deficit due to the City's effort to keep boat harbor fees low. This requires other City revenue sources to be used to cover this deficit spending.

In opposing the petition, the New Koliganek Village Council wrote in part that:

Koliganek is located on the left bank of the Nushagak River and lies 65 miles northeast of Dillingham. Koliganek has about 10 fishermen who actively fish their drift permits. Two People actively fish their set net permits. There are other members of the village who serve as crew for these fishermen. All of their fishing occurs in Nushagak Bay. Most people in the village store drift boats in Dillingham and use the facilities there for launching. One person stores his boat in New Stuyahok.

First, the department wishes to address the need for city services exhibited by the fleet in the territory. The department found in its preliminary report that because the commercial fishing industry in the territory proposed for annexation uses and depends on services provided by the city, the territory exhibits a reasonable need for city government.

To that end, we examine the amount of vessels fishing in Nushagak Bay. Information requested by the department from the Dillingham port director under 3 AAC 110.435(c) reveals use of the harbor in terms of boats permits. It is reproduced below, and in Appendix D.

2010 City of Dillingham Harbor Permits, by Residency		
	Seasonal Use	Daily Use
	Permits	Permits
Dillingham boats	98	3
Local village boats (Nushagak River drainage)	38	5
Other Alaska boats	68	55
Out of state boats	74	82
Out of country boats	2	0
totals	280	145

This indicates that a total of 425 boats had either seasonal or daily use permits to use the harbor (both totals are non-duplicative).² A harbor permit is required to launch, haul out, or dock.

Data from an Alaska Department of Fish and Game report reveals that there were 598 drift net vessels, and 236 set net vessels fishing in Nushagak Bay in 2009. This is a total of 834 vessels fishing in Nushagak Bay in 2009.³ 425 boats, or 53.4%, of all boats fishing in Nushagak Bay used Dillingham's harbor.⁴

It was contended that many fishers, at least those based in Naknek, and quite possibly those based in Ekuak and another places, do not use Dillingham's harbor. Yet, as the above data show, the majority of the permit holders that fish in the Nushagak Bay use the harbor. Whether the particular boats based in Naknek or elsewhere do or do not use the harbor is no doubt relevant to those particular fishers. But, the overall point is whether the territory, including some fishers opposed to the annexation, exhibits a reasonable need for city government. Here, a good percentage of Nushagak Bay fishers are collectively using Dillingham's harbor.

While some commenters have written that they are not using the harbor, clearly, most fishers are – in considerable numbers. As the fishing fleet in the territory is using the city's services, the territory exhibits a reasonable need for city government. The issue of whether those fishers do not use Dillingham's harbor is addressed in under 3 AAC 110.135, Best Interests of the State.

Interpreting 3 AAC 110.090(a)

Regarding the issue of the interpretation of 3 AAC 110.090(a), Respondent wrote on pages 11 -12 of its comments that:

Petitioner proposes to provide tax collection services and some enhanced coordination of existing services if the Commission approves the petition. This is in effect saying that the City wants the revenue but will continue supplying the same services it has always provided. The preliminary report concedes that the petition was deficient meeting the need standard imposed by 3 AAC 110.090. The report states "there is not reasonably expected residential growth beyond the existing boundaries of the city during the 10 years following the effective date of annexation." The report also finds that petitioner did not

² Personal communication with Jean Barrett, Dillingham port director.

³ "Special Publication No. 09-17, Summary of Bristol Bay Sockeye Salmon Harvest by Gear Type, 2007 – 2009," by Paul Salomone, November 2009. The report is available at <http://www.sf.adfg.state.ak.us/FedAidPDFs/SP09-17.pdf>. The report was requested by the department for the commissions' edification.

⁴ The department is comparing 2009 fish data with 2010 harbor usage data because the 2010 fish data were not available. We believe that because the years are consecutive that the data suffice to make clear the proportion of fishers that use the harbor.

show sufficient evidence that anticipated social or economic conditions, including the extent to which residential and commercial growth of the community would occur within the proposed annexation boundaries, even with the inclusion of the seasonal community.

However, the preliminary report then purports to make the case for petitioner regarding the need standard imposed by 3 AAC 110.090. Neither Petitioner nor the department has carried the burden of showing that there is a need for services in the territory to be annexed. To the contrary, there will be no service provided in the territory other than tax collection. Those state agencies, communities and private groups that are providing services there will continue to do so and the petitioner will reap the tax revenue.

The preliminary report takes the tack of considering all of what the petitioner presently does within its existing boundaries and then attributes those facilities and services and conditions to the territory identified for annexation. The preliminary report finds that

the City does not intend to provide additional municipal services to this seasonal population because the essential municipal services required by the fishery industry, or seasonal population are already provided.

This approach displays a basic misinterpretation of the requirements of 3 AAC 110.090. Under the regulation, the territory to be annexed must exhibit the reasonable need for city government, not the existing area or population of the annexing municipality. The territory may establish a need for city government through existing or reasonably anticipated health, safety and general welfare conditions. 3AAC 110.090(a)(2). The evidence provided in the petition and the rationale developed in the preliminary report does not point to any conditions in the territory that supports a need for city government to be provided there. Petitioner will not be assuming police powers there and search and rescue responsibility will remain with the state. The territory is an uninhabited area of the unorganized borough in which transient commercial fishing occurs. The petition well documents that this territory has not required the extension of any services. In fact, the petitioner concedes that the services provided there now are "adequate."

Respondent feels that the department misinterpreted 3 AAC 110.090. The department continues to maintain, and agrees with respondent, that the territory, not the city, must exhibit a reasonable need for city government. But, the territory does exhibit a reasonable need for city government. That is precisely the point that we made exhaustively in pages 28 – 38 of the final report. The department stated on page 38 in the preliminary report that “the petition does meet the requirements of 3 AAC 110.090.”

In considering if a territory exhibits a reasonable need for city government under 3 AAC 110.090(a), LBC may consider whether the territory is currently receiving, or may be reasonably expected to receive, the benefit of city services. Here, the city is already providing services to at least the majority of the fleet that fishes in the territory, and that comes ashore to use city services and facilities. Further, the department wishes to clarify its position that the city intends to use the tax revenue to add some additional services, e.g., enhance the search and rescue, public safety and health and general welfare conditions. The city also intends to maintain an oil spill cache. These additional services would supplement the services that the city already provides to the fleet. For those reasons, the department affirms its earlier conclusion that because the fishing fleet in the territory is using and is expected to continue to use the city’s services, the territory exhibits a reasonable need for city government, and 3 AAC 110.090(a) is thereby met.

City Infrastructure, and How That Affects Need

Finally, the department addresses the issue of the city's infrastructure, and how it impacts need.

The Bristol Bay Area Native Corporation wrote in part that:

6. The Reply Brief states that BBAHC receives City services (police, fire, water, sewer, roads).

RESPONSE: This statement is incorrect. BBAHC is located approximately 6 miles from downtown Dillingham. While the fire station closest to BBAHC located on Lake Road is operated by the City of Dillingham, the State of Alaska also makes its equipment at the airport available in the event of emergencies at Kanakanak. BBAHC provides its own security.

BBAHC is not aware of any police patrols or other systematic City of Dillingham police service on or near the hospital. BBAHC has its own source of water on site at the hospital. It does not receive water from the City of Dillingham. BBAHC has a private sewer lagoon on site. It does not receive sewer services from the City of Dillingham. Finally, BBAHC is located on a road maintained by the State of Alaska, not the City of Dillingham. The Kanakanak Hospital compound is a federal compound, and as such is under federal jurisdiction (FBI). In other villages where BBAHC provides primary care services, the community provides such services. However, Dillingham does not provide these types of services to BBAHC.

Later in its comment, the BBAHC writes that:

[I]n 1980, BBAHC began managing and operating Kanakanak Hospital and the Bristol Bay Service Unit for the Indian Health Service (IHS), the first tribal organization in the United States to do so under P.L.93-638 as amended . . . Health clinics each staffed by a community health aide or EMT certified personnel are maintained in Manokotak and Clark's Point on a year-round basis and in EkuK during the fishing season when the village is occupied.

Respondent Native Village of EkuK wrote on page 13 of its comments that:

Clark's Point, EkuK and Manokotak provide basic medical services in the territory through the presence of local health aides. If a fisherman is injured and needs to be transported for essential medical treatment, that person will be treated at a hospital funded by the tribal governments of the communities of the region. This hospital is located on a federal enclave within the City of Dillingham and is reached over roads that are under the responsibility of the State of Alaska, not the city. The airport is owned and operated by the State of Alaska. Each community in the region provides search and rescue teams for dispatch by the Alaska State Troopers.

On the other hand, Michele Masley wrote that:

Further essential services including public safety, public works, sewage, garbage disposal and the 911 emergency services provided by KDLG, are used by every resident and visitor to Dillingham, including the commercial fishermen no matter where they originate from.

The City of Dillingham wrote in part that:

The City reminds staff that even services provided by others (such as the Post Office or Nushagak Electric) depend on city-supplied basic infrastructure (roads, sewer, water, landfill).

The hospital is not city run. It is in a federal compound, and does not receive city water or sewer services. Many of the roads in Dillingham are state owned and maintained, including between the airport and the hospital. But, the city provides many other municipal services and infrastructure that directly benefits the fishers.

The fire department (which includes the rescue squad) is a city owned department staffed by volunteers. The three fire stations in town, including the one at the airport, are city owned and/or operated. The city leases the land at the airport and does not pay for the downtown fire station land. If there is a fire at the state run airport, it would be the city fire department that responds. It would be the city rescue squad which would transport an injured person from the airport to the hospital. It would be the city rescue squad which would transport an injured person from the docks to the hospital if the injured person arrives by boat, and these roads are city owned and maintained.

The city provides services to fishers beyond the harbor. In addition to the harbor facilities, it also provides city police, fire, and rescue squad, maintains the locally owned roads, and provides other municipal services. These services need to be considered when analyzing what is and is not provided by the city of Dillingham to the fleet. Many of these services, if not all, are provided within the current city borders both when the fishers are docked and when they come ashore. The department finds that while entities such as the airport, hospital, and much of the road system are not city services, the city provides the infrastructure and other services connecting these important agencies to the fleet that fish in the territory and come ashore.

In conclusion, the department has considered the comments made regarding 3 AAC 110.090 (a), and reaffirm its finding that standard of 3 AAC 110.090(a) is met.

3 AAC 110.090(b)

The department feels that 3 AAC 110.090(b) was not a point of much debate in the comments to the preliminary report, and that further exploration of this standard is not necessary. The department reiterates its finding that 3 AAC 110.090(b) is met.

The department affirms its finding that 3 AAC 110.090(a) and (b) are met.

3 AAC 110.100 Character

3 AAC 110.100 states that: “The territory must be compatible in character with the annexing city.”

The department feels that the comments to the preliminary report did not focus on 3 AAC 110.100. The City of Dillingham did comment that

No other community or municipality provides the level of services that the city does, both to the fleet and also to all regional residents for which Dillingham serves as this area's hub community.

Other comments, however, made the point that other communities in the Nushagak Bay region also have ties to the Nushagak Bay. The department feels that those comments are more relevant to 3 AAC 110.090(a) or 3 AAC 110.135. The department addresses those comments in its analysis of those two standards.

The department reiterates its finding on page 25 of its preliminary report that “[o]ther communities have cultural and economic links to the bay, or use their own communities for at least some fleet service. Commerce respects, and does not dismiss those connections. Notwithstanding, the regulations pertain to the compatibility of character between the territory and the city.”

The department reiterates its finding that 3 AAC 110.100 is met.

3 AAC 110.110 Resources

3 AAC 110.110 states that: “The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.”

It is important to note that the standard is not about whether Dillingham needs this fish tax revenue. Dillingham’s fiscal health compared to that of other communities is not relevant to this standard. As the standard states, what is relevant is whether the city economy has the resources to efficiently provide essential municipal services in the proposed expanded boundaries of the city. Any discussion (including analysis of comments) of whether Dillingham really needs the revenue is best discussed in 3 AAC 110.135, Best Interests of the State.

In the preliminary report we found that Dillingham currently provides those essential municipal services necessary to satisfy the resources standard, and that the local fish tax revenue would provide the city with the resources to continue to do so. We concluded in the preliminary report that the standard of 3 AAC 110.110 was met because the economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. We reaffirm that finding.

3 AAC 110.120 Population

3 AAC 110.120 states that: “The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government.”

The department feels that the comments to the preliminary report did not focus heavily on 3 AAC 110.120.

The city of Dillingham wrote that

The City believes this is a significant population loss but does not render the City unable to provide services to the area proposed for annexation should annexation be approved. It does point to the concern that is one of the motivating factors for annexation- the ability of Dillingham to continue to provide the infrastructure and services to the commercial fishing fleet into the indefinite future without an expansion of the local tax base. The City believes staffs attempt to draw conclusions as to the reasons for the population change based on a conversation with a DCRA employee [p.23, n.2] is not relevant to the petition and is a simplistic approach not reflective of the quality of analysis accomplished by staff elsewhere in the preliminary report.

The department does note the decreasing population. In 2000, Dillingham had a population of 2,466. In 2010, it was 2,329. While concerned about the decrease, we still feel that the annexation, if approved, could reasonably stabilize or even increase the population due to the increased revenue.

The department wrote on page 50 of its preliminary report that:

the annexation, if approved, would mean that more revenue would flow into the city treasury. The tax revenue would come from the fishers.

LBC staff believes that in this case, increased tax revenues would stimulate the local economy. This is based on the fact that a good part of the fishery industry that would pay the severance tax is from outside of the Nushagak Bay region. Not only are a good number of the permit holders from outside of the Nushagak Bay region, but the number of out of state permit holders is increasing while local permits holders is declining. This means that the percentage of the tax payers who live locally continues to decrease.

Those funds would be spent in one capacity or another. Commerce finds it reasonable that the increased funding would create more economic opportunity. Should the economic opportunity be increased, that could reduce unemployment. This in turn could stabilize or increase population, if residents could stay and have suitable employment.

LBC staff concludes that the petition meets the standard of 3 AAC 110.120.

The department reiterates its preliminary report finding that 3 AAC 110.120 is met.

3 AAC 110.130 Boundaries

The department feels the comments on this standard centered primarily on 3 AAC 110.130 (c)(1) and (c)(2), with far less focus or emphasis on 3 AAC 130(a), (b), or (d). For that reason, the department focuses on 3 AAC 130(c)(1) and (2). Both 3 AAC 130(c)(1) and 3 AAC 130(c)(2) must be met.

3 AAC 130(c)(1)

To meet 3 AAC 110.130(c)(1), the annexed territory itself must qualify as a community. Respondent Native Village of Ekuk wrote extensively about 3 AAC 110.130(c)(1) and (2) in pages 5 -10 of its comments. Please see Appendix A for its full comments. In addressing 3 AAC 130(c)(1), respondent states (p. 8):

The department's approach of assessing whether the city satisfies the limitation of community doctrine by considering the conditions within the expanded boundaries of the city is plainly wrong. The petition does not meet the boundaries standard of 3 AAC 110.130, specifically the mandatory requirement that the territory to be annexed comprise a present existing community.

Respondent argues that regarding the annexing city as a community would destroy the limitation of community doctrine. Respondent cites regulatory history regarding the limitation of community doctrine, and the definition of the word "territory."

The department has carefully considered the respondent's argument, but continues to maintain that the territory proposed for annexation need not itself qualify as a community. The department agrees with the respondent that there is a limitation of community doctrine outlined in 3 AAC 130(c). But, the department finds that the petition does not violate that doctrine.

First, we need to examine the present regulations. 3 AAC 110.130(c)(1) states that: "To promote the limitation of community, the proposed expanded boundaries of the city must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation."

3 AAC 110.990(32) defines "territory" as "territory" "the geographical lands and submerged lands forming the boundaries in a petition regarding a city government or forming the boundaries of an incorporated city."

3 AAC 110.990(5) defines "community" as "a social unit comprised of 25 or more permanent residents as determined under 3 AAC [110.920](#)."

Interpreting the limitation of community doctrine in the way that respondent urges would mean that no unpopulated lands could be annexed into a city. The LBC has considered and approved such annexations in the past (e.g. Fairbanks 2009, Wasilla 2007) which did not always include populated

lands. To follow respondent's narrow interpretation of the regulations would mean that a city could not annex land if the land was not populated. Such an interpretation would greatly limit the city's ability to grow. For example, no territories with commercial property could be annexed. Such an interpretation would also mean waiting until a territory is populated before annexing and then instituting city zoning (if the city had those powers). That would limit the city's ability to anticipate and be prepared for anticipated growth.

Such an interpretation would also mean that no waters (submerged lands) could be annexed to a city, unless the waters constituted a community. A great many Alaska cities have considerable water size, and they could not have annexed those waters if the waters were required to constitute a populated community. Again, in the past the LBC has approved annexation of water into a city.

The department is unaware of any constitutional, statutory, or regulatory standard that says unpopulated lands cannot be annexed. Indeed, following respondent's theory of limiting a city's ability to grow by only allowing it to annex land or waters that comprise an existing community would seem to violate the state's constitutional principle of providing for "maximum local self-government" (art. 10, section 1) because it would unduly restrict a city's ability to expand.

Further, the full definition of "territory" as above includes the phrase "or forming the boundaries of an incorporated city." If one were to replace within 3 AAC 130(c)(1) the word "territory" with its definition, the following (regrettably wordy) regulation would result:

To promote the limitation of community, the proposed expanded boundaries of the city must be on a scale suitable for city government and may include only that ~~territory~~ (the geographical lands and submerged lands forming the boundaries in a petition regarding a city government or forming the boundaries of an incorporated city) comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

Under such a definition, the proposed expanded boundaries of a city can include the boundaries of an incorporated city comprising an existing local community, plus ten years growth, etc. This seems to the department to be the intent of the regulation – for an existing city to be able to annex lands or submerged lands that are not necessarily populated.

Lastly, the proposed expanded boundaries of the city are on a scale suitable for city government because other Alaskan municipalities are reasonably large and are on a scale suitable for city government. As cited on page 57 of the preliminary report,

Commerce finds that the proposed expanded boundaries of the city are on a scale suitable for city government. The present size of Dillingham is 33.6 sq. miles of land and 2.1 sq. miles of water, for a total of 35.7 square miles. The proposed annexation is 395.84 square miles of water, and 3.24 square miles of land, for a total of 399.08 square miles. The annexation, if approved, would result in a total municipal area of 434.78 square miles for Dillingham.

Other Alaskan municipalities are reasonably large, on a scale suitable for city (municipal) government. St. Paul, for example, has a land area of 40 square miles, and 255.2 of water, for a total municipal area of 295.2 square miles. Togiak has 45.2 square miles of land, and 183.3 of water, for a total municipal

area of 228.5 square miles. Valdez is 222 square miles of land, and 55.1 square miles of water, totaling 277.1 square miles of municipal area. Skagway totals of 464.3 municipal square miles which was the total municipal area as a city as well as after the city was dissolved and incorporated into a borough. That area is larger than the petitioner's proposed expanded boundaries.

The department continues to find that Dillingham's proposed size is suitable for city government because other cities, often with smaller populations, have annexed large tracts of land or submerged lands.

For all the above reasons, the department continues to find that 3 AAC 110.130(c)(1) is met.

3 AAC 130(c)(2)

At issue is whether under 3 AAC 110.130(c)(2) the proposed expanded boundaries of the city may include "entire geographical regions, or large unpopulated areas." A second issue is whether this requirement point is moot. Respondent Native Village of Ekuik wrote about 3 AAC 110.130(c)(2) in pages 8 -10 of its comments. Please see Appendix A for its full comments.

In addressing 3 AAC 130(c)(2), it writes on page eight of its comments that:

The preliminary report makes three arguments why the commission need not consider whether the petition fails to meet the standard of 3 AAC 110.130(c)(2) (the territory may not contain entire geographic regions or large unpopulated areas). First, the department finds that any analysis of whether the territory satisfies 3 AAC 110.130(c)(2) is moot because it finds that including this territory is justified by the standards in 3 AAC 110.090 – 3 AAC 110.135 (the standards for annexations to cities). Second, the preliminary report offers the justification that transient persons operating and Serving on fishing boats operating in the waters of the territory to be annexed are in fact residing in the territory and this means that the territory to be annexed is not "unpopulated". And third, it interprets the prohibition against including entire regions and unpopulated areas as applying only to annexations within organized boroughs.

3 AAC 110.130(c)(2) states that: "To promote the limitation of community, the proposed expanded boundaries of the city . . . may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC [110.090](#) - 3 AAC [110.135](#) and are otherwise suitable for city government.

First, we address respondent's point that the department erred by using the literal definitions of "area" and region." 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."

3 AAC 110.990(28) defines "region" as "(A) 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.”

We stand by the use of those definitions because those literal definitions apply. They are specific terms relating to boroughs. Here, Nushagak Bay is being proposed for annexation to a city. As above, “territory” is the term used to describe a city. This relates to the department’s finding that the size of Nushagak Bay is relevant to annexing to a city.

Stressing the meaning of the definitions, however, is beside the point in the preliminary report that the boundaries are justified by applying 3 AAC 110.090 – 3 AAC 110.135. 3 AAC 110.130(c)(2) states that if 3 AAC 110.090 – 3 AAC 110.135 are met, and the proposed expanded boundaries are otherwise suitable for city government, then the proposed expanded boundaries of the city may “include entire geographical regions or large unpopulated areas.”

As has been found in the preliminary report, and in this report, the department finds that 3 AAC 110.090 – 3 AAC 110.135 are met. The department found in its analysis of 3 AAC 110.130(c)(1) that the proposed expanded boundaries of the city are on a scale suitable for city government. Further, the city is already providing services to the fishers who fish in the territory. The fishers use the harbor in large numbers. The fishers need and use city services, in the harbor and ashore. For those reasons, the department affirms in preliminary report findings that the proposed expanded boundaries of the city are suitable for city government.

As the two prongs of 3 AAC 10.130(c)(2) (determined by applying 3 AAC 110.090 - 3 AAC 110.135, and on a scale suitable for city government) are met, the department again finds that this makes moot the issue of whether the proposed expanded boundaries of the city include “entire geographical regions, or large unpopulated areas.”

Another issue raised is whether the territory is unpopulated. Commerce finds that the municipal area (the present city of Dillingham) is extensively populated year round without the addition of the “seasonal community.” It is not the territory that needs to be populated. Instead, the standard asks whether a community exists within the proposed expanded boundaries of the city (as opposed to the territory proposed for annexation), which includes the city of Dillingham. The proposed expanded boundaries of the city are also populated during the annual fishing season.

The department doesn’t believe that it interpreted the prohibition against including entire regions and unpopulated areas as applying only to annexations within organized boroughs.

The department has considered the respondent's several arguments about regulatory interpretation and respectfully disagrees. For all the above reasons, the department finds as it did in the preliminary report that 3 AAC 110.130(c)(2) is met.

The department finds that 3 AAC 110.130 is met.

3 AAC 110.135 Best Interests of the State

In considering the best interests of the state, the department considered several points. First was the proposed annexation's effect on the interests of the rest of the Nushagak Bay communities. The second was the effects of the proposed annexation on other Nushagak Bay communities, and on the fishers. The third was the effects of the proposed annexation on borough formation. The department will address each of these in turn.

1. The Effect of the Proposed Annexation on the Interests of the Rest of the Nushagak Bay Communities

Financial Impacts

The Southwest Region School District wrote in part on the first page of its comment that:

WHEREAS the families of a significant percentage of the students served by Southwest Region Schools live below the poverty line;
... WHEREAS the Southwest Region School District is concerned that if the fishermen who live in the communities whose students it serves are required to pay new taxes to the City of Dillingham without receiving equivalent services in exchange, those fishermen may not have sufficient funds available to take care of the basic needs of themselves and their families, resulting in reductions in the quality of life of school children and associated decreases in educational performance or in families being forced to leave the village and thereby decreasing the permanent population below levels necessary to support a school;" (Southwest Regional School District Resolution No. 11-04).

Respondent Native Village of Ekuk wrote in part on page 2 of its comments that:

The preliminary report cites per capita earnings of residents of the city in recommending that the annexation should be granted. In making this recommendation the department found that the median family income was \$57, 417.6 However, evidence provided by respondent, but not mentioned in the report, shows that drift net permit holders residing in the Bristol Bay Watershed earn only 70 percent of the fishery wide average and that set net permit holder's earnings averaged only \$27,000 per season. Fishing operations are often family enterprises, so the lower per permit income equates to a lower per capita income. For example, the median family income for Ekwok is only \$20,000; New Stuyahok, \$26,458; Manokotak \$30,357; Aleknagik \$30,625; Clark's Point \$41,250; and Koliganek, \$51,042

The department understands and respects these comments' intent, but disagrees with the notion that the staff has failed to consider the effects of annexation on the Nushagak bay communities. To the contrary, the department made the point in the preliminary report, and makes again, that it considers that this annexation is in the best interests of the rest of the Nushagak Bay communities, not just of Dillingham. Staff has stressed that Dillingham is the hub of Nushagak bay. It is the site of major regional centers, such as the hospital and airport, even though many of these centers are not city owned or maintained. But, these centers need a hub to build and grow in. If the hub is not sustainable in the long run, how will these other communities that rely on the hub continue to exist?

COMMUNITY	POPULATION	POP IN POVERTY	PCT POVERTY
Aleknagik	219	95	40.8%
Clark's Point	62	37	45.7%
Dillingham	2,329	287	11.7%
Ekwok	115	34	32.1%
Koliganek	209	39	19.3%
Manokotak	442	141	35.3%
New Stuyahok	510	152	31.7%
Nushagak Bay Communities Totals	3,886	785	20.2%

(Source: DCRA Alaska Community Database Custom Data Queries)

The Nushagak Bay communities, as many other Alaskan communities, have a relatively high poverty rate. No one community is exempt from this unfortunate dilemma. The department wrestled with this fact in making our recommendations and general conclusions. Two factors were weighed against each other to determine whether this proposed annexation was in the best interests of the state. First, how are the individuals and their collective community affected if this annexation is approved? Second, how will the Nushagak Bay communities be affected if this annexation is not approved?

Both are valid questions that directly affect the determination of best interests of the state. The respondent is correct that several communities around Nushagak Bay have higher poverty rates than Dillingham. The department, however, does not base its recommendation on Dillingham's poverty rate versus all others. We looked at the poverty rate of the Nushagak Bay communities in answering the first question.

The Southwest Regional School District indicated that there is a significant number of school-aged children who belong to families below the poverty line. This fact is not disputed by the department, nor is it ignored. Dillingham has a poverty rate of 11.7% and a 2010 population of 2,329.⁵ In other words, Dillingham has 2,329/3,886 or 59.93% of the Nushagak Bay communities' population. It has 287/785, or 36.56% of the Nushagak Bay communities' poverty population, living in poverty. That poverty needs to be considered as well. The department does not intend to vie one community's impoverished residents against another. While Dillingham's population percentage is much greater than its poverty percentage, our point is that there are many people living in poverty in Dillingham too. While the tax revenue is not going directly to those individuals, a strengthened

⁵ See Appendix D for a chart made from data supplied by Commerce. The data are available by going to the communities database and using the data from "detailed community information." The link is http://www.commerce.alaska.gov/dca/commdb/CF_BLOCK.htm. The totals were derived by LBC staff.

Dillingham would be stronger economically. It is our hope and belief that this would help those individuals living in poverty, both in and out of Dillingham.

The Southwest Regional School District and the Native Village of Ekuk's comments do not include the potentially positive effect of subsistence. Subsistence is a vital cultural part of the Nushagak Bay communities. In addition to subsistence fishing, other commercial harvesting is possible in Nushagak Bay and in other parts of Alaska that would not typically be available to other impoverished communities in other states, for example. The department does not believe subsistence is a complete replacement for higher earnings or income, but it is a part of the culture and way of life that bears some weight in the poverty debate.

