STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Division of Community and Regional Affairs

Sean Parnell, Governor
Susan K. Bell, Commissioner

Preliminary Report to the Local Boundary Commission

Regarding the proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham

January 2011

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

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

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

The LBC staff complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4559.

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

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Chapter 1. Background

Local Boundary Commission's Constitutional Foundation

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").[1] The commission is responsible for establishing and modifying proposed municipal government boundaries. Those Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, but that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."[2] Placing decision making authority with a state body allows arguments for and against boundary changes to be analyzed objectively, taking area wide or statewide needs into account.[3]

Local Boundary Commission's Statutory Authority

The Local Boundary Commission derives its statutory authority from AS 29.06.040. Pursuant to 29.06.040(a) "the Local Boundary Commission may consider any proposed municipal boundary change." AS 29.06.040(a) further reads that "the commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets the applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62."

LBC Duties and Functions

The LBC acts on proposals for several different municipal boundary changes. These are:

- Incorporating municipalities[4]
- Annexing to municipalities
- Detaching from municipalities
- Merging municipalities

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1 Article X, section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

2 *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955.

3 *Id.*

4 The term "municipalities" includes both city governments and borough governments.

- Consolidating municipalities
- Reclassifying municipalities
- Dissolving municipalities

In addition to the above, the LBC under AS 44.33.812 shall:

- Make studies of local government boundary problems
- Adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution

The LBC may present proposed local boundary changes to the legislature concerning boundary changes under article X, section 12 of Alaska's constitution.

Nature of the Commission

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi–executive and quasi-judicial attributes.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that Alaska's constitution gives the LBC legislative authority to make fundamental public policy decisions. The court stated:

> [T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.[5]

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ." See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

5 *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

Quasi-Executive

Article X, section 12 of Alaska's constitution placed the LBC in the state's executive branch. The commission's duty under AS 44.33.812(a)(1) to "make studies of local government boundary problems" is one example of the LBC 's quasi-executive nature.

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

The LBC 's quasi-judicial nature requires that a reasonable basis of support exist for the LBC 's reading of the standards and evaluating the evidence. The LBC 's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

Limits on Directly Communicating the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves those rights.

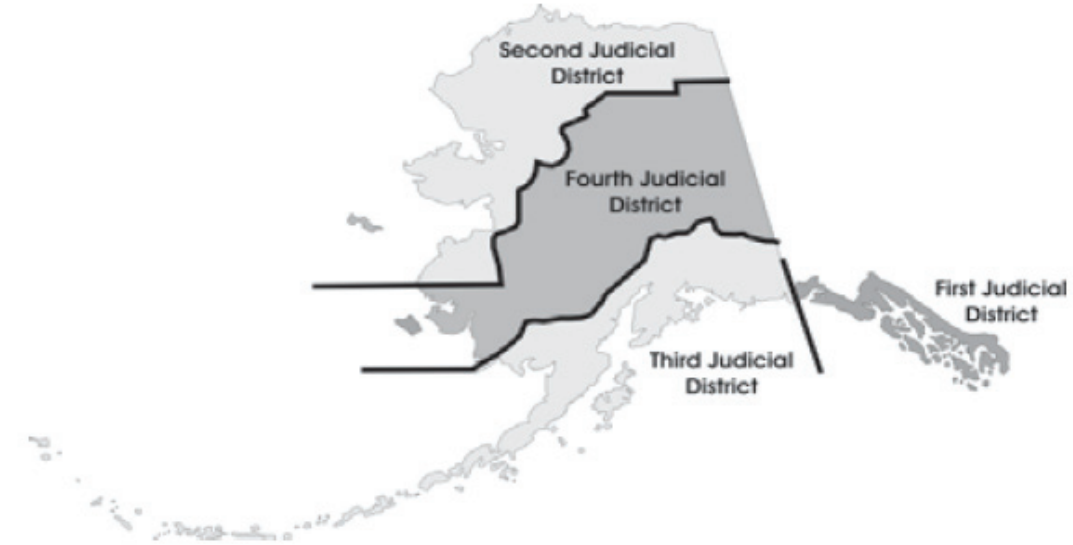
To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is appealed to the court, the *ex parte* contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC .

All communications with the commission must be submitted through the LBC's staff.

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, however, LBC commissioners serve at the governor's pleasure (AS 39.05.060(d)).

The LBC is comprised of five members. (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at-large. LBC members receive no pay for their service.



Alaska Judicial Districts

The following are the current LBC members' biographies:

Lynn Chrystal, Chair, At-Large Appointment, Valdez. Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. On September 10, 2009, Governor Parnell chose him to be the LBC's chair. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has been in Alaska since 1963, and has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. The chair has worked in Tin City, Barrow, Yakutat, and Valdez. He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends on January 31, 2013.

John Harrington, First Judicial District, Ketchikan. Governor Parnell appointed John Harrington to the Local Boundary Commission on September 10, 2009. Mr. Harrington is a real estate manager. He previously worked as an adult education coordinator in Ketchikan from 1985-97, and as a special education teacher and administrator in Washington from 1972-84. He has served on the Ketchikan Gateway Borough Assembly since 2005. He from 2003-04, and serving as an elected member currently chairs the Borough's Planning Liaison and Economic Development Advisory Committee. Mr. Harrington's community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission of Ketchikan Gateway Borough's school board from 1988-94. He earned a

bachelor's degree in psychology and history from Western Washington University, and a master's degree in educational administration from Seattle University. His current term on the LBC ends on January 31, 2011.

Robert "Bob" Harcharek, Second Judicial District, Barrow. Governor Knowles appointed Commissioner Harcharek to the LBC on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He has served as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. In 1977 he earned a Ph.D. in International and Development Education from the University of Pittsburgh. Commissioner Harcharek served for 3 years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. Dr. Harcharek served as a member of the Barrow City Council for 15 years, and is currently Barrow's mayor and chief administrative officer. His current LBC term ends on January 31, 2014.

Larry Semmens, Vice Chair, Third Judicial District, Soldotna. Governor Parnell appointed Larry Semmens to the Local Boundary Commission on September 10, 2009. Mr. Semmens is a certified public accountant and the city manager of the City of Soldotna. Previously, he was the finance director for the City of Kenai from 1996-2008. He served in the finance department of the Kenai Peninsula Borough from 1981-1996. Mr. Semmens currently chairs the Alaska Public Entities Insurance Pool and was recently reappointed to the Alaska Municipal League Investment Pool Board. He is a member of the American Institute of Certified Public Accountants and the International City Managers Association. Commissioner Semmens served in the U.S. Air Force from 1973-76. He earned a bachelor's degree in business administration from Boise State University. His current term on the LBC ends on January 31, 2012.

Lavell Wilson, Fourth Judicial District, Tok. Governor Palin appointed Tok's Lavell Wilson to the LBC on June 4, 2007. He moved to Alaska in 1949, and has lived in the Northway/Tok area since. Mr. Wilson attended the University of Alaska Fairbanks and Brigham Young University. He became a licensed big game guide in 1963. Mr. Wilson served the area outside of the Fairbanks North Star Borough in the Alaska House of Representatives (eighth legislature). Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981- 95, retiring as the company's chief pilot and office manager. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineers' Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and Cape Newenham's radar site. Mr. Wilson has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current LBC term ends on January 31, 2015.

statement limited to ten minutes duration.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. The testimony must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

No time limit on testimony by the Petitioner is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Following the testimony by the Petitioner, Respondent will be allowed to make opening statements and present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. As is required for the Petitioner, the testimony of witnesses for the Respondent must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

Here again, no time limit on testimony by the respondent is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

As the Petitioner bears the burden of proving that its Petition meets the standards and should be approved, the Petitioner has the opportunity to provide sworn responsive testimony to refute testimony of the Respondents. Rebuttal witnesses of the Petitioner must have expertise in matters relevant to the proposed annexation about which they intend to testify.

The laws governing the Commission's hearing make no provision for cross-examination of witnesses by the Petitioner or Respondents. However, a member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

At the conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment. Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes. Next, the Respondents are allowed to make a closing statement not to exceed 10 minutes for each respondent.

As the Petitioner bears the burden of demonstrating that its Petition should be granted, the City is allowed to reply to the closing statements of the Respondents. The reply is limited to five minutes.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by LBC staff and others.

In compliance with Title II of the Americans with Disabilities Act of 1990, LBC staff will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact LBC staff at 269-4559 at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

LBC Decisional Meeting

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the annexation proposal following the hearing, the LBC is likely to convene a decisional session shortly after the conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, Commission members may ask their staff or another person for a point of information or clarification.

Within thirty days after the Commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the City of Dillingham's annexation petition. A copy of the statement will be provided to the Petitioner, Respondents, and any others who request a copy.

Reconsideration

Any interested person or organization may ask the Commission to reconsider its decision in this matter. A request for reconsideration may be filed within 18 days after the written decisional statement has been mailed to the Petitioner and Respondents.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if:

- there was a substantial procedural error in the original proceeding;
- the original vote was based on fraud or misrepresentation; or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the Commission. Ten days are allotted for the filing of such briefs.

Federal Voting Rights Act of 1965 Preclearance

If the Commission approves the Petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the federal Voting Rights Act of 1965.

Federal law (*43 U.S.C. 1973*) subjects municipal annexations in Alaska to review under the federal Voting Rights Act of 1965. The Voting Rights Act of 1965 forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or U.S. District Court for the District of Columbia. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (*see 28 CFR § 51.22*). Annexation will not take effect until the City provides LBC staff with evidence that the Justice Department or U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630). Commission staff is available to assist cities in meeting their obligations under the Voting Rights Act of 1965.

Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within thirty days after the last day on which the Commission may order reconsideration. (*Alaska Rules of Appellate Procedure, Rule* 601 et seq.)

Local Action

The local action annexation by election, if approved by the LBC, takes effect only if approved by voters in each area involved in the petition: (1) those residing in the city to which annexation is proposed, and (2) those residing in the territory proposed to be annexed. *(AS 29.06.040(c)(1) and (c)(2); 3 AAC 110.150(3))*.

Chapter 3. Analysis

Introduction

This report is written by and is the findings of, the staff to the LBC. For each subchapter for standards for annexation to cities (e.g. 3 AAC 110.090 – 3 AAC 110.150) the regulatory standard will be stated. Next, the City's position, the Respondent's position, and the comments will be addressed. The City's position will be prefaced by "City," the Respondent's by "Respondent," and the comments by "Comments" (followed by the commenter's name). Anything within the "City," "Respondent," or "Comments" sections will be the Local Boundary Commission (hereafter "LBC" or "commission") staff's summary of the City's, Respondent's or commenter's position, as the staff understands it. It is intended not as factual statements, but as a paraphrasing or quoting of that entity's position.

Please note that there are often factors mentioned in the pertinent regulations which the LBC may [emphasis added] consider. The commission is not required to address all of those factors, and it may consider others. For consistency, the staff addresses the standards in numerical order of the regulations' subchapters.

The City's petition, the Respondent's responsive brief, and the City's reply brief have been read, reviewed, and considered by the LBC staff in writing this preliminary report. In its responsive brief, the Respondent does not address every regulatory subchapter that the City does. Notwithstanding, LBC staff addresses each subchapter's factors, whether a party addressed it or not.

All of the comments are attached in Appendix A. All of the comments have been read, reviewed, and considered by LBC staff in writing this report. A list of the comments and whether they favor or oppose annexing precedes this section. The comments did not address every subchapter. As some of the comments take similar positions, we will not address each comment for each subchapter. Again, every comment has been considered in writing this report. The applicable comments are summarized and analyzed, along with a summary and analysis of the petitioner's position and the respondent's position.

In this petition, some of the commenting entities passed similar or identical resolutions addressing the annexation. Again, as some of the commenters take similar positions, we will not address each comment for each subchapter.

The summary is not intended to be a verbatim repetition of each point either party or a commenter makes. Rather, it is meant to show the gist of the points made for each factor in a subchapter. The positions are cited to the appropriate page. If only one cite appear in a paragraph, and it follows the last sentence in the paragraph, that cite applies to all the material in the paragraph.

The LBC staff, part of the Department of Commerce, Community and Economic Development (hereafter "department" or "DCCED or Commerce") will then analyze

the parties' and the commenters' positions at the end of the each subchapter. The conclusion will come at the subchapter's end. A final recommendation to the LBC will appear at the report's end.

3 AAC 110.100. Character

The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the

(1) land use, subdivision platting, and ownership patterns;

City: "This is not directly applicable as there is no land (other than small uninhabitable islands) within the commercial fishing waters proposed for annexation." *(Petition p. 52)*.

Respondent: While respondent writes on 3 AAC 110.100, we do not see that it addressed 3 AAC 110.100(1) in its analysis of 3 AAC 110.100. *(Responsive Brief pp. 21 - 22)*.

LBC Staff Findings: LBC staff finds that this factor is not relevant because most of the territory proposed for annexation is waters. The title to the submerged lands will remain with the state. There are a few uninhabited islands comprising less than one percent of the territory. The waters cannot be subdivided.

(2) salability of land for residential, commercial, or industrial purposes;

City: "This is not directly applicable as there is no land (other than small uninhabitable islands) within the commercial fishing waters proposed for annexation." *(Petition p. 52)*.

Respondent: While respondent writes about 3 AAC 110.100, we do not see that it addressed 3 AAC 110.100(2) in its analysis of 3 AAC 110.100. *(Responsive Brief pp. 21 - 22).*

LBC Staff Findings: As above, LBC staff finds that this factor is not relevant because the water and submerged lands belong to the state, and cannot be sold.

(3) population density;

City: "This is not directly applicable as there is no permanent population within the commercial fishing waters proposed for annexation." *(Petition p. 53.)*

Respondent: "The LBC staff's regulations provide that the territory must be "compatible in character with the annexing city." 3 AAC 110.100. Of the seven subparagraphs of the character standard set out in section 100, four pertain to population - which is likely not relevant in this case because the territory does not have a permanent resident population." *(Responsive Brief p. 21)*.

LBC Staff Findings: LBC staff finds there is a seasonal population of commercial fishermen. They are not permanent residents. LBC finds that the population density in the territory is dissimilar to that of the existing City of Dillingham.

(4) cause of recent population changes;

City: "This is not directly applicable as there is no permanent population or population changes within the commercial fishing waters proposed for annexation. The population of Dillingham has been slowly increasing over the last decade. The combined number of unique drift gillnet and set gillnet fishermen with commercial landings in the Nushagak Salmon Commercial district has decreased about 20 percent since 2000. In any one season the number of permit holders fishing in the Nushagak District may vary depending on individual permit holder decisions. Region-wide, the number of Bristol Bay watershed residents holding permits in area drift gillnet fisheries continues to decline, and, after a period of decline the number of Bristol Bay watershed residents holding permits for the set gillnet fishery has stabilized." (*Petition p. 53*).

