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Local Boundary Commission

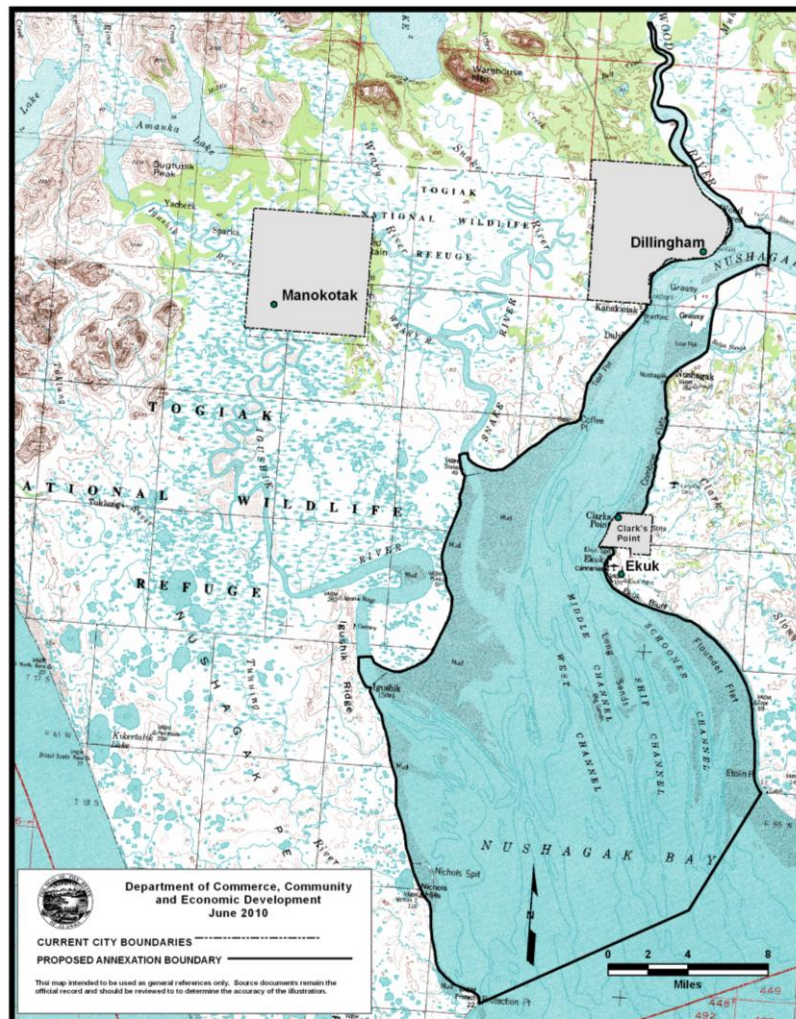
Decision

In the Matter of the June 14, 2010, Petition by the City of Dillingham to annex approximately 396 square miles of submerged land and 3 square miles of land

Section I Introduction

On June 14, 2010, the City of Dillingham petitioned the Local Boundary Commission (also referred to as “LBC” or “commission”) to annex approximately 396 square miles of submerged land and 3 square miles of land. The territory proposed for annexation is described as follows and is shown on the map below:

The territory proposed for annexation is the Nushagak Commercial Salmon District with approximately 390.95 square miles of water and 2.83 square miles of land (Grassy Island), and, the Wood River Sockeye Salmon Special Harvest area with approximately 4.89 square miles of water and 0.41 square miles of land (Sheep Island and small island to north), together totaling 399.08 square miles of which 395.84 (99.2%) are water.



SECTION II PROCEEDINGS

- **Deposit of Petition**

On June 14, 2010, the City of Dillingham provided a copy of the City's prospective petition at the following locations:

- City of Dillingham's City Hall, Dillingham;
- Dillingham Library, Dillingham;
- Port of Dillingham small boat office, Dillingham; and
- City of Dillingham website.

On July 9, 2010 the City updated those notebooks to include the submitted petition, public notice, and copies of the laws establishing standards and procedures for city annexation. They have been subsequently updated.

On September 21, 2010, the City further updated those notebooks to include the errata with minor spelling and grammatical corrections to the submitted petition.

- **Submission and Review of Petition**

The petition was submitted to LBC staff (also referred to as "Commerce") on June 14, 2010, and accepted for filing on July 2, 2010.