Geography

Respondent wrote in part on page 1 that:

The preliminary report contains a finding that the City is a regional center but gives little weight to the fact that the territory to be annexed is also a part of the Western Bristol Bay region along with other municipalities and villages in the Nushagak River water shed. These other communities are as much a part of the region as Nushagak Bay and the petitioner, yet they are being gerrymandered out as parts of the expanded regional governmental entity. The report finds that only Clarks Point and Ekuk have any direct connection with the territory to be annexed. The department then finds 'the city has a more direct connection to the territory than do many of the other communities because the city is directly on the bay.' This is a significant error in the findings of the preliminary report which should be reconsidered. The connections of other communities in the region with the territory are direct, and long-standing.

The department was making the point that Dillingham had a more direct geographical connection to the bay than many other communities, simply because it is on the bay. The department correctly points out in the preliminary report that the City of Dillingham is the regional center for the Nushagak Bay communities, geographically and economically. As indicated later in this report, Dillingham's harbor may not be used regularly by all permit holders that fish in Nushagak Bay. But, a significant portion of those that do fish in the bay do haul, moor, or dock at the Dillingham harbor regularly. Due to the need for services continually provided by the city without appropriate compensation, the city's financial situation is not strong, but instead rather fragile and bordering a fine line, or tipping toward a gradual decline.

2. The Effects of the Proposed Annexation on other Nushagak Bay Communities, and on the Fishers.

Respondent wrote on page 11 that:

The preliminary report also fails to consider if the community purpose of providing for city taxation might in fact harm other communities in the region rather than benefit them. Respondent believes that a hub city is just as dependent on the health and welfare of its spoke communities as those communities are on the financial health of the hub."

In weighing the question of how individuals and their community would be affected by this annexation, the department described, in the preliminary report, that fish tax effects to the individual local governments would not be significant.⁶ The department stands by that conclusion. There has been no evidence found indicating that local governments in the surrounding communities of Nushagak Bay would feel a significant decrease in revenue due to the approval of this annexation.

Again, as pointed out in the preliminary report, no local government entity on or near Nushagak Bay benefits from the direct resource provided by a tax on the bay's fish. Dillingham has been the only local government entity, aside from Clark's Point, that has attempted to annex a significant portion of the waters to benefit the local community(ies). The department believes it is not fair or balanced to insist that the city of Dillingham be framed as the big city taking resources from the rest of the Nushagak Bay communities. This resource has always been available to all local governments through borough formation - an option that has not been exercised.

Now, Dillingham is the community petitioning to annex Nushagak Bay and seek the fish tax revenue. In doing so, it makes clear that it is providing financially unsustainable services to the fishing industry. The city is not asking for anything more than the ability to continue to provide such services that are paid for by those who use it. It wants to continue to improve the harbor for the fishing industry. The city, as a first class city, has shown that it is maximizing the powers of local government by providing services to the fishers and to the community. Izetta Chambers's public comment articulates this point very well,

As you are aware, much of the lands within the current [Dillingham] city boundaries are tax exempt Native Allotments, which provide no funding for all of the services that Dillingham provides - both to it's year-round residents, and also to many of the surrounding communities. Annexation and the proposed fish tax would allow the city to provide those services that so many fisherman require. While I empathize with the plight of many of the residents of the surrounding villages, if Dillingham's petition were approved, I am confident that they will consider their neighboring villages in much of their decision making analyses and do whatever is in their power to provide benefits to all fishermen in the form of improved infrastructure . . .”

Regarding the fishers, the single greatest uncompensated burden for Dillingham as the regional hub is the effort extended to the Nushagak Bay fishing industry that uses and benefits from this hub community's services. Annexation will allow Dillingham to continue its “community minded” practices with a sustainable financial future that truly does benefit the fishers, the city of Dillingham, and the residents of the surrounding communities that regularly travel to and through Dillingham for a variety of purposes.

The department believes that the fishers, however, would be affected by this taxation as pointed out by the respondent:

Respondent urges reconsideration of this emphasis and encourages a fair presentation to the commission of the effect of the tax scheme proposed by the city because it extends beyond the territory sought for annexation to the Western Bristol Bay region. The steady decrease in the number of limited entry permits held by residents of the Bristol Bay region is a major issue within the region

⁶ City of Dillingham Annexation Preliminary Report, Pg. 68

and bears directly on the question whether this added tax burden would be in the best interests of the state at this time.” (Native Village of Ekuk Comment, pg. 3)

The department agrees that, if annexation is approved, the burden of this tax will fall directly on the fishers that drift and set net in the Nushagak Bay. However, the department believes it is the responsibility of the users of municipal services to pay for those services. Dillingham residents currently bear a much larger burden by providing services that they often do not use. As a matter of fact, the department would point to the individuals who will be taxed the greatest: The Dillingham fishers. This severance tax would add a 2.5% severance tax to the residential taxes already being paid by these fishers - 13 mills for the city’s real property tax, 6% sales tax, 10% liquor tax, and 6% gaming tax.

Despite that, the department received a number of public comments from local fisherman and/or residents who pay all these existing taxes and still are community-minded enough to understand that local government is supported by those who live and use the essential municipal services provided. Matt O’Connell who lives in Dillingham and fishes Nushagak Bay, expressed his belief in community and supports this annexation, even though the tax burden is most heavily carried by him and the other Dillingham fishers.

Several public comments insist that as residents of other Nushagak Bay communities, they do not use the Dillingham harbor; therefore they should not have to pay a severance tax. It might be true that that particular individual does not use the harbor, but the department’s research shows that a majority of the permit holders that fish in the Nushagak Bay do obtain a permit to dock, moor, or haul out in Dillingham’s harbor at some point in time during the fishing session (see Appendix D for Dillingham port director’s data).

This is further emphasized in the Department of Fish & Game’s annual fish management report (see Appendix D for the applicable page 6 of that report).⁷ Fish & Game personnel explained that the numbers of drift netters and set netters are based on permit holders, and not boats. But, some boats carry multiple permit holders so that more fish can be caught at one time, as known as “permit stacking.”⁸ The data show that a majority of permit holders do use the Dillingham harbor. It would be speculative to estimate the number of boats that stack permits, but it makes sense that some of the boats must have more than one permit. The department finds that it’s likely that a higher percentage of fishers use the harbor than is reflected by the number of permit holders. The simple majority of individual permit holders do use the Dillingham harbor.

⁷ “Special Publication No. 09-17, Summary of Bristol Bay Sockeye Salmon Harvest by Gear Type, 2007 – 2009,” by Paul Salomone, November 2009. This data was requested by the department for the commission’s edification.

⁸ Personal Communication with Tim Sands, Fishery Biologist III with the Alaska Department of Fish & Game. He heads the Dillingham Fish and Game office. Mr. Sands is on the Dillingham city council, and mentioned that potential conflict of interest.

Furthermore, taxation is used to pay for essential municipal services provided by a local government (see 3 AAC 110.090). This tax intentionally spreads the burden to those who use the services. Essential municipal services, as spelled out in the preliminary report, include the harbor but also generally for municipalities include transportation services like municipal road maintenance, emergency and public safety services, and public education. This 2.5% severance tax will apply to all fish caught in the Nushagak Bay for services provided to fishers of the Nushagak Bay. This tax applies just as equally as the property and sales tax paid by Dillingham residents for education services regardless of whether a resident has a child attending school in the Dillingham School District. This tax applies just as Dillingham residents who don't own a car or drive on the municipal roads pay for those services as well. It is fair for those individuals to pay for those services regardless of use. Similarly, the argument that "I don't use the harbor so I should not have to pay for it" is neither valid nor fair.

The city has shown a considerable effort in shouldering the burden added by the services provided to the fishing industry. For no less than ten years the city's permit fees have been consistent.⁹ The fees charged by the city are far less than several other nearby communities' outside the Nushagak Bay. It has not raised its fees once regardless of inflation, substantially higher costs to provide the service rendered to the fishing industry, or any other circumstances that have occurred. The belief that just raising these fees, as suggested by the public commenter below, is just another form of the proposed severance tax. The difference is that the flat fee would be regressive. Low income fishers would be financially impacted to a larger degree than those that are not low income. In addition, the fees would have to be substantially higher to compensate for the use of the harbor, which would compound the impact on the low income fishers.

"This proposal is an attempt to pay for a local "want" by disguising it as a district "need". The fact is that the majority of Nushagak District fishermen do not store their boats in Dillingham or even go to Dillingham. The fishermen that Dillingham are targeting already pay substantial taxes in the Bristol Bay Borough. Dillingham's need for funds should be fixed directly onto those would benefit, perhaps through increased fees of Dillingham harbor users and those who haul out their boats in Dillingham."
(Tom Henshaw)

As indicated in the preliminary report's 3 AAC 110.090 Needs section, and again in this report in the needs section, the territory proposed for annexation needs and has continued to rely on the city to provide municipal services to the fishing industry.

3. Borough Formation

The department continues to refute any argument that borough formation would be less viable if this annexation is approved by the Local Boundary Commission. The Southwest Regional School District states that:

WHEREAS the proposed annexation may also affect the Southwest Region School District, which has the power to petition to create a borough in the region, 3 AAC 110.410(a)(5). If Dillingham

⁹ Personal communication with Dillingham port director Jean Barrett.

annexes and taxes fishing activity in territory that is part of the region, but not really part of the community of Dillingham, then that may lessen the capacity of surrounding areas to produce or maintain revenue to support a borough or may foster Dillingham opposing borough formation. In light of these dynamics, the boundary commission should consider the appropriateness of creating a borough before permitting the City of Dillingham to claim that territory; (*Southwest Regional School District Resolution 11-04*)

The feasibility of a borough formed in the surrounding communities of Nushagak Bay would only be fully assessed if and when a borough incorporation petition was submitted to the LBC. However, with the additional source of previously untapped revenue coming from the fish severance tax, it is probable that borough formation would actually be further strengthened rather than diminished. The Local Boundary Commission is tasked with assuring that the petitioning local government is sustainable, viable, and financial secure. Without this annexation, the city of Dillingham will continue to be the regional hub with significant financial obligations to provide essential municipal services to the surrounding communities, non-residents, and tribal entities without proper compensation for the “community minded” services it is providing.

The department clearly laid out a comprehensive analysis of the best-case scenarios in the preliminary report outlining how and why borough formation is still plausible. In that analysis, we outlined the options that would make borough formation a truly community minded scenario. We also explained that borough formation can be hostile to Dillingham (by detaching territory from it, or by dissolving it and other cities) depending on the method chosen by the petitioner. The department referred to the multiple studies produced specifically for Nushagak Bay, both by request and during the mandatory borough formation events of the early millennial years. Equally important, we pointed to the fact that borough formation had not been attempted, exclusively for the Nushagak Bay communities, over fifty years.¹⁰ The question of borough formation has continued to be raised during this annexation petition process. Many parties have said that annexation would hinder borough formation. The department asks that if this annexation is not approved, would the surrounding communities then actively seek to form a borough? We believe that we know the answer and for that reason, the borough formation argument is beside the point. The point is that borough formation is still possible even if this annexation is approved and the severance tax is levied on the Nushagak Bay. It is never too late to attempt to form a borough. One point that has been raised is whether Dillingham needs the fish tax revenue. Determining the need is not a standard in itself. But, the staff addresses it under the standard of 3 AAC 110.135 to give the commissioners a full picture. The department continues to affirm that the city of Dillingham needs the revenue. It is a matter of vigorous debate.

Respondent Native Village of Ekuk wrote on page 44 of its comments that:

The preliminary report accepts the assertion of the city that a raw fish tax is necessary to guarantee the “sustainability” of the city. The report also finds “the proposed annexation would bring much needed revenue to the city.” The preliminary report also describes the city as “laboring” under a combined 13

¹⁰ The department found, after the publication of the preliminary report, that an attempt to join the existing Lake and Peninsula Borough had taken place in the late 1990s. This attempt was made by the City of Dillingham. The petition was later withdrawn.

mills in property tax, a sales tax, a general sales tax and specific sales taxes on liquor and gaming. Also at page 66 the preliminary report contains the following finding:

The annexation is necessary to sustain the city, thereby sustaining the regional hub. If the city were to continue its fiscal course, without annexation approval, the state would be forced to step in and assist Dillingham in order to maintain the economic integrity of the city and region.

A review of public records shows that the foregoing findings are not based on fact. The City is adequately funded by its present revenue sources. It has a substantial surplus of revenue derived from existing sources. It reaps a substantial part of this surplus revenue from sales taxes paid by the seasonally fluctuating population and by the residents of other communities of the region. Attached to this letter as Exhibit 1 is a loan evaluation performed on the City of Dillingham by the Alaska Municipal Bond Bank Authority. The evaluation was performed as part of a transaction to fund the 2008 school construction bonds of the city. In that evaluation, it was determined that the city's general fund derives its revenues primarily from sales taxes (36.3%) and property taxes (25.07%). The evaluation also concluded that there was a steady growth in sales taxes over the three relevant fiscal years (\$2.01 million in FY 04 to \$2.34 million in FY 07).

Respondent wrote on page 11 that:

Respondent believes that the finding that the territory to be annexed is suitable for the reasonably anticipated purpose is based on a false premise. The preliminary report accepts the premise that the city needs the tax revenue to sustain its existence. There has been no factual showing that the city's finances are in peril. The contrary is true. The finances of the city are strong and have improved every year since the city enacted the sales tax. It is true that any city would benefit from more income, but the preliminary report accepts as true without any support in the petition or any other source that the sustainability of the city is in question and that a financial collapse is imminent. The preliminary report is not fair and balanced on this point.

On the other hand, Lisa Haggblom wrote that:

I completely support the City of Dillingham's petition to annex parts of Nushagak Bay and Wood River--these waters and subsequent tax revenues should have been part of the city years ago. Since the expectation is that Dillingham will provide services to the fishing industry, than it is completely appropriate for the city to have access to income generated by the fishing industry. This annexation is of utmost importance to generate revenue for a city that has few revenue generating options.

Michele Masley wrote in part that that:

As a private citizen who has made a choice to make a life here in Bristol Bay, I am concerned with what I perceive as deterioration in the past 5 years of basic maintenance of basic services the City of Dillingham is mandated to provide. I believe annexation will help the city get beyond treading deep water that is just getting deeper and deeper as the cost of fuel and the general cost of living increases. A few examples are: the paved roads leading to town have disintegrated, the library roof is leaking, the downtown fire station doors do not fit the fire trucks, and the harbor near the picnic park is washing away with the tides. Due to lack of financial resources, the city barely has capacity to keep up with basic maintenance of essential services for its year-long residents and visitors, let alone keeping up with the vast increase in demand of essential services during fish season, or the resources to increase or improve services for its residents and those who visit from other villages or from outside. Further essential services including public safety, public works, sewage, garbage disposal and the 911 emergency services provided by KDLG, are used by every resident and visitor to Dillingham, including the commercial fishermen no matter where they originate from. I believe Dillingham to be at serious risk of an unsustainable situation with diminished financial capacity but same or increasing demand for services.

Respondent argues that the city has a surplus of \$3.3 million, as of 2008. The city states in its petition (p. 32) that it has “an approximately \$3 million general reserve or ‘rainy day’ fund that its can use to fill a gap such as this [deficit]. However, it is not sustainable to use this fund in this manner.”

It is the department’s position that Dillingham isn’t doing well financially. The department bases this on the budget and other materials submitted by the petitioner, respondent, and commenters. The department finds that the city needs the fish tax that would result from annexation.

The department takes this opportunity to revise our position on Dillingham’s future. If the annexation is not approved, we believe that imminent disaster is not immediately forthcoming. Rather, based on the budget and other materials, we find that there will be a steady decline. This would hurt Dillingham, the rest of the Nushagak Bay communities, and the fishers that all depend on Dillingham.

The department finds that it is prudent to have a reserve fund. The city budget is over \$10 million, with a general reserve of over \$3 million, or enough to run the city for three to four months. This appears to the department to be a healthy, not an unreasonable, reserve amount. Current municipal financial difficulties in the United States confirm the wisdom of having a reserve. If a community has the ability to put money aside, it makes sense to do so. The department would not recommend to any entity, city or individual, to use its reserves before it seeks additional income. In addition, the city is currently running a deficit. Under current projections, the reserve fund will vanish over time. We don’t say how long because we cannot predict the annual deficit after FY 2013.

Respondent also argues that Dillingham has a 13.9% increase in sales tax revenue from 2009, based on the 2009 and 2010 *Alaska Taxable* (prepared by the Office of the State Assessor). The problem with that figure is that it only shows part of the picture. That is because it focuses only on sales tax, and not on other taxes, some of which dropped from 2009 to 2010.

Further, the *Alaska Taxable* is made up of unaudited figures. A more accurate figure can be obtained from audited figures, which the department requested and obtained from the city. Also, the department examined 2008 to 2010 to give a broader picture. It is difficult to find a trend from only one year to the next. Using more complete data from the year 2008 to 2010 (see Dillingham Bond Debt and Tax Figures chart in Appendix D)¹¹, the total taxable income for Dillingham rose from \$4,818,400 in 2008 to \$5,132,095 in 2010. This is a 6.11% increase of all tax income over two years, as opposed to the 13.9% sales tax revenue increase provided by respondent.

Further, revenue is only part of the picture. Expenses are also relevant. The city is now responsible for paying the school bond debt of over \$15 million – something that it was not responsible for at

¹¹ The information was requested of the city by the department under 3 AAC 110.435(c).

the time of the loan application. Even with the state paying 70% of the bonds' cost, the city still pays at least \$1,160,000 a year in bond payments. It is also important to point out that the loan application preceded the incurring of the school bond debt, so the evaluation of the city's finances at that time would largely not reflect the debt burden.

It is worthwhile to point out the difference in the FY 2011 deficit. The figure mentioned in the petition is a deficit of \$286,503. But, the figure mentioned in the budget sent annually to Commerce shows a deficit of \$15,271.¹² The budget sent to Commerce is more recent.

This bulk of the FY 2011 difference comes from \$151,000 in revenues from the federal government (not the same as PILT – Payment in Lieu of Taxes), and a decreased income from debt service transfer. Commerce attributes this to more accurate data garnered over time because the budget sent to Commerce is more recent. The 2010 deficit reflects little change between the two documents. If the deficit were to remain at \$15,271, that would be much better than the years before or after it. But, per below, the department finds that the deficit would rise if the annexation were not approved. Also, any deficit is unsustainable over the long run.

Some might question, however, whether Dillingham need the fish tax revenue. The department emphatically finds that Dillingham does need that revenue. According to data submitted to Commerce, Dillingham had a deficit of \$71,461 in FY 2010, and a deficit of \$15,271 in FY 2011. In FY 2012, assuming that the annexation is approved, Dillingham expects a surplus of \$200,497. If the annexation were not approved, then one could subtract the \$710,883 in expected fish tax revenue, and add \$246,000 in expenses resulting from annexation. That would result in a deficit of \$264,386.

In FY 2013 the city (assuming annexation) expects a surplus of \$350,590. If annexation were not approved, one could subtract \$710,883 from \$350,590, and that add \$150,000 in annexation expenses (the annexation expenses level off after the first year and remain at \$150,000). That would result in a \$210,293 deficit.

The department feels that this situation is not tenable. As said above, the department wants to say that we might have given the misimpression in the preliminary report that immediate doom was expected. We don't expect imminent disaster, but are very concerned about a steady downward trend.

We do firmly state that no entity can continue to run a deficit for very long. It is difficult to see what additional revenues Dillingham could raise. It was suggested by some commenters that the

¹² "Every city and borough in Alaska is required under AS 29.20.640 to annually submit its current annual budget and audit to the Alaska Department of Commerce, Community, and Economic Development." DCRA website (http://www.commerce.alaska.gov/dca/commfin/CF_FinRec.cfm).

harbor fees could be raised, but this flat tax would be regressive, as opposed to a tax based on how much fish one catches. One could live in Dillingham and perhaps not pay an alcohol or gaming tax if one did not pursue those activities. But it is harder yet to avoid a sales tax or a property tax. Dillingham's sales tax is 6%. According to Table 2 of *Alaska Taxable*, a 6% sales tax is one of the highest in the state. Very few municipalities have as a sales tax as high 6% (some, like Anchorage, have none), and only Wrangell has a higher sales tax (7%).

Dillingham has a mill rate of 13.0. While it is possible that the city could raise the mill rate, one would question the wisdom of increasing the mill rate when the sales tax is already high. In addition, Dillingham assesses a tax on personal property as well as real property.

The long and the short of it, as the department sees it, is that Dillingham needs the fish tax revenue, and has few other ways to raise it. Therefore, the city needs the fish tax revenue to sustain itself as the hub of Nushagak Bay. This would benefit not only the city, but also the Nushagak Bay communities and the fishers that rely on the hub that Dillingham is.

The department finds that 3 AAC 110.135 is met.

3 AAC 110.900 Transition

The department feels that the comments to the preliminary report did not focus on 3 AAC 110.900. We affirm our preliminary report finding that:

LBC staff finds the prospective transition of extending essential city services into the territory proposed for annexation to be elementary and uncomplicated. LBC staff finds that the petition includes a transition plan. We further find that the plan was designed to affect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. LBC staff finds that there are no relevant or appropriate assets and liabilities to transfer or integrate from any entity. LBC staff finds that the transition plan stated the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. We find that the dates on which that consultation occurred and the subject addressed during that consultation were also listed. We find that the petition meets the requirements of 3 AAC 110.900.

3 AAC 110.910 Statement of Nondiscrimination

3 AAC 110.910 states that: “A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.”

Respondent wrote on page 19 of its comments that:

Respondent does not believe that the analysis provided regarding whether the annexation violates the nondiscrimination provisions of 3 AAC 110.910 is on point with the facts of this petition.

In this instance, the relevant facts are that communities with overwhelming Alaska Native populations were determined, through a proceeding conducted by the Local Boundary Commission, to reside in a region which included the territory now identified for annexation. Through this proceeding, it was established that the territory was within a region that could only be included within a borough. Under state law, the process for the creation of a borough permits the residents of the communities in the region to vote on the question of formation of their region into a borough.

The department is now taking the position that the regulations of the Local Boundary Commission allow petitioner to select an unpopulated part of the region and request that this territory be annexed to it with a ratification vote limited only to persons who are qualified voters of the city. This action permits the annexation of territory which is a valuable revenue source to the Western Bristol Bay Region. The annexation would be to a city, not a regional government, thereby leaving the residents of the region without any say in the matter, which they apparently presently have under a decision of the Local Boundary Commission.

Under the foregoing formulation of the facts, there may well be a case for racial discrimination if the commission decides to grant the petition. Respondent has not investigated this matter and will not do so until the question is ripe. Respondent is reluctant to make claims of racial discrimination under these circumstances and will weigh the wisdom of doing so carefully before acting.

The department agrees with respondent about the seriousness of racial (or other) discrimination. The department, however, does not believe that any person here is being denied the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

While people may vote in local option (as opposed to legislative review) annexation petitions, such franchise is limited to residents. This is true of elections in general. Nonresidents cannot vote in elections. Had the proposed expanded boundaries of the city included those communities, then those community residents could have voted. As respondent has emphasized, there are no permanent residents in the territory proposed for annexation. They are not being denied voting rights, however, because of race, color, creed, sex, or national origin.

The department finds that 3 AAC 110.910 is met because that no person is being denied the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

3 AAC 110.970 Determination of Essential Municipal Services

[3 AAC 110.970. Determination of essential municipal services](#) states in relevant part that:

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

(1) are reasonably necessary to the community;

(2) promote maximum, local self-government; and

(3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

The department feels that the comments received did not focus on 3 AAC 110.970. The department reaffirms its preliminary report finding that 3 AAC 110.970 is met.

3 AAC 110.981 Determination of Maximum Local Self Government

[3 AAC 110.981. Determination of maximum local self government](#) states in relevant part that:

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

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

The department feels that the comments to the preliminary report did not focus heavily on 3 AAC 110.981. The department discussed maximum local self government briefly in 3 AAC 110.130. The department reaffirms its preliminary report finding that 3 AAC 110.981 is met.

3 AAC 110.982 Minimum Number of Local Government Units

3 AAC 110.982 states in relevant part that:

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

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

The department feels that the comments to the preliminary report did not focus heavily on 3 AAC 110.982. The department reaffirms its preliminary report finding that 3 AAC 110.982 is met.

Chapter 4 - General Conclusion and Recommendation

The department read and considered all the comments that it received to the preliminary report when writing this final report. Some of the standards were not addressed by the comments. The final report most heavily addressed those standards for which it received comments on.

Many issues were brought up in the comments. We make no major recommendation change from the preliminary report, although we did change some of what we had said or found in the preliminary report. Those changes are made clear in the individual standards.

We reaffirm our “General Conclusion and Recommendation” that we made in the preliminary report because the department finds that this annexation meets the standards. We again recommend to the LBC that it approve this annexation for that reason. The department further finds that the fish tax revenue will sustain Dillingham, and help the Nushagak Bay communities collectively. We find that the annexation will not harm borough formation, but instead increase its odds, as the residents see the value of the fish tax. As Michele Masley wrote, “I believe annexation is a step towards a greater sum which will benefit the community as a whole, the community I have chosen to live in.”

The department recommends that the LBC approve this annexation.

Appendix A: Public Comments

February 25, 2011

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Re: Comments of Respondent Native
Village of Ekuk To Preliminary Report
regarding City of Dillingham Annexation
proposal to annex by local option,
approximately 396 square miles of water
and 3 square miles of land to the City of
Dillingham

Dear Sirs:

This letter is provided to take advantage of an opportunity granted in 3 AAC 110.530(c) for Respondent Native Village of Ekuk to comment on matters pertaining directly to the “Preliminary Report to the Local Boundary Commission Regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham” (hereinafter “the preliminary report”).¹ The fact that a comment is not made on a specific finding, conclusion, or recommendation should not be considered to be agreement with the finding, conclusion, or recommendation. Respondent reserves the right to make its case at the hearing of the Local Boundary Commission through testimony and argument. Having said the foregoing, the Native Village of Ekuk makes the comments set out below to the Preliminary Report.²

I. The Preliminary Report fails to consider the effect of Annexation on the Region.

The preliminary report contains a finding that the City is a regional center but gives little weight to the fact that the territory to be annexed is also a part of the Western Bristol Bay region along with other municipalities and villages in the Nushagak River water shed. These other communities are as much a part of the region as Nushagak Bay and the petitioner, yet they are being gerrymandered out as parts of the expanded regional governmental entity. The report finds that only Clarks Point and Ekuk have any direct connection with the territory to be annexed.³ The department then finds “the city has a more direct connection to the territory than do many of the other communities because the city is directly on the bay.”⁴ This is a significant error in the findings of the

¹ In this letter, staff to the Local Boundary Commission will be referred to as “the department”.

² Respondent will not point out typographical errors in the preliminary report. It is presumed that staff will correct these before the final report is issued.

³ Preliminary Report at 26.

⁴ Preliminary Report at 27.

preliminary report which should be reconsidered. The connections of other communities in the region with the territory are direct, and long-standing.

It was unfortunate that weather prevented staff of the commission from attending the public meeting scheduled for Manokotak so that they could see first hand the connections to the territory of a typical village of the region. It is a mistake to minimize the affect on villages that have connection to Nushagak Bay by the navigable rivers of the Bristol Bay Watershed. These villages include not only Clark's Point and Ekuk village, but also the upriver communities of Manokotak, Koliganek, New Stuyahok, Aleknagik, and Ekwok. Of these communities, Manokotak, New Stuyahok, Aleknagik, and Clark's Point provide storage facilities for fishing vessels and each has direct connection to the territory identified for annexation by navigable waterways. These connections take the form of involvement in the commercial and subsistence fisheries and other socio-economic and customary interactions. The preliminary report concludes that Western Bristol Bay is a region.⁵ Such a finding should necessarily include a finding that the communities of the region have shared interests in the commercial fishery conducted in Nushagak Bay and shared responsibilities in providing services for the regional fishery. However, the preliminary report is narrowly focused on the effects and impacts felt by petitioner and not at all on the effects and impacts on the Western Bristol Bay Region.