Respondent: Please see (3) above.

LBC Staff Findings: LBC staff disagrees with the city as to the city's population growth. LBC staff finds that while the city's population generally increased each decade since 1930, the population has gradually decreased between 2000 and 2009[1] . LBC staff is concerned that the population could be an ongoing trend. The cause of the population drop, particularly in the past two years, seems to be the cost of fuel, lack of employment, and the cost of living[2].

LBC staff further finds the number of crew on each fishing vessel more relevant than the number of permit holders. Based on the number of fishermen with commercial landings, however, LBC staff believes the territory's seasonal population is trending downward.

LBC staff finds the city and the seasonal population in the proposed expanded boundaries have a declining population. LBC staff finds that the territory is not compatible in character with the city based on this factor alone.

(5) suitability of the territory for reasonably anticipated community purposes;

City: The territory proposed for annexation is the adjacent commercial fishing waters. This territory is suitable and compatible with community purposes because it holds the resource upon which Dillingham's economic well-being depends. A demonstrated strong and compatible relationship between the City and the use of the waters proposed for annexation is described in this brief at section 3AAC 110.090 Need." *(Petition p. 53)*.

Respondent: "The sole purpose that Dillingham proposes for the territory is to provide a tax situs for revenue generation purposes." (*Responsive Brief p. 21*).

1 AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm.
2 LBC Staff communication with Robert Madeson, Commerce Local Government Specialist in Dillingham

Comments: Ralph Samuelson wrote that "Dillingham is the hub community for the western Bristol Bay region. As such, It spends significant municipal revenue to provide infrastructure and services used by both regional and Dillingham residents and others. Most commercial fisherman in the Nushagak Bay are not Dillingham residents, yet, virtually all use Dillingham's harbor, boat launch ramps, streets, land fill and trash pick-up at the harbor, public safety services, airport and more. Only about 135 commercial boat owners list Dillingham as a primary address, but on a bad weather day in-between fishery openings there can be 4 or 5 times this many commercial fishing boats rafted to one another and to the floats in the City's small boat harbor. Commercial fishermen keep their boats in the harbor between fishery openings, some live onboard, others haul their boats in and out for servicing, repair or storage, to get fresh water or ice and more; 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 some time."

The City of Aleknagik, Aleknagik Traditional Council, and Board of Directors of Aleknagik Natives Limited wrote that:

> "1) The villages of Aleknagik relies on the precedent established by the Local Boundary Commission in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay region. Aleknagik has real social and economic connections to Nushagak Bay for income and food for its residents.
>
> 2) The village of Aleknagik opposes the annexation of the Nushagak Commercial Fishing District and the Wood River Sockeye Special Harvest Area to the City of Dillingham because the waters of the Nushagak Bay and Wood River are not part of the community of Dillingham, but rather they belong to all of the cities and villages of the Dillingham Census Area."

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

The City of Manokotak wrote that:

"There are approximately 30 - 40 drift net permit holders residing in Manokotak. The majority of these permit holders fish exclusively in Nushagak Commercial Salmon District. These vessels harbor in the Igushik River and travel the river between the fishing areas and Manokotak. These drift boats deliver predominately to the Trident Seafoods tender which in turn delivers the fish to a floating processor anchored at Clark's Point. The boats from Manokotak are infrequent users of the harbor facilities of Dillingham. The city of Manokotak maintains a hydraulic trailer for launching and hauling out the drift boats and also provides winter storage space for these boats. Over 100 vessels ranging from 14 feet to 32 feet in length comprise the Manokotak fleet."

LBC Staff Findings: LBC staff finds that Dillingham is essentially a fishing community. "Dillingham is the economic, transportation, and public service center for western Bristol Bay. Commercial fishing, fish processing, cold storage, and support of the fishing industry are the primary activities…. In 2009, 227 residents held commercial fishing permits. During spring and summer, the population doubles. The city's role as the regional center for government and services helps to stabilize seasonal employment[3]."

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

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

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

In a broad view, the Nushagak Bay communities including the City of Dillingham all benefit from the tax revenue the annexation, if approved, would produce. They would benefit because they use city services, whether for fishing purposes or not. If Dillingham cannot financially sustain itself, these other communities will suffer if these services are no longer available, or are of diminished quality. If the annexation is approved, and Dillingham has increased tax revenue, Dillingham can better support these services which benefit all. As the community, in general, benefits from the proposed annexation, it is reasonable to conclude that the territory is suitable for the reasonably anticipated community purpose of producing additional revenue for the direct and indirect benefit of the Nushagak Bay area communities.

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

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

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

(Petition p. 53).

Respondent: "There are existing transportation patterns which have a significant part of the persons and vessels operating in Nushagak Bay spending some time using the facilities available in Dillingham. However, there does not appear to be formally established plans to change the extent of the facilities beyond those in existence." (*Responsive Brief p. 21*).

LBC Staff Findings: The territory comprises nearly 400 square miles of water, including the mouth of Nushagak Bay. It is impossible for any ocean going craft to enter Nushagak Bay without entering the territory. Any craft headed to the Bay's fishing ground, and to the Bay's communities, would have to enter the territory. Nushagak Bay is ice free from June to November[4] . Vessels entering the bay to fish, or act as tenders, or to deliver supplies would have to enter the territory. Barges would also have to enter the territory. Any of those vessels could use Dillingham's' harbor as well. For those reasons, LBC staff finds that the territory has existing and reasonably anticipated transportation patterns and facilities.

(7) natural geographical features and environmental factors.

City: "The proposed annexation conforms to the fishery management units of two waterbodies: the Nushagak Commercial Salmon District waters, and the Wood River Sockeye Special Harvest waters." *(Petition p. 53)*.

Respondent: "Even considering the capital facilities and use patterns indicated by petition, the natural and geographical features of Nushagak Bay do not particularly favor annexation to Dillingham. Rather, the bay is just as connected to other cities and villages of the region. The amount of fish Harvested from the two fishing districts and delivered to processors located outside of Nushagak Bay proves this point. To the extent these fish are delivered to land-based processors, the municipalities in which they are located have as strong a connection to Nushagak Bay as does Dillingham. Dillingham cannot make a strong case on the "character" standard that it alone meets the requirements of section 100 of the LBC staff regulations." *(Responsive Brief pp. 21 - 22)*.

LBC Staff Findings: The territory is mostly the waters of Nushagak Bay and the Wood River. Not all of the communities in the area are on Nushagak Bay. Dillingham, Clark's Point, and the seasonal fishing camp of Ekuk are on the bay. Other communities are linked less directly by river.

Other communities have cultural and economic links to the bay. LBC staff respects, and does not dismiss those connections. LBC staff understands the point of the respondent and several commenters that the bay is of regional importance.

Notwithstanding, the regulations pertain to the compatibility of character between the territory and the city. The territory can have links and connections to other communities,

4 http://www.commerce.state.ak.us/dca/commdb/CIS.cfm. See Clark's Point and/or Manokotak.

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

Dillingham is at the head of the bay. It directly adjoins the bay. Its harbor is used by a large part of the fishing fleet that operates within the bay. LBC staff finds the city has a more direct connection to the territory than do many of the other communities because the city is directly on the bay. In particular, the city harbor is directly linked to the territory.

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

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

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

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

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

3 AAC 110.090. Need

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

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

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

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

LBC Staff Findings: LBC staff acknowledges the petitioner's statement that there is not reasonably expected residential growth beyond the existing boundaries of the city during the 10 years following the effective date of annexation. The petitioner did not show sufficient evidence that anticipated social or economic conditions, including the extent to which residential and commercial growth of the community would occur within the proposed annexation boundaries, even with the inclusion of the seasonal community.

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

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

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

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

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

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

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

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

LBC Staff Findings: The petitioner and respondent focus their arguments primarily on "city owned and operated port and harbor facilities that support commercial fishing" with little or no emphasis on other services the city provides. Of the permit holders with landings in the Nushagak Commercial Salmon Harvest district, 19% were Dillingham residents and 46% were Alaskan, non-Dillingham residents[1]. Yet more than $300,000 annually is being expended specifically for fisheries-related services[2] . While many commenters mentioned that their communities' commercial fishing boats were not frequent users of the city's harbor and docks, a significant Alaskan presence in the Nushagak Bay is apparent. This is significant because the city, as the regional hub, would not expend a significant portion of these funds if this seasonal population, which is a majority Alaskan, non Dillingham resident, did not use and depend on services provided by the city during the seasonal fish harvest.

The respondent addresses the lack of reasonably anticipated health, safety, and general welfare conditions by stating, "[t]he petitioner literally does not meet this standard because the government it intends to provide in the territory, tax collection, will not be provided to any population resident there. Dillingham fails to offer other justification for adding unoccupied territory such as an immediate need presenting a clear and present threat to the public, health, safety or welfare of its community[3]." LBC staff disagrees with the respondent's conclusion. Although the fishers are not considered residents of the city, they are and must be considered a "seasonal population" with significant impact of the city's ability to provide essential municipal services to the territory proposed for annexation as well as the current city limits. The territory is populated, at least three months of the year. The city does not intend to provide additional municipal services to this seasonal population because the essential municipal services required by the fishery industry, or seasonal population, are already provided. These services enable the fishery industry to function efficiently throughout the fishing season with a good harbor, safe and operational ramps and roads, adequate police and public safety staffing, along with proper waste, water, landfill and sewage maintenance.

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

1 Petition, section 6 bottom of page 6
2 Petition, Page 7 & exhibit C-1: Projected Budget Revenue
3 Responsive Brief, pp. 24 - 25

used by the fishery industry, at its own expense[4]. The petitioner currently provides the majority, if not all, access to the region's major transportation services, for example. You can almost always expect visitors, particularly most fishery vessels traveling into and out of the Nushagak Bay area during the summer seasonal harvest, will haul or land in the City of Dillingham owned and maintained docks or harbor. If there was an accident on the waters of Nushagak Bay, it can be reasonably assumed that any individual(s) requiring essential or basic medical services would be transported to the hospital in Dillingham, perhaps on city streets by the volunteer search and rescue (presumably composed of Dillingham residents), through direct coordination with the Alaska State Troopers, and the local police department.

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

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

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

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

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

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

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

4 See Petition, p. 8 & exhibit C-1 & 2
5 Petition, p. 6
6 Fishery Management Report 10-25: 2009 Bristol Bay Area Annual Management Report

(4) ***adequacy of existing services;***

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

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

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

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

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

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

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

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

LBC Staff Findings: Alaskan, non-Dillingham residents comprise 46% of permit holders with landings in the Nushagak Commercial Salmon Harvest district[7] . LBC staff views this information as conclusive evidence that the surrounding communities do, in fact, use the existing services provided by the petitioner. While the respondent is partially correct that the petitioner "does not propose to assume new powers or responsibility for new services in the area to be annexed", LBC staff believes the adequacy of existing services does not require the petitioner to add new powers or services. The municipal services including but not limited to safe and operational ramps and roads, adequate police and public safety staffing, along with proper waste, water, landfill and sewage maintenance; public restroom and facility upkeep, trash and waste removal, etc. have consistently been provided by the petitioner. Furthermore, the petitioner indicate that it will be responsible for new services with the purchase of the oil spill cache and the enhanced coordination with the Alaska State troopers and local search and rescue team(s).

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

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

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

7 Petition, section 6 bottom of p. 6.

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

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

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

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

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

Dillingham also provides public safety, utilities, and road maintenance services to both permit holders transiting through Dillingham on their way to the fishing grounds and to protect the shore-based fish processing facilities critical to purchase and sale of salmon harvested by permit holders in the territory to be annexed[8]. "

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

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

8 Petition, p. 43

adoption of Resolution 2010-85 to express its commitment to communities outside the proposed expanded city boundaries[9]. ”

Respondent: See number (4) above.

Comments: The Ekwok Village Council states, “As residents of Bristol Bay who commercial fish in the Nushagak District we are infrequent users of the harbor facilities of Dillingham during the fishing season and already pay an annual harbor usage fee to the City of Dillingham. The current petition put forth by the City of Dillingham could put tax our residents which only benefit the City of Dillingham instead of our community or region as a whole[10]. ”

LBC Staff Findings: As discussed previously, LBC staff finds that the annexing cities, and the territory proposed to be annexed, are both receiving, at the present and through the foreseeable future, the benefit of services and facilities provided by the annexing city. The petitioner has continued to provide municipal services through harbor/dock assistance and maintenance, street and municipal facility upkeep, to name a few. These services would not be available to the fishery industry within the Nushagak Bay area if it were not for the city providing them. As a responsible local government entity, the city has continually provided these services at the expense of its residents and to the point of unsustainable expense.

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

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

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

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

9 Reply Brief, p. 15
10 Ekwok Village Council Public Comment Letter opposing the City of Dillingham Annexation Petition

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

City: "There is no existing city or borough that can provide services and facilities more efficiently or effectively to the Nushagak Bay commercial fleet and the Wood River fishermen. 3 AAC 110.970(d) indicates a city's essential municipal services may include, levying and collecting taxes, operating a public school system, land use regulation , providing public safety services and "other services the Commission deems reasonably necessary to meet the local government needs of the residents of the community". As previously discussed, the "community" within the territory proposed for annexation is a seasonal commercial fishing community whose need for public services is limited to port and harbor facilities, landfill services, and public safety. All of these services may be provided more efficiently by Dillingham than by any other existing city or by the Bristol Bay or Lake and Peninsula Boroughs[11]. "

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

"Note that the provision does not add the word "existing" before the words "organized borough" and that the two forms of municipalities are mentioned in separate independent clauses. The clear implication is that a determination whether another entity could more effectively and efficiently provide service should not be so artificially limited. A city may only be considered as an alternative if it is in existence, but a borough as a means of delivering municipal services may be considered even if it does not exist at the time of evaluation. Dillingham interprets the LBC staff regulations to permit only consideration of the ability of existing municipalities to provide government services in the territory. It probably wants to avoid consideration of whether a new borough might be a better choice to provide services in the territory. Ekuk urges the LBC staff to reject this interpretation and continue with its long standing policy of encouraging the formation of a regional government when it would be more efficient and effective[12]. "

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

11 Petition, p. 48
12 Responsive Brief, p. 23

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

LBC Staff Findings: Dillingham is the regional hub for the Nushagak Bay area. Nushagak Bay area communities, the seasonal population of the fishery industry, and the current residents of the city benefit from the essential municipal services provided by the petitioner. No other municipality has argued that it has the ability, or desires the responsibility of providing more efficient and more effective essential municipal services for the proposed expanded boundaries.