- **Posting of Notice**

On July 9, 2010, notice was posted at the following locations within and surrounding the territory proposed for annexation:

- City of Dillingham's City Hall;
- Dillingham Library;
- Port of Dillingham small boat office;
- City of Dillingham website
- Dillingham's United States post office;
- Dillingham Alaska Commercial;
- Dillingham N & N Market;
- Dillingham BBEDC office;
- Dillingham Choggiung Office;
- Dillingham BBNA office;
- Dillingham ADF&G office;
- Dillingham Peter Pan office;
- Dillingham Snopac office;
- Clark's Point post office
- City of Clark's Point office;
- Village of Clark's Point office;
- Aleknagik post office;
- City of Aleknagik office;
- Native Village of Aleknagik office;
- Manokotak post office;
- City of Manokotak office;
- Manokotak Council office;
- Ekuk Village Council office;
- Curyung Tribal Council office.

- **Public Notice**

Notice of the petition was published in the *Bristol Bay Times* on July 15, July 22, and July 29, 2010.

On August 2 and 5, 2010, a public service announcement was sent to the following radio stations to broadcast for 14 days:

KDLG am and fm

- **Service of Petition**

On July 26, 2010, the City of Clark’s Point, the City of Manokotak, the City of Aleknagik, the Village of Clark’s Point, Ekuk Village Council, Manokotak Village Council, the Native Village of Aleknagik, and Curyung Tribal Council were served, via United States Postal Service, complete copies of the petition.

On August 2, 2010 a copy of the Notice of Petition was mailed by city employee Janice Shilanski to the individuals and organizations whose names and addresses are listed in Exhibit No. 3, attached to the August 6, 2010, City affidavit.

- **Deadline for Initial Comments and Responsive Briefs**

The notice of filing invited written public comment concerning the proposed annexation by October 4, 2010. The Native Village of Ekuk submitted a timely received responsive brief on October 4, 2010, before 4:30 p.m., via email. Staff received 11 public comments. Below is the full list of each public comment including date received and position regarding the annexation petition.

Name	Date Received	Position Regarding Annexation Petition
City of Aleknagik	10/1/2010	Opposed
Clarks Point Village Council	10/1/2010	Opposed
Ekwok Village Council	10/1/2010	Opposed
Lake and Peninsula Borough	10/1/2010	Conditional Support
Jerry Liboff	9/29/2010	Opposed
Stanley Mack	10/1/2010	Opposed
City of Manokotak	9/30/2010	Opposed
City of New Stuyahok	9/30/2010	Opposed
Native Village of Ekuk Responsive Brief	10/1/2010*	Opposed
Avi Friedman	9/30/2010*	Opposed
Bristol Bay Native Association	10/3/2010**	Opposed
Robin Samuelsen	10/1/2010*	Support
*Electronic version received prior to deadline. Per 3 AAC.110.700 a discrepancy was realized. Late Filing request was submitted and accepted by LBC Chair		
**Received Late with no communication prior to the deadline. Late Filing request was submitted and accepted by LBC Chair		

Staff acknowledged each individual, municipal, and tribal government agency’s comment in a timely manner. Per 3 AAC 110.480(d), originals (hard copies) of public comments not received within 10 days were considered late filed comments. No penalty was enacted for a late filed comment.

To ensure the fairness of the process and to allow every commenter the opportunity to have his or her comments addressed, staff requested that the LBC chair relax the relevant regulations to allow in the three comments that were submitted either late, or on time but without an original on file, and the reply brief¹. Staff felt it was in the interest of justice to allow all comments to be considered regardless of their position. This request was presented to and approved by the LBC chair.

¹ The reply brief was submitted electronically in a timely manner. However, two pages were mistakenly missed from the electronic version. To ensure fairness, LBC staff included the reply brief in the request to relax the regulations to prevent any perception of preferential treatment.

- **Petitioner's Reply Brief Filed**

On October 4, 2010, the City of Dillingham filed a 82-page reply brief in response to the comments and Responsive Brief received during the petition's public comment period.

- **Commerce Informational Meeting**

On January 19, 2011, Commerce planned to conduct a duly noticed public informational meeting concerning the city of Dillingham's annexation proposal in the City of Dillingham. On January 20, 2011 a second meeting was intended to be held, for the same purpose, in the City of Manokotak. Both duly noticed informational meetings were cancelled due to blizzard weather in the region.

- **Preliminary Report Distribution**

On January 26, 2011, Commerce 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, commenters, Local Boundary Commission members, and others.

