



**City of Dillingham**  
**Reply Brief to Responsive Brief and Comments**  
**On**  
**Petition to Annex Commercial Fishing Waters,**  
**Using Local Option Method**

**November 5, 2010**

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BY:

A handwritten signature in black ink, appearing to read "B.W.C.", is written over the printed name of Brooks W. Chandler.

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## **Introduction**

On June 14, 2010, the City of Dillingham ("City") filed a petition to annex, via the Local Option (voter approval) method, the Nushagak Commercial Salmon District waters and Wood River Sockeye Salmon Special Harvest area waters, together consisting of approximately 396 square miles of water and 3 square miles of land (small islands). Pursuant to 3 AAC 110.490, the City submits this reply to the public comments received on the petition.

## **Public Outreach**

The petition was available for public review and comment through October 1, 2010. The deadline for receipt of comments was longer than normal as Dillingham wished to ensure that those engaged in fishing activity had time to consider the petition, and the Local Boundary Commission agreed.

During the public review period, the City of Dillingham at its own expense sent the City Manager, some City Council Members, and other staff to conduct Public Information Sessions as follows:

1. Call-in radio show on KDLG on August 2, 2010;
2. Dillingham City Hall on August 2, 2010;
3. Aleknagik School on August 3, 2010;
4. Clarks Point school on August 4, 2010;
5. Manokotak at the tribal office on August 17, 2010;
6. Curyung at the Curyung Tribal Council building on September 21, 2010.

Flyers and Public Notice about these meetings was posted in Dillingham and at the communities. Meeting Summaries from the 1<sup>st</sup> four meetings are found in Appendix A to the City's petition.

The City also discussed concerns and ideas at publicly noticed City Council Public Outreach Committee meetings conducted by a standing committee composed of the Mayor, two council members and the city manager on 11 monthly meetings between August 6, 2009 and October 4, 2010. Meetings of the public outreach committee were held in August, September, October and December of 2009, and in January, March, April, May, June, September and October of 2010. While these meetings were not exclusively dedicated to annexation, it was a primary topic and at most meetings members of the public attended and there were questions and discussion related to the annexation petition.

## **Comments Received**

During the public comment review period, comments and a responsive brief were received from the following:

1. City of Aleknagik, on behalf of City of Aleknagik, Aleknagik Traditional Council, and Aleknagik Natives Ltd (Resolution);
2. Clarks Point Village Council (Resolution);
3. City of Manokotak (Resolution);
4. Ekwok Village Council and Ekwok Natives Limited (Letter);
5. Jerry Liboff (Letter);
6. Lake and Peninsula Borough (Letter);
7. City of New Stuyahok (Resolution);
8. H. Robin Samuelson, Jr. (Letter);
9. Stanley Mack (Letter);
10. Native Village of Ekuk (Responsive Brief);
11. Bristol Bay Native Association (Resolution);
12. Avi Friendman (Letter).

## **Responses to Common Issues Raised**

### **1. Use of the Area Proposed for Annexation by Residents of Other Communities.**

Several comments from persons living outside of Dillingham identify the number of set and drift gillnet fishermen from their communities that use Nushagak Bay to commercially harvest fish, and also noted Nushagak Bay is used for subsistence purposes. Some of these comments state that this demonstrates their social and economic connection to Nushagak Bay, and that it is thus regional in nature. Commenters also cite a 1987 DCRA staff report that paraphrases a 1986 LBC decision on a similar petition as precedence for considering Nushagak Bay to be regional in nature. Use of Nushagak Bay by residents from areas in addition to Dillingham does not require rejection of the current Dillingham petition.

This situation is analogous to Wasilla residents who work in Anchorage. They live in one city yet regularly commute to another city to work. These Wasilla residents clearly have economic, social and transportation connections to Anchorage. It is common for transportation, economic, and social connections to exist among municipalities and regions.

Even in Bristol Bay this situation is the rule, not the exception. Table One below presents Commercial Fisheries Entry Commission (CFEC) data for Bristol Bay in 2008 (2005 and 2000 data is available, but not presented here and demonstrates the same facts). The residency of fishermen who participate in each of the five Bristol Bay fisheries is shown. Each fishery and all the Bristol Bay commercial fishing district waters are regional in nature to the extent that fishermen from not only the adjacent home community, but also from all over Bristol Bay, all over Alaska, and from outside the state, use the waters and have economic, social and transportation connections to them. In Togiak, just under half the fishermen are from outside of Togiak, yet, Togiak was allowed to annex the entire 183 square miles of its adjacent commercial fishing district into its municipal boundary, thus enabling it to derive tax benefits from the adjacent fishery resource that is harvested by people from throughout the region and state.

In Bristol Bay’s five commercial fishing districts, participation rates by:

- the adjacent community varies from 2% to 55%;
- Bristol Bay region fishermen, but not from the adjacent community, varies from 4% to 18%;
- Alaskans from outside Bristol Bay varies from 12% to 41%;
- Non-Alaskan residents varies from 14% to 61%.

Bristol Bay commercial fishing waters are all “regional” in nature. What the Local Boundary Commissioners must examine and determine is whether Dillingham has an economic, social and transportation connection to these waters it is proposing to annex, and, if the totality of the facts in this case warrant annexation. 3 AAC 110.135.

<b>Table One - 2008 Bristol Bay Fisheries Participation and Harvest, by Residency also showing Local Fish Tax in Effect in the District</b>		
<b>District</b>	<b>Residency of Persons with Commercial Landings</b>	<b>Percentage of Total Pounds of Harvest</b>
<b>TOGIAK DISTRICT</b>		<b>7,000,839 total pounds</b>
• Togiak 3% Local Fish Tax in effect	<b>207 total persons</b>	
Togiak/Twin Hills residents	55%	76%
Other Local Bristol Bay residents	18%	8%
Other Alaskan residents	12%	8%
Non Alaskan residents	14%	7%
Unknown	3%	2%

<b>UGASHIK DISTRICT</b>		
<ul style="list-style-type: none"> <li>• Pilot Point 3% Local Fish Tax in effect</li> <li>• Lake and Peninsula Borough 2% Local Fish Tax in effect</li> <li>• Total = 5% Local Fish tax in effect</li> </ul>	<b>341 total persons</b>	<b>14,157,202 total pounds</b>
Pilot Point residents	3%	3%
Other Local Bristol Bay residents	9%	8%
Other Alaskan residents	41%	41%
Non Alaskan residents	46%	49%
Unknown	1%	0%
<b>NAKNEK DISTRICT</b>		
<ul style="list-style-type: none"> <li>• Bristol Bay Borough 3% Local Fish tax in effect</li> </ul>	<b>1,088 total persons</b>	<b>62,367,864 total pounds</b>
Naknek/Kvichak residents	13%	11%
Other Local Bristol Bay residents	5%	4%
Other Alaskan residents	26%	22%
Non Alaskan residents	54%	62%
Unknown	2%	2%
<b>EGEGIK DISTRICT</b>		
<ul style="list-style-type: none"> <li>• Egegik 3% Local Fish Tax in effect</li> <li>• Lake and Peninsula Borough 2% Local Fish Tax in effect</li> <li>• Total = 5% Local Fish tax in effect</li> </ul>	<b>584 total person</b>	<b>41,582,661 total pounds</b>
Egegik residents	2%	1%
Other Local Bristol Bay residents	4%	3%
Other Alaskan residents	31%	24%
Non Alaskan residents	61%	71%
Unknown	2%	1%
<b>NUSHAGAK DISTRICT</b>		
<ul style="list-style-type: none"> <li>• No Local Fish Tax in effect</li> </ul>	<b>807 total persons</b>	<b>43,742,147 total pounds</b>
Dillingham residents	19%	19%
Other Local Bristol Bay residents	13%	10%
Other Alaskan residents	28%	30%
Non Alaskan residents	38%	40%
Unknown	2%	1%

