

Petition

to the Local Boundary Commission to

Incorporate the Tikchik Borough

as a Second Class Borough

Using the Legislative Review Method

DRAFT

The Petitioner requests the Local Boundary Commission (hereafter "LBC" or "commission") to grant this petition for borough incorporation pursuant to article X, section 3 of the Constitution of the State of Alaska, AS 29.05.060 – AS 29.05.150, and AS 44.33.812. This petition incorporates by reference all of the attached exhibits. All of the petition's sections and exhibits need to be addressed and filled out. If a requirement does not apply, simply state "not relevant" or "not applicable." If the Petitioner has already addressed a requirement, simply state where it was addressed.

Section 1. Petitioner. 3 AAC 110.420(b)(1), (20).

The Petitioner is State of Alaska staff, as designated by the LBC, in the Department of Commerce, Community, and Economic Development.

Section 2. Petitioner's Representatives. 3 AAC 110.420(b)(2).

The Petitioner designates the following individual to serve as its representative in all matters concerning this proposed incorporation:

Name: Local Government Assistance Section, Division of Community and Regional Affairs

Physical address: _____

Mailing address: 550 W. 7th Ave, Suite #1640, Anchorage, AK 99501

Phone number: (907) 269-4564 Fax number: (907) 269-4563

Email address: lga.dcra@alaska.gov

Petitioner's Alternate Representative

The Petitioner designates the following person to act as alternate representative in matters regarding the incorporation proposal in the event that the primary representative is absent, resigns, or fails to perform his or her duties:

Name: _____

Physical address: _____

Mailing address: _____

Phone number: _____ Fax number: _____

Email address: _____

Section 3. Name and Class of the Borough for Which a Change is Proposed. 3 AAC 110.420(b)(3).

The name and class of the proposed borough incorporation is:

Name: Tikchik Borough

Class: Second Class Borough

Section 4. General Description of the Nature of the Proposed Boundary Change.

3 AAC 110.420(b)(4).

This petition requests that the Local Boundary Commission authorize the incorporation of the area generally described as the Tikchik Borough (also known as the Dillingham Census Area) as a second class borough under the legislative review method.

Section 5. General Description of the Area Proposed for Incorporation. 3 AAC 110.420(b)(5).

For the purpose of this petition, the area will include the current Southwest Region Regional Education Attendance Area (REAA) including the City of Dillingham. The offshore boundary would correspond with the State of Alaska's jurisdiction offshore of the Dillingham Census Area.

In 2014, the Alaska Department of Labor and Workforce Development reported the Dillingham Census Area population at 5,044 residents, most of whom lived in nine communities. Seven of these communities (Aleknagik, Clark's Point, Dillingham, Ekwok, Manokotak, New Stuyahok, and Togiak) are incorporated cities. Koliganek and Twin Hills are traditional villages with tribal governments. Additionally, Ekuk and Portage Creek, with few year-round residents, are recognized under the Alaska Native Claims Settlement Act.

Section 6. Reasons for the Proposed Boundary Change. 3 AAC 110.420(b)(6).

The reason for the proposed boundary changes is to distribute the limited resource of raw fish tax among all of the region's communities. Currently, two municipalities have filed petitions to annex portions of Nushagak Bay, and a third is considering a similar proposal. Each intends to capture a portion of the raw fish tax revenue. Borough incorporation would consolidate these efforts, while including the other communities in the region, ensuring no community is excluded from benefitting from the raw fish tax resource.

Section 7. Legal Descriptions, Maps, and Plats. 3 AAC 110.420(b)(7).

Exhibit A-1 provides a legal metes and bounds description of the boundaries of the area proposed for incorporation. Exhibit A-2 shows a map of the area proposed for incorporation.

Section 8. Size of the Area Proposed for Incorporation. 3 AAC 110.420(b)(8)(A).

The area proposed for borough incorporation has 18,569 square miles of land and 2,436 square miles of water, submerged lands, and tidelands for a total of approximately 20,915 square miles.

Section 9. Data Estimating the Population of the Area Proposed for Incorporation. 3 AAC 110.420(b)(9)(A).

The estimated population of the proposed borough is 5,044, according to 2014 Alaska Department of Labor and Workforce Development statistics.

Section 10. Information Relating to Public Notice and Service of the Petition. 3 AAC 110.420(b)(10).

See Exhibit B.

Section 11. Tax Data. 3 AAC 110.420(b)(11).

a) The assessed or estimated value of taxable property in the area proposed for incorporation

For the purpose of this petition, the borough will not levy areawide property or sales tax. Cities levying those taxes will continue to collect and retain those revenues. This petition assumes that an areawide bed tax of 10 percent will be levied, generating approximately \$125,000 annually.

b) Projected taxable sales in the area proposed for incorporation

The projected value of taxable raw fish sales within the area is approximately \$47.6 million, based on a 20-year average. At a rate of five percent, projected annual raw fish tax revenues in the area will be approximately \$2.3 million.

c) Taxes currently levied by municipal governments within the area proposed for incorporation.

List the type and rate of each tax currently levied by any municipal government within the area:

Borough, city, or service area	Property tax (mills)	Sales tax (%)	Bed Tax (%)	Raw Fish Tax (%)	Alcohol Tax (%)
Aleknagik		5%	9%		
Clark's Point		5%			
Dillingham	13 000	6%	10%	2.5%	10%
Ekwok					
Manokotak		2%			
New Stuyahok					
Togiak		2%		2%	

Section 12. Budget Information. 3 AAC 110.420(b)(13)(B).

Exhibit C presents projected revenue, operating expenditures, and capital expenditures for a proposed municipality for one full fiscal year beyond the reasonably anticipated date to receive any organization grant, to complete any transition set out in 3 AAC 110.900, and to make its first full local contribution required under AS 14.17.410(b)(2).

Section 13. Existing Long Term Municipal Debt. 3 AAC 110.420(b)(14).

Name/type of debt	Purpose of debt	Date debt will be fully paid
General Obligation Bonds	School construction and maintenance	2028

Section 14. Municipal Powers and Functions. 3 AAC 110.420(b)(15).

The proposed municipality, a municipality for which a change is proposed, OR alternative service providers	Powers and functions before the proposed change	Powers and functions after the proposed change
City of Dillingham	Provides K-12 Education Services in the City of Dillingham	City School district will merge with Southwest Region REAA to form a Borough School District
Southwest Region REAA School District	Provides K-12 Education Services in eight communities within the Dillingham Census Area	School District will merge with Dillingham City School District to form a Borough School District

Section 15. Transition Plan. 3 AAC 110.420(b)(16).

See **Exhibit D**.

Section 16. Borough Assembly Composition and Apportionment. 3 AAC 110.420(b)(17).

See **Exhibit D**

Section 17. Supporting Brief. 3 AAC 110.420(b)(19).

See **Exhibit E**.

Section 20. Petitioner's Affidavit. 3 AAC 110.420(b)(22).

See **Exhibit F**.

Exhibit A-1

Legal Metes and Bounds Description of the Area Proposed for Incorporation.

For the purpose of this petition, the upland boundary area proposed for incorporation will be identical to the current Southwest Region REAA, and include the city of Dillingham. The offshore boundary will correspond with the State of Alaska's jurisdiction offshore of the Dillingham Census Area. Beginning at a point in Bristol Bay on the common boundary of the Bristol Bay and Calista Alaska Native Regional Corporations (ANRC); thence northerly and easterly along the Bristol Bay ANRC boundary to its intersection with the Lake and Peninsula Borough boundary; thence southerly along the Lake and Peninsula Borough boundary to the Bristol Bay Borough boundary; thence westerly along the Bristol Bay Borough boundary to the Bristol Bay ANRC boundary; thence westerly along the Bristol Bay ANRC boundary to the point of beginning.

Exhibit A-2

Map of the Area Proposed for Incorporation

Dillingham Census Area

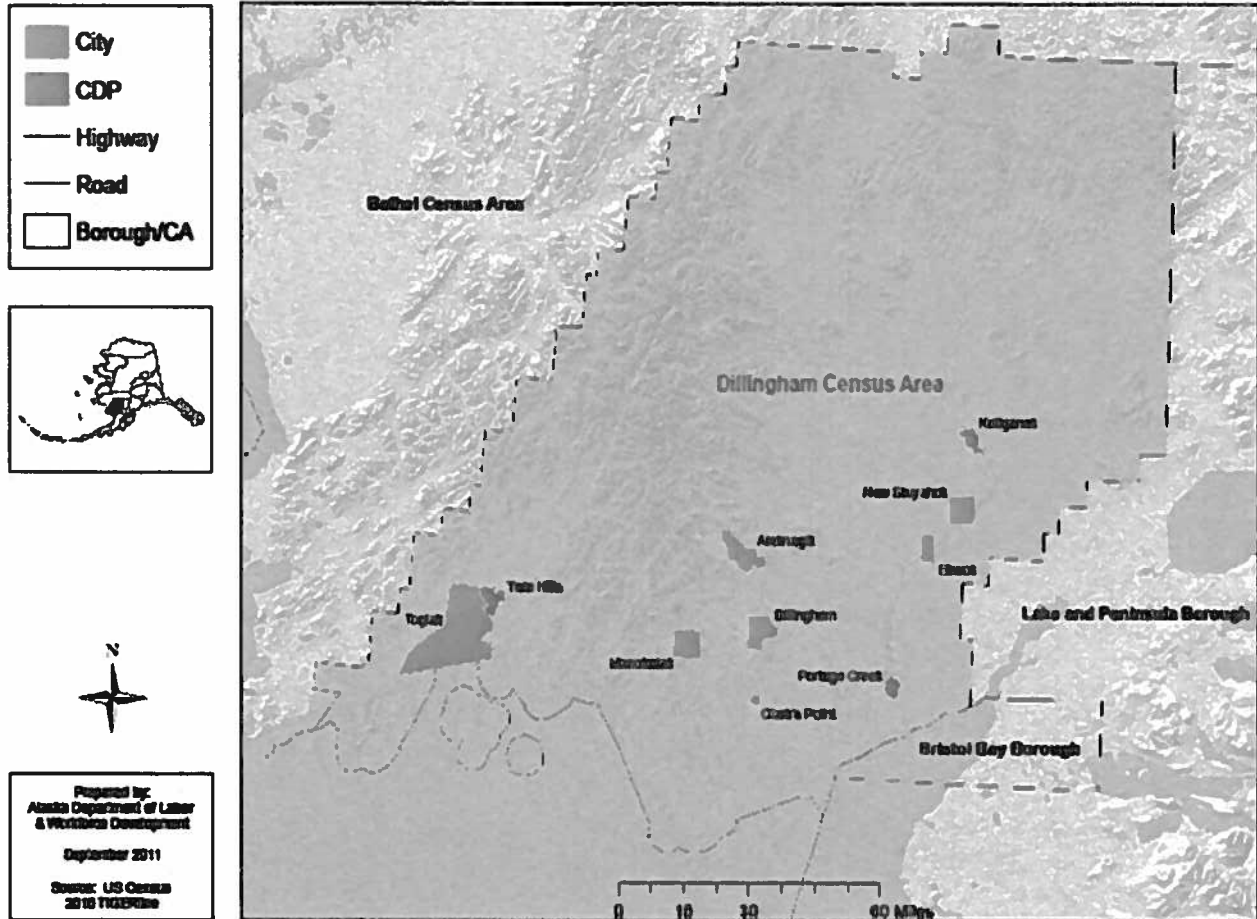


Exhibit B.

Information Relating to Public Notice and Service of the Petition

This exhibit provides information relevant to public notice of this incorporation petition per 3 AAC 110.450 and 3 AAC 110.460. The information includes local media; places recommended to post notices; adjacent municipalities; persons who may warrant individual notice of the filing of the petition because of their interest in this matter, and location(s) where the public can review the Petition.

Local media

The following lists the principal news media serving the boundaries of the proposed borough:

Newspaper(s):

Name: Bristol Bay Times

Physical address: Alaska Media LLC PO Box 241582 Anchorage, AK 99524

Mailing address: _____

Telephone number: (907) 299-1172 Fax number _____

Email address: crestino@reportalaska.com

Radio and television station(s):

Name: KDLG Public Radio

Physical address: PO Box 670 Dillingham, AK 99576

Mailing address: _____

Telephone number: (907) 842-5281 Fax number (907) 842-5645

Email address: info@kdlg.org

Petition to Incorporate the Tikchik Borough

Three or more prominent places readily accessible to the public and *within or near the boundaries proposed for change* to post notices concerning this petition and where petition materials will be available for public review:

Location and address	Days and times open to the public
City of Togiak, PO Box 190 Togiak, AK 99678 (907) 493-5820	M-F 9am-5pm
City of New Stuyahok, PO Box 10, New Stuyahok, AK 99636 (907) 693-3171	
City of Manokotak, PO Box 170, Manokotak, AK 99628 (907) 289-1082	
City of Ekwok, PO Box 49, Ekwok, AK 99580 (907) 464-3311	
Twin Hills Village, PO Box TWA, Twin Hills, AK 99576 (907) 525-4821	
City of Aleknagik, PO Box 33, Aleknagik, AK 99555 (907) 842-5953	
New Koliganek Village Council, PO Box 5057, Koliganek, AK 99576 (907) 596-3434	
City of Clark's Point, PO Box 110, Clark's Point, AK 99569 (907) 236-1221	

Adjacent municipalities (including service areas) whose boundaries extend within twenty miles of the boundaries of the proposed borough (with address and contact information, including email):

Municipality	Address and contact information
Lake and Peninsula Borough	PO Box 495, King Salmon, AK 99613 (907) 781-2216
Bristol Bay Borough	PO Box 189, Naknek, AK 99633 (907) 246-4224

Exhibit C.

Projected Revenues, Operating Expenditures, and Capital Expenditures

(include all years leading up to and including the full fiscal year after receiving the final organization grant, completing the transition, and making the first full local education contribution)

Projected revenues	First fiscal year	Second fiscal year	Third fiscal year	Fourth fiscal year
Raw Fish Tax (Nushagak District)	\$2,026,422			
Raw Fish Tax (Togiak District)	\$210,444			
Bed Tax	\$125,000	\$125,000	\$125,000	
Payment in Lieu of Taxes	\$854,875			
Community Revenue Sharing	\$384,726			
Fisheries Business Tax	\$302,481			
Fisheries Resource Landing Tax	\$6,613			
Electric/Telephone Tax	\$1,594			
Total projected revenues	\$3,912,155			

Operating expenditures	First fiscal year	Second fiscal year	Third fiscal year	Fourth fiscal year
Mayor and Assembly	\$35,360			
Planning Commission	\$4,365			
Borough Staff	\$255,378			
Legal Support	\$25,985			
Travel	\$38,541			
Rent & Utilities	\$49,891			
Office Equipment	\$4,158			
Telecommunication Services	\$18,709			
Insurance	\$12,473			
Contractual Services	\$77,954			
Total operating expenses	\$522,814			

Education expenditures	First fiscal year	Second fiscal year	Third fiscal year	Fourth fiscal year
Estimated required contribution to borough school district operations	\$1,385,969			
School district capital projects	\$779,544			
subtotal	\$2,165,513			
Total expenditures	\$2,688,327			
Balance	\$1,223,828			

**Exhibit D.
Transition Plan.**

This exhibit presents the transition plan as required under 3 AAC 110.900.

The new borough may work with the Department of Commerce, Community, and Economic Development, Local Government Specialist staff to ensure a smooth transition in the incorporation of a borough government.

ELECTION OF INITIAL BOROUGH ASSEMBLY

The initial elected Borough Assembly shall consist of six assembly members. Three of those members shall be elected by and represent the residents of the community of Dillingham at-large as one district. The residents of the Borough outside of the community of Dillingham shall be divided equally into three other districts, each represented by one assembly member.

Initially, two assembly members will be elected to a three-year term, two will be elected to a two-year term, and two will be elected to a one-year term. Terms will be assigned to the members by lot. After the initial terms expire, all assembly members will be elected to three-year terms. Additionally, one borough mayor shall be elected at-large to a three-year term.

The initial Borough election will also be to elect a seven-member school board. Borough residents will be divided into four districts identical to those for the Assembly for election of six school board members. The seventh school board member shall be elected by and represent the borough at-large.

Within two years of the initial Borough election, the Borough will conduct an election to form a seven-member planning commission.

All candidates for election to the Borough assembly, planning commission, and school board shall be qualified voters of their respective voting district within the Tikchik Borough for at least one year preceding the election.

Nominations and Election conduct: Nominations for initial Borough offices are made by petition, and the petition shall be in a form prescribed by the Director of Elections for the State of Alaska.

The Director of Elections shall supervise the election and the State of Alaska shall pay all election costs.

A qualified voter who is registered to vote within the proposed Tikchik Borough boundaries at least 30 days before the date of the election order may vote in the incorporation election.

If the voters approve the proposition to incorporate the Borough, the initial elected officials take office on the first Monday following certification of the election. If incorporation is rejected, no officials are elected. No cities will be considered for dissolution during the Borough incorporation election.

EXTENDING AREAWIDE SERVICES

Immediately after Borough incorporation, all residents within the Borough are eligible to use areawide Borough facilities and services with no extra charges related solely to their place of residence, as they will all then be Borough residents. The following powers and services shall be exercised on an areawide basis in the Tikchik Borough: Borough Administration, Education, Community Development and Planning, and Taxation.

Borough Administration

Bonded indebtedness incurred by the City of Dillingham before Borough incorporation will, following incorporation, be the obligation of the City of Dillingham only. All of the City's indebtedness will be repaid by the City of Dillingham.

Education

The Tikchik Borough School District will provide educational services to all students within the Borough on an areawide basis. The Tikchik Borough School District will assume all assets and liabilities of the Southwest Region REAA School District and the Dillingham City School District. This transfer will be completed no later than two years after borough incorporation is approved.

The unified borough school district will maintain the level of educational services currently provided by the City of Dillingham and the Southwest Region REAA school districts.

Planning

Planning and land use regulation would be an areawide power in the Borough. However, zoning in the remote areas of the Borough would likely be quite general and would occur after comprehensive planning. The Borough Planning Commission will oversee creation of a Borough Comprehensive Plan and an update to the Borough zoning code. The Tikchik Borough will receive title to 10 percent of the State's Vacant Unreserved Unclassified lands within the Borough. The Comprehensive Plan will address land use in these and other areas. Large landowners within the Borough, such as the U.S. Fish and Wildlife Service, State of Alaska, and Bristol Bay Native Corporation, as well as rural and remotely located residents and property owners, are key stakeholders in comprehensive planning and shall be extensively consulted during plan preparation.

Taxation

The Tikchik Borough Assembly will have the authority to set the tax rate for raw fish tax within the Borough boundaries. No municipality within the Borough boundaries will have the authority to levy an additional raw fish tax, as the intention of this petition is to prevent competing taxation and annexation. All other sales and transient room taxes levied within the currently incorporated communities shall remain in effect. The City of Dillingham has traditionally appropriated more than the minimum statutory required contribution to support its schools. The City of Dillingham may continue to do so using property tax revenue or non-areawide locally generated sales tax revenue for this purpose. The Borough Assembly may also levy an areawide bed tax or sales tax for the purpose of generating operating revenue. This transition plan does not promise any additional areawide services until the assembly and residents determine their need and desired level of services through service areas.

Exhibit E.

Supporting Brief

The southwest region of Alaska, commonly referred to as the Dillingham Census Area, has been the subject of several studies and numerous past efforts to organize or annex portions of existing boroughs. In the last 53 years, multiple and competing efforts toward borough incorporation or annexation have taken on various forms, been presented, approved, or sent back to the petitioner for revision or clarification. In that time, two boroughs have formed (the Bristol Bay Borough in 1962, and

the Lake and Peninsula Borough in 1989). Recently, the Local Boundary Commission approved an effort on the part of Dillingham to annex a portion of Nushagak Bay for the purpose of recovering raw fish tax revenue to fund citywide services. However, the annexation was challenged in court, and a new effort is underway, now on the part of not only Dillingham, but also Manokotak. However, it is in the best interest of the State of Alaska, as well as the residents of the region, to consolidate these efforts, and it is the intent of this petition to argue in favor of a Western Bristol Bay borough that encompasses these two, as well as other communities within the region.

In accordance with 3 AAC 110.045(a), the proposed petition area is suitable for borough government for the following reasons. First, the threshold for establishing boundaries on the basis of common interests with the respect to social, cultural, economic, geographic, and transportation considerations was met by the formation of the Southwest Region Schools REAA. Headquarters for the district are located in Dillingham, a first class city that operates its own city school district, as required by AS 14.12.010 and AS 29.35.260(b).

Second, Dillingham serves as a regional hub for surrounding communities. A 6,400-foot paved airstrip there allows freight access and accommodates numerous daily flights to all of the communities considered in this petition. Several state and federal administrative offices that serve the region are located in Dillingham, including the Alaska Department of Fish and Game's commercial fisheries management office for the area fishing district, the Wood-Tikchik State Park (the largest state park in the United States), the U.S. Fish and Wildlife office, which manages the Togiak National Wildlife Refuge, and other state and federal agencies, as well as a regional hospital, Legislative Information Office, district courthouse, and Alaska State Trooper post. A 10,000-watt local public broadcast radio station (KDLG) serves the communities in the considered region and is owned by the Dillingham City School District. The communities of Dillingham and the south shore of Aleknagik are connected by a paved road, and a bridge connecting the road to the north shore across the Wood River is near completion.

For the purpose of this petition, the upland boundaries of the proposed borough will coincide with the Dillingham Census Area, and the offshore boundary would correspond with the State of Alaska's jurisdiction offshore of the Dillingham Census Area. These boundaries have already been established to meet the threshold for formation of the Southwest Region REAA. Similarly, in accordance with 3 AAC 110.060(f), the proposed borough does not include only a portion of an area of existing city

government; the proposed borough conforms almost exclusively to geographic and hydrologic units, except for the upper Nushagak-Mulchatna drainage, which, since 1975, has remained in the boundaries of first the Lake and Peninsula REAA, and later the Lake and Peninsula Borough. That the watershed transcends the two administrative boundaries has previously been considered by the Local Boundary Commission, and no doubt adds political complications when dealing with transboundary conflict. However, fully justifying a change in those boundaries is beyond the scope of this petition; it is only mentioned as a means of acknowledging that this proposal contains no geographic enclaves.