- **Receiving Timely Comments on Preliminary Report**

The public comment period for the preliminary report was from January 26, 2011, until February 25, 2011. Commerce received sixteen submitted comments, including comments from the City of Dillingham and the respondent, Native Village of Ekuk. Per 3 AAC 110.480(d), originals (hard copies) of public comments not received within 10 days were considered late filed comments. No penalty was enacted for a late filed comment.

As with the preliminary report, staff requested that the LBC chair allow in the two comments that were submitted on time but without an original on file. Staff, again, felt it was in the interest of justice to allow all comments to be considered regardless of their position. This request was presented to and approved by the LBC chair.

- **Final Report Distribution**

On April 4, 2011, Commerce distributed copies of its *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* to interested parties including the petitioner, respondent, commenters, Local Boundary Commission members, and others.

- **Notice of Local Boundary Commission Public Hearing and Decisional Meeting**

The Local Boundary Commission chair scheduled a public hearing regarding the City of Dillingham's annexation petition. Formal notice of the hearing had been given by Commerce under 3 AAC 110.550.

Commerce published the full notice as a column ad in the Bristol Bay Times on March 21, 2011, and a display ad in the *Bristol Bay Times* on March 28, 2011, April 5, 2011, April 12, 2011. The notice was also posted on the internet through the state's *Online Public Notice System*, as well as on the Division of Community and Regional Affairs and LBC websites.

Additionally, notice of the hearing was provided to the Petitioner's representative (Mayor Alice Ruby) and to the Respondent Native Village of Ekuk, and the Respondent's legal

counsel, James Baldwin. The City posted the notice where the petition documents were made available for public review.

- **LBC Meeting**

On April 6th, 2011, the LBC held a duly noticed public meeting in Anchorage. One of the items on the agenda was the process of deliberation for the LBC decisional meeting. LBC staff presented an overview of the regulations and standards pertaining to the city annexation process.

- **LBC Public Hearing Regarding the City of Dillingham's Annexation Petition**

In accordance with 3 AAC 110.550 and 3 AAC 110.560 the commission held a duly noticed public hearing on Monday, April 25, 2011, regarding the City of Dillingham's annexation petition. The hearing began at 4:00 p.m. in the Dillingham middle/high school gym. The continuation of the public hearing began at 4:00 pm on Tuesday, April 26, 2011. The decisional meeting immediately followed the close of the public hearing at approximately 10:45 p.m. and concluded at approximately 1:00 a.m. April 27, 2011. The commission heard sworn testimony from witnesses for the City of Dillingham and for the Respondent, Native Village of Ekuk, as well as comments by numerous public members both for and against the proposed annexation.

- **LBC Decisional Meeting Regarding the City of Dillingham's Annexation Petition**

In accordance with 3 AAC 110.570 the Local Boundary Commission held a duly noticed decisional meeting on Tuesday, April 26, 2011, regarding the City of Dillingham's annexation petition. The commission voted 5 to 0 to conditionally approve the annexation petition, as allowed under 3 AAC 110.570(c)(1).

SECTION III FINDINGS AND CONCLUSIONS

The record in this proceeding includes the City of Dillingham's annexation petition and supporting materials, written comments received on the petition, the Native Village of Ekuk's responsive brief, the City of Dillingham's reply brief, Commerce's preliminary report, comments received on Commerce's preliminary report, Commerce's final report, and testimony received at the LBC's April 25th and 26th public hearing on the petition.

The standards for annexation to cities that the Local Boundary Commission is required by Alaska law to apply are found at 3 AAC 110.090 – 3 AAC 110.135 and 3 AAC 110.900 – 3 AAC 110.982. Section III of this decisional statement recounts such application by the commission. Based on the evidence in the record relating to the subject petition, the Local Boundary Commission has reached the findings and conclusions set out in this section.

A. 3 AAC 110.090. Need.

Two standards relate to the need for city government in the territory proposed for annexation. First, 3 AAC 110.090(a) states that a territory may be annexed to a city provided the commission determines that there is a reasonable need for city government in the territory. Second, 3 AAC 110.090(b) states that territory may not be annexed to a city if the commission determines that essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area.

3 AAC 110.090(a)

Regarding the first standard, the commission finds that the territory proposed to be annexed, is receiving, at the present and through the foreseeable future, the benefit of services and facilities provided by the annexing city. The petitioner has continued to provide municipal services. These services would not be available to the fishery industry within the Nushagak Bay area if it were not for the city providing them. As a responsible local government entity, the city has continually provided these services at the expense of its residents and to the point of unsustainability.