LBC staff finds no other existing municipality has the ability to provide essential municipal services to the territory to be annexed more efficiently and more effectively than the petitioner. The idea of regional government has only been theoretical with no petition filed with the LBC staff in almost fifty years since the incorporation of the city. LBC staff asserts that regional government could be a viable option, however, under the circumstances; the region has not produced the will or resources necessary to form such a government. Furthermore, the Local Boundary Commission should not deny an annexation on the basis of a potential petition for borough incorporation.

Conclusion: LBC staff views the region (as opposed to the territory proposed for annexation) to include all communities surrounding the bay. LBC staff finds that the entire region benefits from the sound economic growth and sustainability of the regional hub. LBC staff finds that the regional hub is Dillingham because of its relative size and institutions. LBC staff concludes that several of the Nushagak Bay area communities have populations that are relatively flat or declining[13] . In any given year, 10-15% of the commercial fish permit holders are not fishing in the district yet the fish harvest each season is increasing consistently. This dynamic means that local community's workforce is being stretched and stressed to produce these larger harvests. This dynamic also brings to light the fact that this resource, local fish tax revenue, is not serving the local communities to its maximum potential.

Robin Samuelson, Jr. points out "The Nushagak Bay is the virtually the only major commercial fishery in the region where there is no local fish tax in effect. This is like having money on the table and walking away[14]. " LBC staff agrees. The seasonal commercial fish harvest is the region's economic engine. The petitioner recognizes its regional hub responsibility and that it has stated, in writing, its intention to share this tax revenue with the surrounding communities. The region will benefit from this resource.

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

13 AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm.
14 Robin Samuelson, Jr. Public Comment regarding the City of Dillingham Annexation Petition

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

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

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

3 AAC 110.110. Resources

(a) The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the

(1) Reasonably anticipated functions of the city in the territory being annexed;

City: "The only changes in functions are discussed in 3 AAC 110.090(a)(2) *(p.40)*. Reasonably anticipated functions of the City in the territory being annexed include enhanced public safety and spill prevention, economic development, ongoing support of a small boat harbor, an all-tide dock, boat launch ramps, parking, water and ice availability at the harbor, trash collection at the harbor and docks (and subsequent disposal in a city operated landfill), access to a full complement of vessel repair, equipment and storage businesses as well as seafood processing facilities, and access to a regional hospital and airport and to commercial stores for provisioning." *(Petition p. 54)*.

Respondent: "The city states that the Alaska State Troopers will remain the agency responsible for providing public safety services. Dillingham does not claim it will provide additional search and rescue services in the area to be annexed either. Rather, it proposes to provide better "coordination" of search and rescue services that are provided by other persons presumably located in Dillingham." *(Responsive brief p. 8).*

LBC Staff Findings: LBC staff finds that the city provides reasonably anticipated functions to the seasonal population of the territory proposed for annexation. These services include the harbor and its related facilities, public safety, and trash collection. The city has been providing these functions to the territory by way of the seasonal population for a long time. In addition, reasonably anticipated "functions" include the levying of taxes which, if approved, would be an additional function not already provided to the territory. 3 AAC 110.970(d) includes "levying and collecting taxes" and "public safety protection" as services which the LBC staff can consider to be essential municipal services. The local fish tax revenue would allow the city to continue to provide all the services which it currently does. The LBC staff finds that the city has met 110.110(1) because it does and is expected to continue to continue to provide essential municipal services on an efficient, cost effective level. The local fish tax revenue will provide it the resources to continue to do so.

(2) Reasonably anticipated new expenses of the city that would result from annexation;

City: "Revenue resulting from this annexation will allow Dillingham to help cover the costs listed above and others. It will allow Dillingham to provide better service to its own and neighboring community fishermen as well as those from outside the area and state who use the City-maintained harbor, docks, boat ramps, restrooms, bathhouse, and benefit from trash-hauling, street maintenance, etc. Revenues from this annexation will

also allow some improvements that will benefit all who use Dillingham's harbor related facilities. In addition added revenue will allow enhanced coordination with the Alaska State Troopers, local search and rescue volunteers and others who together enact public safety response in Dillingham. The Alaska State Troopers will continue to be the primary first responders in Nushagak River and Bay as they are now, though the City will be better able to partner and assist when appropriate (refer to the Transition Plan). The City will also provide enhanced environmental protection through an added oil spill response cache." *(Petition p. 8)*.

Respondent: "Dillingham proposes a one-time capital expenditure of $20,000 to establish a cache of materials useful in responding to oil spills. Dillingham predicts that it will spend amounts in the first fiscal year after annexation to provide other services in the area to be annexed. However, this new service consists of approximately $100,000 in costs to be incurred preparing for the levy of a sales tax on raw fish. A small amount ($20,000) would be provided for police services and $120,000 for harbor expenses. In each succeeding fiscal year, the City contemplates spending only $145,000 additionally because of annexation ($5,000 administration, $20,000 police, $20,000 search and rescue coordination and $100,000 for the harbor). Pet. at p. 32. This is far less than the $710,883 that it expects to receive from the levy of a 2.5% tax on the sales of raw fish." *(Responsive brief pp. 8 – 9).*

LBC Staff Findings: The city has proposed new expenditures to enhance search and rescue coordination, purchasing and maintaining an oil spill cache, maintaining and improving the essential municipal services for the territory's seasonal population, and providing a fisheries improvement fund for the industry and surrounding community. LBC staff finds that these expenditures are not substantive and well within the resources available to the city, assuming the city is able to levy the local fish tax after annexation is approved. These expenses are a minimal portion of the additional revenue accumulated from the severance tax collected if annexation is approved. This annexation would provide for a sustainable local government with a well managed, sustainable community resource. LBC staff finds the petitioner has met 3 AAC 110.110(2) because the economy within the proposed expanded boundaries of the city would include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

(3) Actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;

City: "Reasonably anticipated revenue from the territory to be annexed is $710,883 annually, based on a 2.5% local raw fish severance and sales tax. This estimated tax revenue is based on actual salmon harvests in Nushagak Bay in 2000, 2005, 2008 (ADF&G fish ticket data), the price paid for salmon those years in Bristol Bay (COAR data), and the amount of State Business fisheries tax shared those years with Dillingham and Clark's Point (see work sheets on next two pages).

Actual revenue will vary depending on the annual harvest and price. Dillingham is not assuming that it will receive an increased share of State business fishery tax as a

result of annexation, although this could be the case some years. There should be no difficulty collecting this revenue. Twelve or thirteen other municipalities in the region levy either a raw fish severance or sales or flat tax. Dillingham will likely structure its tax similar to Lake and Peninsula Boroughs' where a buyer of resources pays either a sales or severance tax on the value of the raw fish harvested, but not both. We have already talked with a few municipalities levying taxes about their forms, ordinances, code and process. The City of Dillingham does not anticipate any capacity problems in implementing this tax. The first year's budget includes additional funding for finances and administration to set up and provide public notice of the new tax rules and process. The proposed transition budget also includes funding for a compliance/fishery advisor position[1].

Respondent: "The LBC staff's regulations provide that the economy within the proposed expanded boundaries "must include the human and financial resources necessary to provide essential municipal services on an efficient and cost effective level." Dillingham would not satisfy this standard because it does not propose to offer services in the expansion territory other than tax collection, search and rescue coordination (which it presently provides), and a small expenditure on an oil spill cache (which supplements a state cache already present). Dillingham desires to switch the funding source for many fishery related services now provided from the general funds of the city to raw fish tax revenue. Dillingham has adequate revenue to provide these fishery related facilities and services that it presently offers while generating a surplus. It seeks the new territory only for revenue generation purposes to make the city more 'sustainable'." *(Responsive brief pp. 22 – 23)*.

LBC Staff Findings: Based on the above tax explanation, LBC staff finds the territory will generate substantial income for the city should annexation be approved. LBC staff believes the petitioner's estimates for revenue generated by the proposed severance tax are conservative. LBC staff calculates that based on the Department of Fish & Game's FY10 Bristol Bay Season Summary report, the average weight and price of salmon could generate potentially double the current estimates of the petitioner. There should be no difficulty collecting this revenue. LBC staff finds the petitioner has met 110.110(3) because the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. LBC staff finds this because the actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory will fund these services.

(4) Feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for the completion of the transition set out in 3 AAC 110.900;

City: "Please see Exhibits C-1 and C-2. No difficulties are anticipated." *(Petition, p. 56)*.

1 See Petition exhibit C-1 & C-2

Respondent: "There should be no question about the feasibility and plausibility of the city's anticipated operating and capital budgets because it appears that it will be taking in substantially more for the raw fish sales tax than it proposes to spend, or even needs." *(Responsive Brief p. 23)*.

LBC Staff Findings: LBC staff agrees with both parties and finds the petitioner is feasibly and plausibly able to maintain its operating and capital budgets affected by the annexation. The city current has a three million dollar budget reserve, or rainy day fund, that would easily cover the additional cost incurred by the city for the transition set out in 3 AAC 110.900. LBC staff finds the petitioner has met 110.110(4) because the economy within the proposed expanded boundaries of the city would include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. We find that because the city would have the funds, if annexation is approved, to fund the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for the completion of the transition set out in 3 AAC 110.900.

(5) Economic base of the territory within the city after annexation;

City: "The economic base within the City after annexation will be the harvest, processing and support of commercial fisheries and Dillingham's place as a regional service hub for western Bristol Bay." *(Petition p. 56)*.

Respondent: While the respondent writes extensively about 3 AAC 110.110, 110.110(5) is not directly addressed.

LBC Staff Findings: Nushagak Bay, the territory proposed for annexation, is the economic engine for the region's communities. The salmon harvested from the bay produces the majority of the annual salmon harvest revenue for the region. The local governments, residents, and fishery industry all are all supported heavily by the economic impact of the seasonal salmon harvest. Without this economic base, the region would not possess much of the natural and financial resources to support local government at all. The Nushagak Bay region is also the only fishery based economy in Alaska without some form of local tax to benefit the region's local government. This annexation will allow the regional hub to collect revenue to appropriately assist the fishing industry, and the local government. LBC staff finds the city has met 110.110(5) because the economy within the proposed expanded boundaries of the city would include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. We find that because the economic base of the territory within the city after annexation is thriving and expected to continue over the long term.

(6) Valuations of taxable property in the territory proposed for annexation;

City: "There is no taxable real or personal property in the territory proposed for annexation." *(Petition p. 56)*.

Respondent: While the respondent writes extensively about 3 AAC 110.110, 3 AAC 110.110(6) is not directly addressed.

LBC Staff Findings: LBC staff concurs with the petitioner that there is no real or personal property in the territory proposed for annexation. Therefore, LBC staff finds that 3 AAC 110.110(6) is not applicable to this petition.

(7) Land use in the territory proposed for annexation

City: "This is not directly applicable as there is no land (other than small uninhabitable islands) within the commercial fishing waters proposed for annexation. *(Petition p. 52)*.

Respondent: While the respondent writes extensively about 3 AAC 110.110, 3 AAC 110.110(7) is not directly addressed.

LBC Staff Findings: LBC staff concurs with the petitioner that there are no habitable lands in the territory proposed for annexation. Therefore, LBC staff finds 3 AAC 110.110(7) is not applicable to this petition.

(8) Existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;

City: "As previously indicated, the City assumes the value of salmon harvested from the area proposed for annexation will fluctuate within past historical ranges." *(Petition p. 56).*

Respondent: "Petition has the necessary resources without expanding its boundaries and this will provide the existing necessary services." *(Responsive brief p. 23)*

LBC Staff Findings: LBC staff finds the territory proposed for annexation does have existing and reasonably anticipated commercial and resource development. The commercial fish harvest season is appropriately considered an existing commercial and resource development, and is reasonably anticipated to continue. LBC staff finds the city has met 110.110(8) because the economy within the proposed expanded boundaries of the city would include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. We find that because the existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation is thriving and expected to continue over the long term.

(9) Personal income of residents in the territory and in the city; and

City: "The most recent comprehensive data is from the 2000 US Census. At that time, the per capita income of Dillingham was $21,537, the median household income was $51,458 and the median family income was $57,417. There are no additional permanent residents in the territory proposed for annexation. The only income data from the area proposed for annexation is the gross value of salmon harvested from the area that is

included in the Petition at Section 11, Tax Data." *(Petition p. 57)*.

Respondent: While the respondent writes extensively about 3 AAC 110.110, 3 AAC 110.110)(9) is not directly addressed.

LBC Staff Findings: The city residents currently labor under a combined 13 mills property tax, a general sales tax of 6%, and a gaming sales tax of 6%, a liquor sales tax of 10%, and a gaming sales tax of 6%. The cost of living in rural Alaska is high. These taxes are accompanied by a median household income of income of $51,458, a 7.1% unemployment rate, and an 11.7 % poverty rate, according to the 2000 census[2]. The proposed annexation would bring much needed revenue to the city.

While the taxable revenue from the seasonal population suffices would enable the city to provide essential municipal services on an efficient, cost effective level, the personal income of Dillingham residents is not great. As the territory proposed for annexation has no permanent residents but only a seasonal population, LBC staff finds that only the permanent resident personal income information is considered when evaluating 110.110(9). The LBC staff finds that, however, the personal income of residents in the city is sufficient per se, but is accompanied by a 7.1% unemployment rate, and an 11.7 % poverty rate. Therefore, we find that the petitioner only marginally meets this factor.

(10) Need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.

City: "No additional employees are anticipated as a result of annexation. There will be increased work for the clerical positions engaged with tax collection. This additional work can be accomplished with current staff given the budgeted professional assistance to help establish the system. Additional maintenance work on port and harbor facilities is not anticipated to require additional full time positions. It may require seasonal positions that will easily be filled by current Dillingham residents. Port and harbor improvement projects made possible through additional tax revenue from the annexed territory will most likely be contracted out as public works projects." *(Petition p. 57)*.

Respondent: While the respondent writes extensively about 3 AAC 110.110, 3 AAC 110.110(10) is not directly addressed.

LBC Staff Findings: LBC staff finds that the annexation will not cause a need for additional employment of city workers, skilled or unskilled. LBC staff finds that the city has met 110.110(10) because the economy within the proposed expanded boundaries of the city would include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. We find that because there is not a need for, but there is an availability of, employable skilled and unskilled persons to serve the city government as a result of annexation.