*Source: Commercial Fisheries Entry Commission*

The following are important notes to the figures generated for harvests and participation in the Bristol Bay fishing districts:

- 1) The figures represent commercial catches on S03T and S04T permits only. Test fishing, confiscated catch, personal use or discards are not included.
- 2) Harvests represent all species of salmon.
- 3) Harvest pounds are represented by "round pounds" - the weight of whole fish.
- 4) Alaska resident and Nonresident status is determined by declared residency. Some recipients of emergency transfers of permits do not have declared residencies.
- 5) Local / Nonlocal Alaska resident status is taken only from persons with declared residencies.

- 6) Participation represents the number of persons who recorded landings on fish tickets. More than one person can fish a permit during the year.
- 7) An individual can fish more than one district in a year.
- 8) Not all permit holders who actively fish will be counted in these statistics. Since 2004, dual permit operations have been allowed in the Bristol Bay drift gillnet fishery, and deliveries of fish are frequently recorded by only 1 of the 2 persons in the operation. Similarly, set gillnet operations often involve groups or families of permit holders where not all persons who are fishing will record landings. For more information on the extent of Bristol Bay drift gillnet dual permit operations, see CFEC report 09-6N.

## **2. A 24 Year Old LCB Analysis is Neither Binding Nor Persuasive.**

Change is a constant factor of our existence. The evaluation of the City's annexation petition must be based on current conditions in the City and the area proposed for annexation, not conditions as they existed a quarter of a century ago. In addition, the Commission and staff must apply 2010 regulations, not 1986 regulations, in their consideration of this petition. As specifically discussed by the City in pages 46-50 of its initial brief, previous LCB action related to Bristol Bay regional boundaries is no reason to summarily reject the City's petition.

The proposed annexation meets the statutes and regulations in effect today. This annexation, which enables a local fish tax to be enacted in Nushagak Bay, is critical to Dillingham and the region, is in the state's best interest, and is fair and equitable.

There are significant differences between the 1986 and 2010 LCB regulations. Some of the regulations heavily relied on by the LCB in considering the City's annexation petition in 1986 simply do not exist today. The 1986 regulations required the area proposed for annexation to be "urban in character". 19 AAC 10.070(3) (former). The "urban in character" requirement no longer exists. The 1986 regulations required the City demonstrate the likelihood of "future development" within the area proposed for annexation. [19 AAC 10.070(5)]. Today's regulations instead mention "existing or reasonably anticipated" conditions. e.g. 3 AAC 110.090(a)(1-3). The City's petition is not based on speculative future growth, but presently existing conditions.

In 1986, the City was required to demonstrate that existing health and safety conditions "endangered" current residents. 19 AAC 10.070(6)[former]. The current regulations do not require proof of "endangerment". 3 AAC 110.090(a)(2)("existing . . . health, safety and general welfare conditions).

In 1986, the City was required to demonstrate that extension of City services to the area proposed for annexation was "necessary to enable the City to provide adequate service to City residents". 19 AAC 10.070(7)[former]. No such requirement exists today. Instead, the City

must demonstrate: (1) that residents within the territory proposed for annexation receive directly or indirectly the “benefit of services provided by the annexing city”; and (2) that “essential municipal services” cannot be provided more efficiently by another city or borough. 3 AAC 110.090(a)(6),(b).

In 1986, the LBC was concerned about “disincentives” to Borough formation. (Ekuk Brief, Ex. 4, p. 5). The passage of 24 years without any Borough being formed compels one conclusion. A Borough is unlikely to be formed in Nushagak Bay in the foreseeable future. There is no reason to believe the next quarter century will be any different than the last quarter century in this regard. The reasons a Borough will not be formed do not have to do with the people of Dillingham who have consistently suggested Borough formation. Therefore, “disincentive”, even if still a regulatory concern, must be disregarded as a practical matter.

Existing financial conditions favor annexation. The financial information discussed by Mr. Erickson, (Ekuk Brief at Exhibit 8) demonstrates why annexation to an existing city with multiple revenue sources, rather than formation of a borough with a single source of revenue, is the most efficient and practical way to provide services to the commercial fishing population in the area to be annexed. A borough based on a single revenue source is simply not the most practical way to extend local government to this area. Even if this were not the case, the concept that future borough formation is “enormously complicated” if annexation proceeds (Ekuk Brief, Ex. 8, p.4), is simply not true. If a borough were ever formed in this area, any borough tax is simply added to Dillingham’s fish tax as is the case in Pilot Point and Egegik. This is not complicated. It is identical to the situation in the Kenai Borough where both city governments and borough governments levy sales tax on the same transactions. Any new borough formed in the region would displace Dillingham as the tax collector and simply remit to Dillingham and Togiak<sup>1</sup> their portion of the fish tax.

The current version of the regulations contains a specific exception. 3 AAC 110.130(c)(2) (“except if those boundaries are justified by application of the standards of 3 AAC 110.090-3 AAC 110.135”). This exception allows the Commission to include large areas of water such as proposed by Dillingham within proposed expanded municipal boundaries if the resulting city meets regulatory standards regarding, “need” 3 AAC 110.090, “character” 3 AAC 110.100; “resources” 3 AAC 110.110; “population” 3 AAC 110.120, “boundaries” 3 AAC 110.130, and is in the “best interests” of the state. 3 AAC 110.135. As demonstrated in its initial petition, (see pages 39-62), and elsewhere herein, Dillingham’s request meets the standards of these specific requirements. Accordingly, the inclusion of a large area of water in the annexation petition is not of itself mean the area is not part of the Dillingham community.

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<sup>1</sup> It is inconceivable to Dillingham that a borough would not include Togiak.

In addition to the changed regulatory environment other conditions have changed significantly since 1986. The value of the fishery has decreased making it less practical that it would comprise the entire financial base for a future Borough government just as it will not provide the entire financial base for Dillingham. Many efforts at Borough formation have floundered evaporating the argument annexation will prevent a Borough from forming. Clearly annexation by Dillingham (which never occurred) cannot be said to have caused the failure of a borough to be formed. The most logical reading of the historical record results in the conclusion a borough is unlikely to be formed in this area for reasons unrelated to the instant petition for annexation.