The proposed annexation will benefit the region as well as the city. The commission finds that 110.090 has been met.

1. 3 AAC 110.090(b)

With respect to the second standard relating to the need for city government, 3 AAC 110.090(b) provides that territory may not be annexed to a city 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. Dillingham is the regional hub for the Nushagak Bay area. No other municipality has argued that it has the ability, or desires the responsibility of providing more efficient and more effective essential municipal services for the proposed expanded boundaries.

The commission finds no other existing municipality has the ability to provide essential municipal services to the territory to be annexed more efficiently and more effectively than the petitioner. The idea of regional government has only been theoretical with no petition formally filed and accepted by the LBC since the incorporation of the city. Regional government could be a viable option; however, under the circumstances the region has not produced the will or resources necessary to form such a government. The LBC finds that the petition meets 3 AAC 110.090(b)'s requirements.

B. 3 AAC 110.100. Character.

Alaska law allows a territory to be annexed to a city provided, that the territory is compatible in character with the annexing city. (3 AAC 110.100).

In a broad view, the Nushagak Bay communities including the City of Dillingham all benefit from the tax revenue the annexation would produce. They would benefit because they use city services, whether for fishing purposes or not. If Dillingham cannot financially sustain itself, these other communities will suffer if these services are no longer available, or are of diminished quality. As the community, in general, benefits from the proposed annexation, it is reasonable to conclude that the territory is suitable for the reasonably anticipated community purpose of producing additional revenue for the direct and indirect benefit of the Nushagak Bay area communities.

We find that the petition satisfies 3 AAC 110.100's requirements for the territory because the Nushagak Bay is compatible in character to the City of Dillingham.

C. 3 AAC 110.110. Resources.

Alaska law allows a territory to be annexed to a city provided that the commission determines that the economy within the proposed expanded boundaries of the city has the human and financial resources necessary to provide essential city services on an efficient, cost-effective level (3 AAC 110.110).

The commission finds that the city has met 3 AAC 110.110 because the city has and is expected to continue to provide essential municipal services on an efficient, cost effective level. The local fish tax revenue will provide it the resources to continue to do so. The expenses resulting from this annexation are a minimal portion of the additional revenue accumulated from the severance tax collected, however the petitioner has met 3 AAC 110.110 because the actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory will fund the essential municipal services that have been continually provided to the territory.

The existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation is thriving and expected to continue over the long term. The commission concludes that the petitioner has successfully met 3 AAC 110.110 because the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. For all the reasons set out above, the commission finds that the petition satisfies the requirements of 3 AAC 110.110.

D. 3 AAC 110.120. Population.

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

The commission finds that even with a declining population in Dillingham, that the population of the proposed expanded boundaries of the city (the existing city plus the territory proposed for annexation) is sufficiently large and stable to support the extension of city government. The commission believes that in this case, increased tax revenues would stimulate the local economy. This in turn could stabilize or increase population, if residents could stay and have suitable employment. The commission concludes that the petition meets the standard of 3 AAC 110.120.

E. 3 AAC 110.130. Boundaries.

There are five standards related to boundaries that the commission must consider. We find that the petition has satisfied 3 AAC 110.130’s requirements based on the rationale below.

1. 3 AAC 110.130(a)

3 AAC 110.130(a) states that the proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services in an efficient, cost-effective manner.

The commission finds the city is already providing essential municipal services. The proposed annexation will not make it more difficult for the city to provide these services.

2. 3 AAC 110.130(b)

3 AAC 110.130(b) states that territory that is noncontiguous to the annexing city or that would create enclaves in the annexing city, does not include all land and water necessary to develop essential municipal services in an efficient, cost-effective manner (absent a specific and persuasive contrary showing). The commission finds that the territory is contiguous to the city, and would not create enclaves.

3. 3 AAC 110.130(c)(1)

The expanded boundaries of the City of Dillingham 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 ten years following the effective date of annexation.

The commission 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 will 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. While the proposed expanded boundaries are larger than most other municipalities they are proportionate per capita to other municipalities. The city of Dillingham will be large, but it is not without comparison or precedent. For these reasons, the commission finds that proposed expanded boundaries of the city are on a scale suitable for city government.

