

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE 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)

RESPONDENT NATIVE VILLAGE OF EKUK'S REQUEST FOR PERMISSION TO
SUPPLEMENT PETITIONER'S CONSULTATION REPORT AND FOR
CONTINUED SUPERVISION OF CONSULTATION AMONG PETITIONER,
RESPONDENT AND THE INTERESTED COMMUNITIES

Respondent Native Village of Ekuk requests that the Local Boundary Commission (LBC) grant it permission to supplement petitioner's consultation report filed on November 15, 2011. Further, respondent asks the LBC to postpone taking final action on the petitioner's annexation proposal. These requests are unusual, but are warranted and in the public interest for the reasons set out below. Respondent's supplemental report is attached to this pleading.

1. CONSULTATION IS ONGOING AND, IF ALLOWED TO CONTINUE, COULD LEAD TO THE FORMATION OF A REGIONAL BOROUGH AS AN ALTERNATIVE TO THE PROPOSED ANNEXATION.

As shown in the attached Supplement to the Consultation Report, the consultation now underway between petitioner and the affected communities has resulted in the petitioner, the respondent, and a number of the affected communities expressing their support for a regional borough as the best solution to the fiscal and cultural issues

sought to be resolved. While detailed in many respects, the Consultation Report omits some important facts and steps taken. Respondent believes that fairness and due process dictate that all the facts relating to the ongoing consultation, not just a portion of them, should be presented to the LBC and included in the record.

2. ADDITIONAL TIME IS REQUIRED TO COMPLETE THE CONSULTATION PROCESS.

As shown in the attached Supplement to the Consultation Report, preliminary commitments have been made to pursue a borough formation and to seek funding to support that process. The LBC's purpose in imposing the consultation as a condition of approval of the petition was to provide an opportunity to address important fiscal and cultural issues. The deadline imposed for the consultation was a reasonable one if it had resulted in either (a) a completed agreement or (b) a decision that no agreement could be reached. As things unfolded, however, a third result occurred: steps and communications were taken in the direction of forming a regional borough. This result requires more time to establish a plan and an agreement than was originally provided for. It would frustrate the purpose of the imposed condition to cut off this discussion now. Respondent asks the commission to set a new reasonable deadline which would allow the cities and tribal governments to enter into a cooperative agreement to resolve the financial and cultural issues arising out of the proposed annexation.

3. THE COMMISSION HAS AUTHORITY TO ACCEPT THE SUPPLEMENT TO THE CONSULTATION REPORT AND TO DELAY FINAL ACTION ON THE ANNEXATION PETITION.

These filings by respondent should be viewed and considered by the commission. One of the functions of the commission's advisory staff is to ensure that the commission is fully informed by providing new information that supplements information provided

by a petitioner, respondent, or other person. 3 AAC 110.534. The commission is authorized to grant the respondent's requests. Its regulations provide that "the commission, by a vote of at least three members, may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest." 3 AAC 110.660.

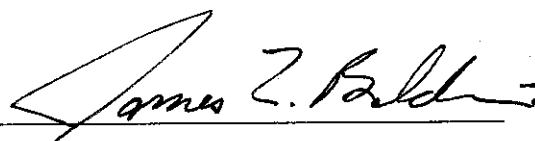
4. APPROVAL OF THE ANNEXATION PROPOSAL AT THIS TIME WOULD MAKE THE POSSIBILITY OF A BOROUGH FORMATION EXTREMELY UNLIKELY.

As reflected in the Alaska Constitution, minutes to the Constitutional Convention, and the commission's statutes, regulations and past decisions, it is in the best interests of the state for its areas to be organized into boroughs. Previous efforts to form a borough in this area were unsuccessful because there was not enough regional support. For the first time, a number of communities, cities, and tribal entities are in agreement that a regional borough would be the best solution to the issues raised by the annexation petition, and are prepared to work together toward that end. If the annexation petition is approved, however, some of the affected groups may no longer feel the need to work toward borough formation. Without a broad support, effort and financial commitments, a borough formation will not occur. In short, there is a small window of opportunity for borough formation that has not existed before and may not exist again. The commission should assist, not hinder, this positive development.

Moreover, if the annexation decision is approved now, respondent loses its right to appeal unless it files an appeal to the superior court within 30 days. Resources are already scarce, and respondent cannot reasonably be expected to adequately pursue both

an appeal and the formation of a borough at the same time. Additionally, petitioner and the commission would be involved in any appeal. Engaging in the adversarial appeal process would make it very difficult to simultaneously work cooperatively towards the formation of a borough. Additionally, it would waste the already limited resources of all parties. Practical and financial considerations compel the conclusion that the best next step is for the commission to delay taking final action on the annexation petition, and allow the consultation process to continue for a further reasonable period.