2 AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm. Click on "Dillingham."

Conclusion: 3 AAC 110.110 addresses whether or not the economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

We find that the city has met 3 AAC 110.110 because we find that the city has does and is expected to continue to continue to provide essential municipal services on an efficient, cost effective level. The local fish tax revenue will provide it the resources to continue to do so.

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

LBC staff finds the petitioner has met 3 AAC 110.110 because the actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory will fund the essential municipal services.

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

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

LBC staff finds the petitioner has met 3 AAC 110.110 because the existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation is thriving and expected to continue over the long term.

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

LBC staff concludes that the petitioner has successfully met 3 AAC 110.110 because the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

3 AAC 110.120. Population

The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including

(1) census enumerations;

City: "The population within the proposed expanded City of Dillingham has two components: 1) permanent residents living within existing city boundaries, and 2) estimated population of seasonal residents working within both existing city boundaries and the area proposed for annexation. As to the first component, Dillingham's population is 2,347. See (4) below for the second, seasonal component." (*Petition p. 57*).

Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings: Please see 3 AAC 110.120(3).

(2) duration of residency;

City: The City has a stable and slowly growing population with many long-term residents. (*Petition p. 57*).

Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings: Please see 3 AAC 110.120(3).

(3) historical population patterns;

City: Dillingham's permanent resident population has been slowly growing since the 1920's, including over the last decade when many rural communities in the state and region experienced population declines. Slow growth in Dillingham is expected to continue. (*Petition p. 58*).

Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings: As we said in our analysis of 3 AAC 110.100(4), "LBC staff disagrees with the city as to the city's population growth. LBC staff finds that while the city's population generally increased each decade since 1930, the population has gradually decreased between 2000 and 2009[1]" . The drop was sharpest in 2008 and 2009. LBC staff is concerned that the 10 year population decline trend could be ongoing. The cause of the population drop, particularly in the past two years, seems to be the cost of fuel, lack of employment, and the cost of living[2].

1 AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm
2 LBC staff communication with Robert Madeson, Commerce local government specialist in Dillingham.

Although LBC staff finds that the population in the proposed expanded boundaries has declined, we agree with Respondent that "Dillingham with over 2000 existing residents would likely have enough population to provide city government within the territory to be added." (*Responsive Brief pp. 23 - 24*). LBC staff finds that even with a declining population, that the city's population is sufficiently large and stable to support the extension of city government. LBC staff bases that finding on two reasons. First, the population drop was largest in the past two years. LBC staff believes that it is difficult to predict a trend on two years alone. The population drop might be a trend, however, it might be a variation.

Secondly, the annexation, if approved, would mean that more revenue would flow into the city treasury. That revenue would be spent in one capacity or another. LBC staff finds it reasonable that the increased revenue would create more economic opportunity. Should the economic opportunity be increased, lower unemployment is possible. This in turn could stabilize or increase the population as residents see more suitable employment available to them.

LBC staff does not predict that this will definitely occur. We merely maintain that increased revenues could likely increase economic opportunity and population.

(4) seasonal population changes;

City: Dillingham's current population is approximately 2,347. The City of Dillingham's population about doubles during the peak fisheries months of May through August as summer visitors come to town to commercial fish in Nushagak Bay and other places in Bristol Bay or work in Dillingham-based seafood processing plants. An estimated additional 1,250 seasonal commercial fishery permit holders and crew are working in Nushagak Bay during the summer, many of whom spend some time in Dillingham. In addition, the Dillingham summer population swells by about 700 with seafood processing plant and other seasonal workers. (*Petition p. 58*).

The population of Dillingham has been slowly increasing over the last decade. The combined number of unique drift gillnet and set gillnet fishermen with commercial landings in the Nushagak Salmon Commercial district has decreased about 20 percent since 2000. (*Petition p. 53*).

Respondent: "The LBC staff regulations require that the population within the proposed boundaries must be "sufficiently large and stable to support the extension of city government". This standard is largely irrelevant to Dillingham's petition. The new territory will not add new population to the City of Dillingham. Rather, the population that Dillingham claims for the territory is an unstable and unpredictable seasonal workforce involved in the fishery. This temporary population will be influenced by the strength of salmon runs and markets for the catch. These factors are not necessarily associated with the concept of stability.

Ekuk acknowledges that the annexation standard set out in 3 AAC 110.120 is intended to judge the viability of the expanded municipality and that Dillingham with over 2000

existing residents would likely have enough population to provide city government within the territory to be added. However, if Dillingham is going to claim seasonal workers as residents of the territory, it should also be answerable as to whether this population is stable enough to meet the standards. For the foregoing reasons Ekuk requests the LBC staff to find that Dillingham has not presented proof that it satisfies the standard set out in 3 AAC 110.120." *(Responsive Brief pp. 23 - 24)*.

LBC Staff Findings: LBC staff agrees with respondent that the seasonal workers are in the territory temporarily, and are not permanent residents of the territory. "Resident" implies a longer stay with deeper, more fixed connections. LBC staff respectfully disagrees with respondent's assertion "that Dillingham has not presented proof that it satisfies the standard set out in 3 AAC 110.120." The standard specifies that "[t]he population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government." LBC staff defines the phrase "the proposed expanded boundaries" to mean the existing city plus the territory proposed for annexation. As stated above, LBC staff finds, and the respondent has agreed, that the existing city's population is sufficiently large and stable to support extending city government. As the city has a sufficiently large and stable population to support extending city government, the stability of the territory's seasonal population is irrelevant to finding the necessary stability for the proposed expanded boundaries. For that reason, LBC staff makes no finding as to the stability of the territory's population.

(5) age distributions;

City: On page 58 of its petition, the city presented an age distribution chart for Dillingham, according to the 2000 census population of 2,466.

Regular CFEC permit records do not establish age distributions among permit holders. *(Petition p. 58)*.

Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings:
Based on those data, LBC staff calculates the age distribution for the city to be as follows:

1 - 19: 904 or 36.7%
20 - 44: 867 or 35.2%
45 - 64: 572 or 23.2%
65 - 84: 123 or 5%

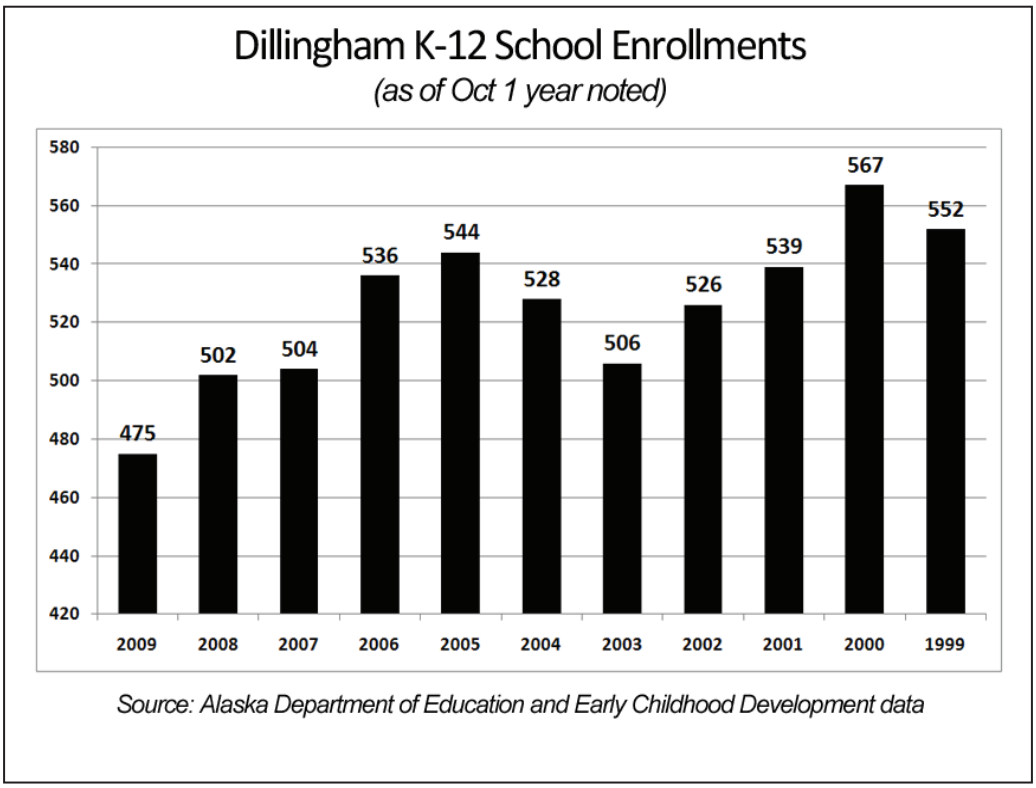
LBC staff finds that the data indicate the city has a young population. 36.7% of its residents are younger than 20 years old. This is comparable to the 2000 census data for Anchorage, which show an under 18 population of 37%.[3] Likewise, the data showed that 6.2% of Anchorage was over 62, compared to 6.2% of Dillingham was 62 and over. Anchorage has a comparable age distribution, and is growing.

3 AKDOL estimates, Division of Community and Regional Affairs, http://www.commerce.state.ak.us/dca/commdb/CF_CUSTM.htm. Click on "Anchorage."

LBC staff finds that Dillingham's age distribution indicates a sufficiently large and stable population. The city's population is relatively young. A younger population indicates a stable population and a future workforce. As the city has a sufficiently large and stable population to support extending city government, and as the fishers constitute a temporary population, LBC staff does not find the fishers' population data pertinent.

(6) contemporary and historical public school enrollment data; and

City: Like most places in Alaska, school enrollments in Dillingham are declining as statewide demographics vary. There are no students in the area proposed for annexation. (*See petition chart below)*.



Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings: LBC staff finds that the school enrollment in the city is declining. While we are concerned by that fact (which is not unique to Dillingham), we first find that the population of children is still sufficiently high (please see 110.120(5)). Secondly, as pointed out in 110.120(3), such a trend can be mitigated or eliminated by an improved local economy. An improved economy could cause residents, including families, to stay in Dillingham. LBC staff believes that in this case, increased tax revenues would stimulate the local economy. This is based on the fact that a good part of the fishers who would pay the severance tax are from outside of the Nushagak Bay region. Not only are a good number of the permit holders from outside of the Nushagak Bay region,

but the number of out of state permit holders is increasing while the number of local permit holders is declining. (*Responsive brief, Ex 3., pp. 12 and 23*). This means that the percentage of the fish tax payers who live locally continues to decrease.

(7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.

City: The number of permanent fund dividends in Dillingham has declined in the 2000's, though population has slightly increased. *(Petition p. 58)*.
[Petitioner did supply a chart of the number of PFD applicants on page 60 of its petition].

Respondent: Please see "Respondent" under 3 AAC 110.120(4).

LBC Staff Findings: Please see our findings under 3 AAC 110.120(3).

Additionally, LBC staff notes that the number of PFD applicants from Dillingham exceeds the city's population. We checked the DOR website and find that the number of applications is for area code 99576, which consists of Dillingham, Koliganek, and Twin Hills.

Conclusion: LBC staff finds that even with a declining population in Dillingham, that the population of the proposed expanded boundaries of the city (the existing city plus the territory proposed for annexation) is sufficiently large and stable to support the extension of city government. LBC staff bases that finding on two reasons. First, the population drop was larger in the past two years. LBC staff believes that it is difficult to predict a trend on two years alone. The population drop might be a variation. Secondly, the annexation, if approved, would mean that more revenue would flow into the city treasury. The tax revenue would come from the fishers.

LBC staff believes that in this case, increased tax revenues would stimulate the local economy. This is based on the fact that a good part of the fishery industry that would pay the severance tax is from outside of the Nushagak Bay region. Not only are a good number of the permit holders from outside of the Nushagak Bay region, but the number of out of state permit holders is increasing while local permits holders is declining. This means that the percentage of the tax payers who live locally continues to decrease.

Those funds would be spent in one capacity or another. LBC staff finds it reasonable that the increased funding would create more economic opportunity. Should the economic opportunity be increased, that could reduce unemployment. This in turn could stabilize or increase population, if residents could stay and have suitable employment.

LBC staff concludes that the petition meets the standard of 3 AAC 110.120.

3 AAC 110.130. Boundaries

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

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

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

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

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

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

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

(1) levying taxes;

(2) for a city in the unorganized borough, assessing the value of taxable property;

(3) levying and collecting taxes;

(4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065 ;

(5) public safety protection;

(6) planning, platting, and land use regulation; and

(7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.”

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

LBC staff finds the city is already providing essential municipal services. The proposed annexation will not make it more difficult for the city to provide these services. With an area of 33.6 square miles of land in Dillingham, LBC staff finds it reasonable that the proposed expanded boundaries of the city include all land and water necessary to provide for the development of essential municipal services on an efficient, cost effective level.

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

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

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

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

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

(1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation;

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

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

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

"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." *(Reply Brief pp. 12-13)*.

"Commercial fishing harvest, processing and provisioning in Nushagak Bay, and at times in Wood River, is expected to continue." *(Petition p. 42)*.

"Public Safety (police, fire, EMS)

- Ten percent of 2009's total calls for service (Dillingham city dispatch) are from the fishery related areas (the boat harbor, Wood River boat launch, city dock or processing plants).
- Twenty percent of all calls for service in June and July are from these areas.
- Ten percent of the FY 2010 public safety budget is $211,990 (public safety includes patrol, dispatch, corrections, fire, animal services).
- There is no additional public safety staff in summer." *(Petition p. 7)*

"The City intends to enhance public safety response and coordination by: 1) Better support for volunteer search and rescuers (There currently is an all-volunteer group not associated with the City. The City does not intend to 'take on' search and rescue, however the City will look to more actively support these volunteers who assist the Alaska State Troopers on Search and Rescue operations); 2) Enhanced coordination with Alaska State Troopers; and 3) Cross-training and developing use procedures between harbor and police staffs for use of the City skiff…. Increased responsibilities in the harbor and adjacent offshore areas along with increased revenue will allow the City to purchase and maintain an oil spill response cache in the harbor to enhance environmental protection in the commercial fishing waters." *(Petition p. 42)*.

Respondent: "A serious question presented by the petition is whether Dillingham is proposing to annex 'territory comprising an existing community.' Or, whether in reality Nushagak Bay is territory belonging to a regional community in which many municipalities and villages in the region share a common interest. A city is a community-based municipal government rather than one that is based on geography." *(Responsive Brief p. 11)*.