Other communities have increased connections with Dillingham since 1986. Aleknagik regularly sends high school students to the City of Dillingham School District's high school. Affidavit of William McLeod. Clarks Point families also have sent children to Dillingham for high school. Id. Dillingham's provision of educational services to communities indirectly impacted by the proposed annexation emphasizes Dillingham's function as a regional hub for an area that extends even beyond the boundaries of the territory proposed for annexation. There are other examples of communities more tightly connected to Dillingham in 2010 than they were in 1986. Aleknagik's solid waste is deposited in the Dillingham landfill three times a week. For example, Dillingham has instituted and regularly provides ambulance service to Aleknagik, Affidavit of Gregg Burton, Exhibit M, and residents of Aleknagik receive services daily from the Dillingham Senior Center.

Perhaps the most significant changed circumstance since 1986 is Dillingham's construction of millions of dollars in infrastructure supporting the commercial fishing community. A new landfill has been built at a cost in excess of three million dollars. Nearly thirty million dollars has been spent since 1986 on multiple boat and harbor improvements some of which are currently being either designed (bank stabilization) or constructed (bulkhead extension). Exhibit N. These include bulkhead improvements, a new dock, new boat ramps, a new crane for loading and unloading vessels and substantial bank stabilization projects. These facilities must be maintained and eventually replaced. Many of the original funds came from state and federal grants; however it is simply irresponsible to assume grants will fund replacement of these facilities. The facilities benefit the commercial fishing community. A tax levied on the fish harvested in the area proposed for annexation is an obvious and rational source of maintenance and replacement funds.

### **3. Annexation does not Impact Subsistence.**

Subsistence hunting and fishing in the territory proposed for annexation is not intended to be, and should not be, impacted by including the area within City boundaries. Subsistence is regulated exclusively by state and federal authorities. Annexation will not change any rule or regulation applicable to subsistence. Dillingham would not have legal authority to place portions of the annexed territory "off limits" for subsistence hunting and fishing. The only current Dillingham ordinance that would conceivably affect subsistence is DMC 9.86.020(D),

which only allows shotgun pellets to be discharged when more than ½ mile from a road within City limits. Dillingham acknowledges that this ordinance would need to be modified to allow the discharge of rifles when an appropriate distance from shore in order to accommodate subsistence hunting with rifles in addition to shotguns. This would be accomplished as part of the City's transition plan.

#### **4. The Existence of Facilities or Plans for Future Facilities in Other Communities does not Diminish Dillingham's Ties to the Territory Proposed for Annexation.**

Manokotak has a place to buy fuel, a hydraulic lift, winter boat storage, and a VPSO. However, the fuel that Manokotak asserts it is providing is made available by private for-profit businesses and entities, not the City of Manokotak. Dillingham, Manokotak, Aleknagik and others all provide mutual aid and all willingly support each other, AST and USCG efforts when called upon. Manokotak's assertion that it assist with public safety affirms this, nothing more.

The Native Village of Ekuk states that it partners with Bristol Bay Area Health Corporation ("BBAHC") and Ekuk Fisheries to maintain a health aide and clinic in the village. But, Ekuk does not explain what being a "partner" means. Ekuk does not indicate it actually contributes any money or property or supplies for this clinic. There is no explanation of how long this clinic has been in operation, whether it is likely to continue into the indefinite future, how it is staffed and when it actually operates. This service is not being provided by a municipality, it is being provided by a private corporation - BBAHC. BBAHC is based in Dillingham. See, <http://www.bbahc.org/>. BBAHC is part of the community of Dillingham and receives City services (police, fire, water, sewer, roads). Accordingly, BBAHC's ability to provide health service to those fishing for Ekuk Fisheries is not properly considered a service from another municipality. BBAHC operates a major hospital in Dillingham and the medical services available are used by those participating in the commercial fishery within the area proposed for annexation. Dillingham is the primary base for delivery of extensive medical services to the annexed area.

The existence of businesses in other communities is not threatened by annexation. Dillingham's petition is not based on claims the City is the exclusive supplier of goods and services to each and every person and vessel fishing in the territory proposed for annexation.

The Native Village of Ekuk references plans for future cooperation between Ekuk and Clark's Point village councils for a road and landfill support. Ekuk does not identify a specific project, does not provide any evidence of where any such project is in the planning phase, and does not provide any cost information for the referenced future plans. With all due respect, the City of Dillingham notes that there are lots of planned future improvements that may or may not ever come to fruition. By contrast, Dillingham is the regional center in this area with existing infrastructure and services. This infrastructure will be more easily maintained and enhanced

with additional revenue from annexation. That revenue, in turn, will be derived from participants in the commercial fishing enterprises that directly and indirectly benefit from the City's existing infrastructure.

Moreover, Ekuk, as a federally recognized tribe, should have access to IHS funding sources not available to the City of Dillingham. Ekuk should also have access to BIA tribal road funding for any road or landfill project it plans with Clark's Point. Clark's Point receives more than a hundred thousand dollars in state fisheries business tax revenues each year. Exhibit V. BIA funding will not be impacted by annexation. Clark's Point's fisheries business tax revenues will not be impacted by annexation. Pending Clark's Point – Ekuk joint projects will be allowed to exceed regardless of annexation.

Dillingham has documented real costs it bears to provide several municipal services and infrastructure used by fishing and processing industry. (Petition pp. 42-45). Revenue and user fees don't cover the costs to provide this support and facilities. Those increased costs are reflected in a level of service to the territory proposed for annexation that is far greater than that provided by any other municipality in the Nushagak region.

**5. The Individuals Participating in the Seasonal Commercial Activity Within the Area Proposed for Annexation Are an "existing community" Under 3 AAC 110.130 (c).**

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).

Seasonal populations are not inherently inconsistent with the notion of community. Especially in Alaska, seasonal population changes are part of many fishing communities. Other towns in Alaska see significant seasonal influxes tied to fishing. Unalaska's population as much as doubles during processing seasons. Sand Point is a base for large numbers of seasonal fishermen. Participants in the commercial fishery in the area proposed for annexation in fact, consider themselves a community, and that community is integrated with year round residents of Dillingham. But, don't take the City's word for it. Observe the fishermen. With concerns about the Pebble Mine in the forefront, where did the commercial fishermen from this area hold a rally? Dillingham. (Exh. O). When fishermen wanted to include product in the Head Start program, where was the effort coordinated? Dillingham. Exhibit P. When fishermen want to attend courses in the "Business of Fish" where do they go? Dillingham. Exhibit Q. Local fish and game and subsistence advisory boards hold meetings in Dillingham. Exhibit R.

The presence of a large area of water within the proposed new boundaries of the City of Dillingham is not inconsistent with the existence of a community based in Dillingham. Other towns in Alaska include areas of water used by seasonal participants in commercial fisheries.