Dated this 23rd day of November, 2011.

By: 

James L. Baldwin
Counsel for Respondent Native Village of Ekuk

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF)
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RESPONDENT'S SUPPLEMENT TO PETITIONER'S CONSULTATION REPORT

A number of the communities with whom the Local Boundary Commission directed the Petitioner to consult regarding the fiscal and cultural issues arising out of the Petitioner's proposed annexation maintain that the solution to those issues is the formation of a regional borough. See Exhibits 1 - 6. Based on meetings with representatives of petitioner, respondent believes that the petitioner is in agreement with that assessment. However, the consultation report does not completely describe the understanding of the respondent and Ekuk as to the future course of cooperation of petitioner and these entities toward the joint purpose of forming a borough. See Exhibit 5. Respondent believes that petitioner has agreed to suspend the calling of the ratification election if the affected communities commit to jointly pursuing the borough formation process. Id. For its part, Ekuk and the other communities have agreed to participate and provide funding for the borough formation effort, if the petitioner

suspends implementation of its annexation petition. These conceptual agreements need to be reduced to writing in the form of a cooperative agreement between the governments involved.

Based on the text of the Consultation report, the petitioner expresses strong resolve to achieve the goal of forming a regional borough but also pessimism as to whether other communities share this goal. The petitioner's report fails to disclose to the LBC any intent to delay the ratification vote other than the usual delays that come with ballot preparation and preclearance.¹ The report also does not contain reference to the request the petitioner made of the affected communities that they send letters of commitment to the petitioner binding them to a joint effort to form a borough and pay their fair share of the costs of such an effort. The letters sent by some of the affected communities, to the extent that Ekuk could obtain copies of them, are attached to this pleading as exhibits 1-6.. It is Ekuk's belief that other communities are considering petitioner's request and will respond in due course.² It was also respondent's understanding that a similar letter of commitment is to be forthcoming from petitioner.

Based on the extent of disclosures set out in petitioner's consultation report, it is possible that there has not been a meeting of the minds during the ongoing consultation meetings. For this reason, it is important that the LBC withhold issuing a final decision and retain jurisdiction over this matter until petitioner and the communities can conclude

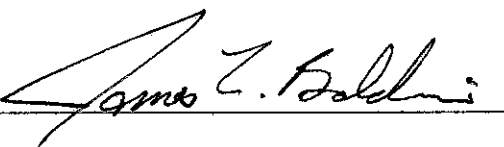
¹ See the memo recording the results of a meeting between the affected communities and petition held on October 27, 2011 appearing at page 82 of the consultation report.

² Robert Heyano will attend the November 30 meeting of the LBC and can speak to respondent's efforts and the expected response from affected communities of the region.

the consultation process. The petitioner should be directed to continue with the consultation until it can either show that the efforts at consultation have matured into a cooperative agreement to form a sponsor organization that is financially and technically able to petition to form a borough, or that this effort cannot be jointly pursued.³

Respondent fears that petitioner is hoping to pave the way to a final decision with statements of good intention rather than a completed consultation that meets the intent of the condition imposed by the commission. Respondent believes it wants the same thing as the commission: that the parties will collaborate to reach a regional solution. The consultation report submitted by petitioner discloses that petitioner has been working in good faith to this end, but that the consultation effort is not yet complete. Petitioner has requested commitments and received them in part. It should now complete the consultation to ensure that the borough formation process is underway.

Dated this 23rd day of November, 2011.

By: 

James L. Baldwin
Counsel for Respondent Native Village of Ekuk

³ For its part, Ekuk has had preliminary discussions with a consultant with experience in the process of forming a borough and is working on identifying other sources of funding to pay the substantial cost of preparing and presenting a borough formation petition.

11/17/2011 17:36 FAX 9078422107

CITY_OF_ALEKNAGIK

001/002

CITY OF ALEKNAGIK

P. O. Box 33, Main Street
Aleknagik, Alaska 99558-0033
Phone: 907 842-5953 or 842-2528
Fax: 907 842-2107
Email: cityalek@gmail.com (admin)
alekcityclerk@hotmail.com (clerk)

FAX COVER SHEET

TO: Mayor Ruby

FAX: 842-5691

FROM: Kay Adams, City Admin.

FAX #: 842-2107

DATE: Nov. 17, 2011

RE: Postponement of Annexation Vote and Borough
Formation

NUMBER OF PAGES INCLUDING THIS COVER:

COMMENTS:

Please find attached a resolution
passed by the city council encouraging
the City of Dillingham to postpone
annexation vote to allow communities
and yours an opportunity to form a borough.
Thank you. Please call if you have any
questions or concerns.