The preliminary report cites per capita earnings of residents of the city in recommending that the annexation should be granted. In making this recommendation the department found that the median family income was \$57, 417.⁶ However, evidence provided by respondent, but not mentioned in the report, shows that drift net permit holders residing in the Bristol Bay Watershed earn only 70 percent of the fishery wide average and that set net permit holder's earnings averaged only \$27,000 per season. Fishing operations are often family enterprises, so the lower per permit income equates to a lower per capita income. For example, the median family income for Ekwok is only \$20,000; New Stuyahok, \$26,458; Manokotak \$30,357; Aleknagik \$30,625; Clark's Point \$41,250; and Koliganek, \$51,042.⁷

The preliminary report cites the fact that the city has an 11.7 percent poverty rate as a basis for concluding that the petitioner has a need for the raw fish tax revenue.⁸ In order to properly consider the effect of annexation on the region, the preliminary report should also contain findings on the 35.3 percent poverty rate for Manokotak, 40.8 percent for Aleknagik, 45.7 percent for Clark's Point, 31.7 percent for New Stuyahok, 32.1 percent for Ekwok, and 19.1 percent for Koliganek.⁹ These communities need additional revenue sources as well.

The narrow focus on only the conditions of residents of petitioner in the preliminary report does not provide a balanced review of the potential consequences of

⁵ Preliminary Report at 37.

⁶ Preliminary Report at 44.

⁷ This income data is taken from the Department's community data base.

⁸ Preliminary Report at 44.

⁹ This data is derived from the Department's community data base.

the annexation proposed by the City. The commission is entitled to know that residents of the Bristol Bay watershed are less able than nonresident permit holders to bear a new tax burden on their main source of earnings. They are also less able to cushion the blow in family finances by seeking other employment. Non fishery related income is quite limited relative to other income for permit holders who reside outside of the watershed.¹⁰

The residents of the Bristol Bay Watershed tend to remain in the region throughout the year paying the cost of food and fuel delivered into the region from outside. Non residents come to the region to partake in the approximately 5 week season and leave for their homes in places with a lower cost of living. Considering the lower income and higher annual costs of these local residents, it can be easily surmised that they have little capacity after deducting these costs from available income to save for the education of their children and to provide for their eventual retirement.

The preliminary report assigns importance to the benefit of having a tax which non-resident fishermen must pay so that they will bear the costs of services and facilities now borne by residents of petitioner.¹¹ But to focus on this goal alone ignores the plight of the watershed fishermen who are included in the class of persons who must bear the burden of the tax. The preliminary report dismisses this problem by finding that the shrinking number of permits held and fished by residents of the Bristol Bay Watershed causes the burden of the fish tax to be more directed to the non-resident permit holders. This implies that the department accepts the decline of local permit holders as an inevitable outcome. The impression left is that the local permit holder will soon become extinct and the effect on these local residents should not be placed in balance when the commission considers whether it will be in the best interests of the state to grant the petition.

Respondent urges reconsideration of this emphasis and encourages a fair presentation to the commission of the effect of the tax scheme proposed by the city because it extends beyond the territory sought for annexation to the Western Bristol Bay region. The steady decrease in the number of limited entry permits held by residents of the Bristol Bay region is a major issue within the region and bears directly on the question whether this added tax burden would be in the best interests of the state at this time.

Respondent believes that if Dillingham needs revenue derived from the territory to be annexed to preserve itself as a regional center it should be required to petition to form a regional government to include all of the territory and communities in the region. The preliminary report counters respondent's regional government concerns by assuming that any new revenue gained through annexation of fishing districts benefiting the City will trickle down to also benefit the entire region. The preliminary report argues that the new tax revenue will promote local spending on goods and services and will increase local employment. But the preliminary report cites to no evidence in the petition or

¹⁰ See Respondent's Brief at 6.

¹¹ Preliminary Report at 50 (regarding whether the territory has a sufficiently stable population to support extension of city government).

otherwise upon which to base that assumption. Nor does the report provide a separate analysis of the probable deterrent to borough formation that was raised and properly supported in the brief submitted by respondent.

The trickle down theory set out in the preliminary report is a rationale which was not offered by the City. One commentor offers the more likely outcome that existing revenue sources will be replaced with raw fish tax revenue and perhaps property tax relief to city taxpayers.¹² If one source of revenue merely replaces another, there will be no benefit to the region and the decline of the smaller municipalities and villages of the region will continue, all to the detriment of the best interests of the state. Another possible outcome that the authors of the preliminary report have not considered: the raw fish tax revenue will merely be added to the existing tax structure and will generate even larger surpluses for the city, while the other communities of the region continue to struggle or are abandoned by their residents. Respondent urges the department to revise its best interests of the state findings and conclusion to fairly place in balance the effects of annexation on the Western Bristol Bay Region.

The preliminary report accepts as an important fact that Nushagak Bay represents the last major commercial fishery in the region where there is no local fish tax in effect.¹³ This finding equates the unrealized raw fish tax revenue to low-hanging fruit that is ripe for the picking. Unfortunately, emphasis on the benefit of a new found revenue source ignores the effect of the tax on the residents of the Western Bristol Bay Region. The preliminary report contains findings that recognize participation of local residents in the fishery is declining. Each season the number of limited entry permits held by residents of the region grows smaller. The preliminary report should acknowledge facts submitted by respondent that local residents are struggling with lower income and less efficient vessels. The local residents reside in the region year round and must contend with the higher cost of living that goes with their permanent attachment to the region.

As presently written, the preliminary report takes a cold and calculating view of the plight of these residents. It concludes that this decline supports annexation because it results in the burden of providing city services being borne more by the non-resident members of the fishery. The department concludes that “no other existing municipality has the ability to provide essential municipal services to the territory....”¹⁴ A casual reader of the report might conclude that the view of the department is more along the lines of good riddance to this low income, less productive part of the region. Respondent argued that the best interests of the state would be to have municipal boundaries that encompass the territory reflect regional rather than local interests. Focus only on the fiscal sustainability of Dillingham is too narrow to adequately protect the regional interests here. The state has shown a strong interest in directly allocating resources in a way that provides economic opportunity to small communities dependent on commercial

¹² See the comment of Mr Samuelson. That of course, is exactly what happened in the Bristol Bay Borough when the local fish tax was imposed there. See Jay Hammond, *Tales of Alaska's Bush Rat Governor* (1969) p. 153; and *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1117 (Alaska 1978).

¹³ Preliminary Report at 37.

¹⁴ Preliminary Report at 37.

fisheries. The present CDQ program and actions by the Board of Fisheries and the North Pacific Management Council to encourage local processing of fishery resources are prime examples of state action in this regard. To now embrace trickle down economics would be a departure from this policy.

It would not be in the state's interest to allow a single municipality to cherry pick the last major commercial fishery in the region that can produce revenues to benefit the entire region, when petitioner has shown no compelling need for this additional revenue. Respondent urges the department to change its best interest analysis to reflect the foregoing.

II. The limitation of Community Doctrine.

Respondent believes that the preliminary report is incorrect in its conclusion that the area proposed for annexation satisfies the standard set out in 3 AAC 110.130 which requires that the expanded boundaries of the city include all land and water necessary to provide for the development of essential municipal services. This standard is not satisfied because the proposed annexation entirely consists of territory that violates the limitation of community doctrine set out in 3 AAC 110.130(c). The preliminary report emphasizes that many of the standards for annexation are directory in nature which leaves the commission discretion to overlook a particular element or develop a new element that is rational. However, the standard set out in sec. 130(c) is mandatory:

The proposed expanded boundaries must be suitable for city government and may only include that territory comprising an existing local community, plus reasonably predicted growth, development, and public safety needs. . . .

3 AAC 110.130(c) (emphasis added). The wording of this provision is clear. The annexed territory itself must qualify as a community.¹⁵ This interpretation rests in part on how the term "territory" is used in every other section in 3 AAC 110.090 – 3 AAC 110.150 and is supported by the history of the adoption and revision of the regulations which is discussed in detail below. Under that definition and usage, the territory referred to is the land and water forming the boundaries in the proposed petition. This means the new territory must be a community, not the new territory taken together with lands and water of the annexing city.

The preliminary report confuses the meaning of section 130 by judging whether a community is present by merely looking to whether the annexing city comprises a community. This interpretation destroys the limitation of community doctrine. Under the department's interpretation, a city can become a regional government without forming as a borough. This would have constitutional implications because, without the

¹⁵ See the definition of "territory" set out in 3 AAC 110.990(32).

limitation of community doctrine in place, there remains no ability to distinguish between city and borough forms of government in state law.¹⁶

Respondent provided documents with its brief from earlier decisions of the commission which bear directly on the effect of the limitation of community doctrine on the issues raised by this petition. However, the preliminary report concludes that it is not appropriate for the commission to be guided by a decision rendered in the 1980s on a petition submitted by the same petitioner to annex the same territory. This history is disregarded because “the regulations have changed.”¹⁷ Petitioner makes this argument as well. In both instances, neither the petitioner nor the preliminary report explains how the regulations have changed to require a different result. Respondent agrees that regulations of the commission have been revised three times since petitioner last attempted to annex the territory. But the changes made by these revisions have expressly incorporated the limitation of community doctrine into the regulations as a means of keeping cities local governments and boroughs regional governments. The revisions reinforce a foundation principle in municipal law developed by the commission to regulate the drawing of municipal boundaries.

A understanding of the history of the development of the regulations providing standards for annexation to cities is essential to apply the correct interpretation of their provisions.¹⁸ In 1982, the commission adopted former 19 AAC 10.070 which established, in a single section, standards describing when territory was annexable. A prominent standard was that the territory to be annexed “is urban in character”.¹⁹ The limitation of community doctrine was not expressly set out in the 1982 version of the commission’s regulations but was applied in decisions of the commission throughout the effective period of those regulations. A 1991 informal opinion of the attorney general advised the commission that it was lawful to apply its “longstanding contemporaneous construction” of the limitation of community doctrine without having this construction expressly set out in regulation.²⁰

When the commission’s regulations were revised in 1992, the limitation of community doctrine was added to the regulations and expressed in substantially the same form that appears in 3 AAC 110. 130(c), 920 and 990(5) today with an important clarification made in 2008. The notice announcing the proposed changes in the 1992 regulations, which was published as required by law, contained express mention that the regulations would add a provision which “discourages the inclusion of large unpopulated

¹⁶ Alaska Const. Art. X, Sec. 2 (All government powers shall be vested in boroughs and cities); Alaska Const. Art. X, Sec. 3 (Each borough shall embrace an area and population with common interests to the maximum degree possible.).

¹⁷ Preliminary Report at 56.

¹⁸ *See, State, Department of Highways v. Green*, 586 P.2d 595, 602 (Alaska 1978)(regulations which are legislative in character are interpreted using the same principles as statutes); *Beltz v. State*, 980 P.2d 474, 476 (Alaska App 1999)(guiding principle is to ascertain and implement the intent of the agency that promulgated the regulations).

¹⁹ Former 19 AAC 10.070 (effective 2/21/82, Register 81).

²⁰ 1991 Inf. Op Att’y Gen. file No. 663-91-0212 (February 15, 1991) at 6.

areas within the boundaries of a proposed city” and was adding definitions of the terms “community” and “permanent resident”.²¹

This history shows that the commission intended in 1992 to codify its long standing interpretation of the limitation of community doctrine in the regulations. This change came after Dillingham’s unsuccessful attempt to annex Nushagak Bay and is evidence of intent to reinforce the limitation of community doctrine, not water it down. The doctrine was expressed in former 19 AAC 10.920 and 19 AAC 10.990.²² After the 2002 revision, these identical provisions appear in title 3 of the Administrative Code as a result of the reorganization of the Department of Community and Regional Affairs into the Department of Commerce, Community and Economic Development.

More recent evidence regarding the meaning of the term “community” used in sections 130, 920 and 990(5) of the LBC regulations was provided by the commission. As recently as 2008, the commission initially adopted as a new definition the term “limitation-of-community doctrine.” This definition read:

“limitation-of-community doctrine” means that territory taken into a city be urban or semi-urban in character as provided for under 3 AAC 110.040(b) and (c).²³

After the pre-filing review required by AS 44.62.125, the regulations attorney dropped the definition from the regulations because it was redundant with the material that was added to sec. 040, and sec. 130(c).²⁴ In the version of sec. 130(c) adopted in 1992 the subsection read:

The proposed boundaries of the city must include only that area comprising an existing local community²⁵

After the new material was added the provision read:

The proposed expanded boundaries . . . may only include that territory comprising an existing local community

(Emphasis added). The change that made the inclusion of a separate definition “redundant” was insertion of the word “territory” in place of the word “area.” The term “territory” was defined as a part of this revision of the regulations to mean in pertinent

²¹Notice of Proposed Changes in the Regulations of the Local Boundary Commission dated May 10, 1991, State of Alaska Archives and Record Management Record Group 35, Record Series 1605, Box AS 17868, C&RA register 123 7/31/92, Title 19.

²² Memo to Charles Bettisworth, Chair Local Boundary Commission dated June 19, 1992 DOL File # 993-91-0128 (State of Alaska Archives and Records Management Record Group 35, Record Series 1605, Box AS 17868, Folder C&RA register 123, Title 19).

²³ A.G. File # 993-07-0095.

²⁴ *Id.*, email from AAG S. Weaver to Lorna McPherran dated October 10, 2007 Department of Law file No. 993-07-0095.

²⁵ Former 3 AAC 110.130(c)(effective 7/31/92, Register 123)(emphasis added).

part “the geographical lands and submerged lands forming the boundaries in a petition regarding city government. . . .”²⁶

The regulations as revised by the regulations attorney were returned to the commission and readopted to be effective January 9, 2008 in register 185. This history confirms that the phrase “territory comprising an existing local community” means that the territory to be added must be “an existing local community”. This means the new territory must have permanent residents - or in other words consistent with an earlier version of the commission’s regulations– the territory to be annexed must be “urban or semi urban in character”. This interpretation is in agreement with the earliest version of the commission’s regulations, is consistent with the decision of the commission regarding petitioner’s earlier attempt to annex Nushagak Bay, and is mandatory. The department’s approach of assessing whether the city satisfies the limitation of community doctrine by considering the conditions within the expanded boundaries of the city is plainly wrong. The petition does not meet the boundaries standard of 3 AAC 110.130, specifically the mandatory requirement that the territory to be annexed comprise a present existing community.

The preliminary report makes three arguments why the commission need not consider whether the petition fails to meet the standard of 3 AAC 110.130(c)(2) (the territory may not contain entire geographic regions or large unpopulated areas). First, the department finds that any analysis of whether the territory satisfies 3 AAC 110.130(c)(2) is moot because it finds that including this territory is justified by the standards in 3 AAC 110.090 – 3 AAC 110.135 (the standards for annexations to cities). Second, the preliminary report offers the justification that transient persons operating and serving on fishing boats operating in the waters of the territory to be annexed are in fact residing in the territory and this means that the territory to be annexed is not “unpopulated”. And third, it interprets the prohibition against including entire regions and unpopulated areas as applying only to annexations within organized boroughs.

Respondent does not agree that the mandatory standard set out in sec. 130(c)(2) is moot. The application of other annexation standards to the facts of the petition does not indicate that the boundaries are justified. Later in this memo respondent addresses defects in the department’s preliminary findings on the standard on need. In addition to problems with satisfying other standards, the boundaries are not justified because the mandatory standard set out in 3 AAC 110.310(c)(1), that the territory to be annexed must be a present existing community, has not been satisfied.

The preliminary report in concluding that the annexation of the territory would not include entire geographical regions or large unpopulated areas makes a finding that

“the proposed expanded boundaries of the city do not fit the definition of a “region” because the proposed expanded boundaries of the city do not encompass a borough, or have multiple communities that share common

²⁶3 AAC 110.990(35). See also 3 AAC 110.420(a) (5) (petition must contain general description of the “territory proposed for city boundary change).

attributes. The existing land based communities other than Dillingham are outside the proposed expanded boundaries of the city.²⁷

The foregoing finding represents a mistake in law by misapplying definitions set out in 3 AAC 110.990(15) and (28) when interpreting 3 AAC 130(c)(2) . It should be noted that section 990 containing the definitions used by the department begins with the phrase “[u]nless the context indicates otherwise. . . .” The department’s interpretations in the preliminary report apply the definitions of “area” and “region” out of context to find that the requirement against adding unpopulated area is only directed to annexations of territory from organized boroughs.

The foregoing interpretation, if adopted by the commission, would effectively negate the intended purpose of the limitation against annexation of unoccupied territory to a city. Literal application of the definitions of “area” and “region” does not make sense in the context of a city annexation. A court would assume that the commission would not have intended to adopt illogical regulations. Under the regulations, a city must be formed around a community, not a region. 3 AAC 110.005. The annexation of unoccupied territory to a city is potentially a departure from the community doctrine which, if not strictly controlled, could lead to cities becoming regional rather than local governments. The interpretation applied by the department would entirely exclude cities in the unorganized borough from the limitation while making cities within organized boroughs subject to the limitation.

The limitation on including entire geographic regions and unpopulated territory within a city annexation was added to the regulations in 1992 at the same time that the commission codified the limitation of community doctrine. The notice of proposed changes to the regulations stated

Notable changes from existing regulations include: . . . adding a provision which discourages the inclusion of large unpopulated areas within the boundaries of a proposed city....²⁸

Identical prohibitions were placed in the annexation standards applicable to a city. There is nothing in the notice given to the public or the recorded history of the regulations to support the interpretation offered by the department. The department should abandon its interpretation and not apply definitions in the regulations out of context to encourage, rather than discourage an annexation of entire geographical regions or unpopulated areas.

The preliminary report finds that Nushagak Bay is not an entire geographic region. Rather, it is only part of a region and it is not a “large unpopulated area” because the salmon fleet fishes there each season. Respondent questions whether this interpretation is a fair and balanced approach to application of the commission’s regulations. Words in statutes and regulations are usually construed in accordance with

²⁷ Preliminary Report at 59.

²⁸ State Archives Record Group 35, Record Series 1605, Box AS17868, folder C&RA register 123 7/31/91 Title 19.

common usage.²⁹ The dictionary definition of “unpopulated” means “not populated, not occupied or settled”. The definition of “populated” is “to inhabit” and the definition of “inhabit” is to live or dwell in”.³⁰ Hence, the term “unpopulated” means a place with no people living there. A claim that participants in the fishery populate the territory is the same as saying that cruise ship passengers populate the territory if they transit it during their cruise. Section 130(c) ceases to discourage the annexation of entire geographic regions or unpopulated areas under the interpretation favored by the department.

The local boundary commission can take notice that the two fishing districts are unpopulated areas. They need only to look at the territory from the vantage point of the city cemetery in Dillingham. The fleet does not “populate” the area, it is there briefly to harvest the salmon run and then leave approximately 5 weeks later. People engaged in the fishery are there as a condition of their employment and are presumed to not be a part of a community in the territory.³¹ And, they could not live there even if they wanted to.³² Nushagak Bay is bounded on one side by the Togiak National Wildlife Refuge. Part of Nushagak Bay is a calving and feeding ground for Beluga whale, has other populations of marine mammals, and is a nesting area for seabirds. It is often covered with ice in winter. No one inhabits Nushagak Bay. People briefly work there, but they don’t live there. The territory is unpopulated, plain and simple.

Particularly disturbing is the finding that the territory qualifies for annexation because it is only part of a region because it does not contain “multiple communities that share common attributes”. Of course, this finding is contrary to a prior decision of the Local Boundary Commission.³³ They are not present because the petition in effect gerrymanders out the other communities that have socio-economic connections to the territory and the preliminary report concludes that this is acceptable behavior for the alteration of municipal boundaries in the state. The department should discuss the consequences of this policy in the policy review section of the report and explain why it is in the best interests of the state to fragment the region.

Respondent believes that the conclusions and findings which condone this practice are based on a fundamental mistake of law and should be deleted. If the department desires that regulations be changed to empower cities to undertake this kind of an annexation, it should recommend that the commission suspend the petition and begin the process to amend the regulations accordingly.

²⁹ *State, Department of Revenue v. Municipality of Anchorage*, 104 P.3rd 147, 151 (Alaska 2002).

³⁰ Webster’s Third New International Dictionary (Merriam-Webster, Inc. 1993).

³¹ 3 AAC 110.920(b)(3).

³² The territory proposed for annexation is within the coastal zone of the Bristol Bay Region. The Bristol Bay CRSA Coastal Management Plan applicable to these waters prohibits persons from residing upon the waters of Nushagak Bay or any other coastal waters of the district. Chapter 4.4 Policy A-1, of the Bristol Bay CRSA Coastal Management Plan.

³³ *Statement of Decision in the Matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska*, (Local Boundary Commission, December 10, 1986) at pages 5 and 6.

III. Specific Comments.

In this part of respondent's comments on the preliminary report certain specific findings or discrete parts of the report are singled out for comment:

Page 25: Respondent believes that the finding that the territory to be annexed is suitable for the reasonably anticipated purpose is based on a false premise. The preliminary report accepts the premise that the city needs the tax revenue to sustain its existence. There has been no factual showing that the city's finances are in peril. The contrary is true. The finances of the city are strong and have improved every year since the city enacted the sales tax. It is true that any city would benefit from more income, but the preliminary report accepts as true without any support in the petition or any other source that the sustainability of the city is in question and that a financial collapse is imminent. The preliminary report is not fair and balanced on this point. The preliminary report also fails to consider if the community purpose of providing for city taxation might in fact harm other communities in the region rather than benefit them. Respondent believes that a hub city is just as dependent on the health and welfare of its spoke communities as those communities are on the financial health of the hub.

Page 28 - 38 Petitioner proposes to provide tax collection services and some enhanced coordination of existing services if the Commission approves the petition. This is in effect saying that the City wants the revenue but will continue supplying the same services it has always provided. The preliminary report concedes that the petition was deficient meeting the need standard imposed by 3 AAC 110.090. The report states "there is not reasonably expected residential growth beyond the existing boundaries of the city during the 10 years following the effective date of annexation." The report also finds that petitioner did not

show sufficient evidence that anticipated social or economic conditions, including the extent to which residential and commercial growth of the community would occur within the proposed annexation boundaries, even with the inclusion of the seasonal community.³⁴

However, the preliminary report then purports to make the case for petitioner regarding the need standard imposed by 3 AAC 110.090. Neither Petitioner nor the department has carried the burden of showing that there is a need for services in the territory to be annexed. To the contrary, there will be no service provided in the territory other than tax collection. Those state agencies, communities and private groups that are providing services there will continue to do so and the petitioner will reap the tax revenue.

³⁴ Preliminary Report at 28.

The preliminary report takes the tack of considering all of what the petitioner presently does within its existing boundaries and then attributes those facilities and services and conditions to the territory identified for annexation. The preliminary report finds that

the City does not intend to provide additional municipal services to this seasonal population because the essential municipal services required by the fishery industry, or seasonal population are already provided.³⁵

This approach displays a basic misinterpretation of the requirements of 3 AAC 110.090. Under the regulation, the territory to be annexed must exhibit the reasonable need for city government, not the existing area or population of the annexing municipality. The territory may establish a need for city government through existing or reasonably anticipated health, safety and general welfare conditions. 3AAC 110.090(a)(2). The evidence provided in the petition and the rationale developed in the preliminary report does not point to any conditions in the territory that supports a need for city government to be provided there. Petitioner will not be assuming police powers there and search and rescue responsibility will remain with the state. The territory is an uninhabited area of the unorganized borough in which transient commercial fishing occurs. The petition well documents that this territory has not required the extension of any services. In fact, the petitioner concedes that the services provided there now are “adequate.”

Petitioner has a harbor and the preliminary report contains findings as to the importance of the harbor as an extension of city government in the territory. Respondent believes that the importance of the harbor should be placed in proper context. In Bristol Bay, a harbor is a convenience, not a necessity. There are no harbors in other major fishing districts served by Togiak, Ugashik, Egegik or Naknek. In order to achieve fairness, the preliminary report should find that many participants in the fishery do not use the Dillingham harbor. There is a significant sector of the drift net fishery that comes into Nushagak Bay directly from other communities, remains on the grounds during the season while being supplied by tenders, and returns to the ports of origin at the conclusion of the season.

The report should also find that many residents of other communities proceed directly to set net sites from their villages and do not use the facilities of petitioner. And additional findings should be made that some of the drift boats are not harbored in Dillingham, but proceed to the fishing grounds directly from storage yards kept in their villages. Based on the foregoing, the following is a conclusion not supported by fact and should be deleted:

You can almost always expect visitors, particularly most fishery vessels traveling into and out of the Nushagak Bay area during the summer seasonal harvest, will haul or land in the city of Dillingham owned and maintained docks or harbor.³⁶

³⁵ Preliminary Report at 30.

³⁶ Preliminary Report at 31.

As an additional matter, use of the city’s harbor by fishing vessels does not extend for three months as stated on page 30 of the preliminary report. Rather, as documented in respondent’s brief, the period of use extends approximately 5 weeks. During most of this period fishing vessels are on the grounds and not in the harbor. This incorrect statement of fact should be corrected in the preliminary report.

The preliminary report finds that there are no permanent residents or property owners in the territory. But in applying the standard (3 AAC 110.090(a)(6)) which considers whether residents of the territory to be annexed will benefit from city government, the report finds this standard is satisfied because many “essential municipal services” are already being provided to the region. This is an unusual finding in that the regulation asks specifically what is being provided to residents in the territory and the preliminary report answers with an array of services that are allegedly provided in the “region.” The unvarnished answer is that there are no residents and no municipal services provided in the territory proposed for annexation.

The preliminary report makes the following finding about the level of service provided by petitioner:

If there was an accident on the waters of Nushagak Bay, it can be reasonably assumed that any individual(s) requiring essential or basic medical services would be transported to the hospital in Dillingham, perhaps on city streets by the volunteer search and rescue (presumably composed of Dillingham residents), through direct coordination with Alaska State Troopers and the local police department.³⁷

The problem with the foregoing is that the finding ignores certain important facts regarding the services mentioned. Clark’s Point, Ekuk and Manokotak provide basic medical services in the territory through the presence of local health aides. If a fisherman is injured and needs to be transported for essential medical treatment, that person will be treated at a hospital funded by the tribal governments of the communities of the region.³⁸ This hospital is located on a federal enclave within the City of Dillingham and is reached over roads that are under the responsibility of the State of Alaska, not the city. The airport is owned and operated by the State of Alaska. Each community in the region provides search and rescue teams for dispatch by the Alaska State Troopers. The finding cited above is not fair and balanced and should be changed to reflect a balanced recitation of the facts.

The preliminary report cites Resolution No.2010-85 supplied by petitioner along with its reply brief as an example of how the region will benefit from the proposed annexation. This is Respondent’s first opportunity to comment on the resolution because it was not a part of the petition. The department makes favorable comments by stating a belief that the resolution shows a willingness on the part of petitioner to provide benefits

³⁷ Preliminary Report at 31.

³⁸ See the comment submitted by the Bristol Bay Area Regional Health Corporation.

financed with raw fish tax revenue to other communities in the region. The ordinance would establish a regional fisheries improvement fund

“to provide funds for small capital projects and leverage large capital projects that improve the fisheries in the annexed area by increasing the value of the fisheries through higher quality or increased marketing or the reduction of foregone harvest.”

The resolution provides that the city council will establish a process to seek advice from communities in the region and include them in the decisions for implementation of the fund. Respondent believes that the resolution is an encouraging development but believes that it would not accomplish the regional benefits that the department envisions. There is no guarantee that the development fund will ever be adequately or fairly capitalized and the vagueness regarding the role of the communities of the region in expenditure decisions makes the process unpalatable and unworkable.

If it is inevitable that a tax will be levied on the territory sought for annexation, the revenue derived should be shared in part with the region. The preliminary report finds that a 2.5 percent tax will likely produce twice the amount projected by the city.³⁹ As a consequence, there will be a substantial amount in excess of what the city asserts it will need to sustain its existence. This leaves an amount for revenue sharing with tribal governments in the region. This would ensure petitioner’s goal of shifting the tax burden for city facilities and services only to the non-resident permit holders and crew.

Respondent believes that authority for an intergovernmental revenue sharing agreement is granted by Article. X, Section 13, Article. XII, Section 2, and AS - 29.35.010(13). To implement this concept, the city would enter into intergovernmental agreements with federally recognized tribal governments of the region, including the tribal government within the urban area of petitioner. The tribes would spend the money for public purposes and in a non-discriminatory manner as determined by the governing bodies of the tribal governments.