St. Paul, (255 sq. miles of water, 40 sq. miles of land), Togiak, (45 sq. miles of land, 183 sq. miles of water); Unalaska (110 sq. miles of land, 110 sq. miles of water); Pilot Point, (25 sq. miles of land, 115 sq. miles of water); and Sand Point (7 sq. miles land, 21 sq. miles of water) for example. Clearly, the mere presence of a large area of water within a boundary is not determinative of the existence of a community connected with an incorporated city.

In 1986, the LBC focused on an amazingly narrow definition of community as a “neighborhood”. The current regulations do not restrict the LBC to a dictionary definition of community, but instead allow the Commission to consider “relevant factors”. 3 AAC 110.920. Dillingham submits that the following factors are relevant in considering the persons seasonally fishing in the territory proposed for annexation part of the community of Dillingham:

1. They have a common interest in the health and welfare of the commercial and subsistence salmon fishery. This would include a common interest in: (a) regulatory issues impacting the salmon fisheries, (b) potential impact to the fishery from proposed offshore oil and gas development or onshore mineral development, (c) the availability of air transportation from the Dillingham airport for shipment of processed fish out and needed supplies in to Dillingham.
2. They have a common interest in the operation, maintenance and upgrade of port and harbor facilities in Dillingham.
3. They have a common interest in the availability and adequacy of medical services, vessel repair services and supply services in Dillingham.

This community of interests among and between persons 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).

#### **6. Disincentives to Borough Formation are not a Practical Concern.**

Several respondents indicate a concern that if the City’s annexation petition is approved that will provide a “disincentive” to Borough formation. In doing so, they harken back to similar concerns expressed by the LBC in 1986. In addition, some respondents feel any tax collected should either be collected or disbursed on a regional basis beyond the boundaries of the proposed enlarged City of Dillingham or that there is not “enough” of a remaining tax base to support a future borough.

Current regulations do not speak of “disincentives” to Borough formation. Instead, they reflect the “best interests of the State”, one of which is identified as “the promotion of a limited number of local government units”. 3 AAC 110.135(2). For annexation petitions the issue is not “disincentive” to Borough formation, but whether the enlargement of city boundaries is preferable to incorporation of a “new” city or “creation of a new borough service area”. 3 AAC

110.982(7). 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.

Even if the Commission believes impact on theoretical future borough formation should be examined, a review of past history indicates annexation by Dillingham is not a realistic impediment to borough formation. Unlike 1986, this Commission does not have competing petitions for annexation filed by Clark’s Point and Dillingham before it. The extent to which a pending competing annexation petition demonstrated that problems were “regional” in nature simply does not exist in 2010. The fact that no borough has been formed in the ensuing 24 years demonstrates granting Dillingham’s petition is not a disincentive to borough formation. The failure of those complaining about the proposed annexation to now be residents of an existing borough is not of Dillingham’s making and is certainly not caused by the filing of the current petition. Dillingham has been a leader in trying to form a borough in the area several times over the last 20 years without success. Dillingham has been an active participant and advocate for borough formation in the region because we value and believe in promoting a regional voice and regional perspective, and support regional sharing of resources, taxation and tax revenue. Many of those commenting that the current proposed annexation should instead be a borough formation and taxation effort have opposed borough formation in the past. Based on this history, it is hard to predict when a borough formation effort will be successful. The time has come to recognize that formation of a borough is neither imminent nor significantly impacted by annexation.

The basic premise regarding “disincentives” to borough formation is itself a flawed assumption. It is assumed a local Dillingham fish tax would result in a “loss” of “over half the Nushagak salmon tax base”. (Ekuk Brief, Ex. 8, p.4). The tax base consists of the fish themselves. The fish population will exist independently of municipal boundaries and will remain a potential “tax base” for a new borough regardless of annexation. The experience of other communities (see Petition pp. 48-49) demonstrate the feasibility of municipal fish tax within a borough. Dillingham’s tax would not “enormously complicate” borough formation as claimed by Ekuk (Ekuk Brief, Ex. 8, p.4). The same procedures would apply to borough formation. The same petition would need to be followed and the same administrative process would ensue. While Dillingham can now attest from experience that the LBC process is not “simple”, that process for borough formation is not altered by annexation.

Borough formation has been examined in the past and these studies are available to staff and will not be regurgitated here. To the extent those studies suggest a borough is financially “marginal” that fact favors annexation. Unlike a new borough, Dillingham is already functioning

as a local government. This allows fish tax revenue to be focused on fishery related infrastructure and services.

Annexation is in the best interests of the State for other reasons as well. Dillingham is today, and will always be, the most logical local government to provide essential public services and facilities to support the commercial fishing fleet harvesting salmon in Nushagak Bay. The proposed annexation provides a means (levy and collection of a local fish tax on transactions that currently are not taxed) that has proven successful in the development of sustainable communities in Alaska. A fiscally sustainable Dillingham is certainly in the state and region's best interest. Capturing revenue escaping the region from non Alaskans is in Dillingham's and the region's best interest.

Even if the past 25 years was somehow reversed and a borough was formed with regional support, Dillingham will still be the major port and access to the Nushagak Bay for fishermen. A borough is not going to build an entirely new port or harbor facility at some other location outside Dillingham. Rather, the existing infrastructure centered in Dillingham will be the focus of support to the commercial fishing fleet. A rational practical examination of the history of this area, and the City's existing facilities, compels the conclusion that extension of existing City of Dillingham boundaries, rather than the theoretical, formation of a new borough is the most efficient and effective way to serve the area proposed for annexation.

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.

#### **7. Dillingham has Promised to Share the Benefits of Increased Revenue with Other Communities.**

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

Concerns are voiced that expanding municipal boundaries will increase the amount of fish processed within City boundaries. (Ekuk brief at 6). Ekuk admits this is speculative and presents no data regarding past receipts of apportioned state fisheries tax to quantify the amount of revenue possibly lost due to expanded City boundaries. Ekuk has never received any

shared tax payments from the State. Exhibits U and V. Manokotak receives less than \$10,000 annually. Exhibit T. However, this should not be impacted by annexation. All available information indicates all floating processing (which forms the basis for the allocation of state tax amongst communities in the region) occurs outside the proposed expanded municipal boundary. See, Petition pp. 52-54 see also, Response to Stanley Mack).

#### **8. Reserves are not Sufficient for a Sustainable City of Dillingham.**

Respondents have suggested that the City of Dillingham does not “need” an additional revenue source in order to sustain historical support services and infrastructure benefitting those engaged in commercial fishing in the area proposed for annexation. These concerns reflect a misunderstanding about what a “reserve” account is and why funds are held in reserve. Of the \$6.5 million held in reserve as of July 1, 2009, more than \$5,000,000 was designated or restricted for a variety of purposes. Affidavit of Frank Burrus. The petition demonstrated the financial strains experienced by Dillingham from operating the small boat harbor at deficit levels. (Petition p. 7, 30, 42). This deficit cannot continually be funded from reserves and maintain a sustainable City of Dillingham. The budget submitted with the petition (Exhibits C-1, C-2) establishes that post-annexation revenue will be applied to eliminate recurring small boat harbor deficits.