The Dillingham Census Area adequately meets the regulatory population requirements outlined in 3 AAC 110.050(a) and is sufficiently large and stable enough to support the proposed borough government. According to the 2010 federal census data, the population of the Dillingham Census Area was 4,847. This is greater than eight of the 18 currently existing boroughs in Alaska. The Aleutians East, Bristol Bay, Denali, Haines, Lake and Peninsula, Skagway, Wrangell, and Yakutat Boroughs all had fewer residents than the Dillingham Census Area at the time of their incorporation.

Per 3 AAC 110.055, the economy of the proposed borough meets the standard, and includes the human and financial resources to provide essential services in an efficient and cost-effective level. Recent annexation petitions from Manokotak and Dillingham have attempted to capture raw fish tax revenue for the purpose of providing local services. Dillingham was successful in its petition to the Local Boundary Commission. However, there should be cause for concern that, as additional communities express interest in their own respective annexation efforts, this will reduce the overall opportunity for other incorporated communities to benefit from available resources.

Sharing collectively in the resource for an areawide benefit should be considered in the best interest of the local residents, but also for the state of Alaska, as it will ultimately reduce transaction costs and make available the resource (raw fish tax) to the greatest number of residents in the proposed area.

In 1962, Hugh Wade, Alaska's Secretary of State at the time, wrote of his concerns regarding the incorporation of the Bristol Bay Borough:

My objection to the proposed borough, of course, is that it takes the principal tax resources in the area and makes them available only to a limited number of people—less than 600 I believe—to the exclusion of all other people in the Bay area.

Per 3 AAC 110.065(3), the solution of borough incorporation as proposed in this petition should be considered in the best interest of the State, as the intention of borough incorporation would provide for maximum local self-government within a minimum of local government units, as advised in article X, section 1 of the Alaska Constitution. Currently, the Dillingham Census Area lies in the unorganized borough. Clearly, the framers of the Alaska Constitution intended this designation to be temporary, and the Alaska Legislature has been providing services to much of the region in terms of education as well as coastal management zoning. However, the Alaska Legislature dismantled the Coastal Management Program in 2011, essentially removing the ability of communities in the unorganized borough along coastal areas to have a voice in development and management of coastal resources. Unifying the census area and enabling planning powers as a borough would empower the region to have a more decisive and influential role in the management of coastal resources in Bristol Bay.

Further, borough incorporation and unification of the two school districts (the Southwest Region REAA and the Dillingham City School District) would be in the best interest of the State of Alaska, as this service would be provided on an areawide basis. The State of Alaska would still play a critical role in providing financial resources for the operation of educational services in the region, though this would be the single most important responsibility of the borough government, and would ostensibly be funded using a portion of revenues collected through raw fish tax.

It is unreasonable to expect that many of the municipal services currently offered in Dillingham would be extended on an areawide basis following borough incorporation. However, education and planning and platting powers would be two examples of essential services in which the region would benefit from maximum local self-government, and should be considered carefully and are justification for moving forward with this petition.

Exhibit F.

Affidavit of Petitioner's Representative Concerning Accuracy of Information

STATE OF ALASKA)
) ss.
_____ JUDICIAL DISTRICT)

I, _____, representative of the Petitioner seeking
Borough incorporation, being sworn, state that the following:

To the best of my knowledge, information, and belief, formed after reasonable inquiry, the information in the Petition is true and accurate.

Petitioner's Representative

SUBSCRIBED AND SWORN TO before me on _____, 20____.

[notary seal]

Notary public in and for Alaska

My commission expires: _____

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STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

BEFORE COMMISSIONERS:

Lynn Chrystal - Chair
(By telephone)
John Harrington
(By Telephone)
Robert Harcharak (By
Telephone)
Darroll Hargraves

PUBLIC MEETING

ANCHORAGE, ALASKA

September 16th, 2015

ANCHORAGE TRANSCRIPTIONS

P.O. Box 100464
ANCHORAGE, ALASKA 99501

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- 2. Consider designating a person as defined by AS 01.10.060 to bring forward a petition to borough incorporation in the Dillingham Census Area.....09
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1 P R O C E E D I N G S

2 (On record - 9:36 a.m.)

3 CHAIRMAN CHRYSTAL: I'm calling the meeting to order.
4 It's about 9:36 by my watch. Hopefully you guys got the same
5 time. Okay. Could we have a roll call, please? Is Brent
6 back? Would you call the roll, or Elaine, one or the other?

7 MR. WILLIAMS: I'll take care of it. Elaine's tied up
8 right now. Commissioner Harcharak?

9 COMMISSIONER HARCHARAK: Present.

10 MR. WILLIAMS: Commissioner Harrington?

11 COMMISSIONER HARRINGTON: Present.

12 MR. WILLIAMS: Commissioner Hargraves?

13 COMMISSIONER HARGRAVES: Present.

14 MR. WILLIAMS: Commissioner Wilson? Chair Chrystal?

15 CHAIRMAN CHRYSTAL: Here.

16 MR. WILLIAMS: Chair, for the record, Commissioner
17 Wilson indicated he would not be able to make it in today.

18 CHAIRMAN CHRYSTAL: Yeah. He's still at his homestead,
19 I believe. Okay. I'd like to acknowledge the guests and staff
20 present. I'll go ahead and start it in Anchorage. If
21 everybody that's there could chime in and let us know if you're
22 going to be doing anything or just listening in.

23 MR. WILLIAMS: I'll start and then we'll go around the
24 table. This is Brent Williams, LBC staff.

25 MS. COLLINS: This is Eileen Collins, also LBC staff.

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1 comment regarding issues not on the agenda or before the
2 commission. Anything out there? Okay. Hearing none, item
3 number 1 is finished. Item number 2, consider designating a
4 person as defined by Alaska Statute 01.10.060 to bring forward
5 a petition of borough incorporation in the Dillingham census
6 area. Anybody want to start out with this one?

7 COMMISSIONER HARRINGTON: Chair, John Harrington moves
8 that the Local Boundary Commission determine that a petition to
9 incorporate the borough formed with the boundaries comparable
10 to those of the Southwest Region School District or the
11 Dillingham substance area will likely provide the standards
12 established under the constitution of the State of Alaska, AS
13 29.04, AS 29.05, AS 29.06, or Chapter 3 AAC 110. Filing such a
14 petition is in the best interest of the state because it would
15 give the LBC a fuller array of information and options given
16 the conflicts history of petition to the LBC for this region
17 over the years, the numerous feasibility studies undertaken and
18 the competing petitions now before the Commission. I further
19 move that the Local Boundary Commission design and direct the
20 Division of Community and Regional Affairs to prepare a
21 petition to incorporate a borough formed within the boundaries
22 comparable to the Southwest Region School District for the
23 Dillingham census area.

24 COMMISSIONER HARCHARAK: Second by Harcharak.

25 CHAIRMAN CHRYSTAL: Okay. We have a motion and a

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1 second. Commission discussion?

2 COMMISSIONER HARRINGTON: As I understand the -- we
3 received one petition regarding this -- establishing a borough,
4 is that correct?

5 MR. WILLIAMS: This is Brent Williams. That is
6 correct, sir.

7 COMMISSIONER HARRINGTON: And it is done, as was
8 commented, it looks like it was done by a legislative.....

9 MR. WILLIAMS: Review.

10 COMMISSIONER HARRINGTON:review option?

11 MR. WILLIAMS: Yes, sir.

12 COMMISSIONER HARRINGTON: And that does not need a vote
13 of the people then to establish it?

14 MR. WILLIAMS: That is correct, sir.

15 COMMISSIONER HARRINGTON: Okay. Thank you. Would that
16 normally be the process that the Division of Community and
17 Regional Affairs would use to establish a petition for
18 boundaries for a borough?

19 MR. WILLIAMS: It doesn't come up very often but
20 legislative review is the method. It's specifically mentioned
21 in the constitution.

22 COMMISSIONER HARRINGTON: Thank you.

23 CHAIRMAN CHRYSTAL: Mr. Williams, do you have an idea,
24 when was this petition that you're talking about put forth for
25 this area?

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1 MR. WILLIAMS: That came in on Monday, sir.
2 CHAIRMAN CHRYSTAL: Okay. And who sent it?
3 MR. WILLIAMS: It was the Division of Community and
4 Regional Affairs.
5 CHAIRMAN CHRYSTAL: Okay.
6 MR. WILLIAMS: It was a part of the Department of
7 Commerce Community and Economic Development of the state.
8 CHAIRMAN CHRYSTAL: Right.
9 MR. BRENNAN: Mr. Chairman, this.....
10 CHAIRMAN CHRYSTAL: I know that -- oh, I'm sorry. Go
11 ahead.
12 MR. BRENNAN: Mr. Chairman, this is Jim Brennan. I was
13 wondering if I could have an opportunity to be heard at some
14 point here.
15 CHAIRMAN CHRYSTAL: Sure. We'll have public comment in
16 just a little bit. All right. When I first heard about this
17 my reaction was this is a really good idea. I think the whole
18 state should be in some kind of a borough. I mean an active
19 borough. However, I'm not sure if it's the position of the
20 Boundary Commission to do this. I would much rather see --
21 this would be just a start of an avalanche of such petitions
22 and I wonder if it'd be more proper for the legislature to be
23 doing this like it did in 1963. Any comments on that, Mr.
24 Williams?
25 MR. WILLIAMS: Yes, sir. The legislature could. Of

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1 course, we don't know if the legislature will do it. It has
2 not incorporated a borough since 1963, which is 50 years. By
3 regulation the commission may designate a person, including an
4 organization, to file a petition. So that is a method that is
5 specifically provided in law. And it is again provided for in
6 law, and is a method that the commission can choose to follow
7 if it wants to. Having the petition in front of the commission
8 does not mean necessarily that the commission will approve that
9 petition. We don't know, it may approve, amend or deny any
10 petition that is before it. And we don't know what the
11 commission will do. Having the petition in front of it gives
12 the LBC full array of options to consider. But again, that's
13 different from approving the petition. Considering is one
14 thing, approving is another.

15 CHAIRMAN CHRYS TAL: Yeah, absolutely. And I agree with
16 that part of it wholeheartedly. Any other commissioners want
17 to comment on this one?

18 COMMISSIONER HARCHARAK: Chairman, Commissioner
19 Harcharak. Now, it was the intent of the signers of the
20 constitution, or designers of the constitution that all of the
21 state will be into borough -- some place into boroughs. I
22 agree with Mr. Williams that the state has not done anything in
23 that area whatsoever recently. And I think going this route
24 might stimulate issues within the legislature to hey, start
25 taking some action. But I like the direction this is taking

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1 and that's it.

2 CHAIRMAN CHRYSTAL: Okay. Thank you. Any other
3 commissioner? Okay. Then we've got some time for a public
4 comment. I know Mr. Brennan expressed the desire to say
5 something.

6 MR. BRENNAN: Yes, Mr. Chairman. And I'm speaking on
7 behalf of the City of Manokotak. We are somewhat skeptical of
8 this process. First of all, we've just learned of it along
9 with everybody else in the last week or so and just saw this
10 draft petition about noon yesterday which from all appearances
11 is quite incomplete. The -- as I understand it, after speaking
12 with Brent, the authority that -- first of all, this process
13 has, to my knowledge, never been undertaken before. It's not a
14 matter of it not having come up very often, I don't think it's
15 ever come up. And discussing with Brent Williams yesterday he
16 indicates that the statutory authority for that is AS
17 29.05.115. It's a statute that allows the LBC to submit a
18 proposal for borough incorporation to the legislature without
19 going through the ordinary procedures for a borough
20 incorporation. And of course as well know those ordinary
21 procedures include a petition that's signed by a requisite
22 number of voters insider and outside home rule or first class
23 cities in the propose borough, and also an incorporation
24 election. So this would in essence be something which would be
25 imposed upon the residents of the area, something that the

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1 materially effect the feasibility for the creation of a borough
2 and believe that this sort of sets the stage. There are a lot
3 of questions, of course. I agree with Mr. Brennan there are a
4 lot of questions about how this process is going to work. I
5 think that with all the brain power that's associated here, Mr.
6 Brennan being foremost with his recent experience with the
7 creations of the Petersburg Borough, there's bound to be a way
8 to work through the formalities and get to the borough
9 question, if that's where we're headed. So that's -- what I
10 say, Mr. Chairman, is we offer our cautious support for them.

11 CHAIRMAN CHRYSTAL: Okay. Thank you. Anybody else?
12 Any further -- I'm sorry. What was that?

13 MS. RUBY: I'm sorry. This is Alice Ruby in
14 Dillingham.

15 CHAIRMAN CHRYSTAL: Okay.

16 MS. RUBY: We just wanted to say that our counsel
17 looked at it and the city has long been supportive of a borough
18 incorporation. And in fact we participated in just about every
19 feasibility effort that's occurred out here for the last 20
20 years. And in fact, most recently the City of Dillingham has
21 pledged money towards a grant match to try to get funds to
22 continue that. The grant was prepared and submitted by BBNA.
23 Anyway, in our opinion, assuming the person designated, was
24 ready, willing and able to prepare a petition the city would
25 not oppose that and would be more than happy to cooperate and

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1 provide information because we continue to think that, you
2 know, the borough should be looked at. Our only concern would
3 be that we would hope this wouldn't be indicating that the
4 commission determine -- or has pre determined that borough
5 formation should be instead of our annexation petition. The
6 city's position is that both of those can occur and both can
7 exist at the same time, and the commission itself previously
8 agreed with that when you, you know, approved our petition the
9 first time. At any rate, in this case we have no problem with
10 looking at this -- the borough petition and looking at the
11 feasibility of the same.

12 CHAIRMAN CHRYSTAL: Okay. Thank you. Anybody else out
13 there?

14 MR. SEDOR: My name is John Sedor, here in Anchorage.
15 I just have -- this is all new to me. I'm here to listen and
16 learn. But my question, having just read the motion, is
17 whether it would preclude a vote of the people that will be
18 impacted and effected by any decision by the LBC. And so as I
19 understand it the process that the Department just proposed
20 would avoid a vote, and I just simply don't know whether that
21 would -- whether that is a process that you can't get off that
22 track or whether it's a process that you can get off that track
23 and allow for a vote of the very people that we're all
24 discussing. Thank you.

25 CHAIRMAN CHRYSTAL: Okay. You might talk to Brent

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1 They have to come through the LBC staff. If Vic Fischer were
2 here, I'm sure that he would say that the preferred method of
3 filing any petition is the ones provided by the constitution
4 which is legislative review. He's not here but I'm pretty sure
5 that's what he would say. And I'm not -- I have to
6 respectfully disagree with Mr. Brennan that this is some sort
7 of a hybrid method by legislative review. If, for any
8 legislative review petition, it would go to the legislature for
9 disapproval. And the other petitions are legislative review as
10 well. So they're using the same method. And we'd have the
11 same procedures because by statute again the LBC can regulate -
12 - can promulgate procedures. And the LBC has done so and so
13 we'd still have the -- any petition would have the technical
14 review and public comment and reports, and it'd be one set for
15 everything -- one combined set for all three petitions should
16 that be the path that the Commission chooses to go down. So I
17 did want to make those points. The legislative review does not
18 call for an election. As the Chair said earlier, there's two
19 distinct methods. That's all I have. Thank you, Chair.

20 CHAIRMAN CHRYSTAL: Thank you, Mr. Williams. Okay.
21 Anybody else out there that wants to make another comment on
22 this?

23 MR. BRENNAN: This is.....

24 MR. TOYUK (ph): Moses Toyuk (ph) from Manokotak.

25 CHAIRMAN CHRYSTAL: Okay.

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1 MR. TOYUK: Yeah. City of Manokotak we're opposed to
2 the petition to form a borough. We still stand on that the
3 last 20 years so it will.....

4 CHAIRMAN CHRYSTAL: Could you speak up just a little
5 bit. It's kind of hard to hear.

6 MR. TOYUK: Yeah. How now?

7 CHAIRMAN CHRYSTAL: That's much better. Thank you.

8 MR. TOYUK: Yeah. City of Manokotak is opposed to
9 formation of a borough. For the last 20 years we've opposed
10 it. So we will still stand on that opposition.

11 CHAIRMAN CHRYSTAL: Okay. Thank you. Anybody else?
12 Any further comments from commissioners?

13 MR. BRENNAN: Mr. Chairman, I -- I was a little slow on
14 that. This is Jim Brennan. Could I respond to that last, keep
15 it very brief, by Brent Williams?

16 CHAIRMAN CHRYSTAL: Well, we're really not in a debate
17 situation here. Could you make it really short?

18 MR. BRENNAN: I will. And I realize you don't want to
19 get into a debate. And I know all these citations, statutes
20 and regulations put you at a disadvantage in listening to this.
21 But Brent said this would actually not come under the Title 29
22 statute that I had referred to, which I thought is what I had
23 discussed with him yesterday. I thought that's what he
24 indicated it would come under. Instead he says it'd be under
25 Title 44. The only Title 44 statute I'm aware of is 44.33.802,

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1 which says in part that the Local Boundary Commission shall
2 consider a local government boundary change requested of it by
3 various entities including the Commissioner of Commerce,
4 Community & Economic Development. But it goes on to say that a
5 boundary change under that statute may not be construed to
6 include a borough incorporation. It may not be construed to
7 include a borough incorporation, which is of course exactly
8 what we're talking about here. That's the only thing I can see
9 in Title 44 that would authorize a procedure such as being done
10 here. I'm not suggesting, just to sum this up, that it can't
11 be done this way. What I am suggesting is there are a lot of
12 technical legal issues because it's never been done before and
13 if it is going to be done I suggest that it be done very
14 carefully after full review by the Department of Law. That's
15 all I have.

16 CHAIRMAN CHRYSTAL: Okay. Thank you. Okay. Any other
17 commission comments on this motion on the floor?

18 COMMISSIONER HARGRAVES: Mr. Chairman?

19 CHAIRMAN CHRYSTAL: Yes, sir.

20 COMMISSIONER HARGRAVES: Commissioner Hargraves. I've
21 had a weakening of our mode of reception here, so if I repeat
22 something please overlook it and forgive me. But I will be
23 voting against this motion and the reason is that there is no
24 precedent, of course, for it. I think that a petition that
25 comes to us from any of the other possible sources is

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1 (indiscernible). I think members of the commission could come
2 to such a petition, considerate it and not have any prior
3 involvement and come to it without prejudice. One of the
4 concerns I have is if the commission takes this action does
5 that prejudice (indiscernible) a future efforts in the
6 consideration of a petition? I have the concern of why would
7 we do it here and not do it in some other places. I think that
8 if we did it here we can find several places across the state
9 where such action would be just as justifiable. So for those
10 reasons I plan to vote against this. I just can't bring myself
11 to feel like that in future actions that I would not have
12 previously expressed myself and in fact prejudiced my future
13 possibility to consider and vote for a borough out there. So
14 again it's my plan to vote against this motion.

15 CHAIRMAN CHRYSTAL: Okay. Thank you very much.
16 Anybody else?

17 COMMISSIONER HARRINGTON: Yes, sir. This is John
18 Harrington.

19 CHAIRMAN CHRYSTAL: Okay.

20 COMMISSIONER HARRINGTON: I intend to vote for this.
21 I'm going to lay it out as my thinking goes, when we were in
22 Dillingham one of the major oppositions to the annexation of
23 the Bay was the deleterious effect it would have on the
24 potential for future borough formation. We could not consider
25 that really in any substantive way while we were in Dillingham

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1 because there was no specific information before us. This is a
2 vehicle whereby we get all of the information in front of us
3 regarding this region, this area, the asset of the Bay and all
4 of the rest of it. I think this makes a lot of sense that we
5 bring forward this petition so that we have all of the facts
6 and can deal with it at the time in one essential meeting and
7 draw the conclusions at that time. I'm not saying it should be
8 a borough, but I'm saying we need to have that information in
9 front of us. And this is one sure way of getting it.

10 CHAIRMAN CHRYSTAL: Okay. Thank you very much,
11 Commissioner Harrington. I'm going to excuse myself ahead of
12 time here. I'm in a hotel in North Dakota and I have to get
13 out of the room I'm in. I'm walking to another room down three
14 floors and I'm not sure if I'll get cut off or not. So in case
15 I do, I'm sorry, I'll get right back on it. So any other
16 comments from commissioners?

17 COMMISSIONER HARCHARAK: This is Commissioner
18 Harcharak. I concur with the comments made by Commissioner
19 Harrington. We need to have this discussion in a public forum.
20 From my point of view this issue has sort of been festering too
21 long without any action, and I agree the discussion is
22 critical. And it needs to get public attention and the
23 attention of our legislatures. And I'm not saying whether I
24 would, you know, vote for it or against it, you know, the
25 formation of a borough but I believe this discussion is

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1 critical at this juncture. Thank you.

2 CHAIRMAN CHRYSTAL: Okay. Thank you very much. Hold
3 on for just a minute if you would. I'm in an elevator.

4 COMMISSIONER HARCHARAK: Going down, sir.

5 CHAIRMAN CHRYSTAL: What's that?

6 COMMISSIONER HARCHARAK: I said going down.

7 CHAIRMAN CHRYSTAL: Yes, I was. Okay. I'm almost to a
8 room here. A private room. Anyway, I've been really hemming
9 and hawing over this thing. And it's just been really gnawing
10 at me trying to figure out what to do. And I know that I look
11 at this and I see the LBC is pushing for -- not really pushing
12 necessarily, but advocating that we do this. And it makes me a
13 little bit nervous. So at this time I'm going to vote against
14 this. I don't have enough information in my own mind that I
15 feel comfortable voting for it. I do hope we continue the
16 dialogue, if we can. So anyway, does any other commissioners
17 have any comments? Hello? Did I lose you?

