



Lake and Peninsula Borough

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September 28, 2010



Lynn Chrystal, Chair
Local Boundary Commission
Division of Community & Regional Affairs
Department of Community, Commerce, and Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

Re: Petition for Annexation by the City of Dillingham
Written Comments of Lake and Peninsula Borough

Dear Chairman Chrystal:

I am the Borough Manager for Lake and Peninsula Borough. The Borough has instructed me to provide the following comments to the Local Boundary Commission regarding the annexation petition filed by the City of Dillingham on May 18, 2010.

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.

As Dillingham makes clear in its petition,¹ this annexation effort is all about revenues from the commercial fishing and seafood processing. "Revenue" includes both the income from those business activities and the municipal taxes generated by those business activities.

Lake and Peninsula Borough relies upon fishing-related taxes to help support its municipal government. Many of its villages similarly rely upon fishing industry taxes to support their government and infrastructures. Any change in local boundaries and taxes imposed in those changed boundaries must take care not to disrupt the existing revenue streams from those taxes.

Lake and Peninsula Borough has three kinds of taxes that apply to commercial fishing activities: a severance tax, imposed upon commercial products harvested from Borough waters;² a sales tax imposed upon sales of commercial products sold in the Borough;³ and a use tax that applies where the sales tax does not.⁴

¹ See Petition for Annexation, Section 6 at pages 6-7.

² Bor. Ord. §6.91.

³ Bor. Ord. §6.40.

⁴ Bor. Ord. §6.40.260.

Lake and Peninsula Borough has not and does not seek to impose its severance tax, Bor. Ord. §6.91, upon areas outside of its waters. The natural resource represented by fish caught in Nushagak Bay will not have been severed from the land within Borough waters.

However, Lake and Peninsula Borough does impose a sales and use tax, Bor. Ord. §6.40, on all sales of commercially caught fish that are processed in the Borough. Similarly, several communities in the Borough have sales taxes on commercially caught seafood processed in their communities. Lake and Peninsula Borough will impose its sales tax on fish caught in Nushagak Bay and brought to Lake and Peninsula Borough for processing, but will grant a credit or exemption to the extent of severance, sales and use taxes paid in Dillingham prior to processing in the Borough. If the processing is performed in a Borough village with a sales tax, then that city sales tax would apply as well. The Borough notes not all villages in the Borough grant a credit or exemption for previously paid taxes. Lake and Peninsula Borough does not understand anything in the City of Dillingham's Annexation Petition to contradict or dispute the right of the Lake and Peninsula Borough or villages in the Borough to impose such a tax. If that understanding is in error, then Lake and Peninsula must object to the Petition, and requests an explanation of Dillingham's position.

Similarly, fish caught in Lake and Peninsula Borough waters and taken to Dillingham for processing would be subject to Lake and Peninsula Borough's severance tax and, if it imposes one, the City of Dillingham's sales tax. The Borough assumes that as a matter of comity Dillingham will grant a similar credit or exemption. Again, if that understanding is incorrect, then Lake and Peninsula must object to the Petition, and requests an explanation of Dillingham's position.

Finally, Lake and Peninsula Borough does not understand the City of Dillingham to be imposing a sales tax on fish caught in the proposed expanded City waters but sold to be processed in the Borough of villages in the Borough. Presently, those kinds of transactions are uncommon in any event. Again, if that understanding is incorrect, then Lake and Peninsula must object to the Petition, and requests an explanation of Dillingham's position.

Floating processors represent a more serious challenge for the Lake and Peninsula Borough and the City of Dillingham. In the case of a floating processor that does not have tenders, then presumably the point of sale is the location of the floating processor when the sale occurs. That's problematic in itself; Lake and Peninsula Borough understands that the Alaska Department of Fish & Game ("ADF&G") does not track the location of floating processors when sales of fish are made. In the case of floating fish processors with tenders, where sales are arguably made at the tender, the situation is even more problematic. ADF&G cannot determine the location of tenders at the time of sale. However, a use tax is imposed by the Borough on fish first sold offshore, or processed offshore, but brought to the Borough for processing. An exemption or credit may be given by the Borough for sales tax paid earlier.¹ There is not always an exemption or credit given by villages in the Borough.

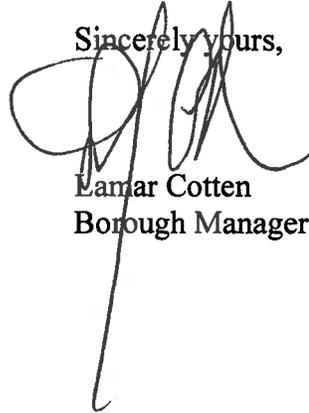
On page 54 of the petition, in the last paragraph, it is stated that, "Dillingham will likely structure its tax similar to Lake and Peninsula Boroughs' where a buyer of the resources pays either or sales or severance tax on the value...." This is incorrect. Please note the buyer(processor)collects the taxes from the seller(fisherman)and in turn transfers those taxes to the borough. Put another way, the fishermen pay the tax, not the processor.

Suitable arrangements for exchange of information and for payment of taxes collected on behalf of another municipality will need to be developed and implemented, but Lake and Peninsula Borough does not insist those arrangements be made as a condition to the Petition, *provided that the City of Dillingham agrees now to the basic principles described in these comments*. A solution to effective implementation of taxation strategies for floating processors will require the cooperation of all municipal governments in the Bristol Bay and Eastern Aleutians area, and the assistance of ADF&G in tracking the location of floating fish processors.

¹ Bor. Ord. §6.40.035 (A).
Chignik Bay • Chignik Lagoon • Chignik Lake • Egegik • Igiugik • Iliamna • Ivanof Bay • Kokhanok • Levelock • Newhalen • Nondalton • Pedro Bay • Perryville • Pilot Point • Pope Vannoy • Port Alsworth • Port Heiden • Ugashik

Thank you for giving the Borough an opportunity to comment of the City of Dillingham's petition. If you have questions regarding Lake and Peninsula Borough's position, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Lamar Cotten', written over the typed name and title.

Lamar Cotten
Borough Manager

cc: Alice Ruby, Mayor
City of Dillingham
PO Box 889
Dillingham, AK 99576

Glen Alsworth, Borough Mayor
Lake and Peninsula Borough
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