An ordinance embodying the foregoing elements would provide a more definite and fair regional benefit than the approach offered by the petitioner. It would allow Dillingham to tax the fishery but not harm the communities of the watershed.

Page 37: The preliminary report needs to be corrected to reflect the history of attempts to form a borough in the Western Bristol Bay Region. The department is critical of Ekuk’s plea that the commission reaffirm its earlier policy of encouraging borough formation over city annexation in the territory indentified for annexation. The department emphasizes that no Nushagak community has petitioned for borough formation in the 52 years since statehood and for that reason it expects that no community of the region would do so now.⁴⁰ This is a careful phrasing which avoids

³⁹ Preliminary Report at 41.

⁴⁰ See page 37.

having to acknowledge the complete history of attempts at borough formation in the region.

In 1988, local officials requested the former Department of Community and Regional Affairs to study a prospective borough encompassing the Dillingham Census Area. In 1989 the department completed a borough study for the Northwest Bristol Bay Region to specifically encompass the settlements of Aleknagik, Clark's Point, Ekuk, Manokotak, Togiak, Twin Hills, Goodnews Bay and Platinum.

In 1991, the City of Dillingham adopted a resolution asking the former Department of Community and Regional Affairs to study a merger of the Dillingham Census Area with the Lake and Peninsula Borough.⁴¹ In 1992, the Local Boundary Commission formally identified the Dillingham Census Area as a "model borough". In 1997 the City of Dillingham, a Nushagak River watershed community, petitioned for annexation of 25,000 square miles of land and additional onshore waters to the Lake and Peninsula Borough. This annexation would have included other Western Bristol Bay communities along with Dillingham.

In 2000, the city asked the department to re-examine the financial feasibility of the annexation for which it petitioned in 1997. The department completed the financial analysis by concluding that financial conditions were as favorable if not more so than when feasibility was last studied in 1993. For reasons unknown to respondent, Dillingham did not actively pursue adoption of its annexation petition. Respondent asks that the department withdraw its incorrect assertion that no Nushagak River watershed community has ever petitioned for borough formation. The statement is plainly wrong and does not represent a fair and balanced recounting of the history of the region.

It is true that none of the smaller municipalities and villages of the region have petitioned for borough formation. However, it asks a great deal for communities that are barely surviving to muster the resources and time to petition for borough formation. This role has properly been assumed by the petitioner in its leadership role in the region. It has the tax base, the professional personnel, and other resources necessary to file and prosecute a petition for borough formation. It is expressly provided in the Comprehensive Plan of the city that it will evaluate the benefits of borough formation.⁴²

It is not appropriate for the preliminary report to be critical of the resolve of other watershed communities concerning borough formation. The preliminary report should contain a recommendation that the commission continue the policy of requiring that borough formation be considered and rejected by the region before the present petition is allowed to proceed. The conclusion of the department expressed in the report as to whether the region favors or opposes borough formation is speculative and, at best, premature.

⁴¹ See exhibit # to this brief.

⁴² See "goal 2" of the implementation chapter of the Comprehensive Plan Update <http://www.dillinghamcompplan.com/>. It should be noted that this is a change from the preceding version of the plan which provided that the city should plan for borough formation.

Page 38: The preliminary report finds that

essential municipal services have been provided to the commercial fishing fleet, communities, and visitors to the region for decades at the expense of the city's residents.

The preliminary report concludes that this poses "a form of inequality and is unfair and unbalanced. This finding is one-sided in that it fails to recognize that there has been substantial benefit to Dillingham from being a hub city. Many city residents participate in the fishery as well as offer services to the fishery. The finding also ignores the use of the harbor by the substantial sport fishing businesses of the region and recreational users. The harbor is also used to handle cargo for shipment outside of Dillingham. The city levies a sales tax on sales made to all sectors using the harbor. The beneficial effect of this tax on the finances of the city is discussed below.

Page 44: The preliminary report accepts the assertion of the city that a raw fish tax is necessary to guarantee the "sustainability" of the city. The report also finds "the proposed annexation would bring much needed revenue to the city." The preliminary report also describes the city as "laboring" under a combined 13 mills in property tax, a sales tax, a general sales tax and specific sales taxes on liquor and gaming. Also at page 66 the preliminary report contains the following finding:

The annexation is necessary to sustain the city, thereby sustaining the regional hub. If the city were to continue its fiscal course, without annexation approval, the state would be forced to step in and assist Dillingham in order to maintain the economic integrity of the city and region.

A review of public records shows that the foregoing findings are not based on fact. The City is adequately funded by its present revenue sources. It has a substantial surplus of revenue derived from existing sources. It reaps a substantial part of this surplus revenue from sales taxes paid by the seasonally fluctuating population and by the residents of other communities of the region. Attached to this letter as Exhibit 1 is a loan evaluation performed on the City of Dillingham by the Alaska Municipal Bond Bank Authority. The evaluation was performed as part of a transaction to fund the 2008 school construction bonds of the city. In that evaluation, it was determined that the city's general fund derives its revenues primarily from sales taxes (36.3%) and property taxes (25.07%). The evaluation also concluded that there was a steady growth in sales taxes over the three relevant fiscal years (\$2.01 million in FY 04 to \$2.34 million in FY 07). The evaluation states the following regarding the year end general fund balance:

From the beginning of fiscal year 2004 through the beginning of fiscal year 2008 the city has increased its general fund balance from \$535 thousand to \$3.3 million. General fund year end balances during that time

have grown from 11.8% of General fund expenditures in fiscal year 2003 to 59.9% in fiscal year 2007.

The document *Loan Application Evaluation City of Dillingham*, was prepared for the Alaska Municipal Bond Bank Authority by Western Financial Group, and it is on file with the Alaska Municipal Bond Bank Authority, Treasury Division of the Alaska Department of Revenue.⁴³

According to the 2009 and 2010 Alaska Taxable reports prepared by the state assessor, the city continues its steady gain with revenues earned at \$2,427,479 in sales tax revenue, an increase of 13.9 percent from 2009.⁴⁴ It also earned \$1,939,617 from the property tax levied against real and personal property located in the city.⁴⁵ A substantial part of the property tax collected is attributed to the value of fishing vessels stored in the city between fishing seasons. According to 2010 Alaska Taxable, the value of locally assessed personal property in the City was \$33,327,615.⁴⁶ The assessed value of commercial property in the city was reported to be \$30.7 million.⁴⁷

The preliminary report makes no mention of the adequacy of existing revenue sources and appears to regard the seasonal population as a drain on revenue rather than the apparent source of the present surplus. To be fair and balanced, the report should be amended to include a complete analysis of the present surplus and revenue forecasts under the present fiscal regime of the city. If that were done, there would be no evidence found of a threat to the “sustainability” of the city.

The record shows that Dillingham is well off in comparison to other similarly situated cities. The preliminary report describes the city as “laboring” under its present fiscal regime. However a review of 2010 Alaska Taxable shows that the millage rate levied against property is comparable to other cities of its size.⁴⁸ The municipal per capita revenue derived from the 2010 local property tax is listed as \$857 per capita.⁴⁹ The per capita revenues from this source for the entire state was reported to be \$1,875 per capita, with the average per capita revenue being \$1,338.⁵⁰ If revenue from all tax sources is considered, Dillingham has per capita revenue of \$2064.⁵¹

This is additional evidence of the importance of sales tax revenue to the overall revenues of the city. But, if sales tax revenues were seasonally adjusted, the result would show that permanent residents of the city are not laboring under a heavy tax burden as compared with other cities and boroughs and that the seasonal population and visitors

⁴³ Attached to this letter as Exhibit #1.

⁴⁴ 2009 and 2010 Alaska Taxable, Table 2.

⁴⁵ *Id.*, Table 3.

⁴⁶ *Id.*, Table 6.

⁴⁷ *Id.*, Table 6A.

⁴⁸ *Id.*, Table 5.

⁴⁹ *Id.*, Table 3. This is an increase of 3 percent from 2009, mainly because of a decline in the population (there was little change in total collections).

⁵⁰ *Id.*

⁵¹ *Id.*, Table 3A.

from other communities are paying a fair share of the costs of government. There is no support in the petition that the City is laboring under its present fiscal regime.⁵² Rather, it is far below average in the burden that the residents bear for their part of property tax revenues and the burden is spread to seasonal populations. There is also evidence available from public records that the city is collecting taxes from seasonal populations and visitors from other communities that are sufficient to pay for services provided to them plus earn a surplus for the general fund of the city. The findings of the preliminary report should reflect the information publicly available about the strength of the finances of petitioner.

Page 67: The preliminary report contains the following finding:

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 above, 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. The realization of benefits could spur borough formation.

Through this finding, the department accepts the city's argument that annexation and subsequent taxation of raw fish sales would act as a "game changer" in the policy formulation process involved in creating a borough for the region. Respondent urges the department to not give credence to the City's "game changer" sports analogy in the final report submitted to the commission. It does not represent a professional approach to analyzing the problem at hand. If respondent must resort to a threadbare analogy, annexing the sole remaining revenue producing fishery districts in the region to a city at this time is akin to "throwing a bomb in the back of the line" to help people board the bus. Some might be encouraged, but some might be severely injured. The approach requested by respondent involves analysis by the department of markets for fish, regional demographics and economics, and potential budget requirements. However, the preliminary report does not contain a creditable analysis of the ability of the finances of the region to support both borough and city treasuries in today's economy.

Respondent offered expert opinion evidence that the annexation will act as a disincentive to borough formation. The preliminary report concludes that the annexation will in fact increase the odds for borough formation.⁵³ The report summarily concludes that the annexation will show the region the benefits to be derived from levying a raw fish tax and will cause it to form a new borough in order to levy a similar tax. This is speculation without investigation into whether the economics of the fishery would support dual taxation or even an assessment of the burden a tax will place on other

⁵² Inspection of the per capita tax revenues of several municipalities with sales taxes in the 5-6 percent range shows that the revenues earned by Dillingham are comparable. See for example the results for Cordova, which is a fishing port with nearly the same population as Dillingham and seasonal population changes. 2010 Alaska Taxable Table 3A. Cordova has a higher per capita tax revenue than Dillingham.

⁵³ Preliminary Report at 67.

persons and communities in the region. This narrow focus is not in the best interests of the state, and is contrary to statute and the commission's regulations.

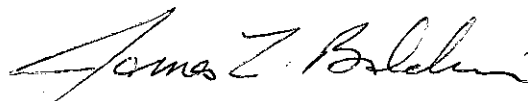
Pages 73 – 77: Respondent does not believe that the analysis provided regarding whether the annexation violates the nondiscrimination provisions of 3 AAC 110.910 is on point with the facts of this petition.

In this instance, the relevant facts are that communities with overwhelming Alaska Native populations were determined, through a proceeding conducted by the Local Boundary Commission, to reside in a region which included the territory now identified for annexation. Through this proceeding, it was established that the territory was within a region that could only be included within a borough. Under state law, the process for the creation of a borough permits the residents of the communities in the region to vote on the question of formation of their region into a borough.

The department is now taking the position that the regulations of the Local Boundary Commission allow petitioner to select an unpopulated part of the region and request that this territory be annexed to it with a ratification vote limited only to persons who are qualified voters of the city. This action permits the annexation of territory which is a valuable revenue source to the Western Bristol Bay Region. The annexation would be to a city, not a regional government, thereby leaving the residents of the region without any say in the matter, which they apparently presently have under a decision of the Local Boundary Commission.

Under the foregoing formulation of the facts, there may well be a case for racial discrimination if the commission decides to grant the petition. Respondent has not investigated this matter and will not do so until the question is ripe. Respondent is reluctant to make claims of racial discrimination under these circumstances and will weigh the wisdom of doing so carefully before acting.

Respectfully Submitted,



James L. Baldwin
Counsel and Designated Representative of
Respondent Native Village of Ekuk.

Loan Application Evaluation

City of Dillingham

Introduction

The City of Dillingham (the "City") has submitted an application to the Alaska Municipal Bond Bank Authority (the "Authority") for a General Obligation Bond Loan not to exceed \$15,150,000. The City will finance the costs of planning, design and construction of school capital improvements. The following is our overview of this application and the security provisions of the loan.

The Project

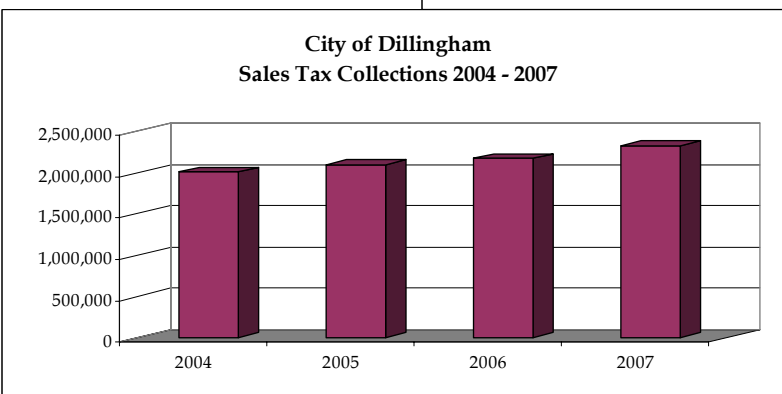
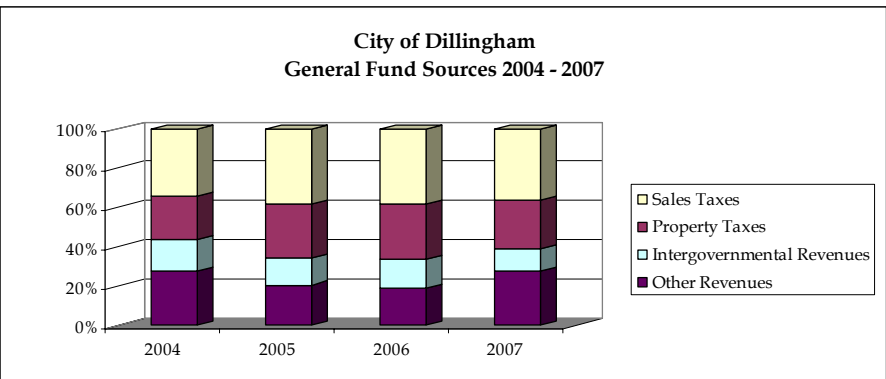
The City will apply the proceeds of the Bond Bank loan toward renovation projects at the elementary and middle/high school buildings. Both buildings are in need new roofing, plumbing, electrical, outside doors and windows. The elementary school playground will be improved and there will be a small addition to provide added space for food storage. Specific dollar amounts and timelines on the projects will be available once design and engineering specifications are completed by late winter 2008.



City Financial Position

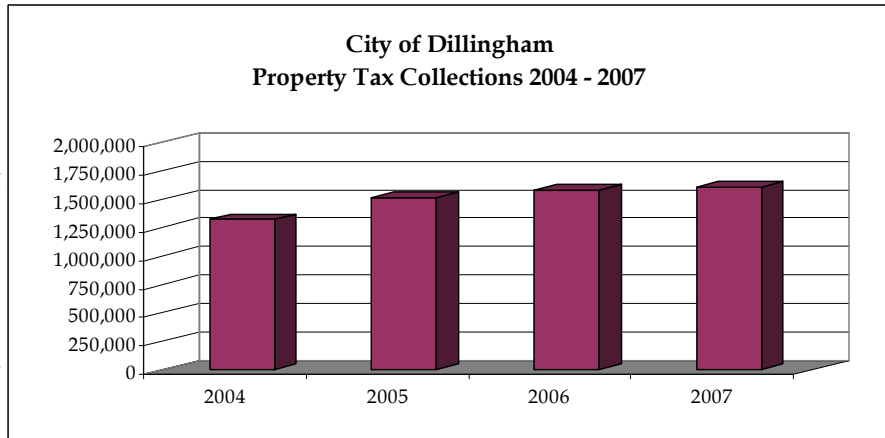
The City's General Fund derives its revenues primarily from sales taxes (36.3% in fiscal year 2007) and property taxes (25.0% in 2007).

The graph to the right presents the City's stable General Fund revenue distribution over the past four fiscal years. The graph shows that sales taxes have consistently been the primary source of General Fund revenue, accounting for

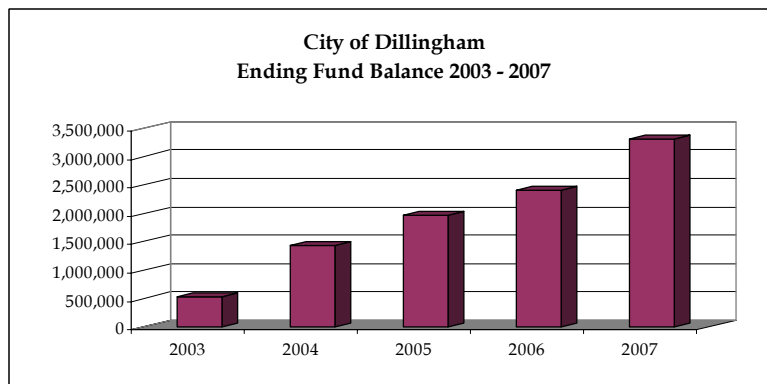


approximately 36.6% of total General Fund resources over the past four years. The graph on the left presents the steady growth of sales taxes over the past four years. During this period, sales taxes have grown from \$2.01 million to \$2.34 million.

Property taxes are next in importance, averaging approximately 25.7% over the past four fiscal years. The graph at the right presents property tax collections from 2004 through 2007. During this period, property taxes have grown from \$1.32 million to \$1.61 million.



Intergovernmental revenues have averaged 13.8% over the past four years.



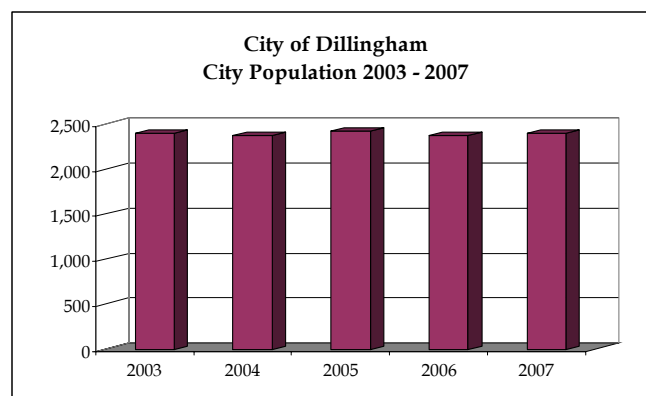
From the beginning of fiscal year 2004 through the beginning of fiscal year 2008 the City has increased its the General Fund balance from \$535 thousand to \$3.3 million. General Fund year end balances during that time have grown from 11.8% of General Fund expenditures in fiscal year 2003 to 59.9% in fiscal year 2007. The graph to the left presents the General Fund year-end balance for fiscal years 2003 through 2007.

From the beginning of fiscal year 2004 through the beginning of fiscal year 2008 the City has increased its the General Fund balance from \$535 thousand to \$3.3 million.

General Fund year end balances during that time have grown from 11.8% of General Fund expenditures in fiscal year 2003 to 59.9% in fiscal year 2007. The graph to the left presents the General Fund year-end balance for fiscal years 2003 through 2007.

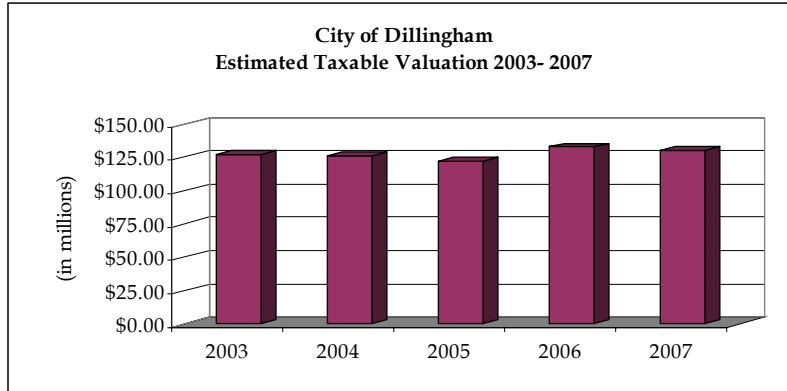
One area of financial weakness relates to the City's collection rate on property taxes. During the 10 year period from fiscal year 1996 through fiscal year 2005 the currently levied property taxes collected as a percentage of the total levy ranged from 67.9% to 83.9%. The percentage of total collections (both current and delinquent) to total levy has ranged from 69.7% to 89.4%. These are lower percentages than would be expected.

The City's population has been stable over the past five years, with the number of City residents ranging between 2,370 and 2,422. Estimated population at this time is 2,397. The table below presents estimated population over the past five years.



The population in the Dillingham Census Area, and area covering 18,467 square miles, is approximately 4,900. The population in the census area has grown from slightly less than 4,200 in 1991 to the current total.

The full faith and credit and taxing ability of the City is pledged to the Bond Bank loan. The taxable value of the City is approximately \$130 million and has ranged between \$122 million and \$133 million over the past five fiscal years. The graph below presents the assessed value in the City over that period.



The top ten taxpayers in the City account for approximately 21.14% of assessed value.

Security and Repayment

The City will pledge its general obligation secured by property taxes levied in the City to the Bond Bank for this loan. City voters approved the school projects in a general obligation bond election on December 18, 2007 that passed at the polls by a margin of 84.8% to 15.2%.

In addition to the City’s general obligation, the projects have qualified, subject to annual appropriation, for the Department of Education and Early Development debt service reimbursement at a 70% debt service reimbursement level.

Future Capital Plans

The City does not report any future capital plans that will involve issuance of bonds.

Estimated Borrower Savings

Savings to the City as a result of borrowing through the Bond Bank are estimated at approximately \$249 thousand or \$164 thousand on a present value basis. Savings are a result of lower costs of issuance the that the City will face as a result of issuing through the Bond Bank, as well as slightly lower assumed yields.

Pension Liability Status

As of June 30, 2005, the most recent data reported in the City’s 2006 Comprehensive Annual Financial Report (the most recent available) the City reported an unfunded liability of \$1.64 million related to employee pensions and an unfunded liability of \$1.51 million related to post-employment healthcare. In both cases, the City’s ratio of assets to liabilities was 74%.

State-Aid Intercept

In addition to the general obligation pledge by the City, the Bond Bank has the ability to intercept state-shared revenues that will otherwise flow to the entire City. This forms the ultimate security for this loan. The table below summarizes the revenues subject to intercept, along with the maximum annual debt service on City's bonds.

Shared Taxes and Fees	\$218,947
School Debt Reimbursement	\$0
Education Support	\$831,544
Education Fiscal Relief	\$5,009,004
Matching Grants	\$1,000,561
Community Jails	\$428,963
Total Revenue Subject to Intercept	\$7,489,019
Maximum Annual Debt Service	\$1,147,114
Debt Service Coverage	6.53

Statement of No Litigation

The City provided a letter from the law firm of Boyd, Chandler & Falconer, LLP dated October 4, 2007 that stated, in part, that "there is no litigation pending or threatened that we are aware of that would... seek to restrain or enjoin the issuance, sale or delivery of the Bonds or the right of the City of Dillingham to levy and collect taxes that would be pledged to pay the principal of and interest on the bonds, or the pledge thereof..."

Summary

Based on our assessment, the security offered by City, as set forth in the City's loan application and supplemental materials, provides sufficient security to justify approval of the application. The City's General Fund health is strong, General Fund balances are growing and the Bond Bank's ability to intercept City revenues adds significantly to the security of the loan.

For these reasons, we recommend approval of this loan application. If you or any of the Board members have any questions regarding our analysis, please feel free to call me at (503) 636-0265.

For Western Financial Group, LLC



Chip Pierce

EXHIBIT #1
PAGE 4 OF 6

APPENDIX

City of Dillingham Demographic Information

Dillingham is located at the extreme northern end of Nushagak Bay in northern Bristol Bay, at the confluence of the Wood and Nushagak Rivers. It lies 327 miles southwest of Anchorage, and is a 6 hour flight from Seattle. Dillingham is located in the Bristol Bay Recording District. The area encompasses 33.6 square miles of land and 2.1 square miles of water. The primary climatic influence is maritime, however, the arctic climate of the interior also affects the Bristol Bay coast. Average summer temperatures range from 37 to 66 degrees Fahrenheit. Average winter temperatures range from 4 to 30 degrees Fahrenheit. Annual precipitation is 26 inches, and annual snowfall is 65 inches. Heavy fog is common in July and August. Winds of up to 60-70 mph may occur between December and March. The Nushagak River is ice-free from June through November.

The area around Dillingham was inhabited by both Eskimos and Athabascans and became a trade center when Russians erected the Alexandrovski Redoubt (Post) in 1818. Local Native groups and Natives from the Kuskokwim Region, the Alaska Peninsula and Cook Inlet mixed together as they came to visit or live at the post. The community was known as Nushagak by 1837, when a Russian Orthodox mission was established. In 1881 the U.S. Signal Corps established a meteorological station at Nushagak. In 1884 the first salmon cannery in the Bristol Bay region was constructed by Arctic Packing Co., east of the site of modern-day Dillingham. Ten more were established within the next seventeen years. The post office at Snag Point and town were named after U.S. Senator Paul Dillingham in 1904, who had toured Alaska extensively with his Senate subcommittee during 1903. The 1918-19 influenza epidemic struck the region, and left no more than 500 survivors. A hospital and orphanage were established in Kakanak after the epidemic, 6 miles from the present-day City center. The Dillingham townsite was first surveyed in 1947. The City was incorporated in 1963.

A federally-recognized tribe is located in the community -- the Curyung Native Village Council. The population of the community consists of 60.9% Alaska Native or part Native. Traditionally a Yup'ik Eskimo area, with Russian influences, Dillingham is now a highly mixed population of non-Natives and Natives. The outstanding commercial fishing opportunities in the Bristol Bay area are the focus of the local culture. During the 2000 U.S. Census, total housing units numbered 1,000, and vacant housing units numbered 116. Vacant housing units used only seasonally numbered 39. U.S. Census data for Year 2000 showed 1,154 residents as employed. The unemployment rate at that time was 7.11 percent, although 32.2 percent of all adults were not in the work force. The median household income was \$51,458, per capita income was \$21,537, and 11.7 percent of residents were living below the poverty level.

Approximately 90% of homes are fully plumbed. Dillingham's water is derived from three deep wells. Water is treated, stored in tanks (capacity is 1,250,000 gallons) and distributed. Approximately 40% of homes are served by the City's piped water system; 60% use individual wells. The core townsite is served by a piped sewage system; waste is treated in a sewage lagoon. However, the majority of residents (75%) have septic systems. The City has requested funds to extend piped water to the old airstrip and Kenny Wren Road, and expand sewer service to the northeast. Dillingham Refuse Inc., a private firm, collects refuse three times a week.

The Senior Center collects aluminum for recycling, and NAPA recycles used batteries. The Chamber of Commerce coordinates recycling of several materials, including fishing web. Nushagak Electric owns and operates a diesel plant in Dillingham which also supplies power to Aleknagik. Electricity is provided by Nushagak Electric Cooperative. There are 2 schools located in the community, attended by 526 students.

Dillingham is the economic, transportation, and public service center for western Bristol Bay. Commercial fishing, fish processing, cold storage and support of the fishing industry are the primary activities. Icicle, Peter Pan, Trident and Unisea operate fish processing plants in Dillingham. 277 residents hold commercial fishing permits. During spring and summer, the population doubles. The City's role as the regional center for government and services helps to stabilize seasonal employment. Many residents depend on subsistence activities and trapping of beaver, otter, mink, lynx and fox provide income. Salmon, grayling, pike, moose, bear, caribou, and berries are harvested.

Dillingham can be reached by air and sea. The State-owned airport provides a 6,404' long by 150' wide paved runway and Flight Service Station, and regular jet flights are available from Anchorage. A seaplane base is available 3 miles west at Shannon's Pond; it is owned by the U.S. Bureau of Land Management, Division of Lands. A heliport is available at Kanakanak Hospital. There is a City-operated small boat harbor with 320 slips, a dock, barge landing, boat launch, and boat haul-out facilities. It is a tidal harbor and only for seasonal use. Two barge lines make scheduled trips from Seattle. There is a 23-mile DOT-maintained gravel road to Aleknagik; it was first constructed in 1960.