18 MR. WILLIAMS: We can hear you, sir.

19 CHAIRMAN CHRYSTAL: Oh, okay. Thought maybe I lost you
20 there for a second.

21 MR. WILLIAMS: No, sir.

22 COMMISSIONER HARRINGTON: You know, it's a good thing
23 we've had this conversation first before we deal with the rest
24 of it, because a lot of the votes that come after this hinge
25 upon our decision here. Because I'm all in favor of postponing

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1 and joining everything together in one master discussion if we
2 get all of the things before us. If we're not going to have
3 all the things before us then I can see no reason to postpone
4 action on anything. So.....

5 CHAIRMAN CHRYSTAL: Yeah, I understand your feelings.
6 I wish the legislature would grab a hold of this whole issue
7 like they were supposed to way back 40, 50 years ago. But
8 obviously it's not happening yet, so I guess we're out of luck
9 in that regard. But I'm just uncomfortable with the LBC doing
10 it this way. I'd like to have more information and then I
11 would probably feel better about voting in favor, but as of
12 right now I've got to vote against it. So any other.....

13 COMMISSIONER HARCHARAK: Commissioner Harcharak.

14 CHAIRMAN CHRYSTAL: Yes, sir?

15 COMMISSIONER HARCHARAK: In your statement about the
16 legislature taking over, I too concur and I would recommend
17 that the commission, you know, advocate this specifically and
18 directly to the legislature, not as a general recommendation to
19 the legislature but to specific legislators who I believe we
20 know are interested in doing this and maybe the combination
21 through them receiving letters from the LBC, maybe we'll spur
22 them into action.

23 CHAIRMAN CHRYSTAL: Well, I would certainly hope so. I
24 would think that with the economic situation in the state, the
25 lack of money, you know, they would probably look more

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1 favorably at putting in a more concisive borough system
2 throughout the state. But who know? I don't know. So do we
3 have any other commission comments before we take a vote?
4 MR. WILLIAMS: Chair, this is Brent Williams. May I
5 make a quick comment?
6 CHAIRMAN CHRYSTAL: I'm sorry, who is this?
7 MR. WILLIAMS: Brent.
8 CHAIRMAN CHRYSTAL: Oh, Brent. Certainly.
9 MR. WILLIAMS: Just a quick response to Commissioner
10 Hargrave's comment that this has come about because we had
11 Dillingham's petition and then the City of Manokotak's
12 petition. I don't see it as a move to be more active regarding
13 the rest of the unorganized borough. Thank you, sir.
14 CHAIRMAN CHRYSTAL: Okay. Could we have a roll call
15 vote then, Mr. Williams?
16 MR. WILLIAMS: Yes, Chair. Commissioner Harrington?
17 COMMISSIONER HARRINGTON: Yes.
18 MR. WILLIAMS: Commissioner Harcharak?
19 COMMISSIONER HARCHARAK: Yes.
20 MR. WILLIAMS: Commissioner Hargraves?
21 COMMISSIONER HARGRAVES: No.
22 MR. WILLIAMS: Chair Chrystal?
23 CHAIRMAN CHRYSTAL: No. Motion fails. But I certainly
24 hope we kind of stay on top of this issue. I think there's
25 some really good points in here and I'd like to at least pursue

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1 them a little bit further. Okay. Moving on to the next item
2 them, consider consolidating any such petition with the City of
3 Dillingham's annexation petition.

4 MR. WILLIAMS: Sir, this is Brent Williams.

5 CHAIRMAN CHRYSTAL: Go ahead.

6 MR. WILLIAMS: Three is moot. That refers specifically
7 to the borough annexation petition. As you have not designated
8 a person there is no petition to consolidate.

9 CHAIRMAN CHRYSTAL: I thought we could still
10 consolidate with Manokotak.

11 MR. WILLIAMS: That's number 4, sir.

12 CHAIRMAN CHRYSTAL: Yeah. But I thought this would
13 have some connotation. But I guess not then. Okay. So we'll
14 move on to number 4, the request for consolidation of an
15 annexation petition from the City of Manokotak and the City of
16 Dillingham's annexation petitions. Do we have any action by
17 the commission on this one? Okay. Hearing none, the -- moving
18 on to the next item then. Can you all hear me okay?

19 MR. WILLIAMS: We can hear you just fine here, sir.

20 CHAIRMAN CHRYSTAL: Okay. I was thinking maybe since I
21 didn't hear a thing after I talked maybe you couldn't hear me.
22 But.....

23 MR. WILLIAMS: I assume the commissioners can. We can
24 here.

25 CHAIRMAN CHRYSTAL: Okay.

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State of Alaska

Notice of a Local Boundary Commission (LBC) Public Meeting

The LBC will consider several agenda items at this meeting:

- Whether a petition drafted and submitted by the Division of Community and Regional Affairs staff to incorporate a borough in the Dillingham Census Area may proceed under 3 AAC 110.410(d).
- Whether to postpone Dillingham's annexation petition to consolidate it with the borough incorporation petition and Manokotak's annexation petition. All three would then have the same schedule and be considered concurrently.
- Other administrative matters.

The LBC will meet on Friday, September 25, 2015 at 9:30 a.m. at the Atwood Building, 550 W. Seventh Avenue, Suite 1640, Anchorage. The meeting will also be available toll free via teleconference by calling 1-800-315-6338 and using access code 94587.

All meeting materials, including an agenda, will be available on the LBC website at <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/PublicMeetings.aspx>. If you have questions, contact the LBC staff at LBC@alaska.gov or at 269-4559/4587. Persons interested in receiving future notices from the LBC are encouraged to sign up for the email list serve at <http://list.state.ak.us/soalists/DCED-LocalBoundaryCommission/jl.htm>. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate must contact LBC staff by 4:30 p.m. September 22, 2015.

20150921 bs to bw FW LBC meeting Friday Sept. 25 at 930.txt
From: Barbara Sheinberg <barbara@sheinbergassociates.com>
Sent: Monday, September 21, 2015 3:47 PM
To: Brooks Chandler
Subject: FW: LBC meeting Friday, Sept. 25 at 9:30

FYI my communication with Brent on this....

Barbara Sheinberg, AICP
www.SheinbergAssociates.com
1107 West 8th Street, Suite 4
Juneau, Alaska 99801
Ph: (907) 586-3141

From: Barbara Sheinberg [mailto:barbara@sheinbergassociates.com]
Sent: Monday, September 21, 2015 3:46 PM
To: 'Commission, Boundary (CED sponsored)'
Cc: 'Collins, Eileen M (CED)'
Subject: RE: LBC meeting Friday, Sept. 25 at 9:30

Brent,
They didn't overlook it, there was no commissioner interested in making a motion.
They clearly had time to do that during this item.
Did a Commissioner ask for reconsideration?
I don't understand this procedurally?
Thank you Brent,
Barbara

Barbara Sheinberg, AICP
www.SheinbergAssociates.com
1107 West 8th Street, Suite 4
Juneau, Alaska 99801
Ph: (907) 586-3141

From: Williams, Brent R (CED) [mailto:brent.williams@alaska.gov] On Behalf of
Commission, Boundary
(CED sponsored)
Sent: Monday, September 21, 2015 2:30 PM
To: Barbara Sheinberg
Cc: Collins, Eileen M (CED); Commission, Boundary (CED sponsored)
Subject: LBC meeting Friday, Sept. 25 at 9:30

Hello Barbara,

Thank you for your note. It has been a busy day, so please excuse me for just
getting to your email now.
The commission is meeting again for a number of reasons. One is because the
telephonic
communication was less than ideal last Wednesday, and not everyone could hear well.
One of the
commissioners will be here live on Friday, which will help. Additionally, the
commissioners inadvertently
overlooked making a motion on one of the agenda items, and wanted to address that
issue again. I hope
that helps.

Thank you,
Brent

Brent Williams

Local Boundary Commission
Alaska Department of Commerce, Community, and Economic Development

Page 1

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Anchorage, AK 99501
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Please be sure to send all email correspondence regarding Local Boundary Commission matters through the following email address: lbc@alaska.gov. This ensures that all LBC staff receive your correspondence in a timely manner. Thank you.

From: Barbara Sheinberg [mailto:barbara@sheinbergassociates.com]
Sent: Friday, September 18, 2015 5:21 PM
To: Commission, Boundary (CED sponsored)
Subject: RE: LBC meeting Friday, Sept. 25 at 9:30

Brent,
I thought the LBC took action on items 1 and 2 this week?
Barbara

Barbara Sheinberg, AICP
www.SheinbergAssociates.com
1107 West 8th Street, Suite 4
Juneau, Alaska 99801
Ph: (907) 586-3141

From: Williams, Brent R (CED) [mailto:brent.williams@alaska.gov] On Behalf Of Commission, Boundary (CED sponsored)
Sent: Friday, September 18, 2015 4:30 PM
To: Barbara Sheinberg; Brooks Chandler; cityofclarkspoint@gci.net; clp_villagecouncil@yahoo.com; Ekuk Village Council (evc@ekukvc.net); Janice Williams; Jim Baldwin; Jim Brennan (jbrennan@law-alaska.com); Kevin Waring; levyjan@gmail.com; manager@dillinghamak.us; mayor@dillinghamak.us; mpandrew@msn.com; Nibeck, Melody A (CED); rhevano@gmail.com; Sara E. Heideman (sheideman@law-alaska.com)
Cc: Collins, Eileen M (CED); Commission, Boundary (CED sponsored)
Subject: LBC meeting Friday, Sept. 25 at 9:30

Hello all,

The LBC will meet on Friday, September 25, 2015 at 9:30 a.m. at the Atwood Building, 550 W. Seventh Avenue, Suite 1640, Anchorage. The meeting will also be available toll free via teleconference by calling 1-800-315-6338 and using access code 94587.

The LBC will consider several agenda items at this meeting:

- * whether a petition drafted and submitted by the Division of Community and Regional Affairs staff to incorporate a borough in the Dillingham Census Area may proceed under 3 AAC 110.410(d).
 - * whether to postpone Dillingham's annexation petition to consolidate it with the borough incorporation petition and Manokotak's annexation petition. All three would then have the same schedule and be considered concurrently.
 - * Other administrative matters.
- Please see the attached notice. The agenda will be available once it is approved by the LBC chair. You

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are very welcome to participate by phone or in person. To maximize the number of
phone lines
available, we respectfully ask that interested parties share a phone if convenient.
If you have any
questions, please let us know.

Thank you,
Brent

Brent Williams

Local Boundary Commission
Alaska Department of Commerce, Community, and Economic Development
550 W. 7th Avenue, Suite 1640
Anchorage, AK 99501
(907) 269-4559

Please be sure to send all email correspondence regarding Local Boundary Commission
matters through
the following email address: lbc@alaska.gov. This ensures that all LBC staff receive
your correspondence
in a timely manner. Thank you.

LAW OFFICES
BRENNAN ■ HEIDEMAN
A PROFESSIONAL CORPORATION

FROM THE DESK OF:
JAMES T. BRENNAN
ATTORNEY AT LAW
jbrennan@law-alaska.com

September 21, 2015

LBC Distribution List (via electronic mail)

Local Boundary Commission
Alaska Department of Community,
Commerce, and Economic Development
550 West 7th Ave., Suite 1640
Anchorage, AK 99501

Re: Local Boundary Commission Meeting of September 25, 2015:
Proposed Designation of DCRA to Prepare Borough Petition:
Consolidation of Manokotak Annexation Petition with Dillingham
Annexation Petition and/or With Borough Petition

Dear Commissioners:

On behalf of the City of Manokotak, I submit the following comments regarding the notice of the LBC's upcoming September 25, 2015 meeting. The notice indicates that the meeting will address (1) authorization for DCRA to submit a borough incorporation petition, as a "person" under 3 AAC 110.410(d) and (2) potential consolidation of the Dillingham and Manokotak city annexation petitions with such borough incorporation petition. LBC staff has explained that, even though these two topics were raised at the Commission's prior (September 16, 2015) meeting, they will be revisited in the upcoming meeting due to technical problems with the Commission's teleconferencing of the prior meeting. The following comments will update comments from my letter to the Commission dated September 15.

Borough Petition.

Manokotak has been opposed to prior proposals for a borough in the Nushagak Bay region, as have other villages in the area. No borough petition featuring the requisite number of petitions signers under A.S. 29.05.060(7) has been brought forward.

Nevertheless, it is premature for Manokotak to take a position in opposition to a borough petition brought by DCRA. The draft petition the agency recently submitted is incomplete and presumably subject to change. Pending completion of a final DCRA petition, Manokotak will reserve judgment as to whether to support or oppose it.

However, Manokotak is skeptical that DCRA will prepare a borough petition sufficiently beneficial to Manokotak because (1) it appears that the borough would be dominated by Dillingham, with insufficient assurances of benefits to Manokotak and (2) as clarified by the Commission's staff at the September 15 meeting, the borough incorporation procedure would feature no election by residents of the proposed borough. While the legislature has, during the initial stages of borough development in the early 1960's, formed "mandatory" boroughs, such legislative actions have not occurred since then, and the Commission itself has never adopted a process to impose borough formation on any region. There is no good cause to initiate such a "top down" process now.

Additionally, the process urged by DCRA is fraught with confusion and legal risk that any resulting borough might be struck down. While Manokotak is not threatening to bring any legal challenge, many individuals and entities will have standing to do so, and it is in the Commission's interest to have the process fully vetted by its own counsel (if this has not already occurred) before appointing DCRA to prepare a petition.

Discussion of the potential legal issues here is necessarily technical.

LBC staff made clear that the procedure proposed by DCRA would *not* involve a vote or election. It would therefore not involve the petition procedure heretofore used by the LBC, wherein a petition with requisite voter signatures is filed under A.S. 29.05.060, and an election is held under A.S. 29.05.110.

An alternative, but never before used procedure arguably exists under a 2006 statute, A.S. 29.05.115, wherein the LBC can "submit a proposal for borough incorporation" to the legislature, but this same statute states that this "may not be construed as granting authority to the Local Boundary Commission to propose borough incorporation." Nevertheless, Manokotak had previously understood that this was the statutory authority under which a DCRA petition would instead proceed, but LBC staff stated unequivocally at the Commission's September 15 meeting that this was *not* the case. Staff suggested that the DCRA petition would instead proceed under authority and Title 44, but the only conceivable statute that might apply in that Title is A.S. 44.33.812(a)(3), which authorizes the LBC to consider a "local government boundary change" requested of it by the Commissioner of DCCED; however that statute states that "'boundary change' may not be construed to include a borough incorporation".

At the LBC's recent meeting, staff also made clear that the DCRA-proposed borough petition would be pursued under the "legislative review" method. This further implied that the DCRA proposal was to be considered under A.S. 29.05.115, concerning incorporation with a legislative review, rather than under the procedure for voter-initiated borough petitions under A.S. 29.05.060, which involves an

election, not a legislative review. Again, however, staff denied that section .115 was being relied upon.

The current notice states only that the petition would proceed under the Commission's regulation, 3 AAC 110.410(d). Regulation section .410 identifies various parties who may bring a petition for proposed action by the Commission. These include voters initiating a petition for municipal incorporation, under section .410(10)(B), and a "person designated by the Commission," under subsection .410(d). The regulation does not go further to describe the procedure to be followed once a petition is initiated. Again, there are only two procedures established by statutes: (1) a voter-initiated petition under A.S. 29.05.060, which must follow the "normal" LBC procedures for borough incorporation, up to and including a voter election, and (2) incorporation with legislative review under A.S. 29.05.115, which requires at least two public hearings in the area proposed for incorporation. Article X, Section 3 of the Alaska Constitution states that boroughs ". . . shall be established in a manner and according to standards provided by law." The regulation, section .110 does not identify any procedure or standards different from those described in A.S. 29.05.060, which requires an election.

As stated by the undersigned at the Commission's last meeting, Manokotak seeks only to bring these substantial questions to the attention of the Commission before it proceeds. Manokotak requests that with the assistance of its counsel, the Commission clarify, for the benefit of the public, the legal authority for proceeding with an evaluation a DCRA-sponsored petition, and describing the procedures and standards by which this would be evaluated.

Consolidation of Dillingham and Manokotak Annexation Petitions:
Consolidation of Annexation Petitions with Borough Petition.

If No Borough Petition Is Authorized:

Regardless of whether the Commission chooses to authorize filing of a DCRA-sponsored borough petition, the Dillingham and Manokotak city annexation petitions should be consolidated. Manokotak requested such consolidation prior to the Commission's September 15 meeting; however, there was no motion to approve this request and it was therefore neither granted nor denied. Manokotak's annexation petition seeks portions of the same boundaries sought by Dillingham's petition. Consolidated procedures on the two petitions, including the Commission's hearings, will greatly enhance the affected public's participation in both matters, resulting in a reasoned, balanced and defensible Commission decision. Such consolidation should not delay the final processing of the first-filed Dillingham annexation. Manokotak's petition was filed September 1, and its request for consolidation was filed September 9. Assuming a normal staff and Commission timetable, a consolidated process would still result in final decisions, exhausting reconsideration times, significantly prior to the January, 2017 legislative session - - which is the earliest Dillingham could proceed even without consolidation.

Dillingham's counsel opposed consolidation of the city annexation petitions by letter dated September 14, but offered no good reasons why consolidation should be denied. Dillingham argues that the Manokotak petition is not now "pending action by the Commission" under 3 AAC 110.430, because the Commission's staff has not yet completed technical review and accepted the petition. This circumstance is directly addressed by 3 AAC 110.640(c), which states that

. . . the commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all the same boundaries and that has either been accepted for filing or is anticipated to be filed. (Emphasis added.)

This same regulation then goes on to state that the Commission may postpone proceedings "for an anticipated competing petition" if the latter is received by the department within 90 days after first publication of notice of the earlier petition. Manokotak's petition certainly is "anticipated to be filed", and was submitted to LBC staff well in advance of the 90 day deadline. As for the request for consolidation, the Commission can grant this, conditional upon DCRA acceptance for filing of Manokotak's petition after technical review and receiving any corrections of deficiencies; or it may act to postpone the Dillingham petition actions until Manokotak's annexation petition is either accepted or rejected by the department.

Dillingham seeks a "rush to judgment" by the Commission. Based upon its own faulty prior petition - - which it now blames on the department and the Commission - - Dillingham now opposes any delay on its own borough-like¹ annexation. Dillingham seeks to have its city annexation approved now, arguing that its boundaries can be "adjusted in the future" to accommodate either a Manokotak annexation or Dillingham census area borough, if approved later.

Such a rush to judgment is not warranted. If, as Dillingham asserts, the department's technical review may reveal any deficiencies in the Manokotak petition, Manokotak commits to promptly remedying these, such as to allow the Commission's handling of both annexation petitions well in advance of the 2017 legislative session.


If a DCRA-Sponsored Borough Petition Is Authorized:

If the Commission approves DCRA's preparation of a borough petition, under 3 AAC 110.410(d) or otherwise, then the Dillingham annexation and Manokotak annexation petitions should be consolidated with this. A borough petition and the two city

¹ In many of its arguments, Dillingham's annexation petition is supported by the logic that Dillingham is a "hub" for Nushagak Bay.

annexation petitions present strongly interrelated questions, such that simultaneous examination of these by the Commission will assure consistency and promote fairness in its treatment of each petition. If a DCRA petition is filed, the City of Manokotak supports consolidation of the three petitions.

Sincerely,

A handwritten signature in black ink, appearing to read 'James T. Brennan', with a long horizontal flourish extending to the right.

James T. Brennan
Attorney for City of Manokotak

JTB;mb
3854/012



State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1640, Anchorage, Alaska 99501, 907-269-4559, Fax 907-269-4563

PROPOSED AGENDA FOR LOCAL BOUNDARY COMMISSION PUBLIC MEETING

Friday, September 25, 2015 – 9:30 a.m.
Atwood Building, 550 West Seventh Avenue, Room 1656
Anchorage, Alaska 99501

Teleconference number: 1-800-315-6338
Access Code: 94587

ADMINISTRATIVE

1. Call to order
2. Roll call and determination of quorum
3. Acknowledge guests and staff present
 - a. Originating site (Anchorage)
 - b. Each individual teleconference site
Note: For clarity of the record, teleconference attendees will be asked to identify themselves and include a spelling.
4. Approve agenda

NEW BUSINESS

1. Public comment concerning items not on the agenda
2. Whether to postpone proceedings on Dillingham's annexation petition to allow concurrent consideration of Manokotak's annexation petition, for purposes of consolidating the two petitions under 3 AAC 110.430. Both petitions would then proceed on the same schedule.
 - Public comment
 - Staff recommendation
 - Discussion by commission
3. Discussion of topics for November LBC meeting
4. Comments from commissioners and LBC staff
5. Adjourn

EXHIBIT F
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LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF PETITION OF THE CITY
OF DILLINGHAM FOR ANNEXATION OF
NUSHAGAK COMMERCIAL SALMON DISTRICT
WATERS AND WOOD RIVER SOCKEYE
SALMON HARVEST AREA WATERS, TOGETHER
CONSISTING OF APPROXIMATELY 396
SQUARE MILES OF WATER AND 3 SQUARE
MILES OF LAND

and

CITY OF MANOKOTAK PETITION TO ANNEX THE
WEARY/SNAKE RIVER TRACT, THE SNAKE RIVER
SECTION AND IGUSHIK SECTION OF THE NUSHAGAK
COMMERCIAL SALMON DISTRICT, AND THE IGUSHIK
VILLAGE TRACT, CONSISTING OF 118 SQUARE MILES
OF WATER AND 37 SQUARE MILES OF LAND

AFFIDAVIT OF JEAN BARRETT

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)
) ss
)

1. My name is Jean Barrett. I am the Port Director of the City of Dillingham.
The statements made below are based on my personal knowledge.