11/17/2011 17:36 FAX 9078422107

CITY_OF_ALEKNAGIK

002/002

CITY OF ALEKNAGIK

RESOLUTION 11-16

A RESOLUTION SUPPORTING AN ENGAGEMENT TO THE FORMATION OF A WESTERN BRISTOL BAY REGION BOROUGH

WHEREAS, the City of Aleknagik in resolution 97-20 supported a petition to annex with Lake and Peninsula Borough; and,

WHEREAS, the City of Dillingham conducted a Dillingham Area Analysis of a Borough Formation that included Dillingham, Aleknagik, Ekuk, Clarks Point, Portage Creek, Ekwok, New Stuyahok, and Kofiganok, September 2003; and,

WHEREAS, the City of Dillingham petitioned the Alaska State Local Boundary Commission on June 14, 2010 for annexation of Nushagak Commercial Salmon District Waters and Wood River Sockeye Salmon Special Harvest Area Waters, together consisting of approximately 386 square miles of water and 3 square miles of land (small islands) of which 99.2 % is water, using the local option (voter approval) method; and,

WHEREAS, the City of Aleknagik is therefore committed to assisting in organizing a Bristol Bay Western Region Borough that could include the communities of Aleknagik, Dillingham, Ekuk, Clarks Point, Portage Creek, Ekwok, New Stuyahok, Kofiganok, Manokotak, and Togiak; and,

WHEREAS, formation of a Bristol Bay Western Region Borough would allow unincorporated communities an opportunity to continue to share in the Bristol Bay Commercial Salmon District Waters including the Wood River Sockeye Salmon Harvest Area Waters and its potential to provide revenue which is a primary economic resource engine for all communities in Bristol Bay; and,

WHEREAS, all communities mentioned herein are tributaries of the Western Bristol Bay Region; and,

WHEREAS, fiscal independence from uncertain forms of revenue for overall governmental operations is critical for all communities;

NOW, THEREFORE BE IT RESOLVED; that the Council and the Mayor or Designee is directed by this resolution to encourage the City of Dillingham to postpone the annexation vote in order to allow said communities an opportunity to engage in the formation of a borough that would allow all to share in the primary economic resource of the Bristol Bay Commercial Salmon Fishery Industry of Western Alaska.

Passed and approved by a duly constituted quorum of the City of Aleknagik this 15th day of November 2011.

SIGNED: Carolyn M. Smith
Carolyn M. Smith, Mayor

11/15/11
DATE

ATTEST: Jeri Alakayak
Jeri Alakayak, Clerk

11/15/11
DATE



Aleknagik Natives Limited

P.O. Box 1630
Dillingham, Alaska 99576
(907) 842-2385

November 6, 2011

Mayor Alice Ruby
City of Dillingham
P.O. Box 889
Dillingham, AK 99576

Dear Mayor Ruby:

Aleknagik Natives Limited (ANL) respectfully requests that the Dillingham City Council postpone an up coming Annexation Vote in order to allow the Togiak, Nushagak Bay, and Nushagak River Communities time to look into the formation of an area wide Borough.

ANL does not support the City of Dillingham's Annexation initiative and believes, instead, that a concerted effort to unify the villages in a Borough to increase their political and economic standing in the state is a much better long-term strategy for our region. I would be honored to be included in such an effort.

Sincerely,

A handwritten signature in cursive script that reads "Bobby Andrew".

Bobby Andrew, President
Aleknagik Natives Limited

Exhibit 2

RECEIVED

NOV 10 2011

CITY OF DILLINGHAM

CLARKS POINT VILLAGE COUNCIL

BOX 90

CLARKS POINT, ALASKA 99569

CITY OF CLARKS POINT

BOX 110

CLARKS POINT, ALASKA 99569

SAGUYAK, INC.

BOX 4

CLARKS POINT, ALASKA 99569

NOVEMBER 11, 2011

CITY OF DILLINGHAM

Box 889

Dillingham, Alaska 99576

Attn:

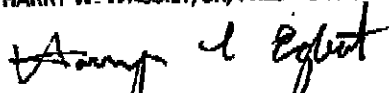
A joint meeting was held in Clarks Point at 12:00 P.M. to discuss the Borough formation . The Village Council, City Council and Saguyak, Inc. unanimously moved to go on record to look at the formation of a Borough with pro's and cons.

We would respectfully like you to put your petition on hold for annexation of the water.

Sincerely,



HARRY W. WASSILY, SR, PRESIDENT VILLAGE COUNCIL



HARRY T. EGBERT, ACTING MAYOR, CITY OF CLARKS POINT



SHARON L. CLARK, ACTING PRESIDENT SAGUYAK, INC.