**City of Dillingham
Comments on Staff Preliminary Report
On
Petition to Annex Commercial Fishing Waters
Using Local Option Method**

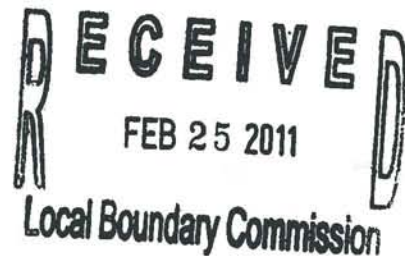
February 24, 2011

BOYD, CHANDLER & FALCONER, LLP

BY:

A handwritten signature in blue ink, appearing to read "Brooks W. Chandler", is written over the printed name.

Brooks W. Chandler
Attorney for City of Dillingham



Introduction

The City of Dillingham believes the Alaska Department of Commerce, Community and Economic Development (DCCED) staff to the Local Boundary Commission (LBC) has done an excellent job in analyzing Dillingham's petition. They have followed a reasonable basis standard, properly interpreted all legal standards, and conducted a thorough, credible and objective analysis.

Staff has appropriately considered the best interests of the State of Alaska in analyzing Dillingham's petition. Staff's analysis is based on today's realities and with the perspective gained from actual events in the region over the past thirty years rather than simplistically embracing old thoughts on annexation and borough formation which have not been validated by actual events.

The City of Dillingham endorses the findings of the LBC staff concerning the vital role played by Dillingham as the regional economic hub for Nushagak Bay and this portion of Southwest Alaska. Staff recognizes the fragility and uncertainty of the rural Alaskan economy in general, and that strengthening hub communities is a key public policy strategy to prepare for the future. Annexation is truly in the best interests of the State over the long run in Nushagak Bay. Strengthening Dillingham as a regional hub helps the surrounding villages and creates more economic opportunity for all.

Minor Corrections

These are listed in the attachment to these comments.

Comments on Specific Topics

Similarity in Character of Territory to be Annexed [p.23]

The City appreciates that LBC staff examined the totality of factors when determining that the territory to be annexed is similar in character with Dillingham. No other community or municipality provides the level of services that the city does, both to the fleet and also to all regional residents for which Dillingham serves as this area's hub community.

Provision of Essential Services to the Territory to be Annexed [p.30]

The City agrees with staff's findings that as the regional hub, Dillingham provides essential services to a seasonal population largely composed of non-residents. The City agrees with staff

that these commercial users have a significant impact on the city's ability to provide essential services. Staff mentions the materials submitted to date focus on the harbor and dock infrastructure, (Report p.30) but also references Dillingham's discussion of other services. (Report p.34, para. 5, 6). Dillingham did comment on other services provided including, schools, landfill, roads, and police protection. (Petition pp.7-8) (Public Safety, Landfill) Reply pp. 10-11 (education, landfill, medical services). An excerpt from the City's proposed updated Comprehensive Plan (Oct. 10, 2010 Council review draft) describing Dillingham-based services is included with these comments. The City reminds staff that even services provided by others (such as the Post Office or Nushagak Electric) depend on city-supplied basic infrastructure (roads, sewer, water, landfill).

Population- [p.23, 47, 48]

Dillingham agrees that the City's population has decreased in the last decade like many places in rural Alaska; the petition misstated this (p. 58 of petition). In 2000 the Dillingham population was 2,466 (US census); the most recent available data is the 2009 AKDOL estimate for Dillingham of 2,264.

The City believes this is a significant population loss but does not render the City unable to provide services to the area proposed for annexation should annexation be approved. It does point to the concern that is one of the motivating factors for annexation— the ability of Dillingham to continue to provide the infrastructure and services to the commercial fishing fleet into the indefinite future without an expansion of the local tax base. The City believes staff's attempt to draw conclusions as to the reasons for the population change based on a conversation with a DCRA employee [p.23, n.2] is not relevant to the petition and is a simplistic approach not reflective of the quality of analysis accomplished by staff elsewhere in the preliminary report.

The City agrees crew numbers are important in any assessment of population levels. Estimates of the numbers of crew participating in the fishery appear at: <http://www.cfec.state.ak.us/cpbycen/2009/070DILLI.htm>. It would be necessary to ask CFEC to do a separate analysis to extract the data for Nushagak Bay.

Past Support for Borough Formation [p.62]

Dillingham has long supported formation of a borough. That support will not end with annexation.

The Importance of Regional Hub Communities When Determining Best Interests of the State [pp.36, 66, 82-83].

Dillingham agrees with staff's perspective as described on page 66 of the Report, "The city is the appropriate government for the territory because the rest of the region's communities need a stronger regional hub for their sustainability." An improved economy, in turn, can keep and attract families, which can lead to improved student numbers and a more viable school system.

Conversely, staff recognizes the dangers ahead for rural sustainability if the hub communities falter and services decline. Dillingham agrees with staff's observation described on page 36 of the Report; 'If Dillingham cannot financially sustain itself, these other communities will suffer if these services are no longer available, or are of diminished quality.' We appreciate and agree with the ominous warning by staff on page 66: 'Should annexation not be approved, we do not see a bright or sustainable future for Dillingham.' Dillingham also agrees with LBC staff's conclusion set forth at page 82; "The sustainability of this regional hub is the sustainability of this region."

Conclusion

Dillingham strongly endorses the findings and conclusions of the staff report, and respectfully ask the LBC Commissioners to concur. We believe the annexation, if approved by the Commission and later the voters, will be a positive addition to the growth and maturity of local government in our state as envisioned in the Alaska Constitution.

ATTACHMENT 1

p 13 – Nushagak Cooperative is listed as a “radio station”. Nushagak Cooperative is the local utility that offers cable TV. The radio station is KDLG.

P14 – The table at the bottom is referenced to indicate locations of posting of notices “within the existing boundaries of the City”. The table includes the following locations which are not within the boundaries of the City of Dillingham and more properly belong in the previous table:

City of Aleknagik offices
City of Clarks Point
City of Manokotak
Manokotak Village
Native Village of Aleknagik
Village of Clarks Point

p. 20 [emphasis added] [plug in appendix number] should be deleted

pp. 29-30 “Respondent” should be “Borough”

p. 35 Ralph should be Robin

p. 44 eliminate duplicate references to gaming sales tax, delete “suffices”

Table 10.2 Dillingham Public Services & Facilities Matrix

Basic Infrastructure		
Airports		
6400 ft. Paved Runway	State of Alaska DOT / PF	<ul style="list-style-type: none"> • Agree to a land trade to move DOT/PF maintenance vehicles and other storage away from downtown • Resolve land use conflicts in area surrounding airport in order to ratify Airport Master Plan and designate expansion area
Gravel Strip	Shannon's Pond (private)	<ul style="list-style-type: none"> • Private strip located on the Lake Road
Water Landing	Shannon's Pond (private)	<ul style="list-style-type: none"> • Private pond located on the Lake Road; interest in developing a float plane base close to downtown to create better access to local shops and services (see Waterfront chapter)
Port		
All-Tide Dock	City of Dillingham	<ul style="list-style-type: none"> • Conflict between gravel operations, cargo operations and Main Street functions in Downtown; possible location for new fish processing plant (see Waterfront & Transportation chapters)
Port of Dillingham Office	City of Dillingham	<ul style="list-style-type: none"> • Building could be more useful for storing large equipment.
Harbor		

Harbor Master's House restrooms & showers	City of Dillingham	<ul style="list-style-type: none"> • Only public restrooms and showers are located at the Harbor, additional services are needed in the center of downtown and at the south end of the harbor. • Survey summer visitors, fishermen to identify additional amenities needed.
Marine Services	City of Dillingham	<ul style="list-style-type: none"> • Commercial lots needed to provide additional services at harbor; major upgrades also needed to better support fishers (see Waterfront chapter) • continue to assess ice machine usefulness in harbor; keep improving the delivery system.)
Small Boat Harbor Ramps	City of Dillingham	Monitor use of north and south ramps to see where improvements can be made in use of space in harbor
Dock Office, Harbor Master's Office	City of Dillingham	
National Guard Armory	Alaska National Guard, leased land from City of Dillingham	<ul style="list-style-type: none"> • Large facility that could potentially be used by the community • Maintain lease with national guard • Assist with effort to locate new facility by airport
Utilities		
Power	Nushagak Electric	<ul style="list-style-type: none"> • Issue of how to serve subdivisions located far from existing service, where lots are single-loaded and easements not platted (see Land Use chapter) • Developing alternate energy sources,

		Smart Grid and district systems (see Energy chapter)
Water Plant & Well Houses	City of Dillingham	<ul style="list-style-type: none"> • Implement the 2003 Water and Sewer Master Plan • Complete dense neighborhood water & sewer upgrade • Residences on northern edge of downtown need city sewer see Land Use chapter) • Concerns about water quality in some areas (see Land Use chapter) • Watering point needed in central place
Sewer system & lift stations	City of Dillingham	<ul style="list-style-type: none"> • Remove sludge from sewage lagoon • Build a sludge disposal pad and install geotubes • Develop a system for proper sludge disposal by private operators • Develop a maintenance schedule for the sewage treatment lagoon • Revise 2003 Water and Sewer Master PlanIdentify needed maintenance equipment and develop a plan for equipment replacement • Identify and describe areas with failing septic • Develop a plan for extending city sewer to those areas • Develop prioritized list • Kodiak is composting sewer sludge – Homer also tried it and ran into issues

		(see Energy chapter)
Bulk Fuel Storage & Distribution	Bristol Alliance Fuels, Delta Western (private)	<ul style="list-style-type: none"> • Threatened by erosion of west side of harbor mouth
Solid Waste		

Class 2 Landfill (State certified)	City of Dillingham	<ul style="list-style-type: none"> • Consider all possibilities for making it more efficient, using waste as biomass (see Energy chapter) and reducing air quality issues • Research incinerators. Burn box may no longer be used. • Research alternatives to burning • Study potential for regional landfill and recycling
Recycling	Senior Center & NAPA Auto (batteries)	<ul style="list-style-type: none"> • Encourage and mandate recycling and waste reduction at City-sponsored events; work with Bristol Bay Campus to host 'green events' • Senior Center currently collects and recycles aluminum cans (\$2451 in 2009, >\$2000 in 2010), • City collects electronics to ship out via Total Reclaim. Curyung Tribe holds annual recycling day. • Determine thresholds to make shipping out plastics, cardboard, and other recyclables cost effective • Investigate fee structure for "pay as you throw" policy to create an incentive to separate and recycle materials
Reclamation & Reuse	Landfill workers	(see Energy chapter) continue to have Landfill workers pull out items and put them aside for reuse
Refuse Collection	Dillingham Refuse, Inc. (private)	Explore possibility of having city-wide

		pickup of refuse
Composting of fish waste, other biomass	None	<ul style="list-style-type: none"> Concern about smell and attraction of bears UA and City working together to research possibilities compost fish waste needs a lot of paper or other carbon like paper or cardboard
Communications		
Telephone / Cellular	Nushagak Co-operative, potentially new providers	<ul style="list-style-type: none"> Assist companies with permitting and locating facilities for high speed internet.
Broadband	GCI, Nushagak Co-operative	<ul style="list-style-type: none"> Improve and expand access to Internet for all private and commercial users Use the Internet as an economic development tool
Other Basic Infrastructure		
Public restrooms & showers	City of Dillingham	<ul style="list-style-type: none"> Summer use only at harbor Needed in downtown area; currently the Sifsof Building (private) and local stores are pressured to provide this, which results in conflicts Explore ways to do oversight and maintenance, to prevent vandalism and maintain safe and hygienic condition

<p>Post Office</p>	<p>United States Postal Service</p>	<ul style="list-style-type: none"> • Located in center of downtown; large parking area with poor pedestrian linkages to nearby facilities • Poor parking flow, no safe inlet and outlet for vehicle traffic • Explore options for improving the parking here. • Coordinate with D street improvements and paths
<p>Road & Maintenance Equipment</p>	<p>City of Dillingham, State of Alaska DOT/PF; Curyung Tribe IRR program</p>	<ul style="list-style-type: none"> • City of Dillingham and ADOT/PF maintain shops for road and maintenance equipment and share responsibility for road maintenance (see Transportation chapter) • Establish an inventory and assessment process to adequately budget for equipment maintenance and replacement (see Transportation chapter)
<p>Cemeteries</p>	<p>Wood River Cemetery; Second Avenue West Cemetery; Evergreen Memorial; Russian Orthodox; Olsonville.</p>	<ul style="list-style-type: none"> • Need additional sites • Survey and design new cemetery off of Lake Road • Need to identify and build access road to new cemetery off of Lake Road • Work with FAA and ADOT to identify options for Evergreen Cemetery • Survey and map Kakanak cemetery

Services & Facilities		
Public Safety		
Fire EMS / Search & Rescue	Dillingham Volunteer Fire Department & Rescue Squad	<ul style="list-style-type: none"> • Develop a Youth Rangers program to engage youth in emergency response and provide training to youth in SAR, emergency medicine and other skills (see Community Wellness chapter)
Downtown Fire Station	City of Dillingham	<ul style="list-style-type: none"> • Needs to be replaced; • Determine location and facility design • If Fire Station moves, current site could be used for city park or snowmachine parking
Lake Road Fire Substation	City of Dillingham	<ul style="list-style-type: none"> • Maintain and provide upgrades to accommodate new equipment
Airport Fire Substation	City of Dillingham	
Dry hydrant system for outlying areas	City of Dillingham	<ul style="list-style-type: none"> • Plan dry hydrant system • Develop cost estimate for dry hydrant system • Get landowner permission • Seek funding for dry hydrant system • Construct system, in phases if necessary
Public Safety Facility	City of Dillingham	<ul style="list-style-type: none"> • Needs to be replaced; Determine location and facility design • Determine if any part of DPS services can be provided in same building as Fire department. • Determine new location for DPS

		<p>services</p> <ul style="list-style-type: none"> • Explore options for a new jail facility
Jail (8-bed)	City of Dillingham	<ul style="list-style-type: none"> • Consider replacing existing facility with a regional correctional facility with larger capacity (see Economic Development & Community Wellness chapters)
24-hour emergency dispatch	City of Dillingham	<ul style="list-style-type: none"> • Explore potential of locating with Fire Department
Police	City of Dillingham State Troopers	<ul style="list-style-type: none"> • Retain police officers by increasing wages and other compensation such as housing, to competitive levels
Domestic Violence Shelter	Safe and Fear-Free Environment (SAFE)	<ul style="list-style-type: none"> • Current facilities in good condition; SAFE offers services and shelter to male and female victims of domestic violence and female perpetrators; • Bring Sewer line to within reach of SAFE • Improve legal access for SAFE
Health & Human Services		
Hospital & Primary care clinic	Bristol Bay Area Health Corporation	<ul style="list-style-type: none"> • Identify a site for eventual replacement of hospital facility located closer to downtown (see Land Use chapter) • Outpatient clinic is over capacity and needs to be expanded • Private physician's practice operating from office on Lake Road
Nitaput Child Advocacy Center	Bristol Bay Area Health Corporation	<ul style="list-style-type: none"> •
Public Health Center	State of Alaska	<ul style="list-style-type: none"> • Facility in downtown next to City Hall that offers preventive health services;

		confidential family planning services
Dental clinic	Bristol Bay Area Health Corporation	<ul style="list-style-type: none"> • Out of compliance with current code; needs to be replaced
Marrulut Eniit Assisted Living Facility	BBHA	<ul style="list-style-type: none"> • Concern about available workforce and ability to house Elders with higher needs (see Economic Development chapter) • Research methods of raising revenue for it
Animal Care/Control	City	<ul style="list-style-type: none"> • Research and investigate how to provide a facility and fund it
Jakes Place	BBAHC	
Mental Health Facility	BBAHC	•
Community Health Center	BBAHC	<ul style="list-style-type: none"> • Sliding fee scale primary care • Work with BBAHC to site a new clinic downtown
Therapeutic Group Home	Alaska Family Services	<ul style="list-style-type: none"> • Operated by Fairbanks-based organization
Family Services, Elder Services, Disability Services, Land Management	BBNA	
Foster homes	Multiple	<ul style="list-style-type: none"> • Great need for more foster homes, particularly with Alaska Native families
Homeless Shelter	None	<ul style="list-style-type: none"> • Currently, no place to house homeless men; public inebriates currently go to jail or hospital • This should be part of a longer term strategy to combat binge drinking and reduce the presence of public inebriates in downtown area and other

		public places
Hospice and Home Health Care	None	<ul style="list-style-type: none"> • Need
Independent Living Services (for people with disabilities)	BBNA	<ul style="list-style-type: none"> • Personal care attendants
Senior Center	City of Dillingham	<ul style="list-style-type: none"> • Facility needs renovation •
Potato House	City of Dillingham	<ul style="list-style-type: none"> • Currently vacant; lease will provide additional revenue for Senior Center
Affordable Housing	Bristol Bay Housing Authority, City, Tribe, BBAHC	<ul style="list-style-type: none"> • Increase number of units and improve quality of housing for teachers, health professionals, young adults, Elders; locate close to downtown, jobs, shops (see Land Use, Housing chapter)
Supportive Housing	None	<ul style="list-style-type: none"> • Attract a provider for respite care
Workforce Development	Bristol Bay Native Association, BB Campus	Consult with workforce development and UAF BB Campus prior to projects to make sure that workforce is alerted and able to respond to projects by getting advance training if necessary
Community Services		
Greenhouse & Community Garden	None in operation	<ul style="list-style-type: none"> • Farmer's Market is small but very popular; interest in locally grown food as part of increasing sustainability; possible use for waste heat resources: commercial growing operation (see Energy chapter) • Community gardens in one site or scattered sites to encourage growing;

		<p>UAF starting a horticulture program</p> <ul style="list-style-type: none"> • Senior Center very interested in expanding its community garden • School and City involvement in greenhouse • City Landscaping in conjunction with greenhouse
Commercial kitchen	None	<ul style="list-style-type: none"> • Use as a business incubator, fisheries-related • Include as part of another facility • Explore a collaboration for this
KDLG Radio		<ul style="list-style-type: none"> • Includes studio, radio tower and transmitter • Involve youth in more production for air • Explore avenues for having live volunteer programs • Explore potential for volunteer coordinator
Community Churches	Russian Orthodox; Catholic; Seventh Day Adventist; Moravian; Assembly of God; Baptist; Trinity Lutheran; Dillingham Bible; Latter Day Saints	
Parks & Recreation		
Wood River Boat Launch	City of Dillingham	<ul style="list-style-type: none"> • Concerns about safety and silting in this area (see Waterfront chapter) • Plan renovation of the boat launch • Develop cost estimate and design • Carry out user survey to support funding applications

		<ul style="list-style-type: none"> • Identify several types of funding • Improve the boat launch with amenities for visitors and fishers
Hockey Rink	City of Dillingham	<ul style="list-style-type: none"> • Located in downtown; maintenance all volunteer; needs upgrade and more consistent upkeep; great resource • Convert this to a year-round facility by adding a roof
Historic Carlson House	City of Dillingham	<ul style="list-style-type: none"> • Possible site for a downtown park (see Land Use chapter)
Library & Museum	City of Dillingham	<ul style="list-style-type: none"> • Library getting a lot of use from school-age children afterschool
Community Center		<ul style="list-style-type: none"> • No central gathering place currently exists; Harvey Samuelsen Center is proposed for downtown – needs owner & operator • Develop a community school and make school available after hours – secure Community Schools funding
Youth Center	Dillingham Christian Youth Center; Boys & Girls Club	<ul style="list-style-type: none"> • Current facility well-used by youth, needs to be expanded
Bike Trail, Waterfront Trail & downtown parks	City of Dillingham	<ul style="list-style-type: none"> • Improve linkages between trails and green spaces, signage, more parks downtown (see Transportation chapter)
Swimming Pool		<ul style="list-style-type: none"> • Much needed for physical recreation and water safety training
Indoor fitness center		<ul style="list-style-type: none"> • Much needed for physical recreation • Could be a private business or a partnership with private operator

Skate Park, BMX park & Motorcross area		<ul style="list-style-type: none"> Youth priorities
Playing fields	City of Dillingham	<ul style="list-style-type: none"> Area where old airstrip is located in downtown, possible site for improved playing fields for school and public use Landscape and improve ball fields
Shotgun & rifle shooting ranges	City of Dillingham	<ul style="list-style-type: none"> State Troopers, local police officers, and local fish and wildlife/game personnel use range for qualifying shooting and training The Gun Club hosts events (both recreational and instructional) at both ranges, and stores equipment there
Education		
Valerie Larson Family Resource Center (childcare & Head Start)	Bristol Bay Native Association	<ul style="list-style-type: none"> Toddler Center is run by Dillingham City Schools but in need of additional funding to continue Head Start at capacity with waiting list for program Also houses BBNA's Social Services programs
Elementary School	Dillingham City Schools	
Middle / High School	Dillingham City Schools	<ul style="list-style-type: none"> Might be good site for boarding students from around the region (see Community Wellness chapter) Dillingham Hotel potential site for boarding home for students
Vocational Training	BBNA, UAF / BB Campus	
College	UAF / BB Campus	

Southwest Region School District HQ	Southwest Region School District	
Dillingham Alternative School	City of Dillingham	<ul style="list-style-type: none"> • Needs facility
Territorial School Building	City of Dillingham	<ul style="list-style-type: none"> • Currently used for rental housing • Needs sprinkler system and other improvements
Governance		
City Hall	City of Dillingham	<ul style="list-style-type: none"> • Needs weatherization, maintenance, siding and new boiler
Curyung Tribal Council Building	Curyung Tribal Council	
Ekuk Tribal Council		
State Legislative Information Office	Kongigatuk Bldg	
Federal Offices: USFWS, USDA	Kongigatuk Bldg	



Bristol Bay Area Health Corporation
 6000 Kanakanak Road
 P.O. Box 130
 Dillingham, AK 99576
 (907) 842-5201
 800-478-5201
 FAX (907) 842-9354

Bristol Bay Area Health Corporation is a tribal organization representing 34 villages in Southwest Alaska:

- Aleknagik
- Chignik Bay
- Chignik Lagoon
- Chignik Lake
- Clark's Point
- Dillingham
- Egegik
- Ekuk
- Ekwok
- Goodnews Bay
- Igiugig
- Iliamna
- Ivanof Bay
- Kanatak
- King Salmon
- Knugank
- Kokhanok
- Koliganek
- Levelock
- Manokotak
- Naknek
- New Stuyahok
- Newhalen
- Nondalton
- Pedro Bay
- Perryville
- Pilot Point
- Platinum
- Port Heiden
- Portage Creek
- South Naknek
- Togiak
- Twin Hills
- Ugashik

BRISTOL BAY AREA HEALTH CORPORATION
Statement in Response
January 19, 2011

Robert J. Clark, President/CEO

Bristol Bay Area Health Corporation ("BBAHC") issues the following statement in order to respond to questions asked and to correct misstatements of fact made in the City of Dillingham's Reply Brief and Comments on Petition to Annex Commercial Fishing Waters Using Local Option Method dated November 5, 2010 (the "Reply Brief").

1. The Reply Brief asks "What does Ekuk provide for the clinic?"

ANSWER: The clinic operated in Ekuk, Alaska during the summer months is staffed by a community health aide ("CHA") or an EMT certified person—either of which is a BBAHC employee. BBAHC also provides medical supplies for the CHA's use at the Ekuk clinic. Ekuk is obligated to provide infrastructure including the building used to house the clinic and a 4-wheeler for the CHA's use. While other villages in the Bristol Bay region receive rental income from the Indian Health Services in exchange for BBAHC's use of their building as a primary care clinic, Ekuk does not receive rent payments. Ekuk also provides BBAHC with suggestions regarding the identity of the CHA selected to provide the services.

2. The Reply Brief asks how long has the clinic in Ekuk been in operation?

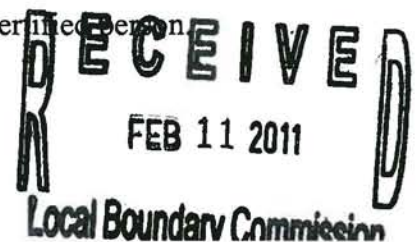
ANSWER: The Ekuk clinic has been in operation for many summers since the 1970s, subject to the availability of staff, and consistently since 2007.

3. The Reply Brief asks whether the clinic in Ekuk is likely to continue operation into the indefinite future?"

ANSWER: In 1973, BBAHC took over the provision of medical care provided to Alaska Natives and Native Americans by the United States of America—which care is guaranteed pursuant to federal law and historic treaties. BBAHC compacts with the Indian Health Service under a federal law commonly referred to as the ISDEAA pursuant to which it receives funding for operation of the hospital along with the right to use federally owned property including the hospital and grounds in Dillingham. Ekuk and 33 other villages/tribes, by resolution, authorize BBAHC as their "tribal organization" to provide services to this consortium of 34 tribes on their behalf. In light of the federal government's obligation to provide this medical care and the fact that BBAHC has been doing so successfully for over 38 years, it is almost a certainty that a clinic will continue to be operated in Ekuk into the indefinite future.

4. The Reply Brief asks how is the clinic in Ekuk staffed?

ANSWER: The clinic in Ekuk is staffed by one CHA or EMT certified person.



5. The Reply Brief asks when does the clinic in Ekuk normally operate?

ANSWER: The Ekuk clinic's normally scheduled hours of operation are 9 a.m. to 3 p.m. five days per week. In addition, the CHA or EMT-certified person on duty also responds to emergencies when called on a 24/7 basis.

6. The Reply Brief states that BBAHC receives City services (police, fire, water, sewer, roads).

RESPONSE: This statement is incorrect. BBAHC is located approximately 6 miles from downtown Dillingham. While the fire station closest to BBAHC located on Lake Road is operated by the City of Dillingham, the State of Alaska also makes its equipment at the airport available in the event of emergencies at Kanakanak. BBAHC provides its own security. BBAHC is not aware of any police patrols or other systematic City of Dillingham police service on or near the hospital. BBAHC has its own source of water on site at the hospital. It does not receive water from the City of Dillingham. BBAHC has a private sewer lagoon on site. It does not receive sewer services from the City of Dillingham. Finally, BBAHC is located on a road maintained by the State of Alaska, not the City of Dillingham. The Kanakanak Hospital compound is a federal compound, and as such is under federal jurisdiction (FBI). In other villages where BBAHC provides primary care services, the community provides such services. However, Dillingham does not provide these types of services to BBAHC.

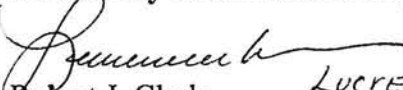
7. The Reply Brief states that the medical services available at BBAHC are used by persons participating in the commercial fishery within the annexed area.

RESPONSE: The medical services available at BBAHC are a source of secondary care for persons participating in the commercial fishery within the annexed. Primary care for such persons, however, is provided at the various villages including Ekuk, Clark's Point, and Manokotak. Moreover, the secondary level medical services available at BBAHC are also used by persons who reside many miles away from the area proposed for annexation. For example, people from Perryville, Chignik Bay, and Chignik Lagoon also use the secondary services available at BBAHC. The fact that BBAHC's facility is in Dillingham is available to provide secondary health care services to persons throughout the Bristol Bay region would seem to be irrelevant to the annexation issue. It is no more relevant to annexation than the fact that tertiary care medical services are provided at the Alaska Native Medical Center in Anchorage.

On behalf of the Board of Directors, management and staff of the Bristol Bay Area Health Corporation, I thank you for the opportunity to provide this statement responding to questions posed and misstatements made in the annexation matter at issue.