“The LBC staff applied the doctrine of community in a 1986 annexation proceeding involving Dillingham and Nushagak Bay which is not distinguishable from the present petition. The LBC staff observed:

> The statutes speak to “a community” when addressing city incorporation and “an area” when addressing borough incorporation. The definition of the word “community” as provided in Black’s Law Dictionary is a “neighborhood” compared to the definition of the word “area” as “a territory, a region”. The instant situation speaks to local boundary actions motivated by problems affecting a territory of people, not a community of people. Clearly a city is not the appropriate vehicle to adequately address problems that are of regional concern.

This decision rejected Dillingham’s attempt to annex both substantial amounts of land and water. The quote set out above was addressing the regional character of water area consisting of Nushagak Bay. *(Responsive Brief p. 12)*.

“In 1987, the former Department of Community and Regional Affairs, acting as staff for the LBC staff, issued a report on the city’s amended petition to annex somewhat less territory but which also included the waters of Nushagak Bay. In the report, the department recounted the rationale of the LBC staff’s December, 1986 decision in which it acted upon separate proposals from the Cities of Dillingham and Clark’s Point for annexation of all or significant portions of Nushagak Bay. The department reported:

1. The size, configuration, level of development and other characteristics of Nushagak Bay are clear evidence that it is a region rather than part of a community. State laws governing municipalities provide that, to the extent territories are incorporated; regional territory shall be served by boroughs or unified municipalities, while community territory shall be served by cities. Thus annexation of all or substantial portions of Nushagak Bay by any city is inappropriate.

2. The need for municipal jurisdiction over Nushagak Bay is of a regional nature. Issues of service delivery, revenue enhancement and impacts to public health and safety are shared by the cities of Clark’s Point and Dillingham, as well as other areas bordering and or relying upon the resources of Nushagak Bay. Thus, regional municipal government was judged to be the most appropriate mechanism to address these needs. . .”*(Responsive Brief p. 12-13)*.

“The effect of granting the instant petition would be to transform Dillingham into a regional government without the responsibility for all of the territory of the region or for answering to the residents of other cities and villages that share interest in the waters proposed for annexation. To grant the petition may set in motion the Balkanization of Western Bristol Bay by forcing other municipalities in the region to seek the detachment of territory from Nushagak Bay in order to fairly allocate fishery related tax revenue to cover the impact of the fishery resource related to them.” (Responsive Brief p. 14).

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

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

Comments: The City of New Stuyahok said that

> "(1) The city of New Stuyahok relies on the precedent established by the Local Boundary Commission in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay Region. New Stuyahok has real social and economic connections to Nushagak Bay for income and food for its residents.
>
> (2) The city of New Stuyahok opposes the annexation of the Nushagak Commercial Salmon District and the Wood River Sockeye Special Harvest Area to the City of Dillingham because the waters of Nushagak Bay and Wood River are not part of the community of Dillingham, but rather they belong to all of the cities and villages of the Dillingham Census Area."

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

LBC Staff Findings:

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

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

LBC staff finds that the proposed expanded boundaries of the city are on a scale suitable for city government. The present size of Dillingham is 33.6 sq. miles of land and 2.1 sq. miles of water, for a total of 35.7 square miles. The proposed annexation is 395.84 square miles of water, and 3.24 square miles of land, for a total of 399.08 square miles. The annexation, if approved, would result in a total municipal area of 434.78 square miles for Dillingham.

Other Alaskan municipalities are reasonably large, on a scale suitable for city (municipal) government. St. Paul, for example, has a land area of 40 square miles, and 255.2 of water, for a total municipal area of 295.2 square miles. Togiak has 45.2 square miles of land, and 183.3 of water, for a total municipal area of 228.5 square miles. Valdez is 222 square miles of land, and 55.1 square miles of water, totaling 277.1 square miles of municipal area. Skagway totals of 464.3 municipal square miles which was the total municipal area as a city as well as after the city was dissolved and incorporated into a borough. That area is larger than the petitioner's proposed expanded boundaries.

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

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

LBC staff examined whether the proposed expanded boundaries of the city include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. LBC staff finds that the city is an existing local community. As of 2009 census data, the city has a population of 2,264. It has a stable and established local government, a port, and other notable municipal features. The petitioner is the largest municipality in the Nushagak Bay area. The proposed expanded boundaries would include the existing community of the city and the territory proposed for annexation.

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

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

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

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

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

(2) May not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 – 3 AAC 100.135 and are otherwise suitable for city government.

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

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

LBC Staff Findings:

3 AAC 110.990(28) states that "region"

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

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

LBC staff finds that the proposed expanded boundaries of the city do not fit the definition of "region" because the proposed expanded boundaries of the city do not encompass a borough, or have multiple communities that share common attributes. The existing land based communities other than Dillingham are outside the proposed expanded boundaries of the city

3 AAC 110.990(15) defines "area" as "the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough."

LBC staff finds that the proposed expanded boundaries of the city do not meet the definition of "area" because they do not describe a borough. They are not even a proposed borough because the model borough boundaries for Bristol Bay exceed that of the proposed expanded boundaries of the city.

LBC staff finds that the municipal area is extensively populated year round without the addition of the "seasonal community". The proposed expanded boundaries of the city are also populated during the annual fishing season. LBC staff finds that any contention about whether the proposed expanded boundaries of the city include large unpopulated areas is moot for reasons explained below.

LBC staff finds that the petition meets the standards of 3 AAC 110.090 - 3 AAC 110.135, and are otherwise suitable for city government. Per 3 AAC 110.130(c)(2), because the petition meets those two criteria, the provision that annexation may not include entire geographical regions or large unpopulated areas does not apply.

(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

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

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

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

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

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

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

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

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

3 AAC 110.135. Best Interests of the State

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

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

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

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

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

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

> for city ... annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists [citing 3 AAC 110.981(7)].

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

"Respondent believes that the best interest determination must be interpreted broadly to include the concept that best interests of the state may only be achieved by the establishment of the appropriate kind of local government for the region. It cannot be in the best interest of the state to allow a city to annex fishing districts that are socio-economic centers shared with other communities as well, for the purpose of increasing the revenue source of the city. This is contrary to the best interests of the state when other communities are denied access to the wealth of a region that they have strong financial and social interests in. Without access to this wealth, these communities and their residents are more likely to remain dependent on the state for services." *(Responsive brief p. 25)*.

"In light of the 'marginal' financial viability of a borough in the region, this annexation would have a "significant disincentive to formation of a borough in the region[1]." Contrary to the bare assertions made by petitioner, little evidence of substance is provided that there would be enough revenue available from the taxation of raw fish sales to support both Dillingham and a new borough. . . . In 1987, the LBC staff established the precedent that:

> Annexation of all or substantial portions of Nushagak Bay by a city would diminish the incentive for, and indeed the feasibility of, borough formation. Thus, annexation of the area by any city was determined not to be in the best interests of the state or the region[2]." *(Responsive brief p. 26).*

"While petitioner's motives are well intentioned, it should realize that the new boundaries it desires would maximize its financial resources to the detriment of adjacent communities. If it is allowed to tap into this source of tax revenue, Ekuk hopes that the LBC staff will inquire whether the governing body of Dillingham will be supporting the formation of a regional government or service area to benefit the Western Bristol Bay region. An annexation which serves as a disincentive to borough formation in the Dillingham Census Area cannot be in the best interests of the state." *(Responsive brief p. 27)*.

"For the foregoing reasons Ekuk requests the LBC staff to find the annexation proposed in the petition is not in the best interests of the state." *(Responsive brief p. 27)*.

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1 *Citing Alaska Department of Community and Economic Development, Chronicle of Borough Developments in the Bristol Bay Region and Update of Revenue Projects Concerning the Proposed Annexation to the Lake and Peninsula Borough* (March, 2000)

2 *Citing Department of Community and Regional Affairs, Report and Recommendation to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the Annexation of Approximately 421.25 Square Miles of Territory* (September, 1987) at p. 15 (emphasis added by Respondent)

Comments:

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

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

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

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

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

LBC Staff Findings:

3 AAC 110.981(7) asks "for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists." 3 AAC 110.981(7) is not by itself a requirement that the petition promotes maximum self government. Rather, it states that the LBC staff will consider AAC 110.981(7) when it considers maximum local self government. Maximum local self government is a factor which the LBC staff may consider under 3 AAC 110.135.

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

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

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

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

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

Respondent: Please see further below.

LBC Staff Findings: 3 AAC 110.982(7) asks whether "for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area."
Art. X, sec. 1 of Alaska's constitution states that "[t]he purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units."

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

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

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

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

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

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

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

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

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

Regional Hub

LBC staff finds further support that the proposed annexation is in the best interests of the state. We find that if the LBC staff approved the annexation, that that would ensure a stronger, more vibrant local government. LBC staff finds the annexation meets the best interests of the state because the city is the appropriate government for the territory. The city is the appropriate government for the territory because the rest of the region's communities need a stronger regional hub for their sustainability. LBC staff finds that the annexation is necessary to sustain the city, thereby sustaining the regional hub. If the city were to continue its fiscal course, without annexation approval, the state could be forced to step in and assist Dillingham in order to maintain the economic integrity of the city and region. This would not be in the state's best interests.

Dillingham is the hub of the Nushagak Bay region. The Dillingham Census Area had a 2000 population of 4,922[3]. In 2000, Dillingham had a population of 2,466, or roughly half that of the entire census area. The city has the hospital the largest harbor, including a barge landing, a branch of the university, and governmental offices. The city has the most stores and businesses.

Without the approval of this annexation, Dillingham's economy or its population could potentially decline dramatically. Would the city, then, be able to continue to provide all these functions? For example, there might be a position advertised outside the city for a hospital employee, but would there be a position for that employee's spouse? Would the hospital be able to recruit and retain sufficient professional staff? Would the media still be able to maintain operations in the region without a strong regional hub? Would there be as many government offices and employees? Would the Bristol Bay Campus of the University of Alaska Fairbanks remain open? There are hypothetical questions, with no easy answers – but they are questions worth asking.

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

We understand that the bay communities view the bay as being of regional interest, and not belonging solely to the city. But, LBC staff takes the view that this proposed annexation would not help only the city, but would benefit the entire Nushagak Bay region. If the city which is the center of activities, and has half the region's population diminishes, the other communities will also fade because there will not a hub to depend on, directly or indirectly. Should annexation not be approved, we do not see a bright or sustainable future for Dillingham. LBC staff feels that Dillingham would diminish in time, and would not be able to serve the region as it does now. This would hurt the entire region. The city is the appropriate government for the territory because the rest of the region's communities need a stronger regional hub for their sustainability.

3 http://en.wikipedia.org/wiki/Dillingham_Census_Area,_Alaska

Borough Formation

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

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

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

LBC staff does not see that approving the annexation would decrease the odds of a borough being formed. Instead, LBC staff finds that approving the annexation would increase the odds of a borough being formed. As the city pointed out above, if the annexation is approved, the region would see the benefits of the resulting severance or sales tax revenue, and how it could help a borough. That realization of benefits could spur borough formation.

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

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

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

Taxation

LBC staff finds that the city is the appropriate government for the territory because approving the annexation petition does not remove any present or future fish tax

revenue for existing communities, or a future borough. We find that approving the annexation is in the best interests of the state for that reason.

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

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

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

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

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

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

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

be distributed by Commerce.

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

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

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

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

For all of these reasons, we find that the city is the appropriate government for the territory because approving the annexation petition does not remove any present or future fish tax revenue for existing communities or a future borough. We find that approving the annexation is in the best interests of the state for that reason.

In conclusion, we find that the annexation meets the best interests of the state standard because it promotes maximum local self government and because it promotes a minimum number of local government units. Further, we find that the annexation meets the best interests of the state standard because the city is the appropriate government for the territory. We find that it is the appropriate government for the territory because the city is the region's hub, because the annexation would encourage, not hinder, borough formation, and because approving the annexation petition does not remove any present or future fish tax revenue for existing communities or a future borough.

3 AAC 110.900. Transition

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change.

City: The city addressed its transition in Exhibit F of its petition *(pp. 36 – 38)*. "In addition added revenue will allow enhanced coordination with the Alaska State Troopers, local search and rescue volunteers and others who together enact public safety response in Dillingham. The Alaska State Troopers will continue to be the primary first responders in Nushagak River and Bay as they are now, though the City will be better able to partner and assist when appropriate (refer to the Transition Plan)." *(Petition p. 8)*.

Respondent: While the Respondent opposes the city annexation petition, it did not comment on the transition.

LBC Staff Findings: The city includes a transition plan in its petition as Exhibit F. The city's transition is mainly concerned with internal discussions, but did include discussions with Sergeant Randy McPherron of the Alaska State Troopers (AST), Lamar Cotten (Lake and Peninsula Borough manager) and Maile Simon (Lake and Peninsula Borough assistant finance officer). The city indicated that those three individuals were a source of information, but that they did not review the transition plan.

The city did consult with the AST as to where public safety responsibilities would shift between the AST and the city. As above, primary responsibility would remain with the AST.

LBC staff finds that because the proposed annexation would occur in the unorganized borough, does not involve any service areas, and does not replace the AST, there is not a considerable amount of transition necessary. Notwithstanding, LBC staff deems that 3 AAC 110.900(a) has been satisfied because the petition includes a transition plan.

(b) A practical plan to assume all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located in the territory proposed for annexation. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change.

City: The city addressed its transition in Exhibit F of its petition *(pp. 36 – 38)*. It indicates there when the transit would occur.

Respondent: While the Respondent opposes the city annexation petition, it did not comment on the transition.

LBC Staff Findings: The LBC staff finds that there is a transition plan and that the city indicates in its transition plan when the transition would occur. The LBC staff finds that there is very little external transition to be done, but that the transition plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. We find that the plan was designed to affect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. LBC staff finds that 3 AAC 110.900(b) has been satisfied.

(c) A practical plan to transfer and integrate all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

City: "No assets or liabilities will be transferred or integrated as a result of the proposed annexation." *(Petition, Exhibit F p. 36)*.

Respondent: While the Respondent opposes the city annexation petition, it did not comment on the transition.

LBC Staff Findings: LBC staff finds that there are no relevant or appropriate assets and liabilities to transfer or integrate from any entity. In consideration that no assets or liabilities exist which would need to be transferred, LBC staff finds that the city's petition meets this requirement.

(d) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.

City: The city addressed its transition in Exhibit F of its petition *(pp. 36 – 38)*.

Respondent: While the Respondent opposes the city annexation petition, it did not comment on the transition.

LBC Staff Findings: LBC staff finds that the transition plan stated the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. We find that the dates on which that consultation occurred and

the subject addressed during that consultation were also listed. LBC staff finds that 3 AAC 110.900(d) has been satisfied.