2. I am familiar with the use of the Dillingham small boat harbor by various
commercial vessels including the destinations of those vessels and the types of cargo
carried to those destinations.

3. Many supplies are transported from the Dillingham small boat harbor to
Ekuk set net sites and the Ekuk Fisheries processing facility each summer. The method
of transport is often by personal or set net skiffs, landing crafts or barges.

AFFIDAVIT OF JEAN BARRETT
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4. The facilities at the Dillingham small boat harbor are not available during the winter (typically November through March).

5. The Dillingham small boat harbor does not have finger floats and designated individual berths. The Dillingham small boat harbor does not have electricity service available to a vessel floating in the water.

6. The Dillingham small boat harbor does provide two launch ramps and floats. Boats using the floats must raft together. It also provides parking for vehicles and trailers, a rest room and a shower facility.

7. It is not practical to use the Dillingham small boat harbor at all tide levels. As a practical matter the launch facility can only be used for 4 hours on either side of most high tides.

8. Dillingham increased fees and charges for port and harbor facilities in May of 2015. The increase was based on charges of other Bristol Bay facilities.

9. I have reviewed the statement I made to the Local Boundary Commission that is attached to this affidavit and confirm that this information remains an accurate description of harbor activities at the time and remains generally accurate today. Improvements have been made to the lights since I spoke and I should have said the dock crane was 120 tons. I am no longer responsible for the landfill so the landfill is separate from the port today.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Dated this 17th day of March, 2016.

By

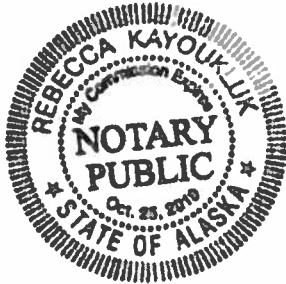


Jean Barrett

AFFIDAVIT OF JEAN BARRETT
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2016.

SUBSCRIBED AND SWORN to before me this 17th day of March,



By: Rebecca Kayouk Luk
Notary Public in and for Alaska
My Commission Expires: 10/25/2019

AFFIDAVIT OF JEAN BARRETT
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1 the petitioner's sworn witnesses. And just like in a court
2 proceeding they will be sworn in. And Mr. Williams will do the
3 honors on the swearing in side. So you can call your witnesses
4 in however order is best.

5 MS. RUBY: Mr. Chairman, we've asked Jean Barrett to
6 come up, please.

7 (Oath administered)

8 JEAN BARRETT

9 testified as follows:

10 MR. BARRETT: Yes, I do. Good afternoon. Welcome to
11 Dillingham. Appreciate you guys making time to come and listen
12 to our sides of the story. I'm sorry?

13 UNIDENTIFIED VOICE: Yeah, I'm old and a little hard
14 hearing.

15 MR. BARRETT: Okay. Well, I'm small and soft spoken.
16 So -- my name is Jean Barrett. I've lived in Dillingham most
17 of my life. I'm -- I didn't graduate in this gym but I spent a
18 lot of time in it in high school. And I've watched Dillingham
19 change immensely over the years. And I'd like to continue to
20 see it keep going and becoming as much as we can make it. I'm
21 the port director for the City of Dillingham. I spend a lot of
22 my time at the harbor. Fishing is a main stay for not only
23 Dillingham but all the surrounding villages. And you'll hear
24 everyone say that today. That's one point that won't be
25 argued.

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1 Like I said, the Port of Dillingham encompasses more
2 than just the harbor. But the harbor is -- seems to be the
3 focal point of a lot of our efforts so that we can make the
4 time in the harbor for the people that use the harbor as easy
5 and accessible as we can for them. For not only local
6 fishermen, and that includes the many village fishermen, but
7 also the outside fishermen that come in. The Dillingham Small
8 Boat Harbor is the only harbor in Bristol Bay. Everywhere else
9 ties up to a dock, is at the mercy of the weather. Winds,
10 rains and all of the above. We are used by over 400 commercial
11 fishing boats annually. Sometimes upwards of 550. We offer
12 many things to the fishermen that come in and use our harbor.
13 Potable water, refuse collection. We have a public rest room
14 and showers. Used oil collection barrels so that can keep the
15 area as clean as possible and there's no dumping of toxins
16 within the city limits. It's all used in the city. The used
17 oil is brought down to the city shop and burned in the boiler.
18 We have a crane that is brand new. Last summer was the first
19 summer we used it. We use it mostly for lifting supplies on
20 and off boats, fishery related supplies. Nets, reels and such.
21 We have the capacity to deliver ice. We have a new ice tote
22 dumper with a chute and a delivery vehicle that we use. We
23 have a 20 ton ice machine that the city acquired several years
24 back and we would like to be able to offer that service
25 regularly to the fishermen. The outside dock, we have a crane

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1 with 120,000 pound capacity. In the past five years we have
2 moved between 210 and 225 million pounds across our dock. And
3 this is not including fuel for generators at the local electric
4 company or fuel coming in to Dillingham to one of the fuel
5 companies. It also does not include the gravel that we have
6 shipped in and out of Dillingham. It's a main shipping point
7 for processed fish leaving Dillingham. Of the 210 or 225
8 million pounds it's safe to say that 50 to 75 million pounds of
9 that is fish going out.

10 Another part of the port is the Wood River Boat Launch,
11 which is located at the lower end of the Wood River. It's a
12 great access for commercial, sport and subsistence fishing and
13 hunting. When they have a commercial fisheries up in the Wood
14 River it's a great vantage point to watch the boats go by. You
15 can launch your boats there. A lot of the set net people do.
16 The Kanakanak Beach launch, which is used predominantly by the
17 west side of the Nushagak Bay fishermen is down at the -- on
18 the bluff by Kanakanak. It's also heavily used by subsistence
19 fishermen. The Dillingham landfill is another part of the port
20 and it's a disposal site for all of the solid wastes in
21 Dillingham. We have a burn box, or two burn boxes, I'm sorry,
22 a place where old vehicles can be stacked up -- crushed and
23 stacked up and stored. We also have fish waste disposal out
24 there which is very important because we get a lot of bears
25 around town and when people don't dispose of their stuff

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1 correctly it tends to bring them in.

2 Some of the recent improvements, and this is from
3 Exhibit N, City of Dillingham response brief. And I'm only
4 going to touch a couple of these. We can go in the way back
5 machine to '87 and Dillingham had a resolution, 87-58, and it
6 was for a seafood industrial park. And this was just for the
7 planning purposes at that time. And it's something that I'm
8 sure we would like to be put on a higher priority but, you
9 know, there's other priorities that seem to beat it out every
10 year.

11 The harbor road upgrade. We've upgraded the road going
12 in and out of the harbor. We've built it up to the point where
13 it's gradeable, it's not just mud. We're able to use it to
14 launch a huge portion of the boats that use our harbor. Not us
15 ourselves but the local boat haulers.

16 The harbor bulkhead improvements, in '99 they replaced
17 the old wooden bulkhead with new sheet pile bulkhead. That was
18 a huge step in the right direction to keep the uplands from
19 sloughing into the harbor from the old wooden bulkhead being in
20 disrepair.

21 Another one I would like to touch on is the harbor in
22 Wood River ramp reconstruction. In '99 the north ramp and the
23 Wood River ramp were both reconstructed. And as I said,
24 they're heavily used. The all tide dock was constructed in
25 '04. That was a \$5.3 million project. And like I said it's

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1 well used. Heavily used. In '07 they designed an extension
2 for the north bulkhead in the harbor. And that was finished in
3 -- just last year. We were able to see that finished and it's
4 going to add a lot to our harbor.

5 In '09 we replaced the south ramp in the harbor with
6 new pads. The old ones were getting pretty wore out from ice
7 and removal of ice. In the springtime, this time of year, we
8 usually go down there and chip the ice off of there so that the
9 herring boats or the subsistence hunters can get out in the
10 water and hunt. Like I said, last year the bulkhead was
11 finished. Along with that we were able to purchase through
12 grant money a crane for the bulkhead which is becoming more and
13 more popular to use. Instead of people hauling their stuff
14 down to the boats it makes it a lot easier to pull over to the
15 bulkhead and swing it on with the crane. We put in a new north
16 ramp with parking which is a very nice added feature as we have
17 lost a lot of parking area down there due to different things.
18 Erosion and such.

19 I've tried to stay away from a lot of numbers. That's
20 not my forte. I'm more of a hands on person. But some of the
21 numbers that really hit me after talking with Barb this winter,
22 she asked me to put some numbers together of the harbor use
23 permits that we sell every year. We sold 280 permits, 24
24 percent of those were Dillingham boats. Those were in
25 Dillingham from local fishermen. Ten percent were from the

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1 Mushagak drainage around -- up river and also Manicotak and
2 Clarks Point. Twenty-nine percent were other Alaska boats. So
3 anywhere outside of Dillingham that used our harbor they --
4 there was 29 percent of them. Thirty-seven percent of the
5 boats that used our harbor were outside of the state of Alaska.
6 And there were two boats registered out of the country.

7 Touching on a lot of things that the City of Dillingham
8 and the Port has been able to accomplish through grants and
9 other monies, I'd like to touch on a few things that is kind of
10 on our wish list. Things that we'd like to do to improve the
11 useability of our harbor and our infrastructure. We've had to
12 lengthen our float arms in our harbor because the erosion on
13 the east side of our harbor is such that we are in danger of
14 losing our electrical and our water supply to the south end of
15 the harbor. Now this is dangerous because we have lights down
16 at the south end of the harbor that light up the harbor for the
17 users of the ramps, at least for the people that live on their
18 boats in the summertime. Yeah, it stays light here quite a few
19 hours like it does everywhere else in Alaska but it's nice to
20 be down on those ramps when there's some light. If we lost our
21 water to the south end and to the east side we'd have no way of
22 fighting a fire. We'd have to run hoses from several hundred
23 yards away to the nearest fire plug.

24 There's a park on the south end of the harbor and it's
25 heavily used by a lot of people in the summertime especially

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1 for get-togethers, for salmon bakes, different things like
2 that. It's really the only place that you can sit and watch,
3 other than Kanakanak Beach, sit and watch the Mushagak Bay.
4 And it's a spectacular sight to watch 400 boats pull out of
5 that harbor and head out to go fishing. And there's a lot of
6 people that come down to watch it. And to see if their family
7 members are coming in.

8 The Wood River bulkhead is in horrible shape. It's an
9 old wooden plank and beam bulkhead. And it has lost its
10 capability to hold the earth in and the water out. It's
11 becoming a safety issue. And we may have to restrict the use
12 down there because of that. The Kanakanak Beach Road is
13 nothing more than wide muddy trail. It's heavily used. The
14 subsistence users use it daily. The west side fishermen of the
15 Mushagak use it to launch their boats because they're four
16 miles or three miles closer to their fishing grounds. They
17 park down there on the beach and they hope that the tide
18 doesn't get blown in and swamp their trucks, which has happened
19 several times. There's no parking for them. They park
20 alongside the road or up high on the beach. It'd be nice to
21 see that upgraded. Maybe a parking area or a concrete launch.
22 That's all I have. I appreciate your time. I appreciate you
23 coming to Dillingham and hearing all of our testimonies. And I
24 hope that you guys can see that this needs to go to a vote for
25 Dillingham. And it's not just for Dillingham. I have friends

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1 and relatives in every one of the communities here. And I
2 think that the infrastructure and the area is heavily used by
3 them and that it would benefit everybody. Thank you.

4 CHAIR CRYSTAL: Thank you, Mr. Barrett. Is there any
5 other questions from the Commissioners for Mr. Barrett? Okay.
6 Thank you.

7 MR. BARRETT: Thank you.

8 CHAIR CRYSTAL: And the next witness?

9 MS. RUBY: Mr. Chairman, for our next witness we'd like
10 to call Hjalmer Olson.

11 MR. WILLIAMS: Mr. Olson, please raise your right hand.
12 (Oath administered)

13 MR. OLSON: I do.

14 MS. RUBY: It is Hjalmer?

15 MR. OLSON: Yes.

16 HJALMER OLSON

17 testified as follows:

18 MR. OLSON: Mr. Chairman and members of the Local
19 Boundary Commission, my name is Hjalmer Olson. I was born and
20 raised in Dillingham. Live here all my life with the exception
21 of a few years serving in the Army and then six years living up
22 the river in Kalignak, but born and raised here, went to school
23 here and commercial fished all my life until a couple years ago
24 when I got sick and kind of semi-retired. Welcome to
25 Dillingham. I think it's the most wonderful place in the

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs

Sean Parnell, Governor
Susan K. Bell, Commissioner

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's Petition

January 2011

550 W. 7th Avenue, Suite 1770, Anchorage, Alaska 99501

Telephone: (907) 269-9559 Fax: (907) 269-4539

Email: lbc@alaska.gov Website: <http://www.commerce.state.ak.us/dca/lbc/lbc.htm>



This preliminary report is produced by the Local Boundary Commission staff. The report can also be found on the Internet at the following address:

http://www.commerce.state.ak.us/dca/lbc/dillingham_2.htm

The report is preliminary and should be used for public review and comment in accordance with 3 AAC 110.530, which also requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

The LBC staff 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 907-269-9559.

The LBC staff would like to thank all those who assisted in the research, preparation or distribution of this report, including Scott Ruby, Steve VanSant, Ron Brown, Lorence Williams, Cheryl Biesmeir, and Jane Ramos.

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City of Manokotak	A6
City of New Stuyahok	A8
Clarks Point Village Council	A10
Ekwok Village Council	A11
Jerry Liboff	A12
Joint Aleknagik Resolution	A13
Lake and Peninsula Borough	A16
Robin Samuelsen	A19
Stanley Mack	A21

3 AAC 110.090. Need

(a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including

(1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;

City: The City of Dillingham (hereafter "Petitioner" or "city") states, "The existing economic condition of the territory proposed for annexation is based on a sustainable seasonal harvest of salmon. The economics of local fisheries are subject to fluctuations based on the health and management of fishery resources and the world market for wild Alaska salmon. It is reasonably anticipated that typical fluctuation in these economic conditions will occur during the next ten years. There will not be any residential growth in the area proposed for annexation. It is not practical for persons to live on the islands within the territory proposed for annexation. Economic activity in the form of commercial fishing and harvesting is addressed in 3 AAC 110.090 (a)(3) and 3 AAC 110.090(a)6)." (*Petition p. 6, Section 6*).

Respondent: Respondent states, "Dillingham virtually concedes that the territory to be annexed does not have a reasonable need for city government. The petition states 'there will not be any residential growth in the area proposed for annexation.'" (*Responsive Brief, p. 22*)

LBC Staff Findings: LBC staff acknowledges the petitioner's statement that 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 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.

LBC staff finds that existing or reasonably anticipated social and economic conditions are met by the fleet's need for the city's services. During the annual fish harvest season, the fishery industry accounts for a significant portion of the needed municipal services provided by the city. The petitioner already provides the majority of the municipal services (i.e. police (on the docks and on shore), harbor and waste management, etc.) necessary for the region's successful seasonal fish harvest. The economic backbone of the region truly is the fishery industry. The economic environment of the proposed expanded boundaries is strong because the seasonal fish harvest has steadily increased. The petitioner, as the regional hub, has and continues to be heavily depended upon by the fishing industry. The economic and social conditions represented by the industries present and continuing needs indicate a need for city government. LBC staff finds the petitioner does meet the requirements of this factor.

(2) existing or reasonably anticipated health, safety, and general welfare conditions;

City: The petitioner states, "Health, safety and general welfare conditions are directly related to city owned and operated port and harbor facilities that support commercial fishing. It is anticipated that the fishing industry will continue to need port and harbor facilities, will continue to need roads over which to travel to vessels using those ports and harbor facilities, and will continue to desire emergency response and rescue operations to be available.

The City intends to enhance public safety response and coordination by: 1) Better support for volunteer search and rescuers (There currently is an all-volunteer group not associated with the City. The City does not intend to 'take on' search and rescue, however the City will look to more actively support these volunteers who assist the Alaska State Troopers on Search and Rescue operations); 2) Enhanced coordination with Alaska State Troopers; and 3) Cross-training and developing use procedures between harbor and police staffs for use of the City skiff. While the City intends to continue to assist and sometimes take the lead on public safety incident response within one-quarter mile of shore and to assist in incident response to areas further offshore within the territory to be annexed, the Alaska State Troopers will retain jurisdiction over these areas and will remain the primary first responders in all of Nushagak River and Bay.

In the territory proposed for annexation, Alaska State Troopers (AST) report that in 2008, AST had no public safety responses and in 2009, there were four calls for assistance in these areas of which three were search and rescue. Increased responsibilities in the harbor and adjacent offshore areas along with increased revenue will allow the City to purchase and maintain an oil spill response cache in the harbor to enhance environmental protection in the commercial fishing waters." (*Petition p. 42, section 2*).

The petitioner also indicates other services (i.e. City-maintained harbor, docks, boat ramps, restrooms, bathhouse, and benefit from trash-hauling, street maintenance, etc.) the city provided for the seasonal fishery population. (*Petition, p. 6*).

Respondent: Respondent contends, "Dillingham does not propose to assume new powers or responsibility for new services in the area to be annexed, other than the collection of raw fish tax. Nor does it propose to extend any services to the new territory that are now provided within the existing boundaries. Dillingham concedes that the services presently provided to the area sought to be annexed are adequate. The need for services described by Dillingham could be satisfied in part by exercise of extraterritorial powers. Extraterritorial powers of a city must be taken into consideration when determining the need for government in an area to be annexed. For example, the oil spill prevention services evidenced by the capital expenditures cited by the city as justification for the annexation could be provided on an extra-territorial basis rather than annexation. (*Responsive Brief p. 19, Section 2*).

Comments: In its resolution, the City of Manokotak states, “the City of Manokotak provides search and rescue services for the part of Nushagak Bay from the Snake River to the West. The search and rescue effort is provided largely by volunteers. The City provides fuel and coordinates with the Alaska State Troopers and the Coast Guard. It sometimes uses the Village Public Safety Office skiff, snowgo and four-wheeler. The city also relies on the volunteer efforts of private pilots. The VPSO from Manokotak has responded to requests for police services coming from the Igushuk Beach area. (See *Manokotak Resolution*).

LBC Staff Findings: The petitioner and respondent focus their arguments primarily on “city owned and operated port and harbor facilities that support commercial fishing” with little or no emphasis on other services the city provides. Of the permit holders with landings in the Nushagak Commercial Salmon Harvest district, 19% were Dillingham residents and 46% were Alaskan, non-Dillingham residents¹. Yet more than \$300,000 annually is being expended specifically for fisheries-related services². While many commenters mentioned that their communities’ commercial fishing boats were not frequent users of the city’s harbor and docks, a significant Alaskan presence in the Nushagak Bay is apparent. This is significant because the city, as the regional hub, would not expend a significant portion of these funds if this seasonal population, which is a majority Alaskan, non Dillingham resident, did not use and depend on services provided by the city during the seasonal fish harvest.

The respondent addresses the lack of reasonably anticipated health, safety, and general welfare conditions by stating, “[t]he petitioner literally does not meet this standard because the government it intends to provide in the territory, tax collection, will not be provided to any population resident there. Dillingham fails to offer other justification for adding unoccupied territory such as an immediate need presenting a clear and present threat to the public, health, safety or welfare of its community³.” LBC staff disagrees with the respondent’s conclusion. Although the fishers are not considered residents of the city, they are and must be considered a “seasonal population” with significant impact of the city’s ability to provide essential municipal services to the territory proposed for annexation as well as the current city limits. The territory is populated, at least three months of the year. 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. These services enable the fishery industry to function efficiently throughout the fishing season with a good harbor, safe and operational ramps and roads, adequate police and public safety staffing, along with proper waste, water, landfill and sewage maintenance.

While the petitioner plans to use the revenue to enhance the search and rescue, public safety, and police coordination, along with the oil spill cache, the city also plans to improve “existing . . . health, safety, and general welfare conditions” by including street, harbor, boat ramp maintenance; public restroom and facility upkeep, trash and waste removal, etc. These municipal services have been maintained by the city, while heavily

1 Petition, section 6 bottom of page 6

2 Petition, Page 7 & exhibit C-1: Projected Budget Revenue

3 Responsive Brief, pp. 24 - 25

used by the fishery industry, at its own expense⁴. The petitioner currently provides the majority, if not all, access to the region's major transportation services, for example. 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. 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 the Alaska State Troopers, and the local police department.

LBC staff finds the petitioner has met 110.090(a)(2).

(3) *existing or reasonably anticipated economic development;*

City: Petitioner states, "Commercial fish harvest, processing and provisioning in Nushagak Bay, and at times in Wood River, is expected to continue. A stronger financial picture for the City of Dillingham as a result of annexation will allow it to better assist and support this economic development through improved facilities and services." (*Petition p. 42*).

Respondent: While respondent writes extensively on 3 AAC 110.090, we do not see that it addressed 3 AAC 110.090(a) in its analysis of 3 AAC 110.090.

Comments: Lake and Peninsula Borough Manager Lamar Cotten, provides written comment regarding the revenue generated by the addition severance tax income that the petitioner would receive if the annexation is approved. He specifically, states, "The Lake and Peninsula Borough applauds the annexation effort begun by the City of Dillingham. The Borough regards it as a positive step, and believes it carries the promise of a fairer sharing of resources and revenues in the Bristol Bay region."

LBC Staff Findings: For the Nushagak Bay area, as stated by the petitioner, "fishery resources and the commercial fishing and seafood processing industries are the backbone of Dillingham's economy and integral to many residents' livelihoods and way of life."⁵ This is the case for all surrounding communities as well. The Department of Fish & Game annual management report ⁶ indicates that the 20 year and 10 year averages for annual salmon harvest has been steadily increasing. As indicated in 110.090(a)(1), LBC staff regards the commercial fisheries industry as the economic development of the territory. The industry will continue to require additional services and economic development from the city to meet the increasing demand of the annual harvests.