Thank you,

Bristol Bay Area Health Corporation


Robert J. Clark
President/CEO

Lucrecia Scotford CFO
For Robert Clark



**Bristol Bay Area
Health Corporation**
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*Bristol Bay Area
Health Corporation is
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representing 34
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Aleknagik
Chignik Bay
Chignik Lagoon
Chignik Lake
Clark's Point
Dillingham
Egegik
Ekuk
Ekwok
Goodnews Bay
Igiugig
Iliamna
Ivanof Bay
Kanakanak
King Salmon
Knugank
Kokhanok
Koliganek
Levelock
Manokotak
Naknek
New Stuyahok
Newhalen
Nondalton
Pedro Bay
Perryville
Pilot Point
Platinum
Port Heiden
Portage Creek
South Naknek
Togiak
Twin Hills
Ugashik

BRISTOL BAY AREA HEALTH CORPORATION
Executive Committee
Resolution No. 2011-03

**A RESOLUTION REGARDING THE CITY OF DILLINGHAM'S PETITION
TO ANNEX THE NUSHAGAK BAY FISHING DISTRICT**

WHEREAS, the Bristol Bay Area Health Corporation (BBAHC) was incorporated in 1973 by representatives from tribes in the Bristol Bay region for the purpose of providing health care and related services to residents of the Bristol Bay region of Alaska;

WHEREAS, the BBAHC now serves 34 villages and employs over 360 health care professionals;

WHEREAS, BBAHC operates Kakanak Hospital located within the city limits of the City of Dillingham, which facility was opened by the United State of America in 1913;

WHEREAS, in 1980, BBAHC began managing and operating Kakanak Hospital and the Bristol Bay Service Unit for the Indian Health Service (IHS), the first tribal organization in the United States to do so under P.L.93-638 as amended;

WHEREAS, the BBAHC Board of Directors desires that the Local Boundary Commission be fully informed of the involvement of villages in the provision of medical services in the territory the City of Dillingham is petitioning to annex;

WHEREAS, the City of Dillingham questions the amount of money provided for health care by the Native Village of Ekuk and presumably other villages in the region, implies that these services are not significantly funded by these villages, and implies they are of recent origin.

WHEREAS, Health clinics each staffed by a community health aide or EMT certified personnel are maintained in Manokotak and Clark's Point on a year-round basis and in Ekuk during the fishing season when the village is occupied.

WHEREAS, the health aides or other health care providers in these clinics are employees of BBAHC and the medical supplies used are supplied by BBAHC;

WHEREAS, the villages of Ekuk, Manokotak and Clark's Point are responsible for providing infrastructure to support each clinic including a building to house the clinic and method of transportation for the use of the provider within the village as well as to help BBAHC recruit for the provider position.

WHEREAS, each health clinic in the vicinity of the territory Dillingham intends to annex is open, available to, and has treated persons commercial fishing in the Nushagak commercial fishing district as well as any other persons who request appropriate health care services at such location.

WHEREAS, each village in the region passes a resolution granting to BBAHC authority to provide health care to its members, and, without this authority, BBAHC could not receive a large portion of its federal IHS funds to provide medical services, including village health clinics.

WHEREAS, another essential part of BBAHC's revenues are received from third parties including payments made by patients not eligible for IHS funded treatment through insurance and self-payment by uninsured patients.

WHEREAS, due to the IHS' underfunding of the costs of providing health care, villages in the region provide additional funding from sources available to them to subsidize the costs of health clinics provided in their communities and the services they provide.

WHEREAS, the City's petition, if granted by the Local Boundary Commission will take a potential valuable revenue source away from villages of the region without providing a replacement funding source for the infrastructure and other contributions made by each such village that are necessary for BBAHC to operate a clinic at that village.

WHEREAS, the BBAHC questions the City of Dillingham's ability to provide any services to the areas proposed for annexation in light of the fact that the City of Dillingham does not provide water, sewer, or road maintenance to Kanakanak Hospital which is only about 6 miles from downtown Dillingham while the areas proposed for annexation are at least twice that distance and in some cases are located much further away.

WHEREAS, the BBAHC is concerned that if fishermen in the area are required to pay new taxes to the City of Dillingham without receiving equivalent services in exchange, these fishermen will not have sufficient funds available to take care of the basic needs of themselves and their families, which is likely to result in more health care issues and needs due to inadequate nutrition, inability to heat their homes, inability to purchase health insurance, and other similar impacts.

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Area Health Corporation Executive Committee affirms the need for clinics to be available to the residents of Ekuk, Manokotak, and Clark's Point as well as other persons engaging in commercial fishing in the Nushagak watershed and the need for each of these villages to have a source of revenue that will allow each village to continue to provide the infrastructure necessary for the operation of such clinics without charge to BBAHC;

BE IT FURTHER RESOLVED that BBAHC urges the Local Boundary Commission to deny the petition for annexation because it will eliminate the source of funding each

village proposed for annexation uses to provide the infrastructure necessary for the operation of BBAHC's clinics; and

BE IT FURTHER RESOLVED that BBAHC opposes the City of Dillingham's proposed annexation of the commercial fishing waters because it would impose taxes on residents of the area without the provision of equivalent services which reduction in income is likely to negatively impact the physical well-being of the residents of the area and cause increased health care issues for such persons, the treatment of which will strain BBAHC's operations as well as such persons' ability to pay, or purchase insurance that would pay, for health care.

ADOPTED at a duly noticed meeting of the Executive Committee of Bristol Bay Area Health Corporation at a meeting held on January 22, 2011 at which a quorum was present.



H. Sally Smith, Chair

CERTIFICATION

I, the undersigned Secretary of the Bristol Bay Area Health Corporation, do hereby certify that the foregoing resolution was duly passed by the Executive Committee of the Bristol Bay Area Health Corporation on January 22, 2011 and that such resolution remains in full force and has not been amended or rescinded.



Diane Shangin, Secretary

Izetta Chambers

2-24-11 Chambers

From: Izetta Chambers [izetta.chambers@gmail.com]
Sent: Thursday, February 24, 2011 3:54 PM
To: Commission, Boundary (CED sponsored)
Cc: Jody Seitz; alice@bbedc.org
Subject: Dillingham annexation petition

Dear Committee Members;

I offer this letter in support of the City of Dillingham's annexation proposal to annex the Nushagak Bay and some nearby lands.

As a prior resident of the Bristol Bay Borough, where I grew up, I was very fortunate to have reaped the benefits that a tax base brings. I would like the same opportunities for the children and residents of Dillingham that I was blessed with - ample municipal revenue from a significant tax base from our primary resource - salmon.

As you are aware, much of the lands within the current city boundaries are tax exempt Native Allotments, which provide no funding for all of the services that Dillingham provides - both to it's year-round residents, and also to many of the surrounding communities. Annexation and the proposed fish tax would allow the city to provide those services that so many fisherman require.

while I empathize with the plight of many of the residents of the surrounding villages, if Dillingham's petition were approved, I am confident that they will consider their neighboring villages in much of their decision making analyses and do whatever is in their power to provide benefits to all fishermen in the form of improved infrastructure that will elevate not only the convenience to the fishermen, but also increase the ex-vessel price paid for the salmon. I feel that the increases in the fish prices will more than mitigate any adverse impacts to the surrounding villages.

Respectfully,

Izetta Chambers, J.D.
Dillingham resident

Lisa Haggblom

28 January, 2011

PO Box 992
Dillingham, AK 99576
907-842-5627
dillinghamhaggblom@yahoo.com

LBC Staff
550 W. 7th Avenue—Suite 1770
Anchorage, AK 99501-3510

To LBC Staff,

I completely support the City of Dillingham's petition to annex parts of Nushagak Bay and Wood River--these waters and subsequent tax revenues should have been part of the city years ago. Since the expectation is that Dillingham will provide services to the fishing industry, than it is completely appropriate for the city to have access to income generated by the fishing industry. This annexation is of utmost importance to generate revenue for a city that has few revenue generating options.

Sincerely,


Lisa Haggblom

Tom Henshaw

February 23, 2011

To: Alaska Local Boundary Commission Staff

I have heard of Dillingham's proposal to annex the Nushagak District so they can impose a tax on the fish that are caught there in order to pay for infrastructure cost. I am strongly opposed to this action for the following reasons:

1. The majority of the fisherman, and the fish caught, in the Nushagak district store their boats in Naknek and King Salmon, where we already pay substantial property and other taxes.
2. What Dillingham wants seems unnecessary. For example, Naknek has the majority of boats in the Bay stored there, yet it does not have a public dock for boats to tie up to unless you count the barge bulkhead. Many people go into the water and stay there for the season knowing they will never come out until the end. Or even tie up. If going dry is necessary, you can run your boat onto the beach. It sounds like Dillingham wants to tax many fishermen who do not use their infrastructure to pay for a local convenience.
3. I do not, and most boats who fish in the Nushagak District do not, go to Dillingham for services. So not only do we not store our boats there, we do not even visit there. The majority of boats stay off of Clark's Point and Queen's Slough, almost 10 miles away from Dillingham.

This proposal is an attempt to pay for a local "want" by disguising it as a district "need". The fact is that the majority of Nushagak District fishermen do not store their boats in Dillingham or even go to Dillingham. The fishermen that Dillingham are targeting already pay substantial taxes in the Bristol Bay Borough. Dillingham's need for funds should be fixed directly onto those who would benefit, perhaps through increased fees of Dillingham harbor users and those who haul out their boats in Dillingham.

Please do NOT support this proposal.

Thank you for your time.

Sincerely,

Tom Henshaw

Bristol Bay drift permit and vessel owner since 1996

Native Village of Koliganek

February 15, 2011

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Dear Sirs:

The purpose of this letter is to comment on the Preliminary Report to the Local Boundary Commission Regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham. The undersigned are officers of the New Koliganek Village Council a federally recognized tribe. Holders of limited entry permits who reside in Koliganek and fish in Nushagak Bay have also signed this letter.

Koliganek is located on the left bank of the Nushagak River and lies 65 miles northeast of Dillingham. Koliganek has about 10 fishermen who actively fish their drift permits. Two People actively fish their set net permits. There are other members of the village who serve as crew for these fishermen. All of their fishing occurs in Nushagak Bay. Most people in the village store drift boats in Dillingham and use the facilities there for launching. One person stores his boat in New Stuyahok. The people of Koliganek have a close connection to other communities of the Western Bristol Bay region. We serve with them on boards of tribal, corporate, regional, federal, and state entities. We fish with our neighbors in Nushagak Bay. Our children's schools compete at sports and other activities. We are even related to people who live in other communities of the region.

The City of Dillingham is proposing to make Nushagak Bay a part of their city. The Village of Koliganek believes that Nushagak Bay is also connected to their village just as much as to Dillingham.

After the annexation, Dillingham would then have a 2.5% fish tax on gross income of all fishermen who sell fish caught from Nushagak Bay. If a fisherman makes \$70,000 a season and the City of Dillingham takes 2.5% on their gross that would be about \$1,750, for someone who makes \$50,000 it would take \$1,250 out of the income of a family.

We want you to know that this fish tax would be in addition to the following annual expenses that a fisherman must pay:

Dillingham Boat Harbor Fees	\$ 265.00
Dillingham Property tax (boat)	\$ 360.00

1

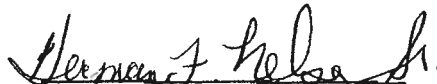
PAF Storage	\$1590.00
Locker Rental	\$ 450.00
Boat Haul out (each time)	\$ 265.00
Boat Insurance	\$2,742.00
Sales tax on purchases in Dillingham	\$
Maintenance and gear start-up cost	\$

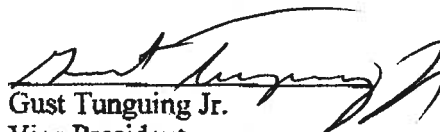
Every Fisherman or woman knows what we have to deal with before fishing and when the season is over. Catch a lot of fish and hope the price is good and have a good season. We don't need another expensel added to what we are already required to pay. After all expenses, depending on fish and price, what we take home goes for fuel, electricity and grub mainly, other than bills. Most of the fishermen and women of our village don't have other employment after the season ends. Not much money is left over after all is said and done.

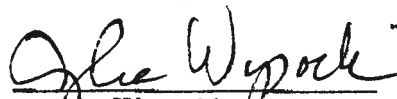
The people in Dillingham know how hard it is for the people in the villages to make ends meet. We know the people in Dillingham are also having a hard time and this extra cost will affect their lives too. We disagree with the staff of the Local Boundary Commission that this proposed tax is going to benefit the villages that surround Dillingham. Dillingham and the villages must rely on each other and make certain that what we each do is not harmful to the other. That is the way for good neighbors to act. If there is going to be a tax on all fisherman, the proceeds should be shared among the communities of the region fairly.

Koliganek Village Council and the undcrsigned fishermen of Koliganek do not support the pctition of City of Dillingham to annex the Nushagak Bay Commercial Salmon District or the Wood River Sockeye Salmon Special Harvest Area and the plan to have a fish tax. A copy of this letter has been sent to the City of Dillingham.

Koliganek Village Council


 Herman Nelson
 President


 Gust Tunguing Jr.
 Vice President


 Anuska Wysocki
 Secretary

Bobby Larson
Bobby Larson
Council member

Nick Johnson Sr.
Nick Johnson Sr.
Council Member

Koliganek Bristol Bay Permit Holders

Nick Johnson
Natalia Johnson
Ethan P. Johnson
at Johnson's request
Tom F. Nelson
Ellen Wapoch
John Johnson
Herman Johnson
Cherrie Johnson

CC: Alice Ruby
P.O. Box 889
Dillingham, AK 99576

Paul Liedberg

P.O. Box 478
Dillingham, AK 99576

February 24, 2011

Local Boundary Commission
550 West Seventh Ave., Suite 1770
Anchorage, AK 99501-3510

Dear Sirs:

This letter is in reference to the Preliminary Report to the Local Boundary Commission regarding the annexation proposal by the City of Dillingham. I am a seven year resident of Dillingham and for the past 22 years I have lived in hub communities off the road system in Alaska. I am a property owner within the city limits of Dillingham. I do not participate in commercial fishing in Bristol Bay. I am in agreement with the Preliminary Report and support the annexation proposal by the City of Dillingham.

Having lived in two other rural hub communities in the state (Galena and Bethel) I've had some exposure to the regional role that these communities play. Dillingham, in my view, is exposed to even more demands than the other hubs mentioned because of the services and infrastructure in place to support the fishing industry in Nushagak Bay. Dillingham certainly benefits from the fishing industry. But without question there is also a high cost to the city in support of this fishery and those costs should logically be shared with the beneficiaries of the industry.

As a homeowner and taxpayer in Dillingham, I have no problem helping to support many of the services provided by the city even though I may not personally use those services to any degree. I don't have children in school but I recognize the financial contribution each of us has to make in the school system for the future of our next generation. I am not a senior citizen but the facility that we have for seniors is a tremendous asset. I make only limited use of the city library and museum but I know that they provide important benefits for residents and visitors.

The city functions mentioned above have virtually no other means of revenue locally except for our real, personal and sales taxes. But for the services provided by the city to support the fishing industry and associated infrastructure – much of which is used by non-Dillingham residents - there is an opportunity to recoup some of those costs. The annexation proposal with the associated fish tax provides that opportunity and that is why I support the initiative. It seems logical and necessary for rural communities in Alaska to make wise and strategic decisions on revenue. I believe this proposal is strategic, and will more equitably share the responsibility for funding local governance among the recipients of services.

Thank you for the opportunity to provide comments.

Sincerely,



Paul A. Liedberg

Mark Lisac

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
Phone: 907-269-4559
Fax: 907-269-4539
Email: lbc@alaska.gov

Dear LBC

I support the City of Dillingham's petition to annex portions of Nushagak Bay & Wood River for the following reasons:

1. Harvesters of a public resource should help support the public infrastructure and facilities that they depend on.
2. Harvesters can fish in other districts of Bristol Bay if they disagree with the proposed 2.5% raw fish tax.
3. Dillingham is the only municipality that does not currently receive a raw fish sales tax.
4. Local residents pay City property tax and local sales tax to support City infrastructure and facilities that are vital to the commercial fishing fleet of Nushagak Bay.
5. Residents from outside the City (regional, state and out of state) use Dillingham facilities and strain our limited resources for public safety, fire, ambulance, land fill and boat harbor during the annual commercial fishing season.
6. The Dillingham boat harbor operates at a deficit due to the City's effort to keep boat harbor fees low. This requires other City revenue sources to be used to cover this deficit spending.

Thank you for this opportunity to comment

Mark Lisac
Dillingham

Michele Masley

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
Email: LBC@alaska.gov

February 25, 2011

RE: City of Dillingham Annexation - Public Comment on Preliminary Report

Dear Local Boundary Commission:

I would like to urge the LBC to support the City of Dillingham annexation petition. I strongly agree with the following statements made on pp. 66-67 of the Preliminary Report and provide further comment for each:

1. “[Annexation] would ensure a stronger, more vibrant local government...The city is the appropriate government for the territory because the rest of the region’s communities need a stronger regional hub for their sustainability. LBC staff finds that the annexation is necessary to sustain the city, thereby sustaining the regional hub. If the city were to continue its fiscal course, without annexation approval, the state could be forced to step in and assist Dillingham in order to maintain the economic integrity of the city and region.”

As a private citizen who has made a choice to make a life here in Bristol Bay, I am concerned with what I perceive as deterioration in the past 5 years of basic maintenance of basic services the City of Dillingham is mandated to provide. I believe annexation will help the city get beyond treading deep water that is just getting deeper and deeper as the cost of fuel and the general cost of living increases. A few examples are: the paved roads leading to town have disintegrated, the library roof is leaking, the downtown fire station doors do not fit the fire trucks, and the harbor near the picnic park is washing away with the tides. Due to lack of financial resources, the city barely has capacity to keep up with basic maintenance of essential services for its year-long residents and visitors, let alone keeping up with the vast increase in demand of essential services during fish season, or the resources to increase or improve services for its residents and those who visit from other villages or from outside. Further essential services including public safety, public works, sewage, garbage disposal and the 911 emergency services provided by KDLG, are used by every resident and visitor to Dillingham, including the commercial fishermen no matter where they originate from. I believe Dillingham to be at serious risk of an unsustainable situation with diminished financial capacity but same or increasing demand for services.

2. “Without the approval of this annexation, Dillingham’s economy or its population could potentially decline dramatically....Would the hospital be able to recruit and retain sufficient professional staff? Would the media still be able to maintain operations in the region without a strong regional hub? Would there be as many government offices and employees? Would the Bristol Bay Campus of the University of Alaska Fairbanks remain open?” “If the city...diminishes, the other communities will also fade because there will not a hub to depend on, directly or

indirectly. Should annexation not be approved, we do not see a bright or sustainable future for Dillingham. LBC staff feels that Dillingham would diminish in time, and would not be able to serve the region as it does now. This would hurt the entire region.”

With First Class status, the city of Dillingham is responsible for its schools. I have witnessed deterioration in retention of high quality teachers to this area, as the school district has not had, among other things, the financial capacity to provide competitive incentive recruitment packages. As an employee of UAF Bristol Bay Campus, we have an increasing number of classes and large events that bring a lot of visitors to Dillingham who are in need of lodging, transportation and food. Bristol Bay Campus, besides being the only post-secondary institution that serves Bristol Bay region and provides essential local educational opportunities, it is a major economic driver in the region with an estimated \$4M in economic activity. If City of Dillingham is not sustainable, the university is at risk of not being able to fulfill its education mission and at risk of closing down. This has implications for every child in the Bristol Bay region, not just Dillingham.

3. “LBC staff finds that approving the annexation would increase the odds of a borough being formed... 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.”

I am encouraged to read that annexation will only help this community should its citizens decide to form a borough. We can build a thriving, sustainable future for the generations to come if we come together as a region and do what will be most beneficial to the collective whole. The old cliché is a good one...the sum is greater than its parts...I believe annexation is a step towards a greater sum which will benefit the community as a whole, the community I have chosen to live in.

Thank you for the opportunity to provide comment on the Preliminary Report to the Local Boundary Commission.

Sincerely,

Michele Masley

Po Box 1070

Dillingham, Alaska 99576

Chris McDowell

February 22, 2011

To: Alaska Local Boundary Commission Staff

I am writing to oppose the City of Dillingham's petition to annex waters of Bristol Bay including the Nushagak fishing district. My understanding is that Dillingham's intent is to generate tax revenue to offset municipal spending associated with seasonal use of its harbor and other infrastructure by the non-local segment of the Nushagak salmon fleet.

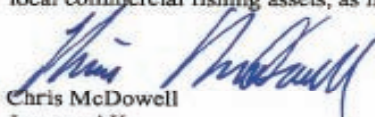
My experience is that the non-local segment of the fleet seldom uses Dillingham harbor or goes ashore in Dillingham. I have owned and operated a Bristol Bay drift gillnet vessel since 2000 and fished most or all of my salmon season in the Nushagak district for 7 of the last 11 years. During that time I used the Dillingham harbor only twice. I work with a group of nine partner boats, and their experience in the Nushagak district is very similar.

My fishing operation is based in Naknek, where I pay a substantial property tax on my assets to fund borough infrastructure such as roads, fire protection and port facilities. Like most Naknek-based boats fishing the Nushagak district, I operate South of Clark's point and get all my fuel, potable water, food, nets, parts and other supplies from my [Naknek-based] processor's tender fleet. There is a substantial fleet of Naknek-based driftnet boats with the same operating program in the Nushagak district; well over 200 and likely closer to 300 vessels.

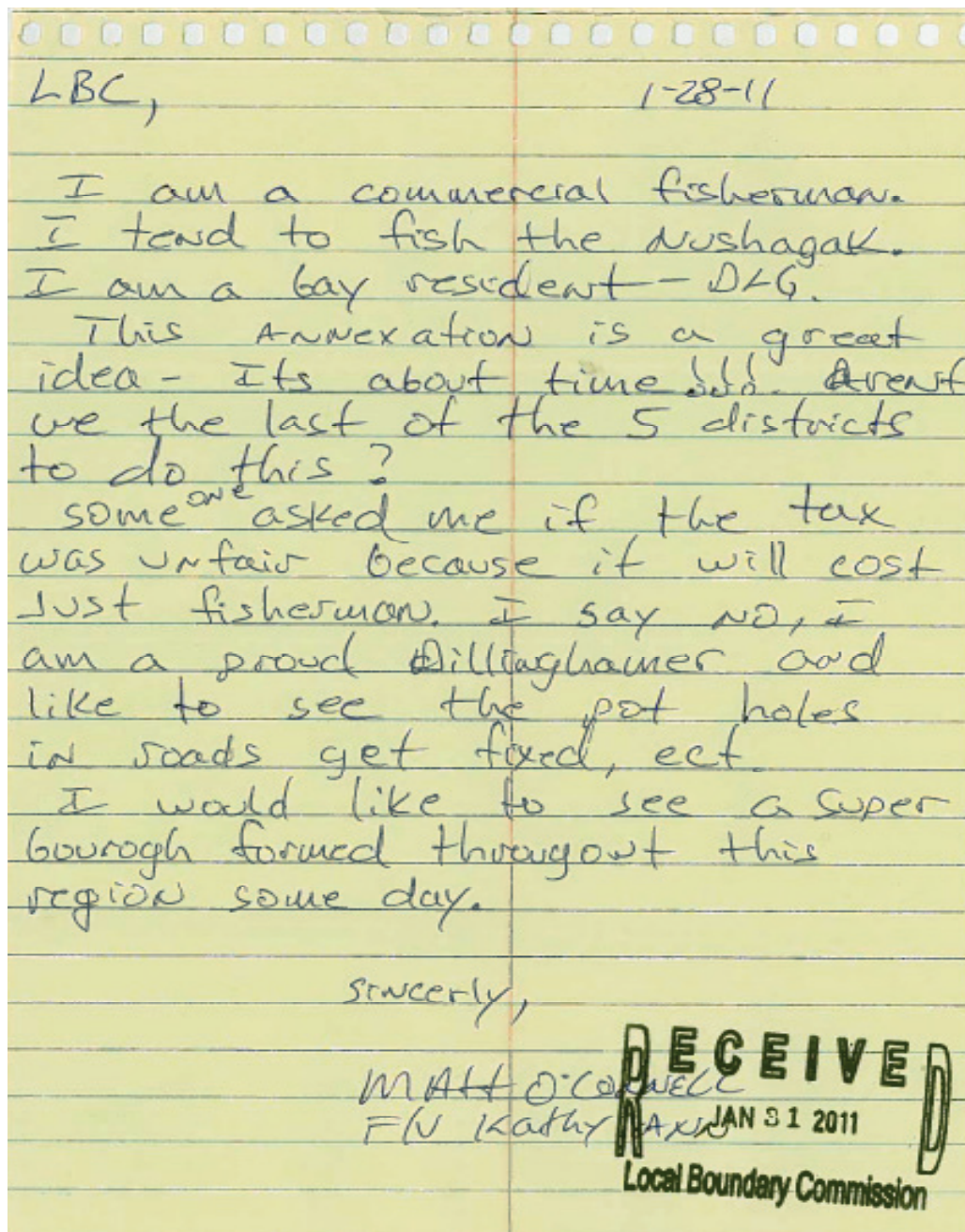
Dillingham harbor is several miles upstream from the fishing district and not easily accessible. Nushagak district salmon openings usually occur on short notice and considering the extreme tides and distance involved, most fishermen consider it impractical to use Dillingham harbor between openings. Judging from the crowded anchorages throughout the season, most of the fleet spends down-time between openings anchored in the fishing district, miles from Dillingham harbor.

Under the proposed annexation and 2.5% tax, the non-local segment of the fleet would experience a significant operating cost increase with little or no associated benefit in the form of improved services or infrastructure. Most of us operate out of Naknek. We seldom go to Dillingham, rarely use Dillingham harbor and do not regularly use or depend upon any services provided by the city of Dillingham.

Dillingham's proposed annexation of the Nushagak district is unnecessary. The city of Dillingham has taxing authority and could potentially meet its needs by alternate means; increasing existing fees for vessels that use local facilities, or through property tax on local commercial fishing assets, as in the Bristol Bay Borough.


Chris McDowell
Juneau, AK

Matt O'Connell



LBC,

1-28-11

I am a commercial fisherman. I tend to fish the Nushagak. I am a bay resident - DLG. This Annexation is a great idea - Its about time!!! Aren't we the last of the 5 districts to do this? Someone asked me if the tax was unfair because it will cost just fishermen. I say no, I am a proud Dillinghamer and like to see the pot holes in roads get fixed, ect. I would like to see a super borough formed throughout this region some day."

Sincerely,

*Matt O'Connell
F/U Kathy Ann*

From: Todd Radenbaugh [todd.radenbaugh@gmail.com]
Sent: Friday, February 25, 2011 10:37 AM
To: Commission, Boundary (CED sponsored)
Subject: Positive for City of Dillingham's petition for annexation

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Dear Local Boundary Commission

I would like to comment on the preliminary report to the local boundary commission regarding the proposal to annex the local option. I am in full support of the annex of territory proposed by the City of Dillingham, which consists of approximately 399.08 square miles. I feel that the revenue created by this annexation would be an important investment in the community which will significantly help the local economy.

Sincerely,
Todd A Radenbaugh, Ph.D.
Dillingham, Alaska

Southwest Region School District



Southwest Region School District

P.O. Box 90
574 Kenny Wren Road
Dillingham, AK 99576

(907) 842-5287 • Phone
(907) 842-5428 • Fax

February 23, 2011

Alice Ruby, Mayor
P.O. Box 889
Dillingham, AK 99576
mayor@dillinghamak.us

Dear Mayor Ruby:

Please find attached a resolution in which Southwest Region School District urges the Local Boundary Commission to deny the petition for annexation because it would impose taxes on the residents of the area without provision of services which reduction income is likely to negatively impact the health of families in the area with attendant decreases in student's educational performance or force families to move from the communities, leaving insufficient populations to support school sites.

The Resolution was passed, approved and adopted by the School Board of the Southwest Region School District on February 21, 2011.

Sincerely yours,

A handwritten signature in cursive script that reads "Jack Foster".