#### **9. Local Option is an Appropriate Ratification Method.**

Commenters feel the local option method of annexation is unfair and favor legislative review. The basis for this argument is that they are impacted by annexation, but would not have a vote in the local option election. Commenters will have ample opportunity to participate in front of the LBC. Having had a full and fair opportunity to participate in the Commission’s thorough examination of the issues provides fairness. A local option election will only be held if the Commission (which is supposed to evaluate annexation as an independent body free from political influence) has approved sending the petition to the voters for ratification. That decision itself may be subject to judicial review. Those participating in the LBC administrative proceeding are accorded a full and fair process.

As shown repeatedly in the petition, a significant majority of persons impacted by the proposed annexation reside in Dillingham. The City has always desired that annexation be submitted to Dillingham residents for approval and it is logical that this occur. While there is never 100% participation in any election, Dillingham residents should be allowed an opportunity to vote either to approve or disapprove this significant step in the history of their community.

That others who would be impacted by annexation would not be able to vote in the Dillingham election does not make the local option method inherently less fair than legislative review. Individual citizens do not get to vote in the legislative review process. Members of the Legislature from Southeast, the North Slope and the Interior have little connection to

Dillingham or Bristol Bay but would have the ability to veto any annexation approved by the Commission.

That persons that live outside Dillingham do not vote on matters in Dillingham that effect them is not unusual. Residents from the region, particularly those that engage in fishing activities, regularly use the City of Dillingham landfill. Dillingham doesn't ask residents of other regions who use its services and infrastructure to vote before they use local roads or landfill. In 2008, 9% of harvest in the Togiak District was accomplished by Dillingham residents, and another 8% of the catch was harvested by other Bristol Bay region residents. All paid the Togiak local fish tax to Togiak. Yet, neither Dillingham nor other Bristol Bay region residents demanded to vote in City of Togiak matters. In 2008, 1% of those fishing in the Egegik District were Dillingham residents and 3% were residents from other places in Bristol Bay region. All pay both the Egegik 3% local fish tax and 2% Lake and Peninsula Borough tax, yet do not demand to vote in the City of Egegik or Lake and Peninsula Borough matters.

Using the local option method allows the vast majority of persons impacted by annexation to vote to approve or disapprove expanding city boundaries. This direct say is inherently more fair than creating the potential for a locally desired annexation to be vetoed by a legislative body whose members have a limited connection to Dillingham or the Bristol Bay region.

## **Response to Specific Comments and Briefs**

### **10. City of Aleknagik, on behalf of City of Aleknagik, Aleknagik Traditional Council, and Aleknagik Natives Ltd.**

The concerns based on use of the area proposed for annexation by Aleknagik residents and the extent to which Aleknagik commercial fishermen use City of Dillingham services are addressed in part 1 above. Subsistence concerns are addressed in part 3 above. The request for legislative review is addressed in part 9 above.

Dillingham disputes that set netters with sites in Ekuk do not use or benefit from Dillingham facilities. Ekuk is supplied directly from the Dillingham Small Boat Harbor typically by landing craft including the vessels Sea Trek II and Jackie M. Affidavit of Jean Barrett. That deliveries are made to tenders outside the proposed expanded boundaries does not diminish the fishing that occurs within the proposed boundaries.

### **11. City of New Stuyahok.**

The concerns based on use of the area proposed for annexation by New Stuyahok residents and the extent to which New Stuyahok commercial fishermen use City of Dillingham services are addressed in parts 1 and 4 above. Subsistence concerns are addressed in part 3 above. The request for legislative review is addressed in part 9 above. That deliveries are made to tenders

outside the proposed expanded boundaries does not diminish the fishing that occurs within the proposed boundaries.

#### **12. Ekwok Village Council and Ekwok Natives Limited.**

The concerns based on use of the area proposed for annexation by Ekwok residents and the extent to which Ekwok commercial fishermen use City of Dillingham services are addressed in parts 1 and 4 above. The request for legislative review is addressed in part 9 above.

Dillingham disagrees that its fish tax would only benefit Dillingham residents and not the residents of the region. As explained in its petition (pages 7 - 8) and in part 7 above, fish tax revenue will be used specifically to benefit persons other than residents of Dillingham including Ekwok residents who fish within the new city boundaries.

#### **13. City of Manokotak.**

The concerns based on use of the area proposed for annexation by seasonal Manokotak residents and the extent to which Manokotak commercial fishermen use City of Dillingham services are addressed in part 1 above. The request for legislative review is addressed in part 9 above. The services provided to the commercial fishing fleet from providers based in Manokotak are discussed in part 4 above.

That deliveries are made to tenders outside the proposed expanded boundaries does not diminish the fishing that occurs within the proposed new city boundaries. While Manokotak is certainly free to file its own petition for annexation, the geographic separation from current city boundaries to Nushagak Bay raise doubt as to whether such a petition would meet the requirements of 3 AAC 110.130(b).

#### **14. Jerry Liboff.**

The concerns based on use of the area proposed for annexation by seasonal or permanent residents of Manokotak, Clarks Point, Aleknagik, Ekwok, Stuyahok, and Koliganek, are addressed in parts 1 and 4 above. The request for shared revenue is discussed in part 7 above. Concerns related to the impact of annexation on taxation by a possible future borough are addressed in part 2 above.

Dillingham disagrees that Clark's Point and Ekuk provide equal or greater service to the commercial fishing fleet than the City of Dillingham. The facts simply do not support this conclusion. Dillingham provided specific cost based information regarding services provided and the associated history of construction and maintenance of its small boat harbor. (Petition pp. 41-45). Neither Mr. Liboff nor any of the other responders identifying other services provided by or from other locations have submitted any information on the cost of those services paid by other cities and other details that would support the assertion that Clark's

Point and Ekuk (which is not a municipality in any event) provide equal services to the fishing community.

Dillingham appreciates that Mr. Libud recognizes that the commercial fishing fleet fishing within the area proposed for annexation does constitute a community.

#### **15. Clarks Point Village Council.**

As indicated in part 7 above, Dillingham is committed to share fish tax revenue for the benefit of non-Dillingham residents that participate in commercial fishing within the proposed expanded city boundary.