Conclusion: LBC staff finds the prospective transition of extending essential city services into the territory proposed for annexation to be elementary and uncomplicated. LBC staff finds that the petition includes a transition plan. We further find that the plan was designed to affect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. LBC staff finds that there are no relevant or appropriate assets and liabilities to transfer or integrate from any entity. LBC staff finds that the transition plan stated the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. We find that the dates on which that consultation occurred and the subject addressed during that consultation were also listed. We find that the petition meets the requirements of 3 AAC 110.900.

3 AAC 110.910. Statement of nondiscrimination

(a) A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

City: "The proposed change will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex or national origin." *(Petition p. 14, and Exhibit H on p. 40).*

Respondent: "This leaves only residents of the existing city qualified to participate in the municipal election." *(Responsive brief p. 31.)*

Comments: Aleknagik commented that "[u]nder the local option method, none of the resident of the village of Aleknagik who are directly affected by the annexation petitioned for by Dillingham would have an opportunity to vote on the question of annexation."

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

LBC Staff Findings: Although the Local Boundary Commission will make a determination concerning the standard at issue, the U.S. Justice Department will independently review under the terms of the federal Voting Rights Act of 1965 of any annexation approved.

The following background information on the history and interpretations of 3 AAC 110.910 and the federal Voting Rights Act of 1965 is cited from the 2002 DCED Preliminary Report – City of Palmer Petition to Annex 921.34 Acres.

> "Two separate laws apply here. The first is 3 AAC 110.910, which states as follows:
>
> 3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
>
> The second law is the Federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. Specifically, the federal law provides as follows:
>
> 42 USC Sec. 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation.
>
> (a) No voting qualification or prerequisite to voting or standard, practice, or

procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

It may be helpful to review certain of the terms used in the State and Federal laws relating to the standards at issue. Specifically, Black's Law Dictionary (Revised Fourth Edition) defines "civil rights," "political rights," and "creed" as follows.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.
The word "creed" has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief."

Because the U.S. Justice Department must provide an independent review of any annexation in the context of the Voting Rights Act, it may also be helpful to provide background concerning the Federal Voting Rights Act and its application to Alaska. The Voting Rights Act was passed in 1965, at which time the U.S. Justice Department established standards to determine which jurisdictions nationwide would be required to "preclear" changes in voting rights and practices under Section 5 of the Act.

The standards provided that if the U.S. Justice Department determined that a state or political subdivision maintained a "test or device," and if the Census Bureau determined that fewer than 50% of the voting-aged residents of the jurisdiction were either registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had both low voter registration and turnout. The U.S. Justice Department also determined that Alaska maintained a literacy test, which was a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Rights Act, Alaska immediately filed a lawsuit asserting that the State had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position and Alaska was allowed to withdraw from the preclearance requirements.

The Federal Voting Rights Act was amended in 1970, at which time Alaska was again made subject to the preclearance requirements. With the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclearance changes affecting voting.
In 1975, the Voting Rights Act was amended again. The amendments expanded the definition of "test or device[1]" to apply to a jurisdiction that conducted elections only in English if 5% or more of the residents were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have remained subject to the Section 5 Voting Rights Act requirements since 1975.

In addition to the definitions of certain terms and background on the Voting Rights Act, it is appropriate to note here that in 1962, the Alaska Supreme Court held that the legislative review process for annexation – the same one employed in this proceeding by the City of Homer – does not infringe or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution. Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 p.2d 540, 545 (*Alaska 1962*):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should

1 "Test or device" was defined as "any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) rove his qualifications by the voucher of registered voters or members of any other class.

take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of Gomillion v. Lightfoot[2].

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of 'liberty, or property, without due process of law[3].' The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation[4]. The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community[5]. There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the Gomillion[6] case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

The Alaska Supreme Court's interpretation is consistent with a U.S. Supreme Court ruling one hundred and twenty years ago. In Kelly v. City of Pittsburgh, 104 U.S. 78 (1881), a taxpayer claimed that taxes assessed by a city into which his land had recently been annexed without his vote, deprived him of his property without due process of law. The court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. … Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation." *(2002 DCED Preliminary Report – City of Palmer Petition to Annex 921.34 Acres pp. 60-62).*

There has been no compelling argument presented that annexation would diminish any civil rights of any person. Some commenters have said that they would not be allowed to vote. As those commenters do not live in the territory, they are not disenfranchised

2 *364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110* (1960).

3 *U.S.Const*. amend. XIV, § 1.

4 *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); 1 Antieau, Municipal Corporation Law § 1.15 at 30 (1958).

5 Cf. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); Mount Pleasant v. Beckwith, 100 U.S. 514, 524 525, 25 L.Ed. 699, 701 (1880).

6 *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

if they cannot vote. Further, any discussion of whether to use local action or legislative review does not involve the Voting Rights Act of 1965.

Conclusion: Although annexation would clearly affect the concerns of citizens who live near, or fish in the territory proposed for annexation, there is no evidence whatsoever that the effects are "because of race, color, creed, sex, or national origin." Moreover, there is no indication in this proceeding that annexation would result in imposing or applying voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. This issue has been addressed by the courts. The local action process is allowed lawfully and does not disenfranchise anyone because of race, color, creed, sex, or national origin. LBC staff finds that the city is lawfully allowed to seek annexation using the local action method under the constitution, statutes, and regulations.

Based on the foregoing, LBC staff concludes that the annexation proposal satisfies the standards set out in 3 AAC 110.910 and 42 U.S.C. Section 1973.

3 AAC 110.970. Determination of essential municipal services

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

(1) are reasonably necessary to the community;

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

Respondent: Please see Respondent analysis of 3 AAC 110.090.

Comments: Please see comments for 3 AAC 110.090.

LBC Staff Findings: The LBC staff finds that the harbor, with its docks and support facilities, is an essential municipal service under the circumstances. We find that it is reasonably necessary to the community. We find this because Dillingham is the largest port in Nushagak Bay, or for quite a distance beyond Nushagak Bay. We find that the docks and related facilities are city owned and maintained, and are essential to the fishers, as either as a place to resupply, to seek refuge from weather, and for other boat or crew needs.

We find that the harbor is an essential municipal service. We find as we did earlier, that 3 AAC 110.970(d) includes "levying and collecting taxes" and "public safety protection" as services which the LBC can consider to be essential municipal services.

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

City: Please see 3 AAC 110.135(1).

Respondent: Please see 3 AAC 110.135(1).

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

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

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

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

City: Please see 3 AAC 110.090(b).

Respondent: Please see 3 AAC 110.090(b).

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

Comments: Please see 3 AAC 110.090(b).

3 AAC 110.981. Determination of maximum local self government

In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider… (7) for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists;

City: Please see 3 AAC 110.135(1).

Respondent: Please see 3 AAC 110.135(1).

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

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

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

3 AAC 110.982. Minimum number of local government units

Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider…(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

City: Please see 3 AAC 110.135(2).

Respondent: Please see 3 AAC 110.135(2).

LBC Staff Findings: In 3 AAC 110.135(2), LBC staff finds that Alaska's constitution promotes minimizing local government units unless creating additional units are found to serve the best interests of the state. Annexing the territory would not increase the number of local government units. Annexation would just change the size of the city. LBC staff finds that if no new local government units are created by an approved proposal, then the annexation would promote the principal of a minimum number of local government units. LBC staff finds that this annexation proposal will not create new local government units. For that reason, LBC staff finds that the requirements of 3 AAC 110.982 have been met by the petition

Policy Review

LBC staff has considered, in addition to the standards, the unique regional nature of the Nushagak Bay communities. In particular, consideration for borough formation or "regional government" was mentioned in one form or fashion in several public comments and briefs presented to the Local Boundary Commission. Historically, the petitioner has served as the regional hub for the Nushagak Bay area since before incorporation as a second class city in 1963[1]. Since incorporation, the region has been unsettled with disputes over whether a regional government (a borough), should or should not be established. Shortly after the incorporation of the City of Dillingham, a dispute came before the LBC regarding the incorporation and boundaries of the city.

The LBC's Statement of Decision stated:

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

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

3. The residents of the Dillingham-Wood River area should look into the possibility of forming a first class organized borough as the area's single unit of local government. If a borough were incorporated, the Commission would recommend dissolution of both cities. The borough would succeed to the bond obligations of the former Dillingham PUD and would have a choice of several alternative methods for retiring the bonded indebtedness. A borough incorporation election would be conducted impartially by the Secretary of State[2]. "

The LBC further required the dispute's participants to resolve the boundary issues internally by a set deadline, or the LBC would be forced to resolve the issues as a mediator. The dispute was not resolved, and the LBC commissioners dissolved the City of Wood River and upheld their decision to incorporate the City of Dillingham.

While the process for which incorporation of a city or borough has changed several times over the course of the past almost fifty years, the underlying regional dispute seems to continue. Since the incorporation dispute, Dillingham and the region have been at odds over resources, municipal boundaries, state versus local municipal obligations, and what LBC staff views as a regional rivalry. The City of Dillingham has petitioned two other times, once in 1986[3] and the second in 1988[4], to annex considerably larger territories than the current proposed expanded boundaries.

1 http://www.commerce.state.ak.us/dca/commdb/CIS.cfm, "Dillingham"
2 Memoranda of the Local Boundary Commission, RE: Dillingham-Wood River Dispute October 8, 1964
3 1986 Local Boundary Commission Dillingham Annexation Petition of 918.25 miles Statement of Decision
4 1987 Local Boundary Commission Dillingham Annexation Petition of 421.25 miles Statement of Decision

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

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

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

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

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

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

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

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

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

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

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

LBC staff believes the regional hub has to be economically sustainable for the surrounding communities to also be sustainable. Borough formation may be a viable option for the Nushagak Bay area communities. Since no community within the Nushagak Bay area has ever filed a petition to incorporate the region as a borough, nor does it appear to LBC staff that any community intends to file one presently, or in the near future, LBC staff does not consider this proposed annexation a "Harm [to] the Viability of a Future Borough in the Region[6]".

6 Responsive Brief: p. 24

General Conclusion and Recommendation

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

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

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

LBC staff concludes that 3 AAC 110.110 is met because the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

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

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

LBC staff concludes that the 3 AAC 110.130(b) is met because the territory is contiguous to the annexing city, and does not create enclaves in the annexing city. LBC staff concludes that 3 AAC 110.130(c) is met because the proposed expanded boundaries of the city promote the limitation of community. We find this because the proposed expanded boundaries of the city are on a scale suitable for city government. Further, we find that they include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

Also, LBC staff concludes that 3 AAC 110.130(c) is met. Those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government. As the petition meets those two criteria, the provision that annexation may not include entire geographical regions or large unpopulated areas does not apply.

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

LBC staff finds that the annexation meets 3 AAC 110.135 because it promotes maximum local self government and because it promotes a minimum number of local government units. Further, we find that the annexation meets the best interests of the state standard because the city is the appropriate government for the territory. We find that it is the appropriate government for the territory because the city is the region's hub, because the annexation would encourage, not hinder, borough formation, and because approving the annexation petition does not remove any present or future fish tax revenue for existing communities or a future borough.

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

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

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

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

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

Appendix A

Comments Received

Avi Friedman A2

Bristol Bay Native Association A3

City of Manokotak A5

City of New Stuyahok A7

Clarks Point Village Council A9

Ekwok Village Council A10

Jerry Liboff A11

Joint Aleknagik Resolution A12

Lake and Peninsula Borough A15

Robin Samuelsen A16

Stanley Mack A18

Avi Friedman

To: Local Boundary Commission
From: Avi J. Friedman, Commercial Fisherman and Small Processor
Re: Petition For Annexation by the City of Dillingham

I strongly object to the City of Dillingham annexing Ekuk Beach.

The Petitioner states that they would like to annex 396 sq. miles of water and 3 miles of land (small islands). This is disingenuous at best as Ekuk Beach is not a small island. Ekuk Beach is mainland Alaska. The water is irrelevant; it's what is on the land that counts.

The City of Dillingham has expressed interest in annexing (taxing) Ekuk Beach several times before. Now they are trying to do it again. But never have I or anyone else out at Ekuk Beach heard word one about any tax monies to be spent on infrastructure improvements out at Ekuk Beach. It is very clear that the City of Dillingham is looking at Ekuk Beach as a source of money, but has no intention whatsoever of returning any of that tax money to Ekuk Beach in the form of infrastructure improvements.

People living and fishing at Ekuk Beach are not responsible for the Mayor and City of Dillingham's inability to balance their budget. On the contrary, fishermen at Ekuk Beach spend great sums of money in the City of Dillingham supportiing local merchants, every year.

Because this attempt by the City of Dillingham to tax Ekuk Beach is clearly a one-sided money grab, I am against any annexation of Ekuk Beach by the City of Dillingham, and hope the Local Boundary Commission denies and stops this annexation attempt.

Yours, Avi J. Friedman

Avi J. Friedman
9-30-10

Avi J. Friedman
Friedman Family Fisheries
6109 Pimlico Rd.
Baltimore, MD 21209

RECEIVED
OCT 01 2010
Local Boundary Commission

Bristol Bay Native Association

10/06/2010 08:32 FAX 002/004

File copy

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

October 6, 2010

Local Boundary Commission via fax (907- 269-4539)
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

RE: City of Dillingham Annexation petition

Dear Sirs:

Please find attached Resolution 2010-28 opposing the City of Dillingham's Petition to annex the Nushagak Fishing District.

These resolutions were passed during the Full Board of Directors meeting of the Bristol Bay Native Association, September 17, 2010. BBNA, the regional non-profit for the Bristol Bay region, represents 31 tribes.

This resolution represent a formal statement of considered opinion, intent, and resolve of the Association and its tribes. We have taken this action out of concern for our social, economic, and cultural well being. We communicate this resolution to inform you of our position and to earnestly solicit your assistance in our efforts.

Your consideration given to this resolution is greatly appreciated.