RECEIVED

NOV 11 2011

CITY OF DILLINGHAM
CITY CLERK

Exhibit 3

EKWOK VILLAGE COUNCIL
P.O. BOX 70
EKWOK, AK 99580
907-464-3336
Fax - 3378

Date: November 8 2011

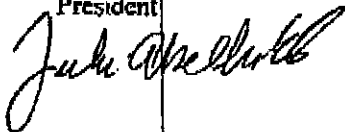
Fr: Luki Akelkok Sr.
Ekwok Village Council (EVC)
President

Re: Borough Formation

To: City of Dillingham

I am writing you concerning the formation of a Borough. EVC is interested in an effort to unify the Villages concerning Borough formation. EVC asks the Dillingham City Council to postpone an upcoming Annexation Vote in order to allow all the communities time to look into the formation of an area wide Borough. EVC does not support the current Annexation initiative. An area wide Borough we believe would be in the best interest of all.

Sincerely,
Luki Akelkok Sr.
President



Secretary:
Vera Taylor



November 11, 2011

Robert Heyano
Ekuk Village Council
Box 539
Dillingham, Alaska 99576

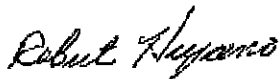
Mayor Alice Ruby
City of Dillingham
Box 889
Dillingham, Alaska 99576

Mayor Ruby;

As we agreed during our meetings, which were encouraged by the Local Boundary Commission, Ekuk Village Council agrees to engage in the process to petition the Local Boundary Commission for the formation of a borough covering the Western Bristol Bay Region. This agreement represents Ekuk's commitment to enter into a cooperative agreement along with other committed Western Bristol Bay Region communities and the City of Dillingham for this purpose. The intent of the parties is to suspend Dillingham's annexation petition during the processes of forming a new borough which includes Dillingham and other communities in the region. This commitment includes Ekuk's pledge 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, and to cooperate with efforts to obtain funding elsewhere. After carefully considering other options we believe the formation of a borough is the best 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 an acceptable solution to deferring a LBC decision of the City's petition as we work together for a borough.

Sincerely:



Robert Heyano
President Ekuk Village Council

RECEIVED

NOV 14 2011

CITY OF DILLINGHAM
CITY CLERK

Exhibit 5

11/21/2011 MON 10:17 FAX 842 3843 Ekuk Village Council

002/002

11/15/2011 15:47 3072891235

NVC

20087 P.002/002

Manokotak Village Council
P.O. Box 169
Manokotak, Ak 99628
PH: (907) 289-2067 or 1227
Fax: (907) 289-1235

November 15, 2011

Mayer Alice Ruby
City of Dillingham
Box 889
Dillingham, Alaska 99576

Mayer Ruby:

As we agreed during our meetings, which were encouraged by the Local Boundary Commission, Manokotak 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 Manokotak'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. Manokotak'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 an acceptable solution to deferring a LBC decision of the City's petition.

Sincerely,


Moses Toyukak Sr.
Manokotak Village Council President

Portage Creek Village Council

Anchorage: 1327 E 72nd Unit #B
Anchorage, Ak 99518
Phone: (907) 277-1105
Fax: (907) 277-1104

Portage Creek P.O. Box PCA
Dillingham, AK 99578

November 11, 2011

To Whom It May Concern:

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

Thanks



Charlie Johnson, President

LOCAL BOUNDARY COMMISSION

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SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

PROOF OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, James L. Baldwin, upon oath, depose and state that:

On November_23rd, 2011 I mailed via first class US mail two copies of the Native Village of Ekuk's

RESPONDENT NATIVE VILLAGE OF EKUK'S REQUEST FOR PERMISSION TO SUPPLEMENT PETITIONER'S CONSULTATION REPORT AND FOR CONTINUED SUPERVISION OF CONSULTATION AMONG PETITIONER, RESPONDENT AND THE INTERESTED COMMUNITIES

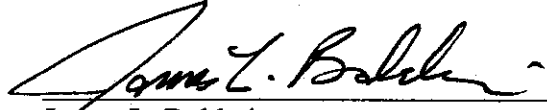
to:

Alice Ruby, Mayor
City Hall
P.O. Box 889
Dillingham, AK 99576

Brent Williams
Division of Community and Regional Affairs

Department of Community, Commerce, and Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

Dated at Juneau, Alaska this _23rd day of November, 2011.

A handwritten signature in black ink, appearing to read "James L. Baldwin", written over a horizontal line.

James L. Baldwin
Counsel for Respondent