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LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF )  
NIKISKI TO INCORPORATE AS THE CITY )  
OF NIKISKI, )  
\_\_\_\_\_ )

**COMMENT OF THE TYONEK GROUP TO THE MAY 10, 2017 PRELIMINARY  
REPORT TO THE LOCAL BOUNDARY COMMISSION**

The Tyonek Group, which is comprised of the Tyonek Native Corporation and the Native Village of Tyonek, submits this written comment in full support of Local Boundary Commission staff's May 10, 2017 Preliminary Report ("Preliminary Report") recommending the denial of Nikiski's petition for incorporation as a home rule city ("Petition").

This written comment fully incorporates comments and statements of support made by The Native Village of Tyonek, the Tyonek Native Corporation, and individual Shareholders and Tribal Members, jointly and individually. Specifically, the Tyonek Group submits the following in support of staff's recommendations in the Preliminary Report:

1. A joint resolution from the Native Village of Tyonek and the Tyonek Native Corporation supporting the recommendations in the Preliminary Report and opposing the Petition.

2. A joint letter from the Native Village of Tyonek and the Tyonek Native Corporation supporting the recommendations in the Preliminary Report and opposing the Petition.

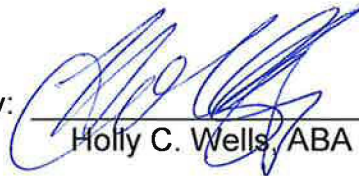
3. Individual comments from Shareholders in the Tyonek Native Corporation and Tribal Members of the Native Village of Tyonek opposing the Petition and confirming that the Tyonek Group represents the interests and opinions of the commenting shareholder.

As stated throughout all submissions included in this written comment, the Local Boundary Commission staff conducted a comprehensive and legally sound analysis of the Petition and properly, as a matter of law and policy, recommended the Petition be denied.

DATED this BH day of June, 2017.

BIRCH HORTON BITTNER & CHEROT

By:



Holly C. Wells, ABA #0511113



**Corporate Headquarters:**  
1689 C Street, Suite 219  
Anchorage, Alaska 99501-5131  
Tel: (907) 272-0707  
Fax: (907) 274-7125

**Village Tribal Office:**  
PO BOX 82009  
Tyonek, Alaska 99682  
Tel: (907) 583-2111  
Fax: (907) 583-2442

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Joint Resolution # 2017-01

**A Joint Resolution between the Council of the Native Village of Tyonek and the Tyonek Native Corporation Opposing Nikiski's Petition for Incorporation as a Home Rule City**

WHEREAS, the Tyonek Native Corporation is an Indian chartered corporation as defined by the Indian Reorganization Act of June 18, 1934 and the act of May 1, 1936, extending certain provisions of the former act to Alaska; and

WHEREAS, the Tyonek Native Corporation has full authority to act under its corporate charter, constitution and by-laws: and

WHEREAS, the Native Village of Tyonek, and IRA Organization is the Tribal authority for Tyonek, and is recognized in the Federal Register; and

WHEREAS, the Tyonek IRA Council is authorized to contract with the Bureau of Indian Affairs (BIA) programs under the Indian Education and Self-determination Act and also has authority to enter into this resolution; and

WHEREAS, The Petition filed by Nikiski to incorporate as a home rule city would have a negative impact on Tyonek and its people;

THEREFORE, BE IT RESOLVED, that the Native Village of Tyonek and the Tyonek Native Corporation hereby jointly and formally oppose Nikiski's Petition for incorporation as a home rule city on behalf of both entities and the Tebughna People and respectfully request that the Local Boundary Commission adopt the recommendations presented by the Local Boundary Commission Staff in the Preliminary Report released on May 10, 2017.

CERTIFICATION

This will certify that the foregoing resolution was approved at a meeting held on the 9<sup>th</sup> day, of June 2017 by the Tyonek Native Corporation, where a quorum of directors were present and a meeting held on the 9<sup>th</sup> day of June 2017 by the Native Village of Tyonek, where a quorum of Council members were in attendance.