Sincerely,

Ralph Andersen

Ralph Andersen
President & Chief Executive Officer

Enclosure: Resolution 2010-28

Cc: City of Dillingham ATTN; Don Moore, City Manager

Tribal Councils Served by BBNA:
Aleknagik
Chignik Bay
Chignik Lagoon
Chignik Lake
Clarks Point
Curyung
Egegik
Ekuk
Ekwok
Igiugig
Iliamna
Ivanof Bay
Kanatak
King Salmon
Kokhanok
Koliganek
Levelock
Manokotak
Naknek
New Stuyahok
Newhalem
Nondalton
Pedro Bay
Perryville
Pilot Point
Port Heiden
Portage Creek
South Naknek
Togiak
Twin Hills
Ugashik

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

By Full Board of Directors

Resolution 2010 - 28

A RESOLUTION OPPOSING THE CITY OF DILLINGHAM'S PETITION TO ANNEX THE NUSHAGAK FISHING DISTRICT

WHEREAS: The Bristol Bay Native Association (BBNA) is an Alaska Native non-profit corporation and tribal consortium serving the 31 federally recognized tribes in the Bristol Bay Region; and

WHEREAS: The City of Dillingham has filed a petition with the Local Boundary Commission to annex the Nushagak fishing district, with the intent of levying a 2.5% fish tax throughout the district; and

WHEREAS: The communities of Clarks Point, Ekuk, and Manokotak each have federally recognized tribes which are members of BBNA, and all have direct impacts from the Nushagak fishery and provide some level of services to the fishery; and

WHEREAS: The City of Dillingham's petition does not contemplate any land annexation or any expansion of services to the fisheries, nor has the City discussed any form of revenue sharing with the other Nushagak Bay communities; and

WHEREAS: The City's petition does not address the immediate onshore impact of the fishery in other communities; the effect of the proposed annexation at Ekuk for example would be to sever the potential tax base from the onshore area where direct impacts occur and services such as water, waste disposal and public safety are badly needed; and

WHEREAS: When the City of Dillingham previously attempted to annex the Nushagak fishing district in 1986, the City of Clarks Point filed a competing petition and the Local Boundary Commission denied both petitions in regard to the fishery; it essentially concluded the fishing district was a shared resource and that the cities should work out their differences;

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Association Full Board of Directors opposes the City of Dillingham's annexation petition as currently formulated; and

BE IT FURTHER RESOLVED that BBNA urges the Local Boundary Commission to either deny the annexation petition or to remand it for further action such that the City of

Dillingham is required to reach agreements regarding fishery revenues and services with the other Nushagak Bay communities.

Signed: Fred J. Angasan
Chairman of the Board

CERTIFICATION:

I, the undersigned Secretary of the Bristol Bay Native Association, Inc., do hereby certify that the foregoing resolution was duly passed by the Full Board of Directors of the Bristol Bay Native Association and a duly called and noticed meeting on the 17 day of September 2010, and that a quorum was present.

Signed: Robert Nuyano
Secretary

2

City of Manokotak

RESOLUTION 11-4

WHEREAS, the Local Boundary Commission has an annexation petition pending before it submitted by the City of Dillingham dated June 14, 2010.

WHEREAS, in its petition the City of Dillingham is proposing to annex the waters of the Nushagak Commercial Salmon District and the Wood River Sockeye Salmon Special Harvest Area.

WHEREAS the residents of the City of Manokotak use Igushik Beach located on the shore of Nushagak Bay for set netting. There are approximately 57 set net sites that were actively fished during the 2010 season. 82 percent of these set netters reside in Manokotak. The people fishing theses sites have summer residences there. They stay 3 months of the year. These set netters from Manokotak depend on Manokotak for their support rather than Dillingham. They buy their fuel either from packers, oil barges, or from the Manokotak Village Corporation. These residents of Manokotak fish exclusively in Nushagak Commercial Salmon District

WHEREAS the Igushik River connects the Igushik Beach area to Manokotak and is navigable nine months of the year.

WHEREAS during the fishing season tenders from three processors are stationed off Igushik Beach. One of these processors is represented by a tender for the cannery at Ekuk. The Ekuk Cannery operated by Ball Brothers deals predominately in fish delivered by set net permit holders.

WHEREAS there are approximately 30 - 40 drift net permit holders residing in Manokotak. The majority of these permit holders fish exclusively in Nushagak Commercial Salmon District. These vessels harbor in the Igushik River and travel the river between the fishing areas and Manokotak. These drift boats deliver predominately to the Trident Seafoods tender which in turn delivers the fish to a floating processor anchored at Clark's Point. The boats from Manokotak are infrequent users of the harbor facilities of Dillingham. The city of Manokotak maintains a hydraulic trailer for launching and hauling out the drift boats and also provides winter storage space for these boats. Over 100 vessels ranging from 14 feet to 32 feet in length comprise the Manokotak fleet.

WHEREAS the City of Manokotak is connected to Nushagak Bay in part by a road to the Weary River. The Weary River connects to the Snake River which connects to the fishing grounds in Nushagak Bay. Drift boats and skiffs will enter the Snake River and traverse to the Weary River to anchor there. The road is passable by truck or four wheeler to Manokotak. The City maintains this road to the point at which it intersects with the airport road.

WHEREAS the city of Manokotak provides search and rescue services for the part of Nushagak Bay from the Snake River to the West. The search and rescue effort is provided largely by volunteers. The City provides fuel and coordinates with the Alaska State Troopers and the Coast Guard. It sometimes uses the Village Public Safety Office skiff, snowgo and four wheeler. The city also relies on the volunteer efforts of private pilots. The VPSO from Manokotak has responded to requests for police services coming from the Igushik Beach area.

THEREFORE, BE IT RESOLVED THAT:

(1) Manokotak relies on the precedent established by the Local Boundary Commission in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay region. Manokotak has real connections to Nushagak Bay and provides substantial services there for the benefit of all who use the bay.

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

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

BE IT FURTHER RESOLVED THAT the City of Manokotak objects to the annexation procedure selected by the City of Dillingham. If the petition is permitted to go beyond the Local Boundary Commission, approval of the petition should be subject to

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

BE IF FURTHER RESOLVED THAT, City of New Stuyahok objects to the annexation procedure selected by the City of Dillingham. If the petition is permitted to go beyond the Local Boundary Commission, approval of the petition should be subject to the legislative review process provided in the Alaska Constitution rather than by an election in the City of Dillingham. Under the local option method, none of the residents of the City of New Stuyahok who are directly affected by the annexation petitioned for by Dillingham would have an opportunity to vote on the question on annexation.

PASSED AND APPROVED, by a duly constituted quorum of the New Stuyahok City Council this 24 day of September, 2010.

SIGNED BY:

Randal A. Hastings

Mayor- Randal A. Hastings

Annie Christopher

Clerk- Annie Christopher

Clarks Point Village Council

CLARKS POINT VILLAGE COUNCIL

BOX 90

CLARKS POINT, ALASKA 99569

RESOLUTION #10-11

WHEREAS THE VILLAGE OF CLARKS POINT MET ON SEPTEMBER 30, 2010 OPPOSING THE ANNEXING OF WATER TO THE CITY OF DILLINGHAM ENCOMPASSING APPROXIMATELY 33.6 SQUARE MIILE 390 SQUARE MILES OF WATER, AND

WHEREAS THE VILLAGE OF CLARKS POINT WOULD LIKE TO SEE A TAX LEVIED ON FISHERMEN AT 2.5% AND SHARED WITH ALL COMMUNITIES AFFECTED IN AREA, AND

NOW THEREFORE BE IT RESOLVED THAT THE VILLAGE OF CLARKS POINT HEREBY RECOGNIZED THAT THE LOCAL BOUNDARY COMMISSION HAS POWERS TO EFFECT THIS CHANGE.

ADOPTED AND APPROVED BY A QUROUM OF 5 AYE, AND 0 NAY ON THIS 30TH DAY OF SEPTEMBER, 2010.

HARRY W. WASSILY, SR. PRESIDENT

ATTEST:

JUDY A. GEORGE

Ekwok Village Council

10/01/2010 16:13 JTJGAJDKMJ PAGE 01/01

October 1, 2010

Ekwok Village Council
PO BOX 70
Ekwok, Alaska 99580

Ekwok Natives Limited
PO BOX 70
Ekwok, AK 99580

Local Boundary Commission
Division of Community and Regional Affairs
Department of Community, Commerce, and Economic Development
550 West 7th Ave., Suite 1770, Anchorage, AK 99501-3510
Phone: 269-4559 **Fax:** 269-4539

Re: City of Dillingham Annexation

On behalf of the Ekwok Village Council and Ekwok Natives Limited we are writing to object to the annexation proposal and procedure selected by the City of Dillingham for the Woodriver and Nushagak Commercial salmon fishing districts. As residents of Bristol Bay who commercial fish in the Nushagak District we are infrequent users of the harbor facilities of Dillingham during the fishing season and already pay an annual harbor usage fee to the City of Dillingham. The current petition put forth by the City of Dillingham could put tax our residents which would only benefit the City of Dillingham instead of our community or region as a whole.

The village of Ekwok relies on the precedent established by the L.B.C. in 1987 that Nushagak Bay is an area of regional importance, not an area subject to the influence of a single community in the Bristol Bay region. Ekwok has real social and economic connections to Nushagak Bay including income and food for its residents.

Ekwok Village Council and Ekwok Natives Limited opposes the annexation of the Nushagak Commercial Fishing District and Wood River Sockeye Special Harvest area to the City of Dillingham because the waters of Nushagak Bay and Wood River are not part of the community of Dillingham, but rather they belong to all of the cities and villages of our region. We also object to the annexation procedure, if the petition is permitted to go beyond the L.B.C., approval of the petition should be subject to the legislative review process provided in the Alaska Constitution rather than by an election in the City of Dillingham. Under the local opinion method, none of the residents of Ekwok who are directly affected by the annexation petitioned for by Dillingham would have an opportunity to vote on the question of annexation.

Sincerely,

Luki Akelkok
President Ekwok Village Council
President Ekwok Natives Limited

Jerry Liboff

Sept 25, 2010

TO: LOCAL BOUNDARY COMMISSION
FROM: JERRY LIBOFF
RE; REQUEST OF CITY OF DILLINGHAM FOR ANEXATION OF NUSHAGAK WATERS

I am opposed to the request of the City of Dillingham to Annex the waters of the Nushagak Bay. I am a resident of Dillingham, and a commercial fisher. I believe that the neighboring communities of Manokotak, Clarks Point, Aleknagik, Ekwok, Stuyahok, And Koliganek, all have fishers and contact with the Nushagak Bay. Dillingham has no more services than Clarks Point or Ekuk in providing for the commercial fishing industry. I believe a tax might be appropriate, and I am not opposed to paying, but I feel that all the surrounding communities should share in the revenue, since it is my belief that Dillingham will provide no more service to the fishing community than the other villages.

And, I believe the proper taxing authority should be a Borough that encompasses all the surrounding villages. Until the formation of a Borough, I believe that a Nushagak Bay tax would be wrong, and it might complicate the taxing authority of a future borough.

Thank You,

Jerry Liboff
Box 646
Dillingham Ak. 99576

Joint Aleknagik Resolution

JOINT RESOLUTION
RESOLUTION 10-01

A JOINT RESOLUTION OF THE COUNCILS OF THE CITY OF ALEKNAGIK, ALEKNAGIK TRADITIONAL COUNCIL AND BOARD OF DIRECTORS OF ALEKNAGIK NATIVES LIMITED TO OBJECT TO THE ANNEXATION PROPOSAL AND PROCEDURE SELECTED BY THE CITY OF DILLINGHAM FOR THE WOODRIVER AND NUSHAGAK COMMERCIAL SALMON FISHING DISTRICTS.

WHEREAS, Aleknagik Natives Limited, Aleknagik Traditional Council and the City of Aleknagik executed a Memorandum of Understanding on October 29, 2000 to recognize areas of mutual concern and support, and to establish a framework for cooperative relations and communication for the benefit of the community of Aleknagik as a whole and it is the desire of the three entities to cooperate concerning legal and political matters inherent in a private corporation to government to government relationship; and,

WHEREAS, the Local Boundary Commission has an annexation proposal pending before it submitted by the City of Dillingham dated June 14, 2010; and,

WHEREAS, in its petition the City of Dillingham is proposing to annex the waters of the Nushagak Commercial Salmon District and the Wood River Sockeye Salmon Special Harvest Area; and,

WHEREAS, approximately 22 residents of the village of Aleknagik hold commercial salmon gillnet fishing permits. These permits consist of approximately 6 set gillnet permits. The people fishing commercial set gillnets have sites in Ekuk and Igushik beach area of the Nushagak Commercial Salmon Fishing District. They stay approximately 2 months of the year there. These setnetters from Aleknagik do not use the harbor or other fish related facilities provided by Dillingham for their support during the fishing season. These residents of Aleknagik fish exclusively in the Nushagak Commercial Salmon Fishing District; and,

WHEREAS, the residents of the village of Aleknagik use Nushagak Bay and the Wood River for their spring and summer, and fall subsistence fishing activities. In the spring king salmon are fished near the lower mouth of the Wood River, and in the summer and fall months sockeye and coho salmon are harvested in the Wood River; and,

WHEREAS, there are approximately 15 drift gillnet permit holders residing in Aleknagik. The majority of these permit holders fish exclusively in the Nushagak Commercial Salmon Fishing District. These commercial drift gillnet vessels mainly deliver their catch to tenders anchored below Clark's Point. The boats from Aleknagik are infrequent users of the harbor facilities

1 of 3

of Dillingham during the fishing season and they already pay an annual harbor $260.00 usage fee to the City of Dillingham; whether they use the harbor in a specific commercial fishing year; and,

WHEREAS, the village of Aleknagik is connected to the fishing grounds in Nushagak Bay by the Wood River, which is navigable into the bay. Commercial salmon drift vessels are annually stored at a boat yard in the village of Aleknagik, which is owned by the City of Aleknagik and pay an annual boat storage fee. The Wood River is approximately 20 river miles from Dillingham and commercial drift gillnet vessel owners from Dillingham also utilize the City's boat storage yard.

THEREFORE BE IT RESOLVED THAT:

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

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

BE IT FURTHER RESOLVED THAT the Council members of Aleknagik Traditional Council, Council members of the City of Aleknagik, and Board of Directors of the Aleknagik Natives Limited objects to the annexation procedure selected by the City of Dillingham. If the petition is permitted to go beyond the Local Boundary Commission, approval of the petition should be subject to the legislative review process provided in the Alaska Constitution rather than by an election in the City of Dillingham. Under the local option method, none of the resident of the village of Aleknagik who are directly affected by the annexation petitioned for by Dillingham would have an opportunity to vote on the question of annexation.

PASSED AND APPROVED by a quorum of the Aleknagik Traditional Council, City of Aleknagik and Aleknagik Natives Limited on this 30th day of September, 2010.