#### **16. H. Robin Samuelson, Jr.**

##### **COMMENT SUMMARY**

##### **A. Support.**

##### **B. 2.5% local fish tax appropriate.**

- About 38% of the commercial fishermen in Nushagak Bay are from outside of Alaska; and
- this local tax will generate revenue from them to help support their use of Dillingham infrastructure and services.
- Over half of the fish caught in Nushagak Bay are processed outside the Bay, so neither Dillingham nor any other Nushagak Bay local community gets any State business fish tax from this fish (because State tax is based on where the fish is processed). The Dillingham local fish tax, because it will be based on where fish is harvested, will provide revenue from this fish to Dillingham to help support infrastructure and services, including real costs for fisheries-related facilities and services.
- This more directly links Dillingham financially to the success of local fisheries.
- Commercial fishermen in other areas pay a local fish tax to the City of Togiak, City of Egegik, City of Chignik, Lake and Peninsula Borough, Bristol Bay Borough, Aleutians East Borough Kodiak Island Borough, the City of Saint Paul, City of Unalaska, City of Akutan, City of King Cove, City of Sand Point, and City of Atka. Dillingham also needs this revenue too to support the services Dillingham provides to the area's commercial fisheries, itself and adjacent regional fisheries.

- This new City revenue source may allow Dillingham to relax - or at a minimum stave off Increases - in property tax.

C. Dillingham is the hub community for the western Bristol Bay region.

- It spends significant municipal revenue to provide infrastructure and services used by both regional and Dillingham residents and others. Most commercial fishermen in the Nushagak Bay are not Dillingham residents, yet, virtually all use Dillingham's fishery related facilities and services. The harbor's use is truly regional in nature. While some neighboring community fishermen may not use it as frequently as non-Alaskan fishermen do, almost everyone with a boat uses it at sometime.

## **RESPONSE**

Dillingham appreciates the support of Mr. Samuelson who is a long time participant in local fisheries.

### **17. Stanley Mack.**

The comments based on the concept of "community" are addressed in part 5 above. The comments regarding impact of annexation on future borough formation are addressed in part 6 above. The comments based on old LBC decisions are addressed in part 2 above.

The concern regarding impact on "extraterritorial" state tax revenue allocation is incorrect. Processing that occurs outside of any municipality is tallied from the Bristol Bay Fishery Management Area (FMA) and placed into a statewide pool. This is commonly called the state shared or extraterritorial fish tax. It is distributed to municipalities based on how much was collected statewide, from within the FMA, and then a formula is used to distribute it based on a combined per capita split and per community split. Exhibit U. Dillingham does get a share of this revenue (\$31,397 in FY 10), as does Aleknagik, Clarks Point, Ekwok, Manokotak, New Stuyahok, Togiak and the Aleutians East Borough. Exhibit T. But, because this revenue is derived from processing outside the boundaries of any municipality, and because all floating processing occurs within the boundaries of Clark's Point, the "pool" of "extraterritorial" revenue will not be diminished by annexation. Nor will the number of communities amongst which the existing pool is divided be increased. Accordingly, no additional state fish tax from extraterritorial processing will be paid to Dillingham as a result of the annexation. Neither the Aleutian East borough's share nor any other community's share of this revenue will change as a result of annexation.

Mr. Mack is correct, however, in inferring that Dillingham's statement in its petition that Dillingham does not receive state shared fish tax from processing outside Dillingham's boundaries was made with regard to the State Business Fishery Tax (landing tax) administered

by the Department of Revenue. This is by far the largest amount of fish tax revenue distributed by the State. This was the source of payment of \$187,259 to Dillingham and \$100,786 to Clark's Point in FY 09. This tax transfer only comes from processing within a municipality's corporate boundaries. Exhibit V. The large payment to Clark's Point confirms that floating processing occurs within its boundaries and that fish tax revenue from this processing is not included in the "extraterritorial" revenue pool.

#### **18. Lake and Peninsula Borough.**

The Lake and Peninsula Borough ("L&P") applauds Dillingham's efforts. The Lake and Peninsula Borough's understanding that Dillingham does not propose to impact L&P's ability to levy and collect sales tax on fish caught within the proposed expanded boundary of the city and processed within L&P is correct. Dillingham is willing to provide a credit against sales tax levied now, or in the future, on fish "severed" within L&P and brought to Dillingham for processing. Dillingham also agrees to join in regional conversations to sort out fish harvest, tender, transfer and processing reporting and any resultant tax issues related to floating processors.

#### **19. Bristol Bay Native Association.**

The concerns based on use of the area proposed for annexation by seasonal or permanent residents of Manokotak, and Clark's Point are addressed in part 1 above. The services provided to the commercial fishing fleet from these locations, and from the fish cannery at Ekuk Breach, are either provided by private companies or are much less significant than the services provided by the City of Dillingham.

The request for shared revenue is discussed in part 7 above. The claim this has not previously been discussed is not accurate. Dillingham sent representatives to Clark's Point and to Manokotak specifically to discuss the annexation petition, including Dillingham's planned use of revenue. See, supra, p. 4 for a summary of meetings held outside Dillingham. It is not necessary to condition approval of annexation on agreements regarding shared revenue because Dillingham has already committed to using fish tax revenue to benefit commercial fishermen who live in Manokotak and Clark's Point. See also, Exhibit S.

It is not accurate to say the tax base is "severed" from Ekuk. Shore based processing occurs at Ekuk. This provides a potential tax base should Ekuk seek to incorporate as a city and qualify for a share of state fisheries business tax.

The claim that public safety, water and waste disposal services are "badly needed" at Ekuk is not specific. Dillingham is not aware of a high crime rate amongst the seasonal set netters at Ekuk, and, BBNA has not provided specific examples demonstrating a need for public safety services. Similarly, the BBNA comments do not identify any specific water needs of Ekuk set netters or show how those needs are not being met by the local cannery.

Ekuk is not a municipality and there are no permanent residents at Ekuk. The idea that this collection of set net sites would qualify for funding for a Village Safe Water project is far fetched; however, Dillingham's annexation petition does not prevent any such effort by Ekuk set netters. Nor does it prevent the Native Village of Ekuk from attempting to access BIA or IHS funding for water improvements.

## **20. Avi Friedman.**

Mr. Friedman is mistaken. Ekuk Beach is not included within the proposed annexation. See, Petition, Exhibit A-1, para. 6 (boundary parallels mean low water line); see also, Petition, p.48 (no uplands included). To the extent Mr. Friedman sees this as a distinction without a difference, the petition and this reply explain in great detail how Dillingham will use fish tax revenue to continue to operate, maintain and improve the substantial infrastructure in Dillingham which supports those fishing from Ekuk Beach. (Petition pp. 7-8, 40, 43-45).

## **21. Native Village of Ekuk Responsive Brief.**

Dillingham respects the past traditions associated with the Native Village of Ekuk, however, annexation must be evaluated based on current conditions. The current population of Ekuk is zero. Exhibit W. Ekuk is headquartered in Dillingham. Id., p.2. Ekuk housing programs build homes for tribal members exclusively in Dillingham. Exhibit X.<sup>2</sup> Ekuk has not provided information on the primary place of residence of its members, but the location of headquarters, the construction of homes in Dillingham and the known fact that Mr. Heyano himself lives in Dillingham, is significant evidence that Ekuk members are present in Dillingham.