LBC staff finds that the petition does meet 110.090(a)(3).

⁴ See Petition, p. 8 & exhibit C-1 & 2

⁵ Petition, p. 6

⁶ Fishery Management Report 10-25: 2009 Bristol Bay Area Annual Management Report

(4) adequacy of existing services;

City: Existing service to the commercial fishing waters proposed for annexation and resource users therein is adequate, but can be improved. Currently user fees are not commensurate with the cost of providing facilities and services at the boat harbor, city dock and boat ramps that the commercial fishing fleet uses (*petition*, p. 42).

Specifically regarding the city's harbor, the petitioner gave the following examples of potential improvements that will be made. "The harbor still needs several improvements. Continuing installation (beyond the 250 ft. to occur in 2010) of a sheetpile bulkhead around the north, east and south sides of the harbor would create a true basin and contain erosion and siltation. Bulkhead installation along the east side should be accompanied by electrical and water upgrades and sewer installation. Existing utilities are now in jeopardy of exposure due to erosion and are also subject to freeze/thaw problems. Fire hydrants should be installed or upgraded. Upgrade and installation of utilities along the east side of the harbor is also needed where there is strong interest in making lots available for lease.

In addition to utilities, the property boundary on the east end of the harbor needs better definition, possibly accompanied by relocating the access road and PAF Marine to easterly. New floats designed to rise and drop with the tides, rather than the pivoting arm design now employed, should be installed to allow boats to get closer to the bulkhead. This will increase the number of vessels that can safely moor and will provide more secure vessel loading and unloading. The Corps of Engineers has recommended installation of a rock revetment to prevent erosion on the south side of the harbor adjacent to the Peter Pan Seafoods processing plant. This will also offer wave and wind protection.

The open space at the southeast end of the boat harbor is Dillingham's only waterfront public space and heavily used by the community. There are multiple large events there each summer. This area needs water and electricity, restrooms and a pavilion and a ramp for access to the beach. There is also interest in installation of a 24 by 100 ft. grid for working on boats on the east side of the new bulkhead at the north end of the harbor. This would allow users to repair or service vessels during low tides without having to pull the boat completely out of the water and onto shore. Another potential improvement to assist with boat repair and maintenance would be installation of a facility to allow a vessel to tie to a bulkhead and sit evenly on its keel as tides change.

The Wood River boat launch is regularly used by area residents, the commercial fishing fleet, hunters and sport fishermen. Improvements are needed to the parking area next to the launch. The river course has changed and is now depositing a lot of silt in front of the old wooden bulkhead. A steel bulkhead is needed with an access ramp positioned in the middle. A fleet of set-netters launch from Dillingham's Kanakanak boat launch each year. This facility needs a parking area, access road upgrade, and ramp improvements to make it accessible at a wider tidal range.

The narrative above describes some of the improvements to be constructed and maintained by the City of Dillingham that the territory's fishing fleet can reasonably expect to receive and benefit from over time." (*Petition*, p. 47).

Respondent: Dillingham does not propose to assume new powers or responsibility for new services in the area to be annexed, other than the collection of raw fish tax. Nor does it propose to extend any services to the new territory that are now provided within the existing boundaries. Dillingham concedes that the services presently provided to the area sought to be annexed are adequate. (*Responsive Brief*, p. 19).

Comments: The City of Manokotak indicated that boats from its community are "infrequent users" of the harbor and other fishery-related facilities in the City of Dillingham. Other commenters, including the City of Aleknagik state their community dip and gillnet permit holders minimally use or do not use the Petitioner's harbor at all. They further note that since they do not use the services provided by the petitioner, they should not be required to pay a tax for services they do not regularly use. (See *Manokotak Resolution*).

LBC Staff Findings: Alaskan, non-Dillingham residents comprise 46% of permit holders with landings in the Nushagak Commercial Salmon Harvest district⁷. LBC staff views this information as conclusive evidence that the surrounding communities do, in fact, use the existing services provided by the petitioner. While the respondent is partially correct that the petitioner "does not propose to assume new powers or responsibility for new services in the area to be annexed", LBC staff believes the adequacy of existing services does not require the petitioner to add new powers or services. The municipal services including but not limited to safe and operational ramps and roads, adequate police and public safety staffing, along with proper waste, water, landfill and sewage maintenance; public restroom and facility upkeep, trash and waste removal, etc. have consistently been provided by the petitioner. Furthermore, the petitioner indicate that it will be responsible for new services with the purchase of the oil spill cache and the enhanced coordination with the Alaska State troopers and local search and rescue team(s).

LBC staff finds the petition does meet 110.090(a)(4) of this standard.

(5) extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and

City: The City does not exercise extraterritorial powers in the territory proposed for annexation nor do any other municipalities. Such powers are "available" under AS 29.35.020, however, the City has not sought to exercise power outside municipal boundaries. Annexation and full inclusion into the City is preferable to an extraterritorial or service area relationship. See, Alaska Constitution, Art. X, Sec. 5 ("[a] new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by . . . annexation to a city").

⁷ Petition, section 6 bottom of p. 6.

Respondent: The need for services described by Dillingham could be satisfied in part by exercise of extraterritorial powers. Extraterritorial powers of a city must be taken into consideration when determining the need for government in an area to be annexed. For example, the oil spill prevention services evidenced by the capital expenditures cited by the city as justification for the annexation could be provided on an extra-territorial basis rather than annexation. (*Responsive Brief*, pp. 22-23).

LBC Staff Findings: LBC staff finds that the petitioner does have extraterritorial powers "available" to it as no other surrounding community has exercised its right to seek those powers over the area. These powers would not give the petitioner the legal authority to levy taxes or appropriate fees and as the respondent points out, the tax revenue is the sole reason for the petition. Local governments are required to tax their populace if essential municipal services are to be provided. Local governments are not required to impose extraterritorial powers in order to petition for annexation of a territory.

LBC staff finds that the petition meets 110.090(a)(5).

(6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

City: "There are no permanent residents or property owners within the territory. Seasonal population within the area proposed for annexation commercial fishermen and fish buyers during May through September. This population currently receives, directly and indirectly, the benefit of services and facilities provided by the City of Dillingham in the form of port and harbor facilities and related services. These services will continue to be provided and will be enhanced as identified previously. Services and facilities include, but are not limited to, a small boat harbor, an all-tide dock, boat launch ramps, parking, water and ice availability at the harbor, trash collection at the harbor and dock areas, access to a full complement of vessel repair, equipment and storage businesses as well as seafood processing facilities, and access to a regional hospital and airport and to commercial stores for provisioning.

Dillingham also provides public safety, utilities, and road maintenance services to both permit holders transiting through Dillingham on their way to the fishing grounds and to protect the shore-based fish processing facilities critical to purchase and sale of salmon harvested by permit holders in the territory to be annexed⁸. "

Furthermore, in the petitioner's reply brief, it takes additional steps to insure that surrounding communities benefit from the annexation in the following statement, "Respondents have expressed concerns that Dillingham will not spread the benefits of additional tax revenue. Dillingham adopted Resolution 2010-85. Exhibit S.

This establishes a fisheries improvement fund that will be supported with a portion of the local fish tax revenue levied within the territory proposed for annexation to benefit the Nushagak Bay fisheries and communities. Dillingham knows of no better way than

⁸ Petition, p. 43

adoption of Resolution 2010-85 to express its commitment to communities outside the proposed expanded city boundaries⁹. "

Respondent: See number (4) above.

Comments: The Ekwok Village Council states, "As residents of Bristol Bay who commercial fish in the Nushagak District we are infrequent users of the harbor facilities of Dillingham during the fishing season and already pay an annual harbor usage fee to the City of Dillingham. The current petition put forth by the City of Dillingham could put tax our residents which only benefit the City of Dillingham instead of our community or region as a whole¹⁰. "

LBC Staff Findings: As discussed previously, LBC staff finds that the annexing cities, and the territory proposed to be annexed, are both 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 through harbor/dock assistance and maintenance, street and municipal facility upkeep, to name a few. 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 unsustainable expense.

LBC staff finds the proposed annexation will benefit the region as well as the city. The primary benefit to all of the region's local governments is the collection of local fish tax which has never been harnessed for economic sustainability in this region. Since no one in the Nushagak Bay region has petitioned to form a borough, the opportunity for the region to benefit from the disbursement of a locally collected fish tax was never realized. The petitioner has committed itself, if annexation is approved, to providing a "fisheries improvement fund" that will assist the fishery industry and the Nushagak Bay communities in fisheries-related needs.

While not indicated in either the petition or the reply brief, LBC staff believes there may be other potential benefits of annexation for all parties. One example may be the reduction or elimination of harbor fees for regional permit holders, reduced or eliminated fees for other municipal services provided by the city to fisheries-related activities, etc. While speculative, these and other examples are possibilities the city could explore if annexation is approved and the full benefit of the proposed territory to be annexed is implemented.

LBC staff finds that since there are no permanent residents or property owners in the territory to be annexed, and that many "essential municipal services" are already being provide by the petitioner to the region, 110.090(a)(6) has been met.

(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an

⁹ Reply Brief, p. 15

¹⁰ Ekwok Village Council Public Comment Letter opposing the City of Dillingham Annexation Petition

organized Respondent, on an area wide basis or nonareawide basis, or through a Respondent service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.

City: "There is no existing city or borough that can provide services and facilities more efficiently or effectively to the Nushagak Bay commercial fleet and the Wood River fishermen. 3 AAC 110.970(d) indicates a city's essential municipal services may include, levying and collecting taxes, operating a public school system, land use regulation , providing public safety services and "other services the Commission deems reasonably necessary to meet the local government needs of the residents of the community". As previously discussed, the "community" within the territory proposed for annexation is a seasonal commercial fishing community whose need for public services is limited to port and harbor facilities, landfill services, and public safety. All of these services may be provided more efficiently by Dillingham than by any other existing city or by the Bristol Bay or Lake and Peninsula Boroughs¹¹. "

Respondent: "The LBC staff regulations require an assessment of need for a requested annexation that considers whether government could be provided to the territory by an existing city or an organized borough. Dillingham argues that this provision in the regulations must be interpreted to consider only whether an existing city or an existing borough could better provide government to the territory. However, the wording of the provision does not support that interpretation. The section provides Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough. . . ."

"Note that the provision does not add the word "existing" before the words "organized borough" and that the two forms of municipalities are mentioned in separate independent clauses. The clear implication is that a determination whether another entity could more effectively and efficiently provide service should not be so artificially limited. A city may only be considered as an alternative if it is in existence, but a borough as a means of delivering municipal services may be considered even if it does not exist at the time of evaluation. Dillingham interprets the LBC staff regulations to permit only consideration of the ability of existing municipalities to provide government services in the territory. It probably wants to avoid consideration of whether a new borough might be a better choice to provide services in the territory. Ekuk urges the LBC staff to reject this interpretation and continue with its long standing policy of encouraging the formation of a regional government when it would be more efficient and effective¹². "

Comments: The City of Manokotak stated in its resolution, "(3) If the Local Boundary

¹¹ Petition, p. 48

¹² Responsive Brief, p. 23

Commission determines to change the precedent established in 1987 and allow the City of Dillingham to annex the waters of the Nushagak Commercial Salmon District, Manokotak hereby states its intent to respond by filing a petition to annex the lands between the existing city boundary to and including Igushik Beach and the waters of Nushagak Bay Commercial Salmon District adjacent to those lands used by the people of Manokotak."

LBC Staff Findings: Dillingham is the regional hub for the Nushagak Bay area. Nushagak Bay area communities, the seasonal population of the fishery industry, and the current residents of the city benefit from the essential municipal services provided by the petitioner. 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.

LBC staff 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 filed with the LBC staff in almost fifty years since the incorporation of the city. LBC staff asserts that 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. Furthermore, the Local Boundary Commission should not deny an annexation on the basis of a potential petition for borough incorporation.

Conclusion: LBC staff views the region (as opposed to the territory proposed for annexation) to include all communities surrounding the bay. LBC staff finds that the entire region benefits from the sound economic growth and sustainability of the regional hub. LBC staff finds that the regional hub is Dillingham because of its relative size and institutions. LBC staff concludes that several of the Nushagak Bay area communities have populations that are relatively flat or declining¹³. In any given year, 10-15% of the commercial fish permit holders are not fishing in the district yet the fish harvest each season is increasing consistently. This dynamic means that local community's workforce is being stretched and stressed to produce these larger harvests. This dynamic also brings to light the fact that this resource, local fish tax revenue, is not serving the local communities to its maximum potential.

Robin Samuelson, Jr. points out "The Nushagak Bay is the virtually the only major commercial fishery in the region where there is no local fish tax in effect. This is like having money on the table and walking away¹⁴. " LBC staff agrees. The seasonal commercial fish harvest is the region's economic engine. The petitioner recognizes its regional hub responsibility and that it has stated, in writing, its intention to share this tax revenue with the surrounding communities. The region will benefit from this resource.

As the regional hub, the petitioner has served the surrounding communities with its harbor, and other fisheries-related services. These and other essential municipal

¹³ AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm.

¹⁴ Robin Samuelson, Jr. Public Comment regarding the City of Dillingham Annexation Petition

services have been provided to the commercial fishing fleet, other communities, and visitors to the region for decades at the expense of the city's residents. This poses a form of inequality that is economically unfair and unbalanced. The petitioner has the right to use extraterritorial powers, but that would mean that the city would formally take on the responsibilities of providing services without compensation, similar to the current situation.

LBC concludes because the commercial fishery industry in the territory uses and depends on services provided by the city, the territory exhibits a reasonable need for city government. The petitioner has also demonstrated its ability to provide essential municipal services more efficiently and more effectively than any other municipality or organized borough in the region.

LBC concludes the petition does meet the requirements of 3 AAC 110.090.

LBC Staff Findings: LBC staff finds that Dillingham is essentially a fishing community. "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.... In 2009, 227 residents held 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 employment³."

Regarding references to past LBC staff decisions, the applicable regulations have changed since those decisions were issued. What happened in the past, while pertinent, does not necessarily establish precedence. Past LBC staff reports and decisions may be but are in no way required to be used as a guide to the present situation.

Other communities have cultural and economic links to the bay, or use their own communities for at least some fleet service. LBC staff respects, and does not dismiss those connections. Notwithstanding, the regulations pertain to the compatibility of character between the territory and the city, for community purposes in this case.

Community purposes can include many things. Employment and economic growth is perhaps the most important, both to the individual, and to the community at large. Respondent points out that the city would like to annex the territory for tax purposes – a point which the city makes itself on page six of its petition. The economic need that the city has for the tax purposes is addressed elsewhere under 3 AAC 110.090. LBC staff finds that the petitioner could use the tax proceeds to help run the city. The city residents benefit from this, but so would the commercial, subsistence, and sports fishermen. They enter the city and use the city-owned docks, harbor, streets, library, and other facilities.

In a broad view, the Nushagak Bay communities including the City of Dillingham all benefit from the tax revenue the annexation, if approved, 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. If the annexation is approved, and Dillingham has increased tax revenue, Dillingham can better support these services which benefit all. 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.

(6) existing and reasonably anticipated transportation patterns and facilities; and

City: "Fishing and other vessels, ice-supplying vessels, processors and tenders, and commercial barges and tugs regularly ply the waters proposed for annexation. They travel between Dillingham - the western Bristol Bay region's service and transportation hub - and other destinations. As noted already, Dillingham's harbor and port facilities are regularly used by these vessels traversing the waters proposed for annexation."

³ <http://www.commerce.state.ak.us/dca/commdb/CIS.cfm>; choose Dillingham from the drop down box.

and at the same time have strong and vibrant character links to Dillingham. The effect on other communities is addressed in section 110.135, "Best Interests of the State."

Dillingham is at the head of the bay. It directly adjoins the bay. Its harbor is used by a large part of the fishing fleet that operates within the bay. LBC staff 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. In particular, the city harbor is directly linked to the territory.

LBC staff finds that the territory's natural geographical features and environmental factors are compatible in character with those of the city. The connection is based not only on the processing that occurs in the city, but on the fishing fleet's extensive use of the city's harbor. The city's existence and importance as a regional hub are directly linked to the fish that are harvested in the geographical feature that is Nushagak Bay and the LBC staff that results from that fishing.

Conclusion: As stated above, most of city annexation regulations have factors "which the commission may consider, including. . . ." Those factors are then listed. LBC staff points out that these factors are not imperative requirements in themselves; they are only factors which the LBC staff may consider, among others not listed, in determining whether the regulation is met. In this case, "[t]he territory must be compatible in character with the annexing city."

LBC staff has found that the territory proposed for annexation is compatible in character with that of the annexing city of Dillingham for the reasons stated in the analyses above. Dillingham has strong connections to the territory. Dillingham is the center of the Nushagak Bay fishing activity. It is not the only place where fish are processed. It does not contain all of the servicing of the fleet, either. But, LBC staff finds that Dillingham is the epicenter of the fishing fleet, and consequently provides for the needs of the fleet. The city has businesses frequented by fishers, seasonal cannery workers, and other non-Dillingham residents. The city has the regional hospital, a heavily used harbor, and the regional airport. To fly into any other Nushagak Bay community, you must almost certainly first fly into Dillingham.

LBC staff finds that Dillingham is compatible in character with the territory proposed for annexation. It is compatible in character in part because of the many services it provides to the fishing fleet. That creates a bond between the city and the territory. The territory is only seasonally populated. That seasonal activity, however, is the economic engine of the entire bay.

LBC staff finds that no other community or municipality provides the level of services that the city does. While the city is not the exclusive provider of services or fish processing in the region, the fleet heavily depends on the city. The mutual economic dependence and impact creates a bond that makes the territory and the city compatible in character. LBC staff finds that Dillingham meets the character standard, 3 AAC 110.100.

Conclusion: 3 AAC 110.110 addresses whether or not 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 find that the city has met 3 AAC 110.110 because we find that the city has does and is expected to continue 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.

LBC staff finds the petitioner has met 3 AAC 110.110 because the expenses resulting from annexation are a minimal portion of the additional revenue accumulated from the severance tax collected if annexation is approved.

LBC staff finds 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.

LBC staff finds the petitioner has met 3 AAC 110.110 because the city would have the funds, if annexation is approved, to fund the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for the completion of the transition set out in 3 AAC 110.900.

LBC staff finds the petitioner has met 3 AAC 110.110 because the economic base of the territory within the city after annexation is thriving and expected to continue over the long term.

LBC staff finds the petitioner has met 3 AAC 110.110 because 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.

LBC staff finds the petitioner has met 3 AAC 110.110 because there is no need for, but there is an availability of, employable skilled and unskilled persons to serve the city government as a result of annexation.

LBC staff 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.

3 AAC 110.130. Boundaries

(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including: (1) Land use and ownership patterns; (2) Population density; (3) Existing and reasonably anticipated transportation patterns and facilities; (4) Natural geographical features and environmental factors; and (5) Extraterritorial powers of cities.

City: The petitioner stated that "The population density of the existing City of Dillingham based on the 2008 Alaska DOLWD figure of 2,347, and there are 35.7 square miles of land and water within the City of Dillingham, yielding a density of 65.7 persons per square mile. The area to be annexed is commercial fishing waters and has no permanent population. The estimated seasonal population of 1,250 divided by the 399.25 square miles of water and land (includes 3.24 square miles of small uninhabitable islands) yields a seasonal population density of 3.1 persons per square mile of water." (*Petition pp. 60-61*).

The City does not exercise extraterritorial powers in the territory proposed for annexation nor do any other municipalities. (*Petition p.43*).

Respondent: While respondent writes extensively on 3 AAC 110.130, we do not see that it addressed 3 AAC 110.130(a) in its analysis of 3 AAC 110.130. (*Responsive Brief pp. 9-19*).

LBC Staff Findings: The petitioner addressed some of the factors which may be considered by the LBC staff regarding proposed expanded boundaries of the city. These factors must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. LBC staff does not see that the city directly asserted that the city has sufficient land and water to provide those services.

LBC staff has evaluated the factors listed above. The waters and submerged lands are owned by the state. They are extensively used for commercial, sport, and subsistence fishing. Territory proposed for annexation is not inhabited permanently, however fishing boats and crews do "reside" in the waters seasonally. The territory is also used for maritime transportation, with facilities in Dillingham. The territory is known to be flat with no notable geographic features or environmental factors. The population density for the city will not change on a permanent basis, although the city's population does increase substantially during the summer fishing season.

3 AAC 110.970 states that "The commission may determine essential municipal services for a city to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing the value of taxable property;
- (3) levying and collecting taxes;
- (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065 ;
- (5) public safety protection;
- (6) planning, platting, and land use regulation; and
- (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community."

The petitioner, as a local government entity, taxes its residence to provide services for its residence. The city supports and maintains its own school district, a volunteer fire department/EMS, a police department, planning & public works departments, among other services. (*City of Dillingham website (<http://www.ci.dillingham.ak.us/>)*). The petitioner also contends the fishing fleet already uses these services, and that the services will be further enhanced. (*Petition p. 43*). The city also contends more active support will be provided to the search and rescue operations along with maintaining an oil spill cache. (*Petition p. 43*).

LBC staff 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. With an area of 33.6 square miles of land in Dillingham, LBC staff finds it reasonable that the proposed expanded boundaries of the city include all land and water necessary to provide for the development of essential municipal services on an efficient, cost effective level.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

Petitioner: "The proposed annexation is contiguous with the annexing city and does not create enclaves in the annexing city." (*Reply Brief p. 61*).

Respondent: While respondent writes extensively about 3 AAC 110.130, we do not see that it addressed 3 AAC 110.130(b) in its analysis of 3 AAC 110.130.