4. 3 AAC 110.130(c)(2)

The proposed expanded boundaries of the City of Dillingham may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of standards in 3 AAC 110.090 – 3 AAC 110.135 and are otherwise suitable for city government.

The commission finds that the proposed expanded boundaries of the city do not fit the definition of “region” because the proposed expanded boundaries of the city do not encompass a borough, or have multiple communities that share common attributes. The existing land based communities other than Dillingham are outside the proposed expanded boundaries of the city.

The commission finds that the proposed expanded boundaries of the city do not meet the definition of “area” because they do not describe a borough. They are not even a proposed borough because the model borough boundaries for Bristol Bay exceed that of the proposed expanded boundaries of the city.

The commission further finds that the municipal area is extensively populated year round without the addition of the “seasonal community.” The proposed expanded boundaries of the city are also populated during the annual fishing season. The LBC finds that any contention about whether the proposed expanded boundaries of the city include large unpopulated areas is moot for reasons explained below.

The commission concludes that the petition meets the standards of 3 AAC 110.090 - 3 AAC 110.135, and are otherwise suitable for city government. Per 3 AAC 110.130(c)(2), because the petition meets those two criteria, the provision that annexation may not include entire geographical regions or large unpopulated areas does not apply.

5. 3 AAC 110.130(d)

3 AAC 110.130(d) states that “if a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply

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

This annexation petition does not describe boundaries overlapping the boundaries of an existing organized borough or another existing city. For that reason the petition does not need to address the standards and procedures for annexation of the enlarged city to the existing organized borough, detachment of the enlarged city from the existing organized borough, detachment of territory from an existing city, merger of cities, or consolidation of cities.

We find that the overlapping boundary standard is satisfied for territory proposed for annexation.

F. 3 AAC 110.135. Best Interests of the State.

3 AAC 110.135 examines AS 29.06.040(a)’s best interests of the state requirement. Alaska’s constitution promotes maximum local government with a minimum of local government units and prevention of duplication of tax levying jurisdictions. (Article X, §1).

The commission finds that the proposed annexation would have no effect upon the number of local government units. The annexation meets the best interests of the state requirement because the city is the appropriate government for the territory. The rest of the region’s communities need a stronger regional hub for their sustainability. 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. This would not be in the state’s best interests. Dillingham is the hub of the Nushagak Bay region.

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. We find that the city of Dillingham is the appropriate government for the territory because the city is the region’s hub, because the annexation could encourage, not hinder, borough formation, and because approving the annexation petition does not remove any present or future fish tax revenue for existing communities or a future borough.

We find that the petition satisfies 3 AAC 110.135’s requirement for annexation.

G. 3 AAC 110.900. Transition.

3 AAC 110.900 concerns whether the transition plan contains all the required information, and that all required actions were undertaken to prepare for a smooth transition. There are six parts to 3 AAC 110.900 that the commission reviewed.

The commission considers the prospective transition of extending essential city services into the territories proposed for annexing to be elementary and uncomplicated. In particular, the commission notes that annexation would not involve the transfer of assets or liabilities from one local government to another.

The commission finds that 3 AAC 110.900’s requirements have been satisfied with respect to the current annexation proposal based on the rationale below.

1. 3 AAC 110.900(a)

3 AAC 110.900(a) requires the petition to include a practical plan demonstrating the capacity of the annexing city to extend essential city services into the territories proposed for annexation in the shortest practical time after the effective date of the proposed annexation. The proposed

annexation would occur in the unorganized borough, and does not involve any service areas. There is not a considerable amount of transition necessary. Notwithstanding, the LBC deems that 3 AAC 110.900(a) has been satisfied because the petition includes a transition plan.

2. 3 AAC 110.900(b)

3 AAC 110.900(b) requires that the petition include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change.

The commission finds that there is a transition plan and that the city indicates in its transition plan when the transition would occur. The commission finds that there is very little external transition to be done, but that the transition plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. We 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. We find that 3 AAC 110.900(b) has been satisfied.

3. 3 AAC 110.900(c)

3 AAC 110.900(c) requires that the petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for annexation. Here, a plan to transfer assets and liabilities is a moot subject because there are no assets or liabilities that would be affected.