SIGNED: Daniel Chythlook, President

Daniel Chythlook, President - Aleknagik Traditional Council

ATTEST: Sally Tinker

Sally Tinker, Secretary - Aleknagik Traditional Council

2 of 3

SIGNED: Berna Andrews, Mayor
Berna Andrews, Mayor - City of Aleknagik

ATTEST:
Jan Alakayak, City Clerk - City of Aleknagik

SIGNED: Bobby Andrew
Bobby Andrew, President - Aleknagik Natives Limited

ATTEST: Dora Trinke, Treasurer
Dora Andrew-Trinke, Secretary - Aleknagik Natives Limited

3 of 3

Lake and Peninsula Borough

Lake and Peninsula Borough
P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602

September 28, 2010

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

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

Dear Chairman Chrystal:

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

The Lake and Peninsula Borough applauds the annexation effort begun by the City of Dillingham. The Borough regards it as a positive step, and believes it carries the promise of a fairer sharing of resources and revenues in the Bristol Bay region.

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

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

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

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1 See Petition for Annexation, Section 6 at pages 6-7.
2 Bor. Ord. §6.91.
3 Bor. Ord. §6.40.
4 Bor. Ord. §6.40.260.

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

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

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

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

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

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

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

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[1] Bor. Ord. §6.40.035(A).

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

Sincerely yours,

Lamar Cotten
Borough Manager

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

Glen Alsworth, Borough Mayor
Lake and Peninsula Borough
PO Box 495
King Salmon, AK 99613

Chignik Bay • Chignik Lagoon• Chignik Lake• Egegik • Igiugig• Iliamna • Ivanof Bay• Kokhanok• Levelock • Newhalen • Nondalton• Pedro Bay• Perryville• Pilot Point• Pope Vannoy• Port Alsworth• Port Heiden• Ugashik

Robin Samuelsen

September 30, 2010

Local Boundary Commission staff
550 West Seventh Avenue, Suite 1770
Anchorage, AK 99501-3510
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I urge the Local Boundary Commission to support the Dillingham effort to annex Nushagak Bay and Wood River Special Salmon Harvest commercial fishing waters into the City.

This annexation will allow Dillingham to join other communities in the Bristol Bay region and collect a fair share of revenue from area commercial fishing, through a local fish tax.

Local fish taxes are bringing in more revenue annually to support communities in the Bristol Bay region than does the State's business fishery taxes. The Nushagak Bay is the virtually the only major commercial fishery in the region where there is no local fish tax in effect. This is like leaving money on the table and walking away.

I am a Dillingham commercial fisherman, and while I don't look forward to paying a new, small local tax on this resource, I support the effort because I know that:

- 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 cover real costs for fisheries-related harbor, port, trash collection, public safety and other services.
- This more directly links Dillingham financially to the success of local fisheries. I expect and will be watching to see Dillingham invest more in harbor and fishery support and infrastructure.
- 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 itself and adjacent regional fisheries.

- Finally, while there are no guarantees, I hope that this new City revenue source will allow Dillingham to relax – or at a minimum stave off increases - in property tax.

Dillingham is the hub community for the western Bristol Bay region. As such, it spends significant municipal revenue to provide infrastructure and services used by both regional and Dillingham residents and others. Most commercial fisherman in the Nushagak Bay are not Dillingham residents, yet, virtually all use Dillingham's harbor, boat launch ramps, streets, land fill and trash pick-up at the harbor, public safety services, airport and more. Only about 135 commercial boat owners list Dillingham as a primary address, but on a bad weather day in-between fishery openings there can be 4 or 5 times this many commercial fishing boats rafted to one another and to the floats in the City's small boat harbor. Commercial fishermen keep their boats in the harbor between fishery openings, some live onboard, others haul their boats in and out for servicing, repair or storage, to get fresh water or ice and more; 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 some time.

Please support the Dillingham annexation effort; it makes sense and will help provide for Dillingham's long term financial sustainability.

Sincerely,

H. Robin Samuelsen, Jr.
Commercial Fisherman

Stanley Mack

Stanley Mack
P.O. Box 349
Sand Point, AK 99661
e-mail: smack@aeboro.org

October 1, 2010

Brent Williams
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Local Boundary Commission
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RE: Comments of Stanley Mack Opposing the Petition of the City of Dillingham to Annex Nushagak Commercial Salmon District Waters and Wood River Sockeye Salmon Special Harvest Area Waters

Dear Mr. Williams:

I respectfully request the Local Boundary Commission to deny this Petition, and I provide these written comments pursuant to 3 AAC 110.480(d).[1] Although I am the Mayor of the Aleutians East Borough, I offer these comments solely in my individual capacity as a resident of Sand Point who grew up in King Cove and has been a lifelong commercial fisherman. Several reasons should lead the Commission to deny the City of Dillingham's request to annex 399 square miles of uninhabited territory and thereby grow more than 11 times in size. Approving the proposed annexation would:

[1] The Petition is formally styled "Petition to the Local Boundary Commission for Annexation of 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) [,] to the City of Dillingham Using the Local Option (Voter Approval) Method." The Petition is dated June 14, 2010, although the City of Dillingham's Mayor has in a letter dated September 21, 2010 submitted to the Commission seven new pages to correct errors in the Petition as originally filed.

- violate the requirement of limitation of community for cities set out in Alaska law;

- promote the balkanization of local government by creating a disincentive to form a borough government that would include the City of Dillingham; and

- work against the best interests of the State by reducing tax revenues that would go to other local governments affected by the fishing industry in Southwest Alaska.

I. The Proposed Annexation Would Violate the Requirement of Limitation of Community for Cities Set Out in Alaska Law

In Alaska, a city is supposed to have jurisdiction over a small area and be a community featuring intense common interests.[2] The statute setting the requirements for incorporation of a city refers repeatedly to a "community."[3] A leading Alaska Supreme Court case on formation of local governments refers approvingly to cases from other jurisdictions that require the area annexed into what is now called a city in Alaska be "urban or semi-urban in character."[4] The Alaska Supreme Court went on to quote from a case stating that[5]

> There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty....

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[2] *See* 3 AAC 110.130(c); and *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 100-01 (Alaska 1974).
[3] AS 29.05.011.
[4] *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 100. The Alaska Supreme Court opinion refers to a "municipality" as opposed to a city in making a contrast to a borough because the statutes existing in 1971 at the time of the filing of the borough incorporation petition at issue in that case distinguished between municipal corporations formed under Title 29 of the Alaska Statutes and boroughs formed under Title 7 of the Alaska Statutes. *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 95. Since 1972, the Alaska statutes refer to both cities and boroughs as municipalities. Note that the Commission's regulations specifically state that "Requirements relating to limitation of community, as set out in 3 AAC 110.130(c), do not apply to boroughs." 3 AAC 110.190(g).
[5] *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 100 (footnote omitted).

The Alaska Supreme Court calls this requirement a "limitation of community,"[6] and the regulations governing the Commission's decision on a city's proposed annexation now set it out explicitly. 3 AAC 110.130(c) provides[7]:

> To promote the limitation of community, *the proposed expanded boundaries of the city*
>
> (1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and
>
> (2*) may not include* entire geographical regions or *large unpopulated areas*, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

The City of Dillingham proposes to annex almost all of Nushagak Bay, an entirely unpopulated area comprising more than 350 square miles whose attraction to the City is the millions of pounds of salmon caught there every year that the City could tax by acquiring jurisdiction.[8] The proposed annexation would make the City 11 times larger than it is today in area without increasing its population. This request does not fit within the narrow exception to the limitation of community principle set out in 3AAC 110.130(c) and as such does not comply with Alaska law.

The two instances the City of Dillingham cites of the Commission approving the annexation by cities of substantial areas of ocean included substantially different facts from what the Commission faces here.[9] In the City of Togiak matter, the Commission was heavily influenced by concerns about helping the city address problems created by the alcohol coming from

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[6] *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 100.

[7] Emphasis added.

[8] Along with the proposed annexation of most of Nushagak Bay, the City of Dillingham's Petition also seeks to annex a portion of the Wood River that appears to be relatively small in area.

[9] *See* "Summary of Proposed Action[,] Findings of Fact[,] Statement of Decision," "In the Matter of the Annexation of the City of Togiak, Alaska, of Togiak Bay, Consisting of Approximately 183 Square Miles," January 18, 1985 [hereinafter, "1985 Togiak Decision"]; and "Summary of Proposed Action[,] Findings of Fact[,] Conclusions of Law[,] Statement of Decision," "In the Matter of the Petition for Annexation by the City of St. Paul, Alaska of Approximately 194 Square Miles[,] Consisting of Otter Island, Walrus Island and the Territory Three Nautical Miles Seaward of these Islands," January 19, 1986 [hereinafter, "1986 St. Paul Decision"].

vessels into a community in which the sale and importation of alcohol was illegal.[10] The City of Dillingham is a wet community by law, and the strong concerns over illegal alcohol importation that animate the Commission's decision in the City of Togiak matter do not apply.

The St. Paul matter is also distinguishable, as that community is almost uniquely isolated far out in the Bering Sea with the lower-population St. George at 40 miles away being the only other community in a very large area.[11] Nushagak Bay, on the other hand, is in the heart of a region featuring numerous fishing-oriented communities.

II. Approving this Annexation Would Promote the Balkanization of Local Government by Inhibiting the Formation of a Borough

The City of Dillingham twice before tried to annex substantial swathes of ocean, and the Commission rebuffed those efforts both times. A quick review of those petitions and how they were adjudicated is instructive.

In 1986, the City of Dillingham petitioned to annex 918.25 square miles, including waterways of Nushagak Bay, including areas in which floating fish processors anchored.[12] The Commission rejected this request, and only approved the annexation of approximately 40 square miles, none of which included any portion of Nushagak Bay.[13] The Commission noted that the City of Dillingham's petition was motivated by a desire to obtain the revenue generated by raw fish taxes that could be gained by annexing the waters on which floating fish processors did the processing.[14] The Commission found that allowing the annexation of Nushagak Bay as proposed "would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, it would constrain the area in terms of a potential revenue base for any future borough."[15] Such a result would be undesirable, the Commission stated, because "the

[10] *See* 1985 Togiak Decision, Summary of Proposed Action and Findings of Fact I and II.A.
[11] *See* 1986 St. Paul Decision, Finding of Fact 4.
[12] "Statement of Decision," "In the Matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska," December 10, 1986 [hereinafter "1986 Dillingham Decision"], pp. 1, 2, and 4.
[13] 1986 Dillingham Decision, pp. 3, 7-8.
[14] 1986 Dillingham Decision, p.1.
[15] 1986 Dillingham Decision, p. 5.

door must remain open" for the creation of a regional form of government to address regional problems.[16]

The City of Dillingham petitioned the next year—1987—to annex 421.25 square miles, 409 of which were water.[17] The area sought to be annexed included "the waterways of Nushagak Bay from Protection Point to and including the mouth of Wood River."[18] These waters included in the proposed annexation included "the 'core' area of anchorage for Nushagak Bay processors" where a majority of floating fish processors in the Bay operated most of the fishing season.[19]

The Commission rejected this second large-scale annexation attempt as well, finding that the problems sought to be addressed by the annexation "are regional in nature."[20] Again, the Commission wanted to do nothing to hurt the possibility of a borough being formed[21]:

> [C]ity government is intended to address local governmental needs on a community level and a borough government is intended to address such needs on a regional level....[A] city is not the appropriate vehicle to address such needs on a regional level.

The Commission only approved an amended petition that allowed the City of Dillingham to annex 12.25 square miles of land and waterways immediately adjacent to the City.[22]

Now the City of Dillingham comes again to the Commission seeking to annex virtually all of Nushagak Bay. The Commission should again deny this request. As the Commission has repeatedly announced before, the way to satisfy the City of Dillingham's desire to be in a unit of local government holding jurisdiction over a very large area of regional concern is for there to be a borough in that area around the City. Approving the

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[16] 1986 Dillingham Decision, p. 6.
[17] "Statement of Decision," "In the Matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska," January 16, 1988 [hereinafter "1988 Dillingham Decision"], p. 1.
[18] 1988 Dillingham Decision, p. 1.
[19] 1988 Dillingham Decision, p. 1.
[20] 1988 Dillingham Decision, p. 3.
[21] 1988 Dillingham Decision, p.3.
[22] 1988 Dillingham Decision, pp. 2, 11-12.

City of Dillingham's Petition will only create more barriers to the formation of such a borough.

III. Approving this Petition Would Work Against the Best Interests of the State by Reducing Tax Revenues that Go to Other Local Governments Significantly Affected by the Fishing Industry in Southwest Alaska

This proposed annexation will cause a loss of revenues for other local governments—including the Aleutians East Borough—through the operation of the "extraterritorial" payments from the State out of collections of the fisheries business tax (also called the State's "raw fish tax.")

State law allows municipalities that demonstrate "significant effects" from commercial fisheries to apply for and receive revenues out of that portion of the State's raw fish tax collections that was from fish not processed in the jurisdiction of any of the State's local governments.[23] The Aleutians East Borough faces some of those significant effects, in part because some fish caught in Nushagak Bay are transported to the Borough for processing. (This transportation of fish to the Borough occurs because processing plants in Dillingham lack the capacity to handle all the demand for their services and sometimes cannot process all the fish caught in the Bay.) The Aleutians East Borough thus gets some of this revenue distributed in "extraterritorial" payments, as the City of Dillingham could—and presumably does.[24]

Some of the money from such "extraterritorial" payments has historically come from processing of fish by floating processors in Nushagak Bay, as the City of Dillingham's two previous petitions have shown. If the Commission approves this Petition, the City of Dillingham will have jurisdiction of virtually all of Nushagak Bay, and none of the revenues the

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[23] *See* AS 29.60.450(a); AS 43.75.137; and AS 43.75.130.

[24] The City of Dillingham's Petition at page 7 states that "Currently, neither Dillingham nor any other community in the bay area receives any State business fishery tax from the harvest of Nushagak Bay fish that is processed elsewhere. Because of the availability of "extraterritorial" payments, that statement is almost certainly incorrect.

There is at least one other error in the Petition. On page 54, the Petition states that the City of Dillingham will likely structure its proposed new tax similarly to that of the Lake and Peninsula Borough, "where a buyer of resources pays either a sales or severance tax on the value of the raw fish harvested, but not both." The reality is that the incidence of such a tax is on the fisherman, not the buyer of the fish.

State collects from processing of those fish in the newly annexed area will go into the pot of funds distributed as "extraterritorial" payments. That redistribution of funds will reduce those "extraterritorial" payments that would otherwise go to the Aleutians East Borough and other local governments facing significant effects from commercial fishing. The amount of loss of revenues is hard to measure because of problems in the statistical information being kept by the State and barriers of confidentiality in releasing all the information that has been collected, but it would be a real loss to the Aleutians East Borough and other local governments.

For all the above reasons, I respectfully urge the Commission to deny the Petition.

Sincerely,

Stanley Mack