Just because Ekuk is based in Dillingham, and its Dillingham members will directly benefit from annexation, does not mean Ekuk is compelled to support the City's annexation petition. Ekuk is entitled to and does provide arguments against annexation<sup>3</sup>. Many of the substantive positions asserted by Ekuk are addressed elsewhere in this reply and will not be repeated here. Ekuk's position on whether the City's petition meets the community requirement or qualifies for the exception to that requirement has been discussed previously at Part 5. Ekuk's position that the 1986 LBC decision should govern the current annexation petition has been discussed previously at Part 2. Ekuk's expressed preference for formation of a new borough is discussed at Part 6,

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<sup>2</sup> Exhibit X identifies properties included in "PILOT" agreements between Dillingham and the Bristol Bay Borough Authority. The properties referenced as "Ekuk Dillingham" subdivision were constructed by BBHA for Ekuk members.

<sup>3</sup> Ekuk suggests it has a witness "prepared to testify" regarding who pays current Dillingham taxes and the effect of annexation on economic development but offers no substantive information on this topic to which the City can respond. Ekuk brief, Exhibit 8, pp.6-7. Accordingly, the city will await specifics on these issues and respond accordingly.

and Ekuk's position on use of the local option method of annexation approval is discussed at Part 9.

Some of Ekuk's arguments are based on inaccuracies, half-truths, and misrepresentations contained in its brief. The opening allegation that annexation "would exclude other villages and municipalities in the region from the benefits" that would or could result from a borough government (Ekuk Brief at 3) is a straw man. Dillingham's response is "what Borough government"? For decades Dillingham has promoted borough formation and advocated for borough formation in the region. The response from Ekuk (and some other of those responding to Dillingham's petition) has always been no. So the idea that Ekuk wants a borough or believes it would benefit from a borough does not square with the historical record. Even if it did, the presence of a city levying a fish tax within the boundaries of a new borough would not be unprecedented. Pilot Point and Egegik (among others) levy such a tax within the existing Lake and Peninsula Borough. (Petition, p. 49). Togiak already levies such a tax and presumably would be included within the boundaries of any new borough.

The claim that Native Village of Ekuk members would not be allowed to vote on the local option petition (Reply Brief at 3), is not quantified. The only specifically identified member (Mr. Heyano) is a Dillingham resident<sup>4</sup>. If registered to vote, Ekuk members living in Dillingham will be able to participate in the requested local option election.

Ekuk speculates Dillingham "threw in" the WRSSHA to the proposed expanded boundary. (Ekuk Brief at p.3 n.2). Not true. This fishing region is directly adjacent to the City, whose inclusion was a logical result of the City's stated goal to receive revenue from a local fish tax. In 2010, 13.43% of the total harvest came from the WRSSHA.

Ekuk believes the fact boats fish in more than one region argues against annexation. (Ekuk brief at 5). This is not relevant. Boats originating in Dillingham also fish in those districts including those that have existing fish tax levies in place.

Ekuk's fisheries business tax generalizations mix the concept of a local fish tax with the existing state tax apportionment of state tax. State tax is not reduced by the presence of a local fish tax as explained in the City's response to Mr. Mack.

At page 7 of its brief, Ekuk misattributes counsel's argument about the impact of a local fish tax to an asserted position of Northern Economics. The first sentence of point (4) is indeed from the referenced Northern Economics report. The remainder of point (4) is not from the Northern Economics report, but simply an argument of counsel. Moreover, the tax is based on the actual catch of fish. Those that catch more fish pay more tax.

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<sup>4</sup> The City does not have access to tribal registration records.

Similarly misleading is Ekuk's repetition of new expenditures while omitting mention of the current costs. (Ekuk brief p. 8). Ekuk also engages in sleight of hand when representing that Dillingham spent "only \$330,000 in annual costs" for fisheries related expenditure. (Ekuk brief p. 9, n.11). This ignores the elephant in the room - deferred maintenance of existing infrastructure whose replacement cannot anticipate grant funding. Ekuk mentions alleged costs incurred by other cities (Ekuk Brief at p.10); however, neither Ekuk nor any of the identified communities submitting comments quantifies their expenses.

The supposed concern that floating processors would move operations to Clark's Point, Ekuk Brief at 11 is specious. The information derived from state fisheries tax payments indicate all floating processing already takes place within the boundaries of Clark's Point. Exhibit \_\_. Even if more processing did occur within the boundaries of Clark's Point, that community will receive a larger allocation of the state fisheries tax or, alternatively, establish its own fish tax.

Ekuk alleges the proposed boundaries will "likely have deleterious effects on Manokaotak and Alegnagik", Ekuk Brief at 11; however, the supposed "deleterious effects" are not identified. Igushik Beach set netters include Dillingham residents and the "transportation" connection between Dillingham and Alegnagik is as much via the existing road as it is up the Wood River.

Ekuk attempts to distinguish Dillingham's petition from a very similar annexation for the City of Togiak approved by the Commission in 1985. (Ekuk Brief at 16). Ekuk claims Togiak's annexation of territory whose community consisted of seasonal commercial fishermen was justified because of the need for Togiak to address alcohol abuse "in the area to be annexed". However, the alcohol abuse that needed to be addressed was not simply in the area to be annexed, but within the entire existing City of Togiak boundary. Moreover, the discussion in the 1985 Togiak decision of the "clear and present threat to public safety" to which Ekuk refers was specifically required by existing regulations. e.g. 19 AAC 10.070(6)[former](annexing city must show existing health and safety conditions "endanger" residents). The current regulations do not require such proof of "endangerment". 3 AAC 110.090(a)(2)("existing . . . health, safety and general welfare conditions). Accordingly, Ekuk's effort to differentiate Togiak on this basis is not relevant.

That Dillingham's need for annexation is based on securing a source of funding for continued maintenance, operation and improvement of existing infrastructure to support commercial fishing while Togiak's need for annexation was based on securing a source of funding to address alcohol abuse problems resulting from commercial fishing is not significant. The underlying justification is addressing on shore impacts and expenses related to commercial fishing. Dillingham's need for annexation is fundamentally the same need which the Commission found compelling in approving Togiak's annexation and Egegik's incorporation. There is no conceptual difference between a need for revenue to address seasonal commercial fishing related alcohol expenses and a need for revenue to operate, maintain and enhance significant public infrastructure such as docks and harbors supporting seasonal commercial fishery efforts. Both

are genuine community needs and both are appropriately funded in part by a local fish tax levied within an expanded municipal boundary.

Ekuk's reference to "extraterritorial powers" (Ekuk Brief at p. 20) suggests an unfeasible approach to extension of services within the territory proposed for annexation. Title 29 does not extend municipal powers beyond existing boundaries. Rather, AS 29.35.020 extends a municipality's "jurisdiction" to provide services beyond existing boundaries. Jurisdiction to provide services does not create taxing power beyond municipal boundaries. A city's extraterritorial powers do not include the ability to levy tax outside municipal boundaries. Accordingly, extension of Dillingham's jurisdiction to the area proposed for annexation does not address the need for operation and maintenance of the extensive port, harbor and landfill facilities necessary to support commercial fishing activity.