4. 3 AAC 110.900(d)

3 AAC 110.900(d) allows the LBC to condition approval upon executing an agreement for assuming powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. The Local Boundary Commission moved to alter the petition as follows: Petitioner shall attempt to meet with [the] cities of Aleknagik, Clark's Point, New Stuyahok, Ekwok, and Manokotak, and the entities of New Koliganek Village Council (DBA Native Village of Koliganek) and respondent Native Village of Ekuk regarding post-annexation financial matters affecting such parties due to the annexation[;] and file a report of the meeting attempts, whether or not held, and meetings held, if any, with the LBC by [no later than] 11/30/2011.

The purpose of this condition is an attempt by the Local Boundary Commission to allow all communities within the region directly affected by this annexation the opportunity to discuss the financial effects and potential remedies with the petitioner.

5. 3 AAC 110.900(e)

The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed. The transition plan did state the names and titles of all officials consulted by the petitioner as required by 3 AAC 110.900(e). The commission finds that the requirements of 3 AAC 110.900(e) have been met.

6. 3 AAC 110.900(f)

If a petitioner has requested consultation, and borough officials have declined to consult or were unavailable during reasonable times, the petitioner may ask the LBC to waive that requirement. As no such request was received, no such waiver was granted.

H. 3 AAC 110.910. Statement of Nondiscrimination

As provided by 3 AAC 110.910, an annexation proposal may not be approved by the commission if the effect of the annexation would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

We find no evidence that 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.

I. 3 AAC 110.970. Determination of Essential Municipal Services.

Essential municipal services were discussed under 3 AAC 110.090. The essential municipal services must be reasonably necessary to the community, promote maximum, local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

The commission finds that the harbor, with its docks and support facilities, is an essential municipal service under the circumstances. We find that it is reasonably necessary to the community. We find this because Dillingham is the largest port in Nushagak Bay, or for quite a distance beyond Nushagak Bay. We find that the docks and related facilities are city owned and maintained, and are essential to the fishers, as either a place to resupply, to seek refuge from weather, and for other boat or crew needs.

We find that 3 AAC 110.970(d) includes “levying and collecting taxes” and “public safety protection” as services which the LBC can consider to be essential municipal services, and we consider them to also be essential municipal services here. We find that the petition has met 3 AAC 110.970’s requirements.

J. 3 AAC 110.981. Determination of Maximum Local Self-Government.

The approval of this petition extends city government to the territory proposed for annexation where no government currently exists. The commission finds that fishers already benefit from the municipal services the city currently provides. Further, the annexation will extend local government to the territory and seasonal population. The commission finds that the proposed boundary change promotes maximum local self government under art. X, sec. 1, Constitution of the State of Alaska.

K. 3 AAC 110.982. Minimum Number of Local Government Units.

The commission finds that Alaska’s constitution promotes minimizing the number of local government units unless creating additional units are found to serve the best interests of the state. Annexing the territory would not increase the number of local government units. Annexation would just change the size of the city. The commission finds that if no new local government units are created by an approved proposal, then the annexation would promote the principal of a minimum number of local government units. The commission finds that this annexation proposal will not create new local government units and therefore has met the requirements of 3 AAC 110.982.

SECTION IV ORDER OF THE COMMISSION

The commission concludes that all of the relevant standards and requirements for annexation of the territory (the Nushagak Bay Commercial Fishing Districts) are satisfied by the City of Dillingham's petition. The commission, however, believes that the uniqueness of the territory proposed for annexation coupled with the longstanding tribal, cultural, and economic relationships that persist in this region demand that additional conversation among the villages, tribal entities, municipalities, and the City of Dillingham be held. These conversations are for the long term benefit of the existing cultural relationships between the City of Dillingham and the communities that surround the Nushagak Bay.

The Local Boundary Commission moved to alter the petition as follows: Petitioner shall attempt to meet with [the] cities of Aleknagik, Clark's Point, New Stuyahok, Ekwook, and Manokotak, and the entities of New Koliganek Village Council (dba Native Village of Koliganek) and respondent Native Village of Ekuk regarding post-annexation financial matters affecting such parties due to the annexation[;] and file a report of the meeting attempts, whether or not held, and meetings held, if any, with the LBC by [no later than] 11/30/2011.

The Commission conditionally approves the June 14, 2010, petition of the City of Dillingham for the annexation of approximately 396 square miles of water and 3 square miles of land.