**Native Village of Tyonek**

For	<u>7</u>
Against	<u>0</u>
Abstain	<u>0</u>
Present	<u>7</u>
Absent	<u>2</u>

**Tyonek Native Corporation**

For	<u>9</u>
Against	<u>0</u>
Abstain	<u>0</u>
Present	<u>9</u>
Absent	<u>0</u>

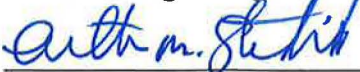
**Tyonek Native Corporation:**




\_\_\_\_\_  
Robert Stephan, Sr., Board Chair

\_\_\_\_\_  
Angie Constantine, Secretary

**Native Village of Tyonek:**



\_\_\_\_\_  
Arthur Standifer, President



\_\_\_\_\_  
Janelle Baker, Secretary/Treasurer

CERTIFICATION

This will certify that the foregoing resolution was approved at a meeting held on the 9<sup>th</sup> day, of June 2017 by the Tyonek Native Corporation, where a quorum of directors were present and a meeting held on the 9<sup>th</sup> day of June 2017 by the Native Village of Tyonek, where a quorum of Council members were in attendance.

Native Village of Tyonek

For	<u>7</u>
Against	<u>0</u>
Abstain	<u>0</u>
Present	<u>7</u>
Absent	<u>2</u>

Tyonek Native Corporation

For	<u>9</u>
Against	<u>0</u>
Abstain	<u>0</u>
Present	<u>9</u>
Absent	<u>0</u>

**Tyonek Native Corporation:**

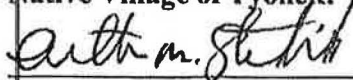


Robert Stephan, Sr., Board Chair

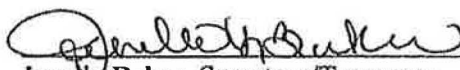


Angie Constantine, Secretary

**Native Village of Tyonek:**



Arthur Standifer, President



Janene Baker, Secretary/Treasurer



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June 08, 2017

Local Boundary Commission  
550 West Seventh Avenue, Suite 1640  
Anchorage, Alaska 99501-3510

RE Comments by the Tyonek Group Regarding the Nikiski Petition to Incorporate as a Home Rule City

Dear Local Boundary Commission and Local Boundary Commission Staff:

The Tyonek Native Corporation and the Village of Tyonek (collectively the "Tyonek Group") hereby file these written comments in support of the Preliminary Report issued by the Local Boundary Commission Staff ("LBC Staff") recommending the denial of Nikiski's petition to incorporate as a home rule city (the "Petition"). As aptly and comprehensively discussed in the Preliminary Report and as asserted in the Tyonek Group's written response opposing the Petition, the Petition wholly fails to meet the requirements for incorporation under Alaska Statutes and relevant regulations.

The Tyonek Group fully supports the recommendations made by the LBS Staff and praises the Staff's careful consideration of the petitioner's bases for seeking incorporation as well as the respondent's objections to incorporation. The Tyonek Group submits the following comments to reinforce the concerns raised by LBC Staff in the Preliminary Report and reaffirm the Tyonek Group's opposition to the Petition based upon the potential harm that approval of the Petition and Nikiski's incorporation would cause the people of Tyonek and its separate and distinct tribal community. The Tyonek Group incorporates into these comments its response to the Petition as well as the recommendations in the Preliminary Report and the bases for those recommendations.

Perhaps most importantly, the Tyonek Group seeks to reiterate to the Local Boundary Commission that residents on the east side of the Inlet and the Tyonek community are separate and apart and do not comprise a community as required for incorporation of a city under Alaska law.

In order to incorporate, the territory proposed to become a city must be recognized as a community<sup>1</sup>, as defined by regulation.<sup>2</sup> "In determining whether a settlement comprises a

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<sup>1</sup> AS 29.05.011(a) ("A community that meets the following standards may incorporate as a first class or home rule city."); 3 AAC 110.005 ("Territory proposed for incorporation as a city must encompass a community.").

<sup>2</sup> 3 AAC 110.920:

community, the commission may consider . . . whether . . . the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction[ ] and [ ] [whether] the permanent residents at a location are a discrete and identifiable social unit.”<sup>3</sup> “[T]he commission will presume that a population does not constitute a community if [ ] public access to or the right to reside at the location of the population is restricted.”<sup>4</sup>

The Tyonek Group contends<sup>5</sup> and the LBC Staff<sup>6</sup> recognizes that Tyonek is a “restricted” or “closed” community. Both geographically and culturally, public access to or the right to reside in Tyonek is restricted. Tyonek cannot be reached by road and is separated from the proposed city by Cook Inlet. Access to Tyonek is granted only by permit.<sup>7</sup> Culturally, Tyonek highly values its autonomy and self-governance and has advocated for that right in court.<sup>8</sup> The Petition fails to make the specific and persuasive showing necessary to rebut the regulatory presumption against the incorporation of a city encompassing a closed community within its proposed boundaries. Without such a showing, the Petition cannot succeed.