Ekuk claims that evidence that some tax payers within the area proposed for annexation will not use municipal services means annexation is not allowable. This is not the case in any community in the State of Alaska. Local schools are supported with property tax payments made by individuals with no children attending school. Local libraries are funded by tax payments from individuals who, for whatever reason, choose not to use the library. Fire departments are funded by tax payments made by individuals who are fortunate enough never to have a fire anywhere near their property. Tourists who make minimal use of city facilities contribute to their operation and maintenance through sales tax and bed tax payments. The standard to be applied by the Commission is whether people within the area to be annexed will receive or could reasonably be expected to receive municipal services. 3 AAC 110.090(a)(6). This does not require a showing that 100% of persons subject to annexation will make use of City services.

In addition, the fact that persons live in other villages, but work in the fishing industry in the area proposed for annexation is not, of itself, proof that these individuals do not make use of Dillingham's port and harbor services or otherwise indirectly benefit from City services. Most of these individuals will travel to Dillingham for medical services on a regular basis. Many vessels from other villages transit the Bay and go to Dillingham for services and supplies. Some tender fish directly to shore based processors located in Dillingham thereby indirectly benefitting from city services provided to Peter Pan. Trucks and vessels destined for the Ekuk beach fishery annually depart from Dillingham's harbor via landing craft, and there are multiple landing craft deliveries to the Ekuk cannery that originate from Dillingham. Affidavit of Gene Barrett. In summary, the existence of City services benefits a significantly large proportion of those working in the territory to be annexed. This shows the Commission that annexation is in the best interests of the State. 3 AAC 110.090(a)(6), 3 AAC 110. 135.

Ekuk claims that there does not appear to be "formally established plans" to overhaul or upgrade existing facilities. Ekuk Brief at 21. This is a clever word play on the phrase "formally established" and completely ignores the identified needs of the existing harbor discussed in the City's petition (Petition, pp. 45-46), which are described as "to be constructed" and the current

in progress construction of an extensive sheet pile bulkhead. (Petition, p. 44, Exhibit N).<sup>5</sup> No city in Alaska does everything at once. Even if Dillingham was not engaged in ongoing port and harbor upgrades, a lack of projects needed in the Dillingham port and harbor, but unable to be “formally” designed, would demonstrate exactly why annexation is appropriate. To provide an additional source of funding for the necessary upgrades that benefit those fishing in the area proposed for annexation.

Ekuk claims the delivery of fish caught within the area proposed for annexation to land based processors outside the proposed extended boundaries proves that this area does not meet the “character” requirement of 3 AAC 110.100. Ekuk Brief at 22. But, the City is not proposing to annex territory which includes land based processors, and has also promised to include an exemption or credit for fish transferred within the proposed new municipal boundary which is taxed upon delivery in another city. [See, p. 21 of this reply Brief]. It certainly is not necessary for the City to show that 100% of the fish caught within the proposed new boundary is also delivered within City boundaries in order to show the territory is “suitable” for annexation and that existing transportation “patterns” support annexation. 3 AAC 110.100(5),(6).

Ekuk’s claim that existing City revenues are “adequate” to continue to provide and maintain infrastructure to support the commercial fishing community, Ekuk Brief at 23, is a fantasy. As explained in the City’s petition and the affidavit of Mr. Barrus submitted herewith, the City’s boat harbor enterprise fund has been operating at a deficit and much of the City’s existing reserves are dedicated for specific expenses. The concept advanced by Ekuk - that Dillingham should first go broke and then start an annexation process, is stupid. The need for additional sources of revenue to maintain, operate and improve existing fishing-related facilities is financially obvious. The need will only grow as existing facilities age. Ongoing maintenance is not appropriately funded from reserves. The City’s annexation petition represents prudent realities. The facilities historically used in support of commercial fishing in the area proposed for annexation will not continue to exist without additional funding sources for their maintenance.

Ekuk’s claim that the seasonal commercial fishing community is not “stable”, Ekuk Brief at 24, is contradicted by its own historical recitation. The Bristol Bay commercial fishery has existed for 125 years. Exhibit Y. There are numerous instances of generations continuing to commercial fish in the area proposed for annexation. Many of the same permit holders return year after year after year. Permit data compiled by the Commercial Fisheries Entry Commission calculated an annual statewide permit turnover rate of 8 per cent. Exhibit Z.<sup>6</sup> Even assuming that none of the permit transfers are to children of original permittees (which is certainly not the case); this transiency of the commercial fishing community is similar to Anchorage or State

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<sup>5</sup> Project 17 on Exhibit N is in the construction phase. Project 18 on Exhibit N is in the design phase.

<sup>6</sup> Exhibit Z is an excerpt from the executive summary of a CFEC report titled “Changes in the Distribution of Alaska’s Commercial Fisheries Entry Permits, 1975 to 2009”. The table identifying all permit transfers in this period appears at p.11 of the report.

of Alaska residents. Exhibit AA, (Only 41% of Anchorage residents lived in the same house in 2000 as they did in 1995), Exhibit BB. (169,000 people left Alaska between 2005 and 2007, while 108,000 people moved to Alaska during the same period). Based on a population of 683,000, Exhibit BB shows an annual transiency rate statewide of between 8.2% (outbound) and 5.2% (inbound)<sup>7</sup>. Participants in commercial fishing are as “stable” as the average Alaska resident.

Ekuk’s claim that annexation would not relieve the state government of the responsibility of providing local service, Ekuk Brief at 25 reflects an assumption that state revenue coffers will remain at existing levels and continue to allow the state to fund the replacement and repair of infrastructure originally constructed with state grant funds. This ignores the looming fall in state revenue. Expanding the local tax base most definitely will provide more funds for the maintenance and replacement of port and harbor infrastructure originally constructed with state grants. While the state is not legally “responsible” for such expenses, the state has historically funded most of the cost of these improvements and will be expected to do so in the future absent an alternate funding source. Annexation creates that source.

Dillingham has reviewed the letter report of Ekuk’s economist. The City’s reaction is that only an economist could turn a 33% increase in the price paid for a product over a two year period (compare price data on p.53 of City’s petition (.74 per lb. for sockeye) to .95 price estimate in Ekuk Brief Ex. A, p.5 n.21), into bad financial news for governments whose revenue stream depends on the price of a natural resource.

## **Conclusion**

The comments received in response to Dillingham’s petition are not surprising and raise factors properly considered by the Commission. A careful review of the facts and application of 2010 (not 1986) regulations to those facts compels the conclusion that granting Dillingham’s annexation petition is in the best interests of the State of Alaska.

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<sup>7</sup> Exhibit AA is found at <http://www.fedstats.gov/qf/states/02/0203000.html> . Exhibit BB is found at <http://pewsocialtrends.org/maps/migration/> and is part of a report published by the Pew Research Center titled “Who Moves, Who Stays Put, Where’s Home” (Dec. 2008). The complete report may be found at <http://pewsocialtrends.org/assets/pdf/Movers-and-Stayers.pdf> .