CITY OF DILLINGHAM CORPORATE BOUNDARIES

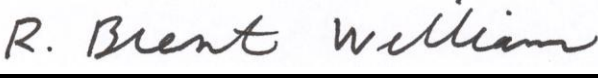
Beginning at the northwest corner of protracted Section 31, T12S, R55W, Seward Meridian (S.M.) (Map of USGS Quad Dillingham A-7, 1952); Thence, east to the mean high tide line on the west bank of the Wood River; Thence, meandering north and northwesterly along a line paralleling the mean high tide line of the west bank of the Wood River to the intersection with 59 degrees 12.11 minutes North Latitude and 158 degrees 33.38 minutes West Longitude; Thence, east across the Wood River to mean high tide line on the east bank of the Wood River at 59 degrees 12.11 minutes North Latitude and 158 degrees 33.11 minutes West Longitude; Thence, meandering south and southeasterly along a line paralleling the mean high tide line of the east shore of the Wood River and the northeastern shore of the Nushagak River to the intersection with R55W, S.M.; Thence, south along the eastern boundary of protracted Sections 12, 13, and 24, T13N, R55W, S.M. to the intersection with mean high tide line on the southern shore of Nushagak River; Thence, meandering southerly along a line paralleling the mean high tide line of the southeastern shore of Nushagak River and Nushagak Bay, including Grass Island, and excluding the corporate boundaries of the 2nd class city of Clark's Point (as shown on certificate recorded May 11, 1971, in Book XVII, Page 299, Records of the Bristol Bay Recording District, Third Judicial District), to a point at 58 degrees 39.37 minutes North Latitude and 158 degrees 19.31 minutes West Longitude; Thence, southwesterly to 58 degrees 33.92 minutes North Latitude and 158 degrees 24.94 minutes West Longitude; Thence, southwesterly to 58 degrees 29.27 minutes North Latitude and 158 degrees 41.78 minutes West Longitude at mean high tide line along the east shore of Nushagak Bay; Thence, meandering northerly along a line paralleling the mean high tide line to a point at the intersection of mean high tide line and the Igushik River at 58 degrees 43.841 minutes North Latitude and 158 degrees 53.926 minutes West Longitude; Thence, easterly across the Igushik River to a point at the intersection of the Igushik River's mean high tide line on its eastern shore at 58 degrees 43.904 minutes North Latitude and 158 degrees 52.818 minutes West Longitude; Thence, meandering northerly along a line paralleling the mean high tide line of Nushagak Bay to a point at the intersection of mean high tide line and the western shore of the Snake River at 58 degrees 52.879 minutes North Latitude and 158 degrees 46.710 minutes West Longitude; Thence, easterly across the Snake River to a point at the intersection of the Snake River's mean high tide line on its eastern shore at 58 degrees 52.988 minutes North Latitude and 158 degrees 46.030 minutes West Longitude; Thence, meandering north easterly along a line paralleling the mean high tide line of Nushagak Bay to the intersection with the line common to the northwest corner

of protracted T14S, R56W, S.M. (USGS map of Quad Nushagak Bay D-2, 1952, minor revision 1985); Thence, west along the northern boundary of protracted Sections 1, 2, and 3, T14N, R56W, S.M. (USGS map of Quad Nushagak Bay D-2, 1952, minor revision 1985) to the northwest corner of Section 3; Thence, north to the northwest corner of protracted Section 3, T13S, R56W, S.M. (USGS map of Quad Nushagak Bay D-2, 1952, minor revision 1985); Thence, west to the protracted southwest corner of Section 31, T12S, R56W, S.M. (USGS map of Quad Dillingham A-7, 1952); Thence, north to the northwest corner of protracted Section 31, T12S, R56W, S.M., the point of beginning, containing approximately 36.84 square miles of land and 397.94 square miles of water, more or less, all within in the Third Judicial District, Alaska (USGS map of Quad Dillingham A-7, 1952).

Approved in writing this 26th day of May, 2010.

LOCAL BOUNDARY COMMISSION

By:  x
Lynn Chrystal, Chair

Attest:
By:  x
Brent Williams, Staff

RECONSIDERATION BY THE COMMISSION

Per 3 AAC 110.580(a) “within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of the decision, describing in detail the facts and analyses that support the request for reconsideration.”

Per 3 AAC 110.580(e) “the commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law;
- or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.”

Additionally, per 3 AAC 110.580(f) “if the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied.”

Also, per 3 AAC 110.580(f) “if the commission orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered.”

JUDICIAL APPEAL

Per 3 AAC 110.620, “a final decision of the commission made under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).” Please note that AS 44.62.560 requires that “the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding.”