Jack Foster
Superintendent

Cc: Local Boundary Commission

Aleknagik

Clark's Point

Ekvok

Koliganek

Manokotak

New Stuyahok

Togiak

Twin Hills

SOUTHWEST REGION SCHOOL BOARD

RESOLUTION NO. 11-04

A RESOLUTION REGARDING THE PETITION FOR ANNEXATION BY THE CITY OF DILLINGHAM

WHEREAS Southwest Region School District serves students in a Regional Educational Attendance Area bordered by Bristol Bay to the south, the Kuskokwim Mountains to the west and north, and the Aleutian Range to the east including the communities of Aleknagik, Clark's Point, Ekwok, Koliganek, Manokotak, New Stuyahok, Togiak, and Twin Hills;

WHEREAS the villages served by Southwest Region Schools are located 15 to 75 miles from Dillingham, the largest community in the region. Of the eight villages, only Aleknagik is accessible by road from Dillingham and all of the other villages are accessed by air, primarily using small, single engine planes;

WHEREAS the families of a significant percentage of the students served by Southwest Region Schools live below the poverty line;

WHEREAS the region's primary economic base is commercial fishing in the summer, and subsistence hunting and fishing in the winter. The permanent populations of some of the communities served by Southwest Region schools are relatively small. For example, the summer population of Clark's Point associated with the commercial fishery can swell into the hundreds but then dwindles to several dozen year round residents (11 of whom held commercial fishing permits in 2009 according to the State of Alaska, Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs). The year-round population of Clark's Point currently includes a sufficient number of children to barely support an elementary school;

WHEREAS the Southwest Region School District is concerned that if the fishermen who live in the communities whose students it serves are required to pay new taxes to the City of Dillingham without receiving equivalent services in exchange, those fishermen may not have sufficient funds available to take care of the basic needs of themselves and their families, resulting in reductions in the quality of life of school children and associated decreases in educational performance or in families being forced to leave the village and thereby decreasing the permanent population below levels necessary to support a school;

WHEREAS the proposed annexation may also affect the Southwest Region School District, which has the power to petition to create a borough in the region, 3 AAC 110.410(a)(5). If Dillingham annexes and taxes fishing activity in territory that is part of the region, but not really part of the community of Dillingham, then that may lessen the capacity of surrounding areas to produce or maintain revenue to support a borough or may foster Dillingham opposing borough formation. In light of these dynamics, the boundary commission should consider the appropriateness of creating a borough before permitting the City of Dillingham to claim that territory;

NOW THEREFORE BE IT RESOLVED that the Southwest Region School District affirms the need for stable minimum populations in the communities it serves to provide sufficient numbers of students to maintain its school sites;

BE IT FURTHER RESOLVED that Southwest Region School District urges the Local Boundary Commission to deny the petition for annexation because it would impose taxes on the residents of the area without provision of services which reduction income is likely to negatively impact the health of families in the area with attendant decreases in student's educational performance or force families to move from the communities, leaving insufficient populations to support school sites.

PASSED, APPROVED AND ADOPTED BY THE SCHOOL BOARD OF THE SOUTHWEST REGION SCHOOL DISTRICT THIS 21ST DAY OF FEBRUARY, 2011:



President, Southwest Region Schools

02-21-11
Date



Superintendent, Southwest Region Schools

02-21-11
Date

Diane Wetter

Williams, Brent R (CED)

From: Brent Wetter [ekukalaska@starband.net]
Sent: Friday, February 25, 2011 4:03 PM
To: Commission, Boundary (CED sponsored)
Subject: City of Dillingham annexation plans

February 25, 2011

To: Local Boundary Commission
From: Diane Wetter
submitted via e-mail

I am against the City of Dillingham's request to annex the waters of the Nushagak.

I am a Dillingham resident and I commercial fish on Ekuk beach. As a resident of Dillingham I pay a property and a sales tax to the city. What they are proposing is a sales tax to a selected group. They will not provide any additional support for me in Ekuk. Just because there is the potential for money to be raised by a tax, I believe it is not a reason to allow the City of Dillingham to go after such money and not benefit the people they are taxing.

I ask the LBC to deny The City of Dillingham's request to annex the waters of Nushagak.

Thank You

Diane Wetter

February 15, 2011

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510

Dear Sirs:

The purpose of this letter is to comment on the Preliminary Report to the Local Boundary Commission Regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham.

Koliganek is located on the left bank of the Nushagak River and lies 65 miles northeast of Dillingham. I and members of my family actively fish set net permits sites which are located on Nushagak Bay in Nushagak statistical area 325-31. We fish as a family with my wife and two children. All of our commercial fishing occurs in Nushagak Bay. Each summer we load up our skiffs in the village and travel down river to our site. We also have two crew members employed in our set net operation. We have been set netting at Nushagak since limited entry started. My wife was born in Koliganek and her family came to Nushagak to fish even before limited entry. It was their traditional fishing site for many generations before my wife and I took it over.

The City of Dillingham wants to make Nushagak Bay a part of their city. As a villager from Koliganek, I consider Nushagak Bay to be connected to my village just as much as to Dillingham.

After the annexation, I am told that Dillingham would then have a 2.5% fish tax on gross income of all fishermen who sell fish caught from Nushagak Bay. When I calculate the cost to me, it would be substantial. Just when we get a good price for our fish, it seems that Dillingham comes up with a plan to take away that little bit of room that the price has given us. I pay sales tax in Dillingham and launch fees for the skiffs that we use in our set net operation. I am not getting a free ride by any means. I live in this area all year long and pay the local price for everything. The cost of fuel is particularly hard to take.

The amount I would pay in fish tax would probably cover a large part of my fuel bill for the season.

I and my family do not support the petition of City of Dillingham to annex the Nushagak Bay Commercial Salmon District or the Wood River Sockeye Salmon Special Harvest Area and the plan to have a fish tax. A copy of this letter has been sent to the City of Dillingham.

Glenn (Skin) Wysocki
PO Box 5015
Koliganek, AK 99576

CC: Alice Ruby
P.O. Box 889
Dillingham, AK 99576

**Appendix B: LBC Regulations and Procedures,
Public Hearing and Decisional Meeting Notice and Agenda**

Hearing Procedures (3 AAC 110.560)

3 AAC 110.560. Commission hearing procedures

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (5) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by each respondent;
- (6) sworn responsive testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (7) a period of public comment by interested persons, not to exceed three minutes for each person;
- (8) a closing statement by the petitioner, not to exceed 10 minutes;
- (9) a closing statement by each respondent, not to exceed 10 minutes;
- (10) a reply by the petitioner, not to exceed five minutes; and
- (11) points of information or clarification by the department.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the

opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief, document, or other evidence may not be introduced at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents or for consideration in the reports of the department under 3 AAC 110.530.

(f) The commission may amend the order of proceedings and change allotted times for presentations to promote efficiency if the amendment does not detract from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185 | Authority: Art. X, sec. 12, Ak Const.; Art. X, sec. 14, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.020; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.820; AS 44.33.826

Decisional Meeting (3 AAC 110.570)

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony and to reach a decision regarding the proposed change. During the decisional meeting,

- (1) the commission will not receive new evidence, testimony, or briefing;
- (2) the chair of the commission or a commission member may ask the department or a person for a point of information or clarification; and
- (3) the department may raise a point of information or clarification.

(b) Repealed 1/9/2008.

(c) If the commission determines that a proposed change must be altered or a condition must be satisfied to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, and be in the best interests of the state, the commission may alter or attach a condition to the proposed change and accept the petition as altered or conditioned. A motion to alter, impose

conditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval. If the proposed change is a

(1) municipal annexation, detachment, deunification, dissolution, merger, or consolidation, a city reclassification, or a legislative-review borough incorporation under AS 29.05.115 , and if the commission determines that the proposed change must be altered or a condition must be satisfied before the proposed change can take effect, the commission will include that condition or alteration in its decision; or

(2) municipal incorporation subject to AS 29.05.060 - 29.05.110, and if the commission determines that an amendment to the petition or the placement of a condition on incorporation may be warranted, the department shall provide public notice and an opportunity for public comment on the alteration or condition before the commission amends the petition or imposes a condition upon incorporation; if the department recommended the proposed change or condition and the public had an opportunity to comment on the proposed change or condition at a commission hearing, an additional notice or comment period is not required.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, or is not in the best interests of the state, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will issue a written decision explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185 | Authority: Art. X, sec. 12, Ak Const.; Art. X, sec. 14, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.020; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.818; AS 44.33.820; AS 44.33.822; AS 44.33.826

Tips for Effective Public Comment



Local Boundary Commission

Members

Lynn Chrystal
Chair
At large

John Harrington
Member
First Judicial District

Robert Harcharek
Member
Second Judicial District

Larry Semmens
Member
Third Judicial District

Lavell Wilson
Member
Fourth Judicial District

TIPS FOR EFFECTIVE PUBLIC COMMENT

If you plan to offer comments to the Local Boundary Commission (LBC) at the public hearing on the proposed annexation to the City of Dillingham, the following tips are offered to make your comments more effective.

1. Come prepared and informed. Plan your comments in advance. Prior to the hearing you may wish to review:

- ◆ the annexation petition, responsive brief, and written comments on the petition,
- ◆ Commerce's preliminary report, public comments on the preliminary report, and Commerce's final report.

The above materials are available at the Dillingham City Hall, Port of Dillingham small boat Office, and the Dillingham Public Library. The documents are also available on the LBC web site at <http://www.commerce.state.ak.us/dca/lbc/dillingham.htm>.

2. Provide relevant comments or testimony. The LBC's decision on the annexation proposal will be based on legal standards applied to the proposal's facts. Comments addressing those standards will most help the LBC. A summary of the criteria includes:

- ◆ There must be a reasonable need for city government in the territory proposed for annexation. (3 AAC 110.090(a));
- ◆ The territory may not be annexed if essential city services can be provided more efficiently and more effectively by another existing city, by an organized borough, or through a borough service area. (3 AAC 110.090(b));
- ◆ The territory must be compatible in character with the annexing city. (3 AAC 110.100);
- ◆ There must be sufficient human and financial resources in the proposed city boundaries (area within existing city, plus territory proposed for annexation) to provide essential city services on an efficient, cost effective level. (3 AAC 110.110);
- ◆ The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government. (3 AAC 110.120);
- ◆ The proposed expanded city boundaries must include all land and water necessary to provide the development of essential municipal services on an efficient, cost effective level. (3 AAC 110.130(a));
- ◆ Absent a specific and persuasive showing to the contrary, the Local Boundary Commission will, presume that territory that is not contiguous to the annexing city or would create enclaves in the existing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. (3 AAC 110.130(b));
- ◆ The proposed boundaries of the city must be on a scale suitable for city government and may include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation. (3 AAC 110.130(c)(1));
- ◆ The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except when boundaries are justified by applying the annexation standards. (3 AAC 110.130(c)(2));
- ◆ Whether the petition for annexation is in the best interests of the state under AS 29.06.040(a). (3 AAC 110.135);



Local Boundary Commission

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- ◆ 3 AAC 110.140 requires that the territory to be annexed by legislative review must meet at least one of several specified criteria. (3 AAC 110.140);
- ◆ petition for annexation must include a practical plan:
 - ◆ demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practical time after the effective date of the proposed boundary change;
 - ◆ providing for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, service area or other entity located in the territory proposed for change;
 - ◆ providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change;
 - ◆ must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed. (3 AAC 110.900);
- ◆ The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (3 AAC 110.910);
- ◆ If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services. (3 AAC 110.970(c));
- ◆ In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area. (3 AAC 110.981(8));
- ◆ Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area. (3 AAC 110.982(7)); and
- ◆ The commission is also guided by principles set forth in Article X of the Constitution of the State of Alaska in judging the merits of annexation proposals.
- ◆ All legal standards can be looked up on the legislative website (Title 3, Part 15, Chapter 110): <http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac?>

3. Observe the rules.

- ◆ New written materials may not be filed at the hearing unless good cause for such is shown.
- ◆ Public comment will be limited to a maximum of three minutes per speaker (does not apply to petitioner and respondent) to ensure that the LBC will be able to hear from all persons who wish to speak. Please honor the time limits.

4. Avoid repetition.

- ◆ If an earlier speaker has addressed certain points to your satisfaction, you may wish to simply note that you agree with the earlier remarks, and then spend your allotted time on topics that have not yet been addressed.

Notice of Public Hearing and Decisional Meeting

**State of Alaska
Local Boundary Commission (LBC)**

**Notice of Public Hearing and Decisional Meeting Regarding the City of
Dillingham's Annexation Proposal**

The LBC will meet to convene a public hearing under 3 AAC 110.560 regarding the proposal to annex an estimated 399 square miles to the city of Dillingham. The proposed area includes 396 square miles of water and 3 square miles of land.

**Monday, April 25, 2011 – 4:00 p.m.
Dillingham Middle School Multipurpose Room/Gym
711 Seward St, Dillingham, AK 99576**

The public hearing will start at 4:00 p.m. April 25, 2011 and may be continued to the following day, April 26, 2011 at 4:00 p.m. if deemed necessary by the Chair.

The LBC will convene a decisional meeting under 3 AAC 110.570 to act on the proposal as noted below.

**Tuesday, April 26, 2011 – 4:00 p.m.
Dillingham Middle/High School Multipurpose Room
711 Seward St, Dillingham, AK 99576**

The decisional meeting will start April 26, 2011 at 4:00 p.m. The hearing agenda and information concerning the hearing, decisional meeting, and other aspects of the annexation proposal may be obtained from:

LBC staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Brent Williams: (907) 269-4559
Don Burrell: (907) 269-4587
Fax: (907) 269-4539
Email: LBC@alaska.gov

All petition materials are available for public review in Dillingham at the Dillingham City Hall, Dillingham library, Dillingham small boat office, and the City of Dillingham website. The materials are also available on the LBC website: <http://www.commerce.state.ak.us/dca/lbc/dillingham.htm>.

Persons interested in receiving future LBC notices by email may subscribe to the LBC notice list service by visiting <http://www.commerce.state.ak.us/dca/lbc/lbcnotices.htm>, clicking on the link to the *LBC Subscription Service*, and following the instructions.

Teleconference sites for the proceedings may be added for the convenience of the public and/or LBC members and must be requested of LBC staff in writing by April 11, 2011. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff by April 11, 2011.

Proposed Agenda for Dillingham Public Hearing and Decisional Meeting

**State of Alaska
Local Boundary Commission**

550 West Seventh Avenue, Suite 1770, Anchorage, Alaska 99501, 907-269-4559, Fax 907-269-4539

PROPOSED AGENDA**PUBLIC HEARING****Monday, April 25, 2011****4 p.m.**

(Originating site: Dillingham Middle School Multipurpose Gym)

Call to order

Local Boundary Commission Chair Lynn Chrystal

Roll call and determination of quorum

Local Boundary Commission staff

Local Boundary Commission Chair Remarks

Local Boundary Commission Chair Lynn Chrystal

LBC Staff Report and Recommendations to Commission

Local Boundary Commission staff

Petitioner's Opening Statement

City of Dillingham Mayor

Respondent's Opening Statement

Native Village of Ekuk President

Petitioner's Sworn Witnesses Testimony**Dinner Break****Respondent's Sworn Witnesses Testimony****Adjournment until Tuesday, April 26th**

Lynn Chrystal, Chair
John Harrington, First Judicial District • Robert Harcharek, Second Judicial District
Larry Semmens, Third Judicial District • Lavell Wilson, Fourth Judicial District

PUBLIC HEARING CONTINUATION
Tuesday, April 26, 2011 - 4 p.m.
(Originating site: Dillingham Middle School Multipurpose Gym)

Call back to order

Local Boundary Commission Chair Lynn Chrystal

Roll call and determination of quorum

Local Boundary Commission staff

Local Boundary Commission Chair Remarks

Local Boundary Commission Lynn Chrystal

Petitioner's Responsive Sworn Witness(s) Testimony

Public Comment Period (Not to exceed 3 minutes each)

Dinner Break

Additional Public Comment (Not to exceed 3 minutes each)

Petitioner's Closing Statement

Alice Ruby, City of Dillingham Mayor

Respondent's Closing Statement

Robert Heyano, Native Village of Ekuk President

Petitioner's Closing Statement Reply

Alice Ruby, City of Dillingham Mayor

LBC Staff Information/Clarification to Commission

Local Boundary Commission staff

Break

DECISIONAL HEARING

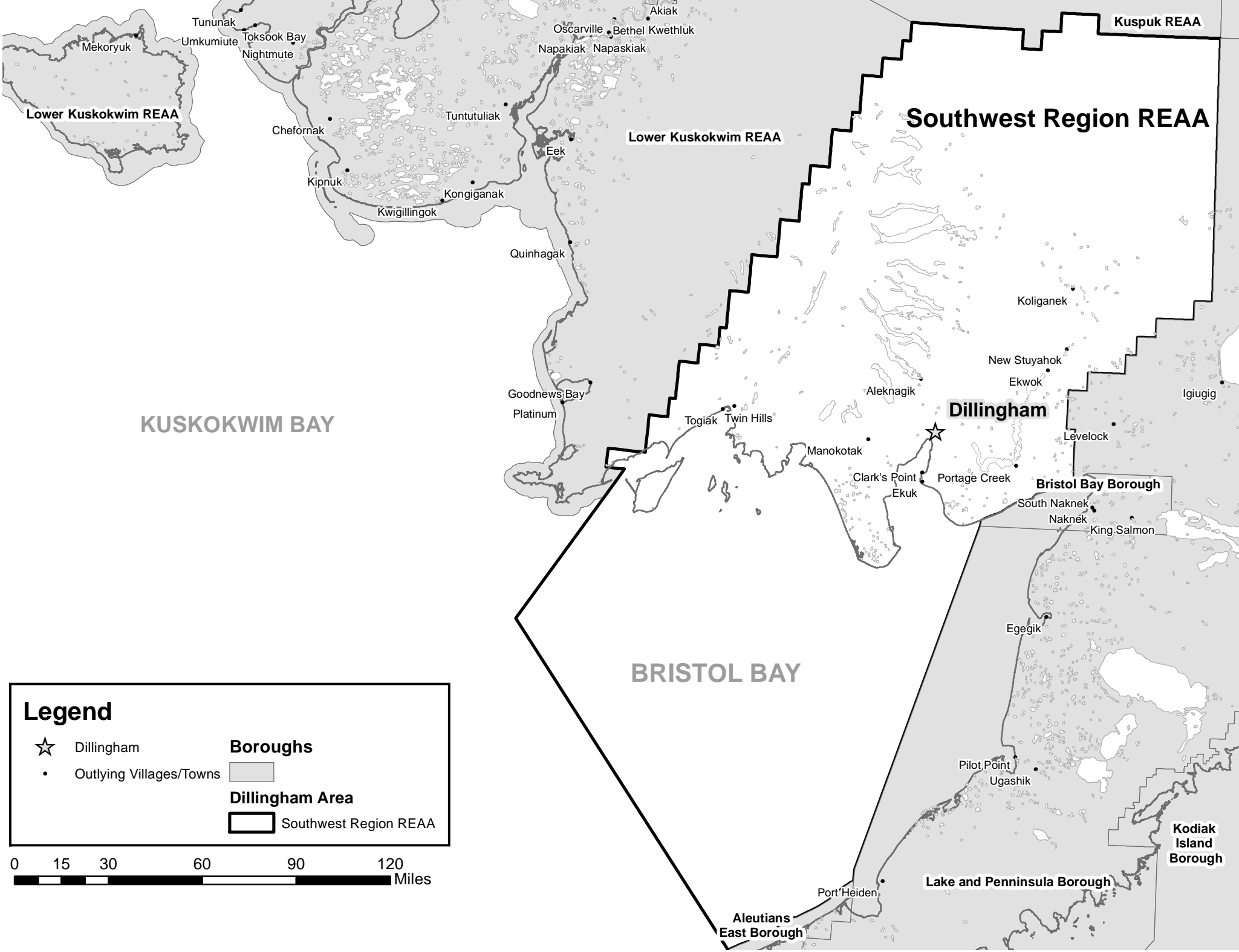
Tuesday, April 26, 2011

(Originating site: Dillingham Middle School Multipurpose Gym)

Adjournment

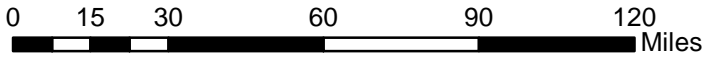
Lynn Chrystal, Chair
John Harrington, First Judicial District • Robert Harcharek, Second Judicial District
Larry Semmens, Third Judicial District • Lavell Wilson, Fourth Judicial District

Appendix C: Maps

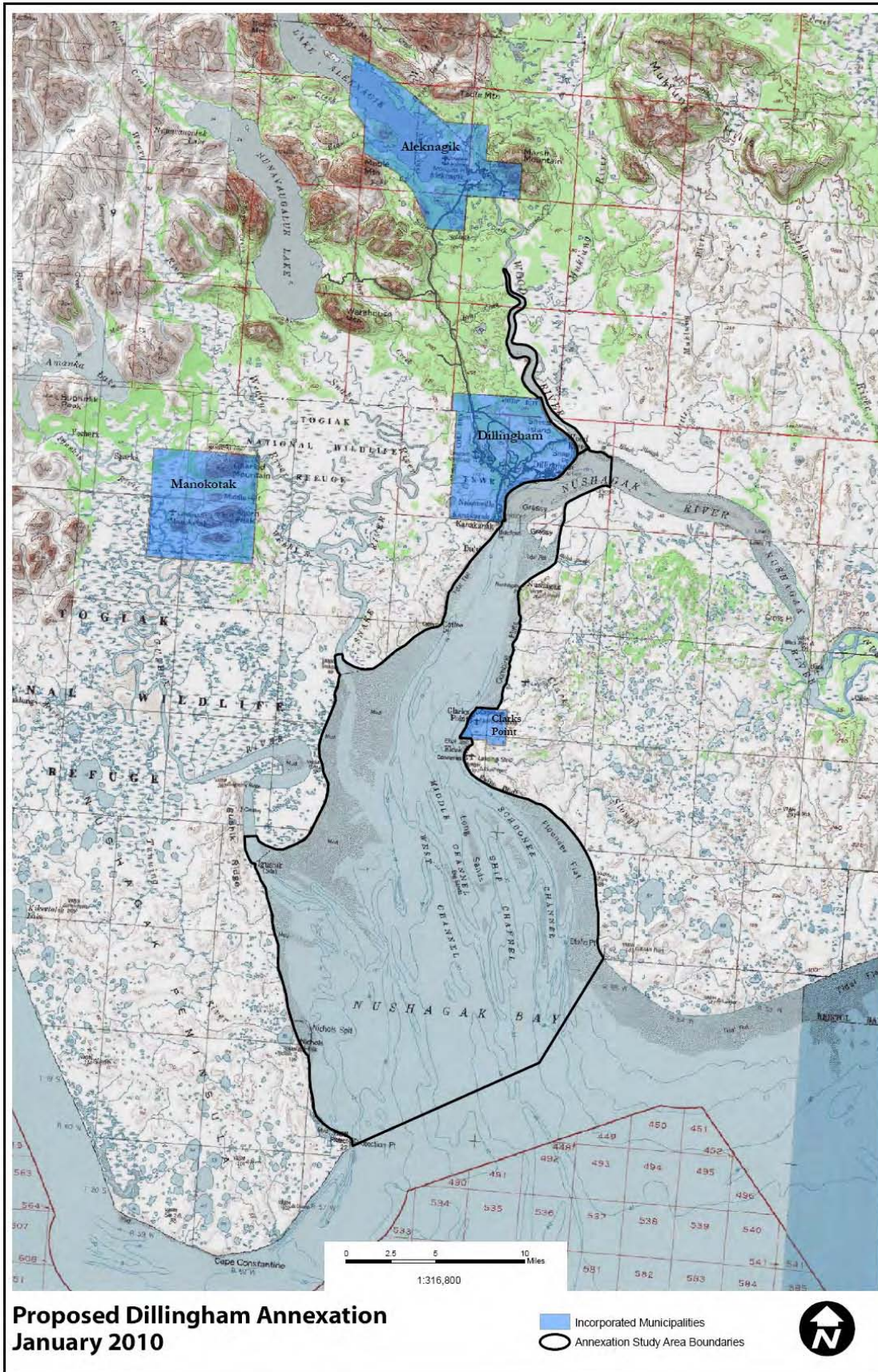


Legend

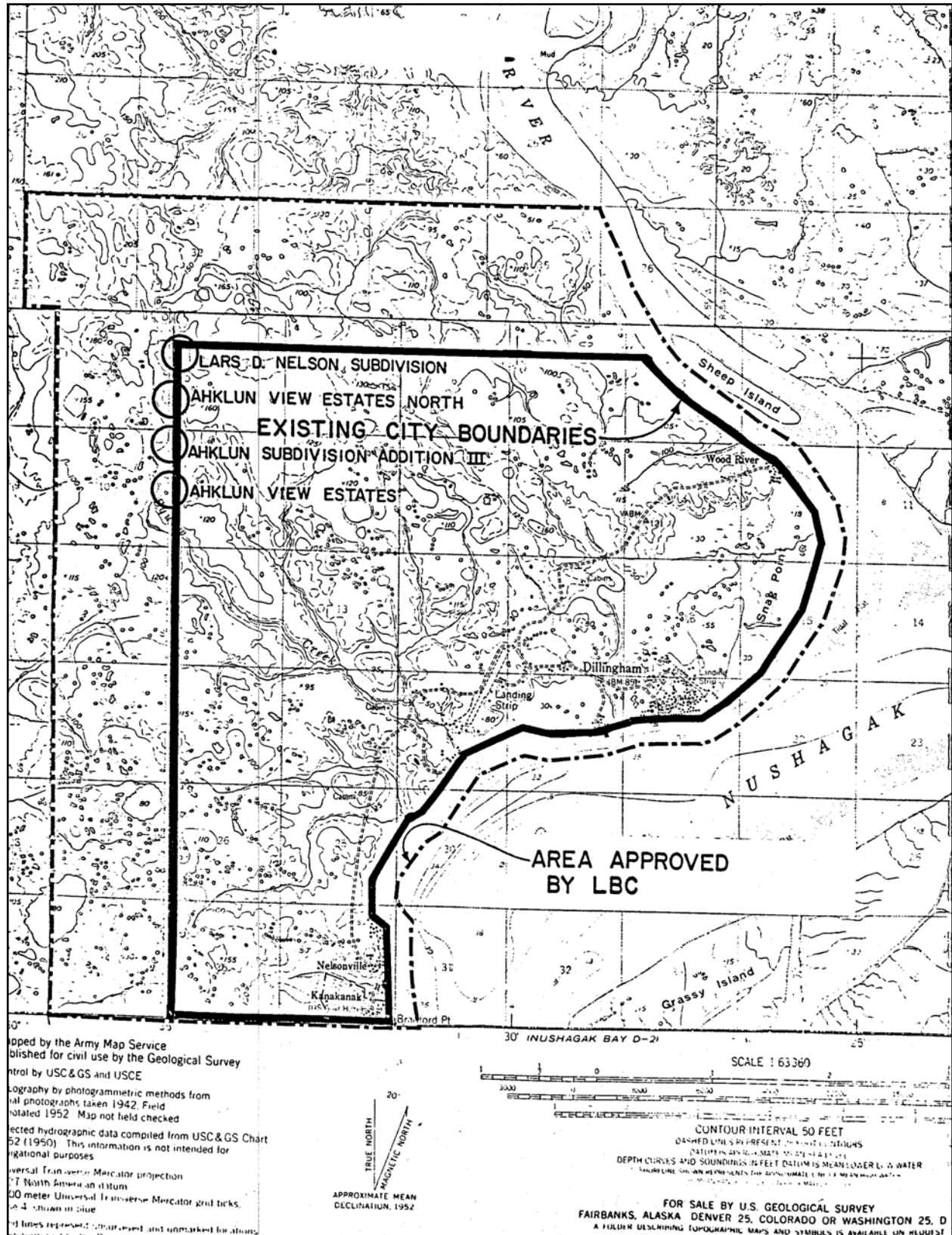
- ☆ Dillingham
 - Outlying Villages/Towns
- | | |
|------------------------|--|
| Boroughs | |
| Dillingham Area | |