LBC Staff Findings: LBC staff finds that the territory is contiguous to the city, and would not create enclaves. LBC staff finds that because the territory is contiguous to the city and would not create enclaves, this standard's requirements have been met. Therefore, LBC staff need not address the land and water issue for 3 AAC 110.130(b).

(c) To promote the limitation of community, the proposed expanded boundaries of the city

(1) 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;

City: "The Local Boundary Commission has allowed cities in this region to incorporate or annex adjacent contiguous commercial fishing waters, which could be construed as large geographic regions and are only populated seasonally by those engaged in commercial and sport fishing. The Commission has recognized that in this part of Alaska, this territory is suitable for city government, needed to provide financial stability to cities, and fishery activities are commonly directly supported by the annexing local community allowing for reasonably predictable growth, development and public safety needs. The scale of this annexation petition is consistent with these past approvals. The City of Dillingham, having provided public services and facilities to the Nushagak Bay commercial salmon fisheries for years, is not biting off more than it can chew with this proposal." (*Petition p. 61*).

"Respondents have suggested the seasonal nature of the population of the participants in the commercial fishery means these persons are not members of "an existing local "community" as that phrase is used in 3 AAC 110.130(c)(1). Dillingham disagrees. "Seasonal population" is specifically identified as one of the factors that may support annexation. 3 AAC 110.050(a)(4), 110.120(4)." (*Reply Brief p. 12*).

"This community of interests among and between persons [the persons seasonally fishing] commercial fishing in the area proposed for annexation is sufficient to qualify these persons as a "community" as that term is used in 3 AAC 110.130(c)(1)." (*Reply Brief p. 12*).

"Dillingham's argument that Nushagak Bay is part of its community should be rejected because it has a legal flaw. Dillingham argues that temporary seasonal participants in the fishing industry of the region who use city facilities and impact city services form a community with Dillingham that extends to the area to be annexed. A community "is a social unit comprised of 25 or more permanent residents".' The petition describes the community within the territory proposed for annexation as "a seasonal commercial fishing community whose need for public services is limited to port and harbor facilities, landfill services, and public safety.

A temporary workforce or persons comprising a transient fishing fleet are not domiciled in the city or the fishing districts to be annexed. They are domiciled elsewhere. Many members of the fleet and set net permit holders reside in other communities in the Dillingham Census Area. They are not a social unit of permanent residents in the sense intended by the annexation standards in the LBC staff regulations. Their presence or activity in the area sought to be annexed cannot be used to establish a community of interest between the existing City of Dillingham and the waters of the Nushagak Commercial Salmon District." (*Responsive brief pp. 14-15*).

Comments: The City of New Stuyahok said that

"(1) The city of New Stuyahok relies on the precedent established by the Local Boundary Commission in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay Region. New Stuyahok has real social and economic connections to Nushagak Bay for income and food for its residents.

(2) The city of New Stuyahok opposes the annexation of the Nushagak Commercial Salmon District and the Wood River Sockeye Special Harvest Area to the City of Dillingham because the waters of Nushagak Bay and Wood River are not part of the community of Dillingham, but rather they belong to all of the cities and villages of the Dillingham Census Area."

[A similar position was taken by other Nushagak Bay communities and entities].

LBC Staff Findings:

Per 3 AAC 110.130(c)(1), the proposed expanded boundaries of the city must be on a scale suitable for city government. Both parties have exhumed and examined previous petitions' reports and decisions, and have argued why or not those reports and decisions should be viewed as precedent, or not. LBC staff views the importance of these documents differently for two reasons. First, the reports themselves are the analyses by LBC staff (in some cases, the responsible agency was the then Department of Community and Regional Affairs), and are not in themselves decisions issued by the LBC staff. Secondly, the applicable regulations have changed since those decisions were issued. What happened in the past, while pertinent, does not necessarily establish precedence. Past LBC staff reports and decisions may be but are in no way required to be used as a guide to the present situation.

It is reasonable, logical, and prudent to examine the proposed scale of city government. The regulations do not specify limitations, maximums, or specific formulas that determine certain square mileage for cities (or for boroughs, for that matter). First, the appropriate scale is based on the standards, which LBC staff has determined do not indicate any specificity. Secondly, appropriate scale is based on the facts as presented in the petition.

LBC staff 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.

Historically, the size of the proposed expanded boundaries is exceeded by at least one other. While the proposed expanded boundaries are larger than most other municipalities cited, the petitioner's proposed expanded boundaries are proportionate per capita to all other above cited municipalities. With the exception of one, the aforementioned municipalities have populations well under that of the petitioner, yet they have relatively large municipal areas, particularly in proportion to their populations.

While the city, if annexation is approved, would be large, it is not without comparison or precedent. For those reasons, LBC staff finds that proposed expanded boundaries of the city are on a scale suitable for city government.

LBC staff examined whether the proposed expanded boundaries of the city 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. LBC staff finds that the city is an existing local community. As of 2009 census data, the city has a population of 2,264. It has a stable and established local government, a port, and other notable municipal features. The petitioner is the largest municipality in the Nushagak Bay area. The proposed expanded boundaries would include the existing community of the city and the territory proposed for annexation.

For additional predicable growth, development, and public safety needs, the petitioner's

economy (and that of the Nushagak Bay) is based on seasonal salmon harvest. The total annual salmon catch is increasing. According to the 2009 Bristol Bay Area Annual Management Report, over a 20 year period, the number of fish caught has increased from 3,406,958 in 1989 to 8,505,990 in 2008 (Alaska Department of Fish and Game, June 2010). The 20-year average was 5,825,425, and the 10-year average (1999-08) average was 7,314,211. (Information found at <http://www.sf.adfg.state.ak.us/FedAidPDFs/FMR10-25.pdf>, p. 84).

The petitioner (in partnership with the Corps of Engineers) annually dredges the harbor. The city is also steadily upgrading the harbor by adding and expanding ramps, shoreline protections, float extensions, and other improvements. The petitioner plans to continue the improvements. (*Petition p. 46*).

LBC staff finds there are existing and reasonably predicable future public safety needs. The city is currently providing public safety services. The city experiences higher demand for these and other services during the summer fishing season. These services are provided, predominately, at the boat harbor, Wood River boat launch, city dock or processing plants. As the city receives greater municipal services demands for these fishery-related areas, the fleet and cannery workers are benefiting from these municipal services on an annual basis. As the amount of fish caught continues to increase, it is a logical inference that the demand for public safety services will also continue to rise. This justifies the petitioner's plans to enhance its search and rescue involvement.

LBC staff finds that the proposed expanded boundaries of the city are not only on a scale suitable for city government, but that they include only that territory comprising an existing local community. LBC staff further finds there is reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

(2) 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 100.135 and are otherwise suitable for city government.

City: Please see "City" under 3 AAC 110.130(c)(1).

Respondent: Please see "Respondent" under 3 AAC 110.130(c)(1).

LBC Staff Findings:

3 AAC 110.990(28) states that "region"

"(A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;

(B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section."

LBC staff 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

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."

LBC staff 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.

LBC staff 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. LBC staff finds that any contention about whether the proposed expanded boundaries of the city include large unpopulated areas is moot for reasons explained below.

LBC staff finds 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.

(d) 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.

City: "The Petition does not describe boundaries overlapping another existing city."
(Petition Ex. H p. 6).

Respondent: While respondent writes extensively on 3 AAC 110.130, we do not see that it addressed 3 AAC 110.130(d) in its analysis of 3 AAC 110.130.

LBC Staff Findings:

LBC staff finds that the proposed expanded boundaries of the city do not overlap the boundaries of an existing organized borough, or another existing city.

Conclusion: Standards set out in 3 AAC 110.130 are broadly concerned with ensuring that city governments only annex territory of appropriate scale, and ability to provide essential municipal services on an efficient, cost effective level. LBC staff has concluded the proposed expanded boundaries of the city do include all land and water necessary to provide for the development of essential municipal services on an efficient, cost effective level. LBC staff further concludes that the territory is contiguous to the city, and would not create enclaves.

While the city, if annexation is approved, would be large, it is not without comparison or precedent. For those reasons, LBC staff concludes that proposed expanded boundaries of the city are on a scale suitable for city government.

LBC staff concludes the proposed expanded boundaries of the city are not only on a scale suitable for city government, but 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.

LBC staff concludes that the proposed expanded boundaries of the city do not overlap the boundaries of an existing organized borough, or another existing city.

LBC staff concludes that the petition meets all four standards (a-d) set out in 3 AAC 110.130.

3 AAC 110.135. Best Interests of the State

In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation

(1) promotes maximum local self-government, as determined under 3 AAC 110.981;

City: The Petitioner stated that "[t]he proposal is to require voter approval of annexation. This is a pure expression of local self-government- a direct vote of the people." (*Petition p. 63*).

"Moreover, if borough formation is ever going to be resurrected, there has to be a significant "game changer". There is reason to believe approval of annexation will serve as the "game changer" and actually increase the likelihood of borough formation. Dillingham believes many of the past concerns regarding borough formation are based on the unknowns inherent in creation of a new government structure, and a failure to fully appreciate the benefits of the potential revenue stream from a local fish tax. Once other towns in the region actually see the benefits the additional revenue source creates, it is logical they would take a fresh look at the question of borough formation." (*Reply brief p. 15*).

Respondent: The Respondent states that: "The LBC staff regulations interpret and make specific the statutory requirement that the commission consider whether an annexation to Dillingham is in the best interests of the state. The LBC staff regulations provide that two factors bear on a best interest determination: (1) whether the annexation will promote maximum local self-government and (2) whether the annexation will result in a minimum of local government units.

Whether an annexation to a city promotes maximum local self-government is a fairly simple determination. The LBC staff regulations provide:

for city ... 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 [citing 3 AAC 110.981(7)].

The petitioner literally does not meet this standard because the government it intends to provide in the territory, tax collection, will not be provided to any population resident there. Dillingham fails to offer other justification for adding unoccupied territory such as an immediate need presenting a clear and present threat to the public, health, safety or welfare of its community." (*Responsive brief p. 24*).

Comments:

The City of Manokotak wrote that: "The City of Manokotak opposes the annexation of the Nushagak Commercial Salmon District to the City of Dillingham because the waters of Nushagak Bay are not a part of the community of Dillingham, but rather they belong to all of the cities and villages of the Dillingham Census Area."

[A similar position was taken by other Nushagak Bay communities or entities].

Stanley Mack quoted the LBC staff's Statement of Decision in the Matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska (dated December 10, 1986) (hereafter 1986 LBC staff Dillingham Decision) when he said that "would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, it would constrain the area in terms of a potential revenue base for any future borough." (*Stanley Mack's October 1, 2010, comment, p. 4, quoting p. 5 of the decision*).

Mr. Mack also quoted the January 16, 1988 LBC staff Statement of Decision in the matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska (*hereafter 1988 LBC staff Dillingham decision*) when he wrote that "[C]ity government is intended to address local governmental needs on a community level and a borough government is intended to address such needs on a regional level." (*Stanley Mack October 1, 2010, comment, page 5, quoting p. 2 of the decision*). Mr. Mack further quotes the decision as stating that "[A] city is not the appropriate vehicle to address such needs on a regional level." (*Stanley Mack October 1, 2010, comment, page 5*). LBC staff reads the quote as stating somewhat differently stating that "[A] city is not the appropriate vehicle to adequately address these issues that are of the regional nature described above."

The Village of Clarks Point asserted that it would like a 2.5% tax levied on fishers, to be shared with all affected communities in the area. It also asserted that it recognized that the LBC staff had the power to do so.

LBC Staff Findings:

3 AAC 110.981(7) asks "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." 3 AAC 110.981(7) is not by itself a requirement that the petition promotes maximum self government. Rather, it states that the LBC staff will consider AAC 110.981(7) when it considers maximum local self government. Maximum local self government is a factor which the LBC staff may consider under 3 AAC 110.135.

If the annexation were approved, it would extend city government to the territory proposed for annexation. No government currently exists there. LBC staff finds that the fishers already benefit from the municipal services the city currently provides. Further, the proposed annexation would extend local government to the territory and

seasonal population. For example, the fishers seasonally residing in the territory would be taxed by the city. 3 AAC 110.970(d) states that the LBC staff can consider levying and collecting taxes to be an essential municipal service of a city. The fishers would be subject to city taxes, but they would also continue to receive the services that they receive, primarily in the harbor area, because there would be increased revenue to pay for those services. LBC staff finds that the petition meets this factor.

(2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and

City: The petitioner stated that “[t]he petition application enlarges the boundaries of an existing city. Accordingly, no additional governmental unit is created Since no new government unit is being created the proposal promotes a minimum number of local government units- namely no more than exist today. (*Petition p. 63*).

“The current formulation of “best interests of the state” focuses not on theoretical future boroughs, but existing boroughs. There is not an existing borough. Therefore, the only relevant inquiry regarding promotion of a minimum number of governmental units is whether annexation is preferable to incorporation of a new city. Annexation is obviously preferable to incorporation of a new city. The territory proposed for annexation could not possibly be incorporated as its own city. Accordingly, the only way to promote a minimum number of local government units that meets the current requirement is through annexation.” (*Reply brief p. 14*).

Respondent: Please see further below.

LBC Staff Findings: 3 AAC 110.982(7) asks whether “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.” Art. X, sec. 1 of Alaska’s constitution states that “[t]he purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.”

LBC staff finds that Dillingham is being enlarged, and that a new city is not incorporated, nor is a new borough service area being created. We also find that the annexation, if approved, would enhance the concept of a minimum of local government units, and would prevent the duplication of tax-levying jurisdictions.

Dillingham is an existing first class city. The territory is in the unorganized borough. The territory is not incorporated, or part of a municipality. We find that if the annexation is approved, the city would grow in size, but that the annexation would not increase the number of local government units. We further find that the proposed annexation promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska. For those reasons, LBC staff finds that the petition meets this factor.

(3) will relieve the state government of the responsibility of providing local services.

City: "The petition will not relieve state government from the responsibility of providing public safety services in the annexed area, however, it will create additional support for the exercise of public safety services in the annexed area." (*Petition p. 63*).

Respondent: "A factor mentioned in the regulations which bears on the best interest determination is whether the annexation would relieve state government of the responsibility of providing local service [citing 3 AAC 110.135(a)(3)]. The instant annexation petition clearly would not relieve the state government of a single expense." (*Responsive brief pp. 24-25*).

LBC Staff Findings: LBC staff finds that while the annexation creates additional support for public safety services, that it does not relieve the state of the responsibility of providing local services. This factor does not support annexing the territory, and is not met.

Conclusion: There are often factors mentioned in the pertinent regulations which the LBC staff may consider as examples. The commission is not required to address all factors outlined in each standard and it may consider others pertinent to the petition but not addressed by the factors.

Throughout the petition, the parties have emphasized the factors, and sometimes treated them as imperatives in themselves. In 3 AAC 100.135, as similar to many other regulations, the LBC staff may consider whether the proposed annexation promotes maximum local self government, a minimum number of local governments units, and whether the annexation will relieve the state of the responsibility of providing local services. But, LBC staff respectfully points out that these factors are examples for the LBC staff to consider, and determine whether the overall standard of 3 AAC 110.135 is met. They are not, however, mandatory "checklists" in themselves.

The question was raised as to whether the city would be the appropriate government for the territory. In examining whether the city is the appropriate government for the territory, we first examine Dillingham's importance as the regional hub. We next discuss how approving this annexation would not hinder borough formation, but would actually increase its chances of forming. Thirdly, we find that the city is the appropriate government for the territory because approving the annexation petition does not remove any present or future fish tax revenue for existing communities, or a future borough.

Regional Hub

LBC staff finds further support that the proposed annexation is in the best interests of the state. We find that if the LBC staff approved the annexation, that that would ensure a stronger, more vibrant local government. LBC staff finds the annexation meets the best interests of the state because the city is the appropriate government for the territory. 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. This would not be in the state's best interests.

Dillingham is the hub of the Nushagak Bay region. The Dillingham Census Area had a 2000 population of 4,922³. In 2000, Dillingham had a population of 2,466, or roughly half that of the entire census area. The city has the hospital the largest harbor, including a barge landing, a branch of the university, and governmental offices. The city has the most stores and businesses.

Without the approval of this annexation, Dillingham's economy or its population could potentially decline dramatically. Would the city, then, be able to continue to provide all these functions? For example, there might be a position advertised outside the city for a hospital employee, but would there be a position for that employee's spouse? 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? There are hypothetical questions, with no easy answers – but they are questions worth asking.

As a first class city, Dillingham is responsible for its own public schools. If this annexation is not approved, the city could attempt to reclassify as a second class city. If it did so, and if such a reclassification petition were approved, the state would be responsible for paying that portion of education which the city currently pays. Such a transfer of spending from a municipality to the state would not be in the state's best interest.

We understand that the bay communities view the bay as being of regional interest, and not belonging solely to the city. But, LBC staff takes the view that this proposed annexation would not help only the city, but would benefit the entire Nushagak Bay region. If the city which is the center of activities, and has half the region's population 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. 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.

³ http://en.wikipedia.org/wiki/Dillingham_Census_Area_Alaska

Borough Formation

LBC staff finds that the city is the appropriate government for the territory because approving the annexation petition does not prevent, and could act as an incentive for, future borough formation in the region. LBC staff respectfully points out that in the fifty two years since statehood, no borough has formed in Nushagak Bay, nor are we aware of any borough incorporation petition for Nushagak Bay being presented to the staff. The region's communities could have reaped the benefits from local fish taxes for decades, as the Bristol Bay Borough did when it formed in 1962.

Parties and commenters have referred to annexation petitions from the mid-1980s as precedent. Both regulations and facts have changed, and what might have been the case then is not necessarily the case now. Those previous decisions are not legal precedent. The LBC staff evaluates a petition on the basis of the current standards, not past circumstances.

The argument has been made that this petition, if approved, will hinder the chance of borough formation. There is no guarantee one way or the other that a borough incorporation petition would be approved - such a petition would have to meet the standards. But, filing a petition would be a first step to forming a borough.

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. That realization of benefits could spur borough formation.

LBC staff makes no recommendations as to whether to file a borough formation petition, or which type of borough to form. We merely point out that options (please see "Policy Review" section) still exist to form a borough should such a petition be filed and approved.

If annexation is not approved, LBC staff does not expect that a borough incorporation petition will be filed, due to the fact that no such petition has ever been filed for Nushagak Bay. We do not believe that the city should have to wait indefinitely to annex territory on the possibility that some day, perhaps, a borough might (or might not) form.

For all of these reasons, LBC staff finds that the city is the appropriate government for the territory because approving the annexation petition does not prevent future borough formation in the region, but instead enhances its possibility. We find that approving the annexation is in the best interests of the state for that reason.

Taxation

LBC staff finds that the city is the appropriate government for the territory 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 approving the annexation is in the best interests of the state for that reason.

LBC staff finds that it is both practical and equitable to encourage the providing of services to an important state industry. It is in the state's best interests to have services provided to the fishers because fishing is an important part of the state's economy. Dillingham is providing a lot of those services, particularly a safe harbor. This annexation better ensures the continuation and improvement of those services.

It has been contended that the annexation would reduce the potential income to the regional communities. There are state and local fish taxes. Basically, there are two kinds of state fish taxes: A state fishery business tax (informally called a raw fish tax, which is what we will call it), and the landing tax (also called the state fishery resource landing tax).

With the raw fish tax (AS 43.75.130), the state keeps 50% for the general fund. The DOR distributes the other 50% to the municipality in which the fish is processed. If the processing occurs in a city located within a borough, the city and borough split the 50%. If the fish is not processed in a municipality (extraterritorial), then the state still keeps 50% for the general fund, and the other 50% is distributed by Commerce. Commerce distributes that 50% to eligible municipalities that suffer significant effects from fishing. (AS 29.60.450).

Of the funds that DOR distributes, 50% goes to the municipality where the fish were processed. That means that no municipality presently benefits from the raw fish tax on the fish processed in the territory, because there is no processing in the territory. Further, there are no municipalities in the territory (Clark's Point and the present borders of Dillingham are outside of the territory). Thus, no municipality would lose anything, because no municipality currently derives income from the Nushagak Bay potential raw fish tax distributed by DOR.

The regional communities argue that they are losing potential income. That potential income would only occur if a borough was formed, and the resultant borough would have to share with Dillingham the DOR distributed revenue from the fish processed in the territory. The sharing would depend on the kind of borough formed, if any, and on whether the annexation petition is approved.

Commerce distributes raw fish tax revenue for fish not processed within a municipality. In that case, the communities could theoretically lose if the fish that formerly were processed outside a municipality were now processed within an expanded Dillingham. But, there is no processing that is currently done in the territory.

The processing at Ekuk (which is not a municipality, and which would not receive these funds in any event), is done on shore. If it is done on shore, it is outside of the territory. As the potential revenue from the Ekuk processors is outside of a municipality, the revenue is not subject to DOR distribution. As the potential revenue from the Ekuk processors is outside of the territory, it is not affected by the annexation, and would still

be distributed by Commerce.

Regarding the landing tax, that affects fish harvested and processed in federal waters, and first landed in the state. That tax would not be affected by the proposed annexation.

Regarding the local tax, it is typically either a sales tax, or a severance tax. There is not a legal limit as to how much fish tax a borough can add to existing city fish taxes. If the Dillingham annexation was approved and a borough was formed, a borough tax could be piggybacked upon the city tax. That is done in the Lake and Peninsula Borough. It is also possible, as said above, that a petition could be filed to form a borough and detach that territory from Dillingham, or a petition could be filed to form a unified borough, which would dissolve all cities in the borough. If either of those were to occur, then the local fish tax revenue would go to the borough. For those reasons, an approved annexation petition would not deny potential tax revenue to the potential borough.

Commenters have stated that other local communities' fishers infrequently use the harbor, or do not use it during the fishing season. LBC staff also received a comment that almost everyone with a boat used the harbor at some time. Regardless of the amount of use, the number of local fishermen is declining. This means that less of the impact will be felt by local fishers over time.