Similarly, the lack of geographic proximity between Tyonek and residents on the east side of the Inlet substantially limit interactions between Tyonek and those across the Inlet. Indeed, to the extent the Tyonek community interacts with the east side, these interactions are predominately between other tribal entities and individual tribal members. Interactions between the two communities are even more limited by transportation challenges.<sup>9</sup> Cook Inlet is nearly 10 miles across at its narrowest point, representing a substantial geographic barrier between the east and west sides of the Inlet.

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(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 permanent residents;
- (2) the permanent residents live in a geographical proximity that allows frequent personal contacts and interaction; and
- (3) the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial or industrial establishments, community services, and service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

- (1) public access to or the right to reside at the location of the population is restricted; or
- (2) repealed 1/9/2008;
- (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

(c) A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.

<sup>3</sup> 3 AAC 110.920(a)(2)-(3).

<sup>4</sup> 3 AAC 110.920(b)(1).

<sup>5</sup> *Responsive Brief of Tyonek of Nikiski Petition 4*. [hereinafter, “Response Brief”].

<sup>6</sup> Preliminary Report, *supra* note XX, at 36.

<sup>7</sup> See Tyonek Exhibits in Support of Its Response to Nikiski Petition, Tyonek Native Corporation Use and Special Use Permit Applications (“Tyonek Exhibits”), Ex. 1; Tyonek Maps, Ex. 2.

<sup>8</sup> See *Native Village of Tyonek v. Puckett*, 957 F.2d 631 (9th Circuit 1992).

<sup>9</sup> Response Brief, *supra* note XX, at 7.

For all of these reasons and more, the Tyonek Group agrees with the LBC Staff's finding that "the inclusion of Tyonek is inappropriate and that the west side of Cook Inlet cannot legitimately be considered part of the community with frequent interactions with Nikiski."<sup>10</sup>

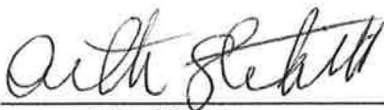
While the Tyonek Group represents the interests of the people of Tyonek, numerous individual tribal members have or will soon submit separate and individual comments to the LBC Staff expressing their opposition to the Petition. These comments reiterate the differences between residents on the east side of the Inlet seeking to incorporate and members of the Tyonek community. Additionally, a joint resolution between NVT and TNC has been approved opposing the Petition.

The Tyonek Group also contends, as the LBC Staff found, that the Petition fails to meet other constitutional, statutory, and regulatory requirements for incorporation and thus must be denied as a matter of law. By way of example, the Petition fails in the following ways:

- Incorporates large geographical regions or large unpopulated areas into the proposed boundary.
- Fails to demonstrate reasonable need for city government.
- Fails to sufficiently identify services inadequately provided by the Borough.
- Fails to offer additional services.
- Is not in the best interests of the State.

The above commentary is intended only to highlight the concerns raised in the Tyonek Group's Response Brief and express clearly and unequivocally the Tyonek Group's support for the LBC Staff's recommendations in the Preliminary Report. For all of the reasons outlined in these comments and asserted in depth in the Tyonek Group's Response Brief, the people of Tyonek respectfully request that the Commission adopt the recommendations of the LBC Staff and deny the Petition.

Sincerely,



Arthur Standifer, President  
Native Village of Tyonek



Robert Stephan, Sr., Board Chair  
Tyonek Native Corporation

<sup>10</sup> Preliminary Report, *supra* note XX, at 37.



representative, Stacy Oliva, P.O. Box 8567, Nikiski, Alaska 99635, by regular mail, postage prepaid on June 12, 2017:


- A. Comment of the Tyonek Group to the May 10, 2017 Preliminary Report to the Local Boundary Commission;
- B. The joint resolution from the Native Village of Tyonek and the Tyonek Native Corporation;
- C. The joint letter from the Native Village of Tyonek and the Tyonek Native Corporation;
- D. Individual comments from Tyonek Native Corporation shareholders; and
- E. Affidavit of Service.

As a courtesy, true and correct copies of the foregoing documents have also been served via electronic mail on Petitioner ([stacy.oliva@gmail.com](mailto:stacy.oliva@gmail.com)); Kenai Peninsula Borough ([cbalser@kpb.us](mailto:cbalser@kpb.us)), Wenda Kennedy ([wkennedyjd@aol.com](mailto:wkennedyjd@aol.com)), and Louis Oliva ([lou@ljalaska.com](mailto:lou@ljalaska.com)) on June 12, 2017.

  
Peggy Crowe

SUBSCRIBED AND SWORN to before me, this 12<sup>th</sup> day of June, 2017.



  
Notary Public for Alaska  
My Commission expires: November 15, 2020