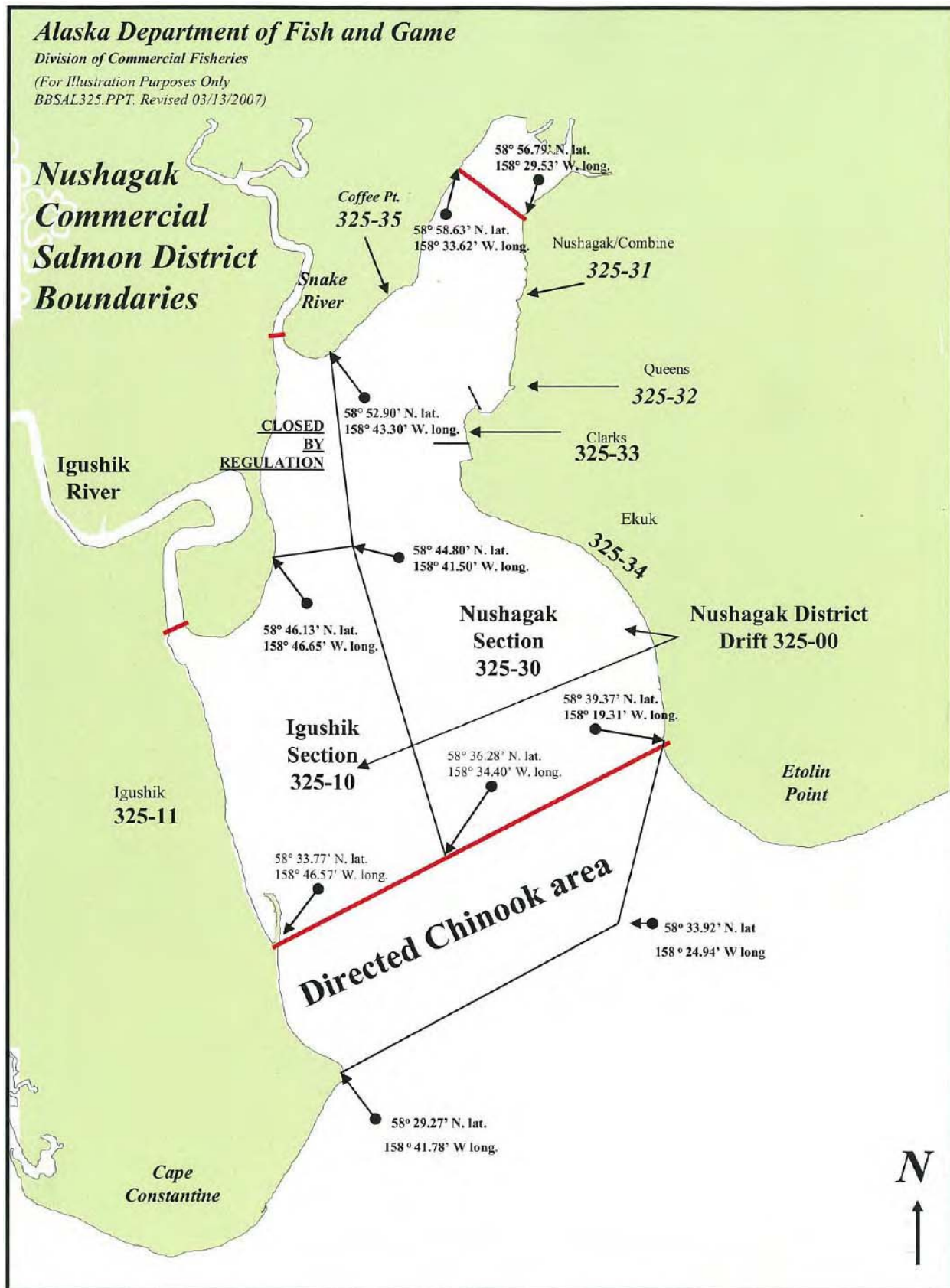
Proposed Annexation



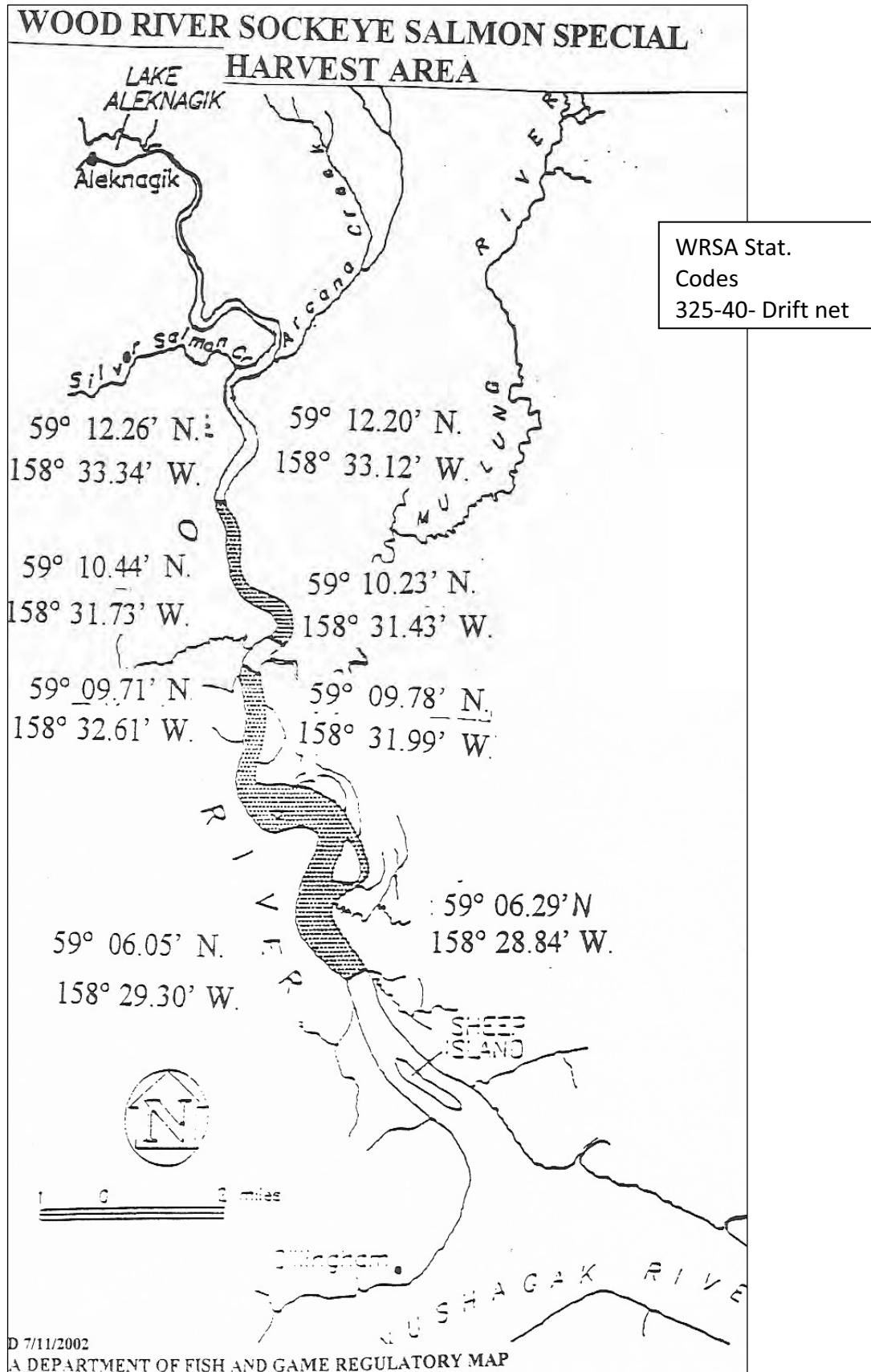
Current City of Dillingham



Nushagak Commercial Salmon District



Wood River Sockeye Special Harvest Area



Appendix D: Data



FAX (907) 842-5691
 PHONE (907) 842-1434
 FAX TRANSMITTAL SHEET

TO: Brent Williams FAX # 907-269-4539
 FROM: Gregg C. Burton *Gregg C. Burton*
 DATE: 03/30/11 No. of Pages: 5
 MESSAGE: The Total bond payment for FY 2009: 1,148,630.94
 The Total bond payment for FY 2010 1,177,590.00

Mar 20, 2008 11:52 am Prepared by Western Financial Group, LLC

Page 2

BOND DEBT SERVICE

Alaska Municipal Bond Bank
Dillingham 2008 One Loan

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
04/15/2008					
10/01/2008			325,585.94	325,585.94	
04/01/2009	470,000	5.000%	353,045.00	823,045.00	1,148,630.94
10/01/2009			341,295.00	341,295.00	
04/01/2010	495,000	5.000%	341,295.00	836,295.00	1,177,590.00
10/01/2010			328,920.00	328,920.00	
04/01/2011	520,000	5.000%	328,920.00	848,920.00	1,177,840.00
10/01/2011			315,920.00	315,920.00	
04/01/2012	545,000	5.000%	315,920.00	860,920.00	1,176,840.00
10/01/2012			302,295.00	302,295.00	
04/01/2013	570,000	5.000%	302,295.00	872,295.00	1,174,590.00
10/01/2013			288,045.00	288,045.00	
04/01/2014	600,000	5.000%	288,045.00	888,045.00	1,176,090.00
10/01/2014			273,045.00	273,045.00	
04/01/2015	630,000	5.000%	273,045.00	903,045.00	1,176,090.00
10/01/2015			257,295.00	257,295.00	
04/01/2016	665,000	5.000%	257,295.00	922,295.00	1,179,590.00
10/01/2016			240,670.00	240,670.00	
04/01/2017	695,000	4.000%	240,670.00	935,670.00	1,176,340.00
10/01/2017			226,770.00	226,770.00	
04/01/2018	725,000	4.000%	226,770.00	951,770.00	1,178,540.00
10/01/2018			212,270.00	212,270.00	
04/01/2019	750,000	4.000%	212,270.00	962,270.00	1,174,540.00
10/01/2019			197,270.00	197,270.00	
04/01/2020	780,000	4.250%	197,270.00	977,270.00	1,174,540.00
10/01/2020			180,695.00	180,695.00	
04/01/2021	815,000	4.250%	180,695.00	995,695.00	1,176,390.00
10/01/2021			163,376.25	163,376.25	
04/01/2022	850,000	4.375%	163,376.25	1,013,376.25	1,176,752.50
10/01/2022			144,782.50	144,782.50	
04/01/2023	890,000	4.500%	144,782.50	1,034,782.50	1,179,565.00
10/01/2023			124,757.50	124,757.50	
04/01/2024	925,000	4.700%	124,757.50	1,049,757.50	1,174,515.00
10/01/2024			103,020.00	103,020.00	
04/01/2025	970,000	4.800%	103,020.00	1,073,020.00	1,176,040.00
10/01/2025			79,740.00	79,740.00	
04/01/2026	1,020,000	4.900%	79,740.00	1,099,740.00	1,179,480.00
10/01/2026			54,750.00	54,750.00	
04/01/2027	1,070,000	5.000%	54,750.00	1,124,750.00	1,179,500.00
10/01/2027			28,000.00	28,000.00	
04/01/2028	1,120,000	5.000%	28,000.00	1,148,000.00	1,176,000.00
	15,105,000		8,404,463.44	23,509,463.44	23,509,463.44

Exhibit E-

CITY OF DILLINGHAM, ALASKA
General Fund

Schedule of Revenues, Expenditures and Changes
in Fund Balance - Budget and Actual
Year Ended June 30, 2010
(With Comparative Amounts for 2009)

	2010		Variance Positive (Negative)	2009
	Budget	Actual		Actual
Revenues:				
Taxes:				
Sales taxes	\$ 2,470,000	2,483,948	13,948	2,464,159
Alcohol sales taxes	238,000	219,300	(18,700)	266,799
Transient lodging sales tax	60,000	67,495	7,495	59,156
Real property taxes	1,480,600	1,426,238	(54,362)	1,457,723
Personal property taxes	480,770	406,345	(74,425)	395,179
Penalty and interest on property taxes	30,000	28,244	(1,756)	51,179
Penalty and interest on sales taxes	22,000	8,839	(13,161)	15,694
Gaming taxes	87,000	80,240	(6,760)	72,111
Payment in lieu of taxes	409,000	411,446	2,446	409,714
Small claim costs	-	-	-	1,824
Total taxes	5,277,370	5,132,095	(145,275)	5,193,538
State of Alaska:				
Jail contract revenue	428,963	428,963	-	428,963
Revenue sharing	217,000	215,730	(1,270)	219,942
Raw fish tax	176,000	187,259	11,259	176,261
Shared fisheries business tax	28,450	33,524	5,074	35,515
Electric and telephone co-op tax	66,000	75,300	9,300	72,727
Motor vehicle tax	27,000	20,028	(6,972)	18,663
PERS relief	-	106,308	106,308	234,845
DMV commission revenue	40,000	40,439	439	41,426
Jail capital grant	-	8,573	8,573	-
Training assistant grant	-	2,000	2,000	-
Liquor licenses	4,600	1,500	(3,100)	4,600
Library grant	6,350	6,350	-	6,350
Total State of Alaska	994,363	1,125,974	131,611	1,239,292
Federal government:				
Emergency management planning grant	5,000	8,350	3,350	6,914
Volunteer fire assistance	-	1,094	1,094	5,850
Public safety grants	1,000	3,703	2,703	2,504
Library grants	6,000	6,011	11	4,022
FEMA grants	-	-	-	1,189
Heating fuel grant	70,532	70,532	-	-
Planning grants	-	331	331	1,282
Total federal government	82,532	90,021	7,489	21,761

Exhibit E-2

CITY OF DILLINGHAM, ALASKA

General Fund

Schedule of Revenues, Expenditures and Changes
in Fund Balance - Budget and Actual
Year Ended June 30, 2009
(With Comparative Amounts for 2008)

	2009		Variance Positive (Negative)	2008
	Budget	Actual		Actual
Revenues:				
Taxes:				
Sales taxes	\$ 2,472,000	2,464,159	(7,841)	2,357,636
Alcohol sales taxes	234,000	266,799	32,799	210,757
Transient lodging sales tax	58,000	59,156	1,156	53,740
Real property taxes	1,473,000	1,457,723	(15,277)	1,291,832
Personal property taxes	418,000	395,179	(22,821)	420,400
Penalty and interest on property taxes	30,000	51,179	21,179	49,376
Foreclosure costs	500	-	(500)	552
Penalty and interest on sales taxes	22,000	15,694	(6,306)	49,555
Gaming taxes	87,000	72,111	(14,889)	120,632
Payment in lieu of taxes	409,000	409,714	714	263,920
Small claim costs	2,000	1,824	(176)	-
Total taxes	<u>5,205,500</u>	<u>5,193,538</u>	<u>(11,962)</u>	<u>4,818,400</u>
State of Alaska:				
Jail contract revenue	428,000	428,963	963	428,963
Revenue sharing	220,000	219,942	(58)	-
Raw fish tax	176,000	176,261	261	183,743
Shared fisheries business tax	27,600	35,515	7,915	27,705
Electric and telephone co-op tax	66,000	72,727	6,727	66,144
Energy assistance grant	-	-	-	187,607
Motor vehicle tax	28,000	18,663	(9,337)	32,020
PERS relief	-	234,845	234,845	45,468
DMV commission revenue	42,000	41,426	(574)	39,905
Liquor licenses	4,600	4,600	-	4,600
Library grant	6,350	6,350	-	6,350
Total State of Alaska	<u>998,550</u>	<u>1,239,292</u>	<u>240,742</u>	<u>1,022,505</u>
Federal government:				
Emergency management planning grant	4,800	6,914	2,114	10,412
Volunteer fire assistance	-	5,850	5,850	2,000
Public safety grants	1,000	2,504	1,504	9,815
Library grants	5,000	4,022	(978)	6,000
FEMA grants	1,190	1,189	(1)	-
Planning grants	-	1,282	1,282	-
Total federal government	<u>11,990</u>	<u>21,761</u>	<u>9,771</u>	<u>28,227</u>

CITY OF DILLINGHAM, ALASKA
Basic Financial Statements, Supplementary
Information, and Single Audit Reports
Year Ended June 30, 2009

RSM McGladrey Network
An Independence Group Practice

 **Mikunda,
Cottrell & Co., Inc.**
Certified Public Accountants & Consultants
Offices in Anchorage & Kenai

NON-CODE ORDINANCE

Introduced: June 3, 2010
Public Hearing: June 17, 2010
Public Hearing: June 24, 2010
Enacted: June 24, 2010

CITY OF DILLINGHAM, ALASKA

**ORDINANCE NO. 2010-07
(INTRODUCED AS ORDINANCE NO. 2010-06 IN ERROR)**

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL ADOPTING THE BUDGET AND APPROPRIATING FUNDS FOR THE FY 2011 CITY OF DILLINGHAM BUDGET.

WHEREAS, the City manager has presented the proposed Operating Budget and Capital Improvement Budget for FY 2011 to the City Council in accordance with Title 4 of the Dillingham Municipal Code pursuant to A.S. 20.20.500(3); and,

WHEREAS, duly advertised public workshops were held and the City Council reviewed the budget recommendations presented and made various changes therein; and,

WHEREAS, the City Council has set the rate of levy of property tax for the City of Dillingham for FY 2011 budget at 13 mills; and,

WHEREAS, the budget presented, reviewed and changed is in accordance with sound and efficient municipal management principles. The City Council should have the power to transfer appropriated monies from one General Government Fund or Special Revenue Fund to another and from one Capital Project to another by resolution and the City Manager should have the power to transfer funds from one line item object to another object code within a fund and within a Capital Improvement Project; and,

WHEREAS, the FY2011 funds are ready for appropriation by ordinance,

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council that:

1. The FY2011 Operating Budget and Capital Improvement Budget as recommended by the City Manager and as amended by the City Council, are hereby adopted for the City of Dillingham.
2. The amounts set forth in the budget as reviewed by the City Council for the respective departments and/or funds shall be, and hereby are, appropriated for the fiscal year ending June 30, 2011.
3. The City Council shall have the power to transfer approved and appropriated General Fund or Special Revenue Fund monies from one to another and from one Capital Project to another by resolution.
4. The City Manager shall have the power to transfer funds from one line item object code to another within a fund and within a Capital Improvement Project.

BE IT FURTHER ENACTED by the Dillingham City Council that:

Section I. CLASSIFICATION:

This ordinance is a non-code ordinance.

Section II. SEVERABILITY

If any portion of this ordinance or any application thereof to any person or circumstances is held invalid, the remainder of the ordinance and the application to other persons or circumstances shall not be affected thereby.

Section III. APPROPRIATION SUMMARY

The appropriation from the Treasury in Section IV is a total of \$ 24,282,669.

Section IV. APPROPRIATIONS

A. General Fund Government Operations

01	City Council	\$85,950
04	Administration	272,017
06	City Clerk	144,936
08	Finance	545,887
10	Legal	30,000
12	Insurance	100,996
13	City School	1,300,000
14	Non-Departmental	173,675
15	Contributions	97,500
16	Planning	126,123
19	Dispatch	401,489
20	Patrol	895,650
22	Corrections	480,417
23	Dept. of Motor Vehicles	77,810
30	Fire	287,459
40	Community Services Officer	110,145
42	Buildings and Grounds	250,815
44	Shop	196,423
46	Street	453,344
48	Public Works Administration	113,694
60	Library	156,368
80	Transfers/Contingencies	794,962
90	Transfers to Equipment/Capital Reserves	<u>95,000</u>

TOTAL GENERAL FUND APPROPRIATIONS \$7,190,660

SPECIAL REVENUE FUNDS & OTHER FUNDS APPROPRIATIONS

06	Water & Sewer	\$414,634
07	Landfill	323,878
08	Port - Dock	363,469
09	Port - Boat Harbor	223,196
10	E-911	170,000
12	Senior Center	482,072
15	Debt Service	1,177,840
34	Mary Carlson Estate Permanent Fund	<u>8,610</u>

TOTAL SPECIAL REVENUE FUNDS
& OTHER FUNDS APPROPRIATIONS \$3,163,699

CAPITAL APPROPRIATIONS

Equipment Replacement Capital Project Fund	203,000
Capital Improvement Projects	<u>13,725,310</u>
TOTAL CAPITAL APPROPRIATIONS	<u>13,928,310</u>

TOTAL APPROPRIATIONS \$24,282,669

Section V. REVENUES

General Fund

Taxes

Sales Taxes	\$2,500,000
Alcohol Sales Taxes	250,000
Transient Lodging Sales Taxes	60,000
Real Property Taxes	1,496,896
Personal Property Taxes	427,495
Penalty and Interest on Property Taxes	42,450
Penalty and Interest on Sales Taxes	30,000
Gaming Sales Tax	85,000
Payment in Lieu Taxes (PILT)	417,196

Other Revenues

Jail Contract Revenue	428,000
Revenue Sharing	240,762
Raw Fish Tax	176,000
Revenues from State of Alaska	174,452
Revenues from Federal Government	151,000
Administrative Overhead	365,962
Charges for Current Services	20,850
Licenses Fees Fines and Permits	90,900
Lease and Rental Income	52,558
Investment Income	84,500
Other Revenues	<u>5,000</u>

TOTAL GENERAL FUND REVENUES \$7,099,021

SPECIAL REVENUE FUNDS & OTHER FUNDS REVENUES

06	Water & Sewer	\$392,130
07	Landfill	323,878
08	Port - Dock	600,451
09	Port - Boat Harbor	223,196
10	E-911	125,000
12	Senior Center	482,072
15	Debt Service	1,177,840
30	Equipment Replacement	50,000
32	Ambulance Reserve	47,500
34	Mary Carlson Estate Permanent Fund	12,500
50	Landfill Capital Project Fund	<u>8,500</u>

TOTAL SPECIAL REVENUE FUNDS
& OTHER FUNDS REVENUES \$3,443,067

Capital Improvement Projects

Dillingham Middle/High/Elementary Schools	\$5,135,450
Water Tank Repair	1,508,600
Water Treatment Plant	2,998,191
Water Line #2 to Water Treatment Plant	226,345
Neqleq Well Development	357,392
Landfill Projects	175,000
Tower Road Construction	1,000,000
Water-Front North Bulkhead	<u>2,324,332</u>
Total Capital Improvement Projects	<u>\$13,725,310</u>

TOTAL REVENUES \$24,267,398

SECTION VI. TRANSFERS

Transfers from General Fund to Other Funds:

Landfill	\$143,085
Harbor	108,458
Senior Center	300,067
Ambulance Reserve	47,500
Debt Service	243,352
Equipment Replacement	<u>50,000</u>

Total Transfers From General Fund \$892,462

Transfer from E911 Fund 10 to General Fund 01 Dispatch \$45,000

SECTION VII. SUMMARY

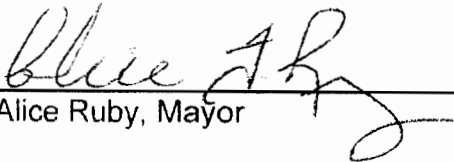
Total Revenues	\$ 24,267,398
Total Expenses	24,282,669
Net (Decrease) to Fund Balances	(\$ 15,271)

SECTION VIII. EFFECTIVE DATE.

This ordinance is effective upon passage.

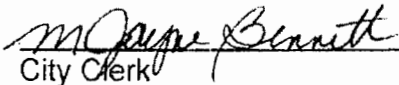
ADOPTED by the Dillingham City Council on JUNE 24, 2010.

SEAL:



Alice Ruby, Mayor

ATTEST:

 RECORDER
City Clerk



March 21, 2010

Mr. Brent Williams and Mr. Don Burrell

State of Alaska DCCED/ DCRA

550 W 7th Ave, Suite 1770

Anchorage, AK 998501-3569

Sent via email to brent.williams@alaska.gov and don.burrell@alaska.gov

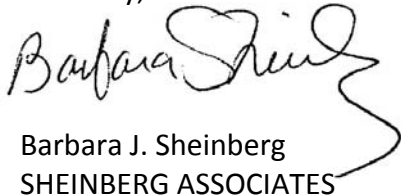
Dear Brent and Don,

City of Dillingham Port Director Jean Barrett prepared the following information regarding 2010 harbor use permits for Dillingham's boat harbor.

2010 City of Dillingham Harbor Permits, by Residency		
	Seasonal Use Permits	Daily Use Permits
Dillingham boats	98	3
Local village boats (Nushagak River drainage)	38	5
Other Alaska boats	68	55
Out of state boats	74	82
Out of country boats	2	0
totals	280	145
<i>Source: City of Dillingham Port Director</i>		

Please don't hesitate to ask me if there is any other data the City of Dillingham can provide.

Sincerely,



Barbara J. Sheinberg
SHEINBERG ASSOCIATES

Table 1.–Drift and set gillnet fishing effort by year and district, 1975–2009.

Units of Effort (one or more sockeye salmon deliveries during season)												
Year	Naknek-Kvichak		Egegik		Ugashik		Nushagak		Togiak		Bristol Bay Total	
	Drift	Set	Drift	Set	Drift	Set	Drift	Set	Drift	Set	Drift	Set
1975	705	147	235	88	34	8	421	141	92	24	1,235	445
1976	664	182	256	96	75	18	422	178	86	31	1,353	501
1977	621	179	324	94	47	7	476	166	130	31	1,359	498
1978	798	280	386	130	48	4	641	216	151	38	1,575	656
1979	1,060	298	332	159	103	23	656	236	162	57	1,714	770
1980	1,011	347	283	179	187	29	666	241	181	47	1,764	807
1981	993	348	345	167	270	33	658	260	178	54	1,785	841
1982	801	332	420	168	253	49	980	252	202	56	1,792	859
1983	1,064	361	483	171	346	47	792	260	251	58	1,797	865
1984	1,091	338	573	180	313	53	575	260	225	63	1,804	869
1985	1,165	351	936	181	740	59	406	251	117	54	1,815	872
1986	722	298	833	279	844	136	750	340	141	110	1,823	869
1987	1,062	318	929	206	633	78	626	284	146	67	1,824	899
1988	1,015	354	1,010	193	578	70	534	282	321	123	1,837	922
1989	1,213	363	986	213	555	68	375	288	149	97	1,855	971
1990	1,387	441	969	214	420	64	446	342	127	77	1,878	971
1991	1,089	359	667	211	416	62	467	312	207	106	1,887	950
1992	976	349	947	203	501	67	478	298	278	116	1,889	968
1993	834	335	1,189	227	608	70	490	296	154	107	1,881	965
1994	1,139	326	1,087	228	477	67	455	295	171	115	1,882	939
1995	1,187	348	945	207	743	67	398	312	176	110	1,921	967
1996	761	348	933	203	626	53	570	278	140 ^a	111 ^b	1,884	941
1997	550	301	950	243	473	58	577	284	65 ^a	85 ^b	1,875	921
1998	1,053	297	947	209	393	51	648	277	62 ^a	82 ^b	1,858	901
1999	1,092	309	788	204	453	50	520	295	121 ^a	77 ^b	1,847	925
2000	797	325	817	204	520	54	668	298	187 ^a	87 ^b	1,823	921
2001	553	250	643	193	283	51	795	277	164 ^a	83 ^b	1,566	834
2002	338	230	423	147	378	35	490	215	94	59	1,183	680
2003	469	244	556	177	437	52	609	222	87	70	1,415	766
2004	435	277	609	176	344	44	434	229	72	70	1,415	796
2005	643	283	616	179	365	57	670	234	60	71	1,439	824
2006	774	302	525	184	243	56	677	231	79	76	1,469	798
2007	716	289	492	189	436	50	670	234	109	75	1,466	837
2008	803	283	401	189	287	53	539	252	132	73	1,468	850
2009 ^c	674	287	529	183	335	52	598	236	121	73	1,451	821
1975–2009 Avg.	864	305	668	185	393	51	576	259	147	75	1,681	835
1990–2009 Avg.	814	309	752	199	437	56	560	271	130	86	1,675	879
2000–2009 Avg.	620	277	561	182	363	50	615	243	110	74	1,470	813
1998–2009 Avg.	696	281	612	186	373	50	610	250	107	75	1,533	829
2007–2009 Avg.	731	286	474	187	353	52	602	241	121	74	1,462	836

^a Drift gillnet effort before July 24 is as follows: 1996–37, 1997–40, 1998–33, 1999–44, 2002–80, 2003–118, and before July 21, 2000–40, 2001–81.

^b Set gillnet effort before July 24 1996-79, 1997-83, 1998-76, 1999-68, 2002-59, 2003-72 and before July 21, 2000-66, 2001-73.

^c Preliminary.