We respectfully disagree with the Village of Clark's Point's assertion that the LBC staff could impose a tax on fishers, for the benefit of the entire region. The LBC staff considers proposed local boundary changes, but does not impose taxes. Further, the state taxes are only distributed to municipalities, not to unincorporated communities.

For all of these reasons, we find that the city is the appropriate government for the territory 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 approving the annexation is in the best interests of the state for that reason.

In conclusion, we find that the annexation meets the best interests of the state standard because it promotes maximum local self government and because it promotes a minimum number of local government units. Further, we find that the annexation meets the best interests of the state standard because the city is the appropriate government for the territory. We find that it is the appropriate government for the territory because the city is the region's hub, because the annexation would 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.

3 AAC 110.970. Determination of essential municipal services

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

(1) are reasonably necessary to the community;

City: Please see city's analysis of 3 AAC 110.090.

Respondent: Please see Respondent analysis of 3 AAC 110.090.

Comments: Please see comments for 3 AAC 110.090.

LBC Staff Findings: The LBC staff 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 as a place to resupply, to seek refuge from weather, and for other boat or crew needs.

We find that the harbor is an essential municipal service. We find as we did earlier, 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.

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

City: Please see 3 AAC 110.135(1).

Respondent: Please see 3 AAC 110.135(1).

Comments: Please see comments for 3 AAC 110.135(1).

LBC Staff Findings: Please see 3 AAC 110.135(1).

LBC staff finds that the essential municipal services, named but not limited to those named above, promote maximums local self government. They are functions which meet, and exceed, normal municipal functions, and extend those services to the seasonal population in the territory.

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

City: Please see 3 AAC 110.090(b).

Respondent: Please see 3 AAC 110.090(b).

LBC staff findings: Please see 3 AAC 110.090(b).

Comments: Please see 3 AAC 110.090(b).

3 AAC 110.981. Determination of maximum local self government

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;

City: Please see 3 AAC 110.135(1).

Respondent: Please see 3 AAC 110.135(1).

Comments: Please see comments for 3 AAC 110.135(1).

LBC Staff Findings: In 3 AAC 110.135(1), LBC staff explained "If the annexation were approved, it would extend city government to the territory proposed for annexation. No government currently exists there. LBC staff finds that the fishers already benefit from the municipal services the city currently provides. Further, the proposed annexation would extend local government to the territory and seasonal population. For example, the fishers seasonally residing in the territory would be taxed by the city. 3 AAC 110.970(d) states that the LBC can consider levying and collecting taxes to be an essential municipal service of a city. The fishers would be subject to city taxes, but they would also continue to receive the services that they receive, primarily in the harbor area, because there would be increased revenue to pay for those services."

LBC staff finds that the proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska. There is no local government for the territory and population. We find that the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists.

Policy Review

LBC staff has considered, in addition to the standards, the unique regional nature of the Nushagak Bay communities. In particular, consideration for borough formation or "regional government" which was mentioned in one form or fashion in several public comments and briefs presented to the Local Boundary Commission. Historically, the petitioner has served as the regional hub for the Nushagak Bay area since before incorporation as a second class city in 1963¹. Since incorporation, the region has been unsettled with disputes over whether a regional government (a borough), should or should not be established. Shortly after the incorporation of the City of Dillingham, a dispute came before the LBC staff regarding the incorporation and boundaries of the city. The LBC staff Commissioners Statement of Decision stated:

"1. Every opportunity for settlement of the problem at the local level should be allowed before solution is imposed by the State.

2. The Dillingham-Wood River area needs and can support only a single unit of local government.

3. The residents of the Dillingham-Wood River area should look into the possibility of forming a first class organized borough as the area's single unit of local government. If a borough were incorporated, the Commission would recommend dissolution of both cities. The borough would succeed to the bond obligations of the former Dillingham PUD and would have a choice of several alternative methods for retiring the bonded indebtedness. A borough incorporation election would be conducted impartially by the Secretary of State². "

The LBC staff further required the dispute's participants to resolve the boundary issues internally by a set deadline, or the LBC staff would be forced to resolve the issues as a mediator. The dispute was not resolved, and the LBC staff Commissioners dissolved the City of Wood River and upheld their decision to incorporate the City of Dillingham. While the process for which incorporation of a city or borough has changed several times over the course of the past almost fifty years, the underlying regional dispute seems to continue. Since the incorporation dispute, Dillingham and the region have been at odds over resources, municipal boundaries, state vs. local municipal obligations, and what LBC staff views as a regional rivalry. The City of Dillingham has petitioned two other times, once in 1986³ and the second in 1988⁴, to annex considerably larger territories than the current proposed expanded boundaries.

1 <http://www.commerce.state.ak.us/dca/commdb/CIS.cfm>, "Dillingham"

2 Memoranda of the Local Boundary Commission, RE: Dillingham-Wood River Dispute October 8, 1964

3 1986 Local Boundary Commission Dillingham Annexation Petition of 918.25 miles Statement of Decision

4 1987 Local Boundary Commission Dillingham Annexation Petition of 421.25 miles Statement of Decision

The Department of Commerce, Community and Regional Affairs produced several reports on the feasibility of borough formation for the region ⁵. Extensive state and local resources have gone into providing the Nushagak Bay area communities options and opportunities to work cooperatively to form a "regional government". The undertone of discord regarding boundaries and municipal borders has continued almost fifty years with no serious individual or collective effort to incorporate as a borough presented to the LBC staff.

After forty plus years, borough formation, or a "regional government" as alluded to in several public comments submitted, may or may not even be feasible for this region. The Budget Projections for a Prospective Dillingham Census Area Borough Report, produced by the Department of Community and Regional Affairs in 1994 evaluated the feasibility of a number of tax combinations for borough formation. The report concluded that 5 of 9 variations made borough formation viable. It is important to note, however, that the report was written more than fifteen years ago. Today, the question regarding whether borough formation is feasible would require new budget projections, in addition to whether additional taxation within the region, in particular bed/lodging tax, property tax, etc. could or would realistically be borne by local residents.

As time has progressed, the region has become, like it or not, more dependent on its regional hub. Transportation, goods, and services to and from the surrounding Nushagak Bay area communities almost always arrive by way of Dillingham. Members of the surrounding communities use several of the petitioner's essential municipal services regularly. The seasonal commercial fishing fleet and other government entities also use several of these services as well with little to no comparable form of compensation to the City. At the same time, the regional hub has continued to take on more responsibility to include the regional harbor, airport, and other municipal services within Nushagak Bay on behalf of the region, particularly during the annual fishing season.

LBC staff recognizes the sensitive nature of the regional relationships. However, LBC staff does not believe the Nushagak Bay area communities are taking into account the full scope of the economic effects of an unsustainable regional hub. Based on the budget projections provided by the petitioner, the city's annual budget had a deficit during fiscal year 2010 of more than \$70,000 and without annexation, the annual budget deficit could exponentially grow to more than a quarter of a million dollars by Fiscal Year 2013. This makes local government unsustainable.

It could be argued that the deficit is the city's concern but as the regional hub, LBC staff believes that the petitioner has done more than it is obliged to do including sales taxes, bed/lodging taxes, property taxes, alcohol taxes, etc. Short of charging new and higher user fees for current municipal services provided within city limits, the petitioner has reached its maximum capacity for generating necessary revenue for sustainable local government. The sustainability of this regional hub is the sustainability of this region.

⁵ See *Borough Budget Projections for Dillingham Census Area* (1994), *Model Borough Boundaries Study* (1997), *Unorganized Areas of Alaska that Meet Borough Incorporation Standards* (2003)

LBC staff also recognizes that the uniqueness of this region may provide, at a later date, what seems to be a unique opportunity to end the undertone of discord thereby unifying, literally, the region as a borough. Should the LBC staff Commissioners follow the recommendation of this report and approve the annexation of the proposed expanded boundaries, there are at least three options LBC staff believes still remaining for the region to form a borough.

The first option, while potentially less viable, would be to incorporate as a first class, second class, or home-rule borough. This option would leave the local municipalities, their current existing boundaries, borders and municipal obligations intact, and add a regional government that is responsible for certain regional municipal services (i.e. typically regional education, land use and planning, the ability to levy and collect taxes, etc.). The mill and taxation levied by this borough option would be in addition to the current local governments' existing mill and tax rates.

The second option would be for all municipalities within the borough's boundaries to dissolve their municipal governments and incorporate as a unified borough. This option makes only one municipality for the region. No individual local government [city] would keep its current local government. All cities incorporated within the unified borough become part of the regional government (borough) and all municipal services are provided by that borough. Unified borough formation is only viable if all municipalities within the boundaries of the borough dissolve their local governments to incorporate as a unified borough.

The third option, while controversial, is still possible. Should the Local Boundary Commission Commissioners follow the recommendation of this report and approve the annexation of the proposed expanded boundaries, any municipality could file a petition to detach territory from Dillingham and incorporate the detached territory and region to form a borough. This option, if proposed this way, would transfer taxation rights for those areas detached to the borough. This would transfer the revenue from Dillingham to the borough.

These options are all theoretical and would have to meet the basic standards for their individual petition standards in order to be approved by the Local Boundary Commission. Moreover, since the region has never formally petitioned the LBC staff for borough formation, there is no guarantee one way or the other, that a petition would be approved.

LBC staff believes the regional hub has to be economically sustainable for the surrounding communities to also be sustainable. Borough formation may be a viable option for the Nushagak Bay area communities. Since no community within the Nushagak Bay area has ever filed a petition to incorporate the region as a borough, nor does it appear to LBC staff that any community intends to file one presently, or in the near future, LBC staff does not consider this proposed annexation a "Harm [to] the Viability of a Future Borough in the Region⁶⁷".

6 Responsive Brief: p. 24

General Conclusion and Recommendation

Based on the findings and conclusions set forth in Section 3 of this report, LBC staff concludes that all of the relevant standards and requirements for annexation are satisfied by the city of Dillingham's petition. The LBC staff's recommendations are that of the LBC staff alone.

LBC staff finds that the requirements of 3 AAC 110.090(a) are met because the commercial fishery industry in the territory uses and depends on services provided by the city. The territory exhibits a reasonable need for city government. LBC staff finds that the requirements of 3 AAC 110.090(b) are met because the petitioner has also demonstrated its ability to provide essential municipal services more efficiently and more effectively than any other municipality or organized borough.

LBC staff finds that the petition does meet the requirements of 3 AAC 110.100 because LBC staff finds that Dillingham is compatible in character with the territory proposed for annexation. It is compatible in character in part because of the many services it provides to the fishing fleet. This creates a bond between the city and the territory. The territory is only seasonally populated. That seasonal activity, however, is the economic engine of the entire bay. LBC staff finds that no other community or municipality provides the level of services that the city does. While the city is not the exclusive provider of services or fish processing in the region, the fleet heavily depends on the city. The mutual economic dependence and impact creates a bond that makes the territory and the city compatible in character.

LBC staff concludes that 3 AAC 110.110 is met 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.

LBC staff concludes that 3 AAC 110.120 is met because the population within the proposed expanded boundaries of the city is sufficiently large and stable to support the extension of city government.

LBC staff concludes that the 3 AAC 110.130(a) is met because the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

LBC staff concludes that the 3 AAC 110.130(b) is met because the territory is contiguous to the annexing city, and does not create enclaves in the annexing city. LBC staff concludes that 3 AAC 110.130(c) is met because the proposed expanded boundaries of the city promote the limitation of community. We find this because the proposed expanded boundaries of the city are on a scale suitable for city government. Further, we find that they 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.

Also, LBC staff concludes that 3 AAC 110.130(c) is met. 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. As the petition meets those two criteria, the provision that annexation may not include entire geographical regions or large unpopulated areas does not apply.

Also, LBC staff concludes that the annexation has successfully met 3 AAC 110.130(d) because the petition for annexation to a city does not describe boundaries overlapping the boundaries of an existing organized borough, or another existing city.

LBC staff finds that the annexation meets 3 AAC 110.135 because it promotes maximum local self government and because it promotes a minimum number of local government units. Further, we find that the annexation meets the best interests of the state standard because the city is the appropriate government for the territory. We find that it is the appropriate government for the territory because the city is the region's hub, because the annexation would 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.

LBC staff finds that the annexation meets the requirements of a transition plan under 3 AAC 110.900.

LBC staff finds that the annexation meets the requirements of 3 AAC 110.910. There is no indication in this proceeding that annexation would result in imposing or applying voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color, or because a person is a member of a language minority group.

Under 3 AAC 110.970, the LBC staff identifies essential municipal services to include the harbor as an essential municipal service. Further, we identify "levying and collecting taxes" and "public safety protection" as services which the LBC staff can consider to be essential municipal services.

The LBC staff staff finds that the petition meets the requirements of maximum local self government under 3 AAC 110.981, and a minimum number of local government units under 3 AAC 110.982.

LBC staff recommends that the Local Boundary Commission approve the July 2, 2010, petition of the City of Dillingham for the annexation of approximately 396 square miles of water and 3 square miles of land (small islands) consisting of the Nushagak Commercial Salmon District waters and Wood River waters.



State of Alaska Local Boundary Commission

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STATE OF ALASKA LOCAL BOUNDARY COMMISSION

Minutes of Decisional Meeting, April 26, 11:00 p.m, and April 27th, 2011.
Dillingham Middle School Gym

1. **Call to order** – Chair Chrystal called the meeting to order (all commissioners being present) and proceeded directly into the standards:

3 AAC 110.090(a) Need

Commissioner Wilson commented that he didn't understand how the water had a reasonable need for city government. He explained that he could see how the city needed the water for taxable reasons. He did not see any additional services being provided to the waters aside from taxation.

Chair Chrystal explained his view of the proposal by explaining that he believed a strong regional hub is extremely important and the water would be part of the city, if annexation did occur. He further explained that the services the city provides are needed by the people on the water. He concluded that he felt there is need.

Commissioner Semmens agreed with Chair Chrystal adding that he believes the users of the territory proposed for annexation are using essential municipal services which are being provided by the city of Dillingham. He further explained that taxation is a municipal service and if annexation is approved, taxation would be an essential municipal service provided by the city. He concluded that the more important issue is that those individuals using the municipal services need those services to function.

3 AAC 110.090(b)

Chair Chrystal read the standard and stated that there is no other municipality or borough that can provide essential municipal services more effective or efficient than the city of Dillingham. Commissioner Harcharek concurred.

Commissioner Semmens explained that even if a theoretical borough was argued, the city of Dillingham already provides these essential municipal services and therefore is the logical choice.

3 AAC 110.100 Character

Chair Chrystal read the standard and asked for any discussion. Hearing none, he proceeded by explaining that the water and the city are compatible in character since Dillingham is a fishing community.

Commissioner Semmens commented that he didn't see how you could separate the bay from the character of the city.

Commissioner Harcharek commented that the bay and the fish are adjacent to the city and compatible in character with the city. He indicated that the fishery is the "life blood" of the city.

3 AAC 110.110 Resources

Chair Chrystal read the standard and commented that resources are the main reason for the annexation proposal.

Asst. Attorney general Erling Johansen pointed out to the chair that the ten factors outlined in the standard 3 AAC 110.110 should also be mentioned and addressed in the commission's decision.

Chair Chrystal read those factors and commented that the city is functioning and doing all the things a city would normally do, underlining that this standard has been met. Commissioners Semmens and Harcharek agreed. Chair Chrystal also commented on federal earmarks and how they will no longer be available to Alaskan communities as they were previously, and the state is minimizing its funding as well in some areas, stressing that there will be a need for more local support of communities throughout the state.

Commissioner Semmens commented on the finances of the city of Dillingham. He commended the city for operating in the black, generating a modest surplus. He explained that the city he works for has a surplus of a year and a half of operating reserves. The city is well run. The city has exercised restraint and that the standard has been met.

Chair Chrystal commented on the city of Valdez's taxation of the oil revenue and how it taxes at a higher mill rate in order to capture the additional revenue for the city, which was explained in comparison to the Dillingham annexation proposal. He stated that capturing the fish tax from those who don't live in here [Nushagak Bay area] is a worthwhile goal if there is some way to mitigate those local fishers that can't afford to pay the tax. He hopes something can be done.

3 AAC 110.120 Population

Chair Chrystal read the standard and explained that he believed the city has sufficient population to handle the territory proposed for annexation.

3 AAC 110.130 Boundaries

Chair Chrystal read the standard.

Commissioner Wilson commented on 3 AAC 110.130(c). He stated the standard does not allow for large, unpopulated territories to be annexed except as justified by state statute which he mentioned does apply to this petition. He further specified that large regions would normally be governed by boroughs, while smaller community territories would be governed by cities. He explained that staff indicated the territory is populated by seasonal residents - boats, fishers, etc, but he considers it unpopulated and does not believe the petition meets this standard.

Commissioner Semmens asked for clarification on the exception to this standard. LBC staff member Brent Williams read and outlined the exception, as requested. Brent explained that the exception allows for the annexation of large, unpopulated areas as long as the petition meets all other standards and the petition is otherwise suitable for city government.

Commissioner Semmens stated that if the petition doesn't meet the other standards, it fails anyway. He further pointed out the question the commissioners have to determine is whether or not the territory is suitable for city government.

Asst. Attorney General Johansen confirmed Commissioner Semmens' point.

Chair Chrystal asked what other cities in the State of Alaska have annexed large bodies of water. Mr. Williams named Togiak, Saint Paul, Pilot Point, and Ketchikan prior to borough formation. He

further explained these bodies of water were annexed to cities, even though they are smaller than the current petition proposes.

Chair Chrystal explained that state residence census figures include seasonal populations as part of many communities' data. He further explained that the City of Valdez counts the tanker population, and is approved by the state to do so, because these individual are residing in the city for an extended period of time and they use their city's services.

Commissioner Harcharek explained that the city of Barrow does count seasonal population as well, and it is approved by the state.

Brent Williams asked if the commission had addressed 3 AAC 110.130(a), (b), (c)(1), or (d).

Chair Chrystal responded that 3 AAC 110.130 (a), (b), and (c)(1) were not directly addressed. He further read 3 AAC 110.130 (d) and stated that he did not believe any of that standard applied to this petition.

Commissioner Semmens concurred. He further stated that he felt that the proposed expanded boundaries do include all the land and water necessary for the development of essential municipal services on a cost effective level. He further stated that annexation of the territory would help provide essential municipal services on a cost efficient, cost effective level.

Chair Chrystal referred to 3 AAC 110.130 (b) and explained that the proposed expanded boundaries are contiguous and do not create enclaves.

3 AAC 110.135 Best Interests of State

Chair Chrystal read the standard.

Commissioner Semmens stated he feels the petition is in the best interests of the state. He further explained that a strong regional hub is necessary for the surrounding communities to prosper. He explained that he did hear the testimony in opposition to the petition, as well as the quote attributed to Jay Hammond regarding municipalities not wanting their revenue swimming away. He believes that the city brought the petition forward to strengthen the regional hub. He stated the city recognizes their role in the bay and their need to the fishermen of the bay. He also stated he believes that the city is being responsible by bringing this petition forward and that area residents use the city. He further stated he believes if the city struggles financially, they will begin to cut services and they will see a deterioration of services provided by the city of Dillingham. This would impact the quality of life for the city residents and the bay's surrounding communities. It is clearly in the best interests of the state for Dillingham to be able to provide essential municipal services.

Commissioner Harcharek stated he finds that of all the criteria of the petition, he finds the best interest of the state to be the most problematic. He agreed with Commissioner Semmens that in one way, the petition is in the best interests of the state. He further explained that he believed the petition should be amended so that the fishers and the surrounding villages should be exempt from the severance tax.

He explained that the financial burden on the fishers and the communities may be too much to bear. He stated that without an amendment, he believed the petition does not meet the best interest of the state because he believes the state wants culturally and economically sustainable communities and this petition, unamended, would affect the surrounding communities' sustainability. He also stated that the city does not provide essential municipal services outside the city limits and he would like to see them extend those services to the residents of the surrounding communities if the residents are to be taxed. He further stated that he intends to offer

an amendment to the petition requiring the City of Dillingham to communicate with and "share" some revenue with the Nushagak Bay surrounding communities pursuant to state laws and regulations. He further explained that the surrounding communities' village fishers would be adversely affected if no revenue sharing or exemption from the fish tax is given to them.

Chair Chrystal expressed his understanding.

Commissioner Harcharek further reiterated that he believes the state wants those villages to be culturally and economically sustainable. He used an example of the school's closing because of out migration of students from the villages that he believes is not in the best interests of the state.

Commissioner Harrington explained that regulations under the best interests of the state are limited to three items, and that the LBC is the representatives of the state who would make sure this standard is met. He further stated that the petition meets all three of this standard's factors. But he concurred with Commissioner Harcharek's point about other aspects specific to this petition being in the best interests of the state need to be taken into account in deliberating on this petition.

Commissioner Wilson disagreed that adding a tax burden to low income residents and the surrounding communities is not in the best interests of the state. He further explained that this would put those individuals in more need of state services. He also stated annexation is not in the best interests of the state because it would lessen the possibility of borough formation. He believed that after annexation, most Dillingham residents would oppose borough formation, particularly the fishermen, because of the additional taxes.

Chair Chrystal expressed his disbelief that there would be a borough formed in that area anytime in the near future.

Commissioner Semmens explained he does not believe this annexation stops borough formation since twenty to thirty years have gone by without the communities expressing interest in borough formation, even with the LBC previously advising the area that a borough was potentially feasible. He also stated that he believes the LBC needs to accept the fact that this area may not want a borough, and he's not convinced this would be the final "nail in the coffin" for borough formation of this area. He explained that if residents feel disenfranchised they do have the right to petition to form a borough. Commissioner Semmens asked staff if a borough can take back territory from a city, if the borough was formed.

Brent Williams responded yes, a borough incorporation petition could take current territory from a city to be included as part of the borough and no longer be part of the city. Staff gave several possible options for borough incorporation that would include current city territory.

Commissioner Semmens explained that there was ample opportunity to form a borough. He further explained that this is another opportunity for borough formation, but he does not know if that will ultimately happen.

Chair Chrystal expressed his concern that the best interests of the state regulation does not cover taxation, and he further explained that he did not believe the LBC had the authority to require any condition that relates to taxes or taxation.

Mr. Williams explained that the three factors under best interests of the state are factors that the commission may consider. He also explained that best interests of the state is statutory, but the commission is not restricted or required to determine those factors specifically are met, only that the statute itself is met.

Commissioner Harrington commented on the fact that most communities with an REAA are predisposed to not creating a borough. He further explained that he would only consider this petition if he did not believe borough formation is feasible in the near future. He further explained that there needs to be some regional way to deal with those issues that are on a regional level.

Commissioner Wilson stated that he did not hear any testimony regarding any burden this annexation would relieve the state of. He asked if this annexation would relieve the state of any burden, and if so, what that burden would be.

Chair Chrystal explained that anytime a city has more revenue, it could potentially provide relief to the state from providing those services otherwise required by the state.

Commissioner Semmens explained that the burden is if Dillingham stopped providing services, then the state would have to step in and provide those services.

Commissioner Harcharek concurred with Commissioner Semmens and explained that there had been talks about the city petitioning the LBC to reclassify as a second class city, leaving the burden of education to be provided by the state.

3 AAC 110.900 Transition

Chair Chrystal read the regulation and asked staff if the transition plan was adequately addressed.

Brent Williams responded that yes, the transition plan was adequate and since there was no existing municipality in the territory, staff believe the transition plan is acceptable.

Chair Chrystal further outlined the additional requirements of the transition plan. Staff responded that all parts of the transition are adequate and acceptable.

3 AAC 110.910 Statement of Non-Discrimination

Chair Chrystal read the regulation and asked the staff if the petition was discriminatory. Staff responded no. Chair Chrystal asked if there were any other items that needed to be discussed by the commission.

3 AAC 110.970(c) Determination of Essential Municipal Services

Mr. Williams responded that the commission may need to address Determination of Essential Municipal Services and explained that essential municipal services had been mentioned previously and may need to be addressed.

Commissioner Semmens explained that he believed the commission had already covered this regulation's factors and that all were adequately answered "yes".

3 AAC 110.981 Maximum Local Self-Government

Chair Chrystal read the regulation.

Commissioner Harcharek responded that the answer is "yes".

3 AAC 110.982 Minimum Number of Local Government Units

Chair Chrystal read the regulation.

Commissioner Harcharek responded "yes."

Commissioner Semmens moved the approval of the petition as presented. Commissioner Harcharek seconded the motion.

Commissioner Harcharek, under discussion, moved to amend the motion as follows, "I would like this petition to be amended when it comes to the taxing of the fish catch that the communities outside of the city of Dillingham property Nushagak Bay, be exempt, because they have no additional sources of revenue."

Commissioner Wilson seconded the amendment.

Commissioner Harcharek explained the number of fishers is a small percent of the tax base and this is their only source of income.

Commissioner Harrington requested the attorney general's opinion on whether or not the commission had the authority to require such an amendment.

Asst. Attorney General Johansen explained this amendment would have constitutional considerations and the charge of the commission is to deal directly with the petition itself.

Commissioner Harcharek asked if the commission can put a recommendation on the approval of the petition for the city of Dillingham to meet, in advance of any ordinance, to discuss this with any villages and consider their input with regard to any ordinance passed by the city council.

Asst. Attorney General Johansen explained that 3 AAC 110.570(c) allows the commission to alter or amend the petition. He further stated the regulation does not directly address recommendations.

Commissioner Harcharek further asked if the regulation prohibits recommendations.

Asst. Attorney General Johansen explained that the fishery fund has already been established by the city and maybe that would satisfy the commission's concern.

Commissioner Harrington asked if the commission puts a condition on a petition, does that mean that the condition has no effect.

Chair Chrystal asserted that the condition cannot relate to taxes.

Asst. Attorney General Johansen stated that the commission can, by motion, alter or attach a condition to a petition.

Commissioner Harrington asked if that is specifically regarding boundaries and nothing else.

Asst. Attorney General Johansen stated he did not believe the condition or alteration is required to be specifically about boundaries.

Commissioner Harrington responded asking if taxation conditions could be a condition.

Asst. Attorney General Johansen explained that this was not a tax proceeding and that it may not be within the authority of the Local Boundary Commission, further explaining that he did not believe the commission could require city resources be allocated by the commission.

Commissioner Semmens expressed that the city of Dillingham has a vested interest in working with the communities. He explained that this interest includes the fact that local residents of Dillingham that are also members of the Native Village of Ekuk. He stated he would be surprised and disappointed if the city of Dillingham did not seek to work with its own residents. He further believed that other residents would vote "no" if their concerns for other communities, which include many of Dillingham residents' relatives, did not benefit from this annexation. He further explained that he did not believe it is necessary to add a condition. The communities would finally have the opportunity to work together to make this annexation benefit everyone, or the annexation would fail by vote.

Chair Chrystal expressed his concurrence and offered his sentiment for those local fishers that would be affected by this annexation.

LBC staff member, Don Burrell offered an option to postpone the effective date of the approval of the decision with a condition that satisfies both parties and allows for communication between the petition and the surrounding communities.

Chair Chrystal asked counsel if the option presented by staff was feasible.

Asst. Attorney General Johansen referred back to 3 AAC 110.570 and responded that as presented, it would meet the decisional meeting regulation.

Chair Chrystal asked the city when it intended to vote on this annexation. The city responded that it had not set an official date, but anticipated it to be the first Tuesday in October.

Commissioner Harrington asked about the date of the election, pending a condition is placed on the petition's approval.

Staff explained they did not believe that there was a specific amount of time for the election to be held, or that the condition would have to be met prior to the election being held.

Commissioner Semmens asked for a point of order and requested Commissioner Harcharek request a vote, or withdraw the current motion.

Commissioner Harcharek withdrew his motion with the concurrence of the second and restated a new motion. The motion read:

To put a condition on the approval of the petition that the petitioner meet in advance of any action with the affected communities to come up with or to come to agreement on acceptable financial plan which may include the exemption of the fisher communities from the surrounding communities and report back to the LBC when it has been accomplished satisfactorily.

Commissioner Wilson seconded the motion.

Chair Chrystal asked if the motion was clear. He asked Commissioner Harcharek, the maker of the motion, if he wanted to withdraw the motion. Commissioner Harcharek agreed to withdraw the motion. Commissioner Harrington, who second to the motion, concurred. The motion was withdrawn.

The commission recessed for LBC staff to draft a clearer motion.

Chair Chrystal called the meeting back to order and expressed the commission's appreciation for the attendee's manner and respectfulness of the process and commissioners throughout the proceedings.

Chair Chrystal asked for the drafted amendment to the motion to approve the petition as presented.

Commissioner Harcharek read the motion, "Petitioner shall attempt to meet with the cities of Aleknagik, Clark's Point, New Stuyahok, Ekwok, and Manokotak, and New Koliganek Village Council (dba Native Village of Koliganek) and the 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] 11/15/2011."

The motion was seconded by Commissioner Harrington.

The due date for motion was later changed per both parties' request, to reflect a report due date of November 30, 2011. That was acceptable to the second.

Commissioner Wilson asked what happens when the report is filed. The chair clarified that the condition on the petition is to file a report outlining the above stated motion and the LBC would make a decision at that time. Asst. Attorney General Johansen opined that the petition is approved, but if the report is not filed by the date specified, then the petition's approval is void.

Commissioner Semmens said that you cannot void an attempt, and that the LBC was asking for a good faith attempt for the petitioner to meet with the entities, and a report, and that did not condition the approval of the petition. Commissioner Harcharek confirmed that the LBC would decide on the petition tonight, with one condition, that the petitioner attempt to meet and to send the LBC a report. He said that the LBC was only asking for an attempt to meet.

Brent Williams opined that the LBC would need to meet again to determine if the condition had been met.

Asst. Attorney General Johansen said that the most effective way was to get finality that night. If a report comes in, then tonight's LBC decision would be final.

Comm. Harrington said that he understood that if the amendment and the motion passed, tonight, and a report was filed, then the decision is approved, regardless of the report's content. The chair said yes, but that it did not mean that the LBC could not take further action.

Upon roll call, the vote on the amendment was as follows:

Yes: Commissioners Harrington, Wilson, Semmens, Harcharek, and Chrystal.
No: None.

Motion carried unanimously.

The motion to approve the petition, as amended was as follows:

Yes: Commissioners Harrington, Wilson, Semmens, Harcharek, and Chrystal.
No: None.

3. A motion to adjourn the meeting was moved by Harcharek and seconded by Semmens. The commission unanimously voted to adjourn. The meeting was adjourned.

APPROVED Thursday, July 21, 2011:

LOCAL BOUNDARY COMMISSION



LYNN CHRYSTAL, CHAIR

ATTEST:



BRENT WILLIAMS, STAFF



State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1640, Anchorage, Alaska 99501, 907-269-4559, Fax 907-269-4563

MINUTES FOR LOCAL BOUNDARY COMMISSION (LBC) PUBLIC MEETING

Monday, November 16, 2015 – 8:00 a.m.

Atwood Building, 550 West Seventh Avenue, Room 102, Anchorage, Alaska

Local Boundary Commission Workshop Minutes

8:00 ADMINISTRATIVE MATTERS

- **Call to order**
Chair Lynn Chrystal called the meeting to order.
- **Roll call and determination of quorum**
Brent Williams called the roll. Chair Lynn Chrystal, and Commissioners Bob Harcharek, Lavell Wilson, John Harrington, and Darroll Hargraves were present in Anchorage and represented a quorum.
- **Acknowledge guests and staff present at originating site and each individual teleconference site**
Chair Chrystal acknowledged guests present and on the phone, but did not ask them all to identify themselves.
- **Approve agenda**
The agenda was approved unanimously.
- **Goals and objectives**

NEW BUSINESS

Session One: LBC Petitions and Hearings

There were three presentations given. Eileen Collins led a refresher on local government in Alaska, and overview of the LBC petition process. Brent Williams followed with a presentation on the hearings and decisional meetings.

Session Two: Overview of LBC Powers by Distinguished Guests

Dr. Vic Fischer, 1955 Alaska Constitutional Delegate and former Alaska State Senator, presented on the constitutional authority and framers' intent for the LBC and answered questions afterward.

Gary Wilken, Former Alaska State Senator, spoke via teleconference on disincentives to borough formation and Alaska's Fiscal Situation, and

Clem Tillion, former Alaska State Senator and Representative. spoke about the Mandatory Borough Act and the unorganized borough and took questions afterward.

Lynn Chrystal, Chair

John Harrington, First Judicial District • Robert Harcharek, Second Judicial District
Darroll Hargraves, Third Judicial District • Lavell Wilson, Fourth Judicial District

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The workshop recessed for lunch at noon until 1:00 p.m.

Afternoon Session

Chair Chrystal called the workshop back to order.

Session Three: Successfully Conducting a Hearing

The Honorable Elaine Andrews, the Honorable Kathleen Franklin, and the Honorable Chris Kennedy led a discussion with the five commissioners on a judicial perspective of the LBC practices.

The workshop paused for a short break following the judges' presentation.

Session Four: LBC Petitions and Hearings.

Conducting LBC meetings

Brent Williams gave a presentation on the purpose and responsibilities, and expectations of staff and commission, and also included topics such as agendas, and meeting materials.

Meetings Best Practices

Glen Hamburg's presentation included a discussion of Alaska's Open Meetings Act, and best practices for public comment in meetings, as well as other topics.

Closing Comments From Commissioners and LBC Staff

Adjourn

The meeting was adjourned at 4:30 p.m.

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STATE OF ALASKA

THE LOCAL BOUNDARY COMMISSION

BEFORE COMMISSIONERS:

Lynn Chrystal - Chair
Lavell Wilson
John Harrington
Larry Semmens
Robert Harcharek

VOLUME II

ANNEXATION PUBLIC HEARING

Dillingham, Alaska

~~June 26th, 2011~~ ^{April 26-27, 2011} - Pages 152 through 355

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EXHIBIT K
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1 comments.

2 CHAIR CHRYSTAL: Thank you, Mayor. Any questions for
3 the Mayor?

4 COMMISSIONER SEMMENS: I hear what you're saying but in
5 nearly every testimony from the people from the villages they
6 say that Dillingham -- they seem to be offended frankly, that
7 Dillingham did not include them enough. Is there anything
8 further, Mayor, that you have to say about that or that you
9 feel that Dillingham could have done or can do going foward?

10 MAYOR RUBY: Mr. Chairman, I think that going forward,
11 I think Dillingham has indicated by the resolution that they
12 intend to include the communities in the regional fisheries
13 fund and that we intend to consider the effect on them in all
14 cases. We do anyway. As far as why there's a lack of
15 information, Mr. Chairman, we've been working on this for two
16 years. I think that, you know, I'm going to hear something
17 when I know that it effects me, and until I know it does I'm
18 jut not paying any attention. And I guess that's the only
19 response I can make. I think we've done every effort for
20 outreach now. And we'll continue to do that. It's not over.
21 Certainly there's still lots of work to do on this and we'll
22 continue to do that.

23 COMMISSIONER HARCHARAK: Madame Mayor, my concern is
24 similar to Larry's. I've heard an objection and I gave it
25 serious consideration. When you filed your petition on June

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1 14th, 2010, and in order to file that, you know, you spent a
2 lot of time. You said basically two years. My concern is that
3 the council also had this resolution on October 7th, 2010
4 relating to outreach and cooperation (indiscernible). If I
5 were a resident of one of the villages I would take offense,
6 and in the culture -- the Yupik culture, now the spirit of
7 collaboration is extremely necessary. And, you know, that's
8 part of keeping closer to what it is. Most of the people that
9 testified from the villages that are indigenous residents of
10 long standing in the community, I believe they should have been
11 contacted prior to filing this petition, when the petition was
12 being considered and drafted. Because right now it seems to be
13 after the fact and my concern is that the impact that it's
14 going to have on those communities -- you know, you're
15 basically taxing everything outside of them. You're going to.
16 And it's going to have a negative impact on every one of them.
17 And that's not a minor negative impact. If I have been a part
18 of your committee pursuing this I would consider going out
19 prior, way prior to June 14th, 2010 and making the point to
20 each of those villages and explain to them how it was going to
21 effect them with the tax. My concern is that the impact on
22 them after the fact, you know, you're going to tax them. And
23 there'll certainly be an exemption to all the local fishermen
24 in those villages in this tax, or some way of providing them
25 with benefits for the tax collected. All this tax basically

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1 collecting benefits Dillingham. It's not going to benefit the
2 outside villages. I have -- personally I've been listening and
3 reading, I went through most of this document again today, I
4 have objection to it based on that fact that there was no
5 consultation prior to the writing and explaining of the
6 document. And there was no question there. It's just a
7 statement I needed to bring out as I deliberate and run this
8 over in my own mind. Because being the mayor of Barrow,
9 anything that the City of Barrow does that may have a
10 potential impact on one of our surrounding villages
11 (indiscernible), anything that would have an impact on them I
12 would be totally amiss if I did not make a direct effort in
13 advance of submitting a petition or a document like this of not
14 going out to the villages prior to the writing. Thank you.

15 MAYOR RUBY: Mr. Chairman, I would say that -- ask you
16 to look at this as a whole continuing effort. This effort
17 didn't just start with this petition. The emphasis that I'm
18 trying to make is this has been going on since 1988. And we
19 have been communicating with our neighbors and with our
20 communities. All of our meetings, the current meetings, in
21 fact, were publicized. People attended from other communities.
22 People attended from outside the community, people that live
23 between here and Aleknagik. The meetings were publicized on
24 the radio. I mean I think we did make an effort. None of this
25 was done in isolation. We made a concerted effort. We have

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I, Wanda Ventres, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and electronic reporter for R & R Court Reporters, Inc., do hereby certify:

That I am not a relative, employee or attorney of any of the parties, nor am I financially interested in this action.

Wanda Ventres
Wanda Ventres
Notary in and for Alaska
My commission expires 06/04/12

EXHIBIT K
Page 5 of 5

11/21/2011 MON 10:17 FAX 942 3843 Eruk Village Council

0002/002

11/16/2011 15:47 2072001285

NVC

00087 P.002/002

Manchok Village Council
P.O. Box 149
Manchok, AK 99623
PH: (907) 239-2057 or 1237
Fax: (907) 239-2235

November 15, 2011

Mayor Allen Ruby
City of Dillingham
Box 389
Dillingham, Alaska 99576

Mayor Ruby,

As we agreed during our meetings, which were encouraged by the Local Boundary Commission, Manchok Village Council agrees to engage in the process to petition the Local Boundary Commission with the rest of the Western Bristol Bay Region. This agreement represents Manchok's commitment to enter into a cooperative agreement along with other committed Western Bristol Bay Region communities. The intent of the parties is to suspend Dillingham's annexation. Manchok's pledges to act in good faith to negotiate a cooperative agreement with Dillingham and the other communities to define the scope of the petition process, provide our fair share of needed funds. After carefully considering other options we believe the possible option that would address almost all the concerns expressed both for and against the City of Dillingham's annexation petition.

We are confident that our attorneys will find and acceptable solution to deferring a LBC decision of the City's petition.

Sincerely,

Mike Toyak Sr.
Mike Toyak Sr.
Manchok Village Council President

Exhibit 6

Portage Creek Village Council

Address: 1200 E 73rd and 68
Anchorage, AK 99514
Phone: (907) 877-4183
Fax: (907) 877-4184

Portage Creek P.O. Box 604
Eliot, AK 99570

November 11, 2011

To Whom It May Concern:

The Borough that is being under study for the Nushagak Bay which the city of Olingham is working on, Portage Creek Village Council is in expansion to the annexation. We are requesting consultation with the communities that will be directly affected by the Annexation.

Thanks


Orla Johnson, President

BRISTOL BAY NATIVE ASSOCIATION
P.O. BOX 310
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5257

RECEIVED

OCT 27 2014

CITY OF DILLINGHAM

October 28, 2014

Tribal Councils
Served by BBNA:

Aleknagik

Chignik Bay

Chignik Lagoon

Chignik Lake

Clarks Point

Curyung

Egegik

Ekuk

Ekwok

Igiugig

Iliamna

Ivanof Bay

Kanatak

King Salmon

Kokhanok

Koliganek

Levelock

Manokotak

Naknek

New Stuyahok

Newhalen

Nondalton

Pedro Bay

Perryville

Pilot Point

Port Heiden

Portage Creek

South Naknek

Togiak

Twin Hills

Ugashik

The Honorable Alice Ruby
Mayor, City of Dillingham
Members of the Dillingham City Council
P.O. Box 889
Dillingham, AK 99576

RE: Proposal to Host a Borough Feasibility Study

Dear Mayor Ruby and Members of the City Council:

BBNA applauds the City Council's decision on October 16th to defer action on an annexation petition to allow an opportunity for another party to initiate a borough feasibility study.

BBNA's Executive Committee met on October 22nd and weighed the potential benefits of a borough to our region and the harm a divisive annexation might have on relations between the region's villages and the City of Dillingham. After deliberation, the Executive Committee agreed that BBNA should host a borough feasibility study. This will be the first step in a process to formulate options for a proposed borough and test public support for a possible petition.

Attached for your consideration is a proposed budget for BBNA to host but not conduct a borough feasibility study. We envision the purposes of the proposed study would be threefold:

1. To create a region-wide network of local leaders who are well-informed about the borough form of government and the borough incorporation process;
2. To evaluate the key options for borough formation, such as borough type and structure, geographic configuration, powers to be exercised, assembly composition, etc.; and
3. To assess the fiscal feasibility of the most practical options.

Again, BBNA is willing to sponsor and administer the study but not conduct it. We believe the study should be guided by a broadly representative Task Force consisting of one (1) local leader selected by each community in the Nushagak and Togiak river drainages. The finance and administration of local education systems will be a crucial issue in the study. Therefore, we believe one (1) representatives from the Dillingham School District and one (1) from the Southwest

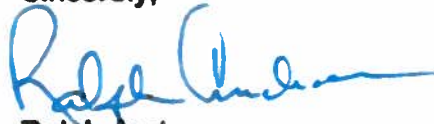
October 28, 2014
Page 2

Regional School District should be invited to participate on the Task Force. It may also be advisable to invite a Local Boundary Commission staff member to observe Task Force meetings. This inclusive approach will lay the groundwork for productive follow-up if the study's feasibility findings are positive and keep the LBC abreast of the progress.

We estimate that the total cost of the feasibility study will be in the range of \$117,327, as shown in the attached estimated budget. BBNA does not have funds for the study so we suggest interested parties could share the costs. Possible funding sources include BBEDC community block grants and the City of Dillingham's Borough Study Fund, possibly supplemented by funds from the State and other sources.

I want to stress that BBNA is willing to host this initiative because we believe it offers a path to progress on shared issues that challenge both the affected communities and the City of Dillingham. I am offering this proposal for discussion to move us forward together. We are available to discuss this proposal with the City and others.

Sincerely,



Ralph Andersen
President & Chief Executive Officer

Estimated Budget

Borough Feasibility Study

Task Force Support

Travel ¹ (4 X \$2,560)	\$10,240
Per diem ² (36 person trips X 1.5 days X \$250 daily)	13,500
Misc. meeting expenses	2,000

Borough Feasibility Study

Project Manager Contract	15,000
Technical Consultant Team	
Borough workshops	12,500
Feasibility study	42,500
Reimbursable expenses	16,000
(travel, per diem, report production, etc.)	

Subtotal 111,740

BBNA Administration @ 5% 5,587

Grand Total \$117,327

Note: This estimated budget assumes one Steering Committee member per village.