

SUMMARY OF ACTIVITIES

In accordance with 19 AAC 10.490(a)(4), the City Council of Dillingham passed a resolution on April 24, 1986 authorizing the filing of a petition for annexation of 918.25 square miles of territory under the provisions of AS 29.06.040(b). On May 1, 1986, the Department of Community and Regional Affairs received the authorized petition. Under 19 AAC 10.530, the City published notice of the filing of its petition on June 27 and July 4, 1986, in the Bristol Bay Times.

On April 23, 1986, the City of Clark's Point's submitted a petition for annexation of area included within the territory proposed for annexation by the City of Dillingham. It was accepted by the Department in terms of form and content and was subsequently transmitted to the Local Boundary Commission (LBC) with the Department's report and recommendation. This presented a novel problem for the LBC in that it was now having to consider competing annexation requests.

On May 25, the Department received a letter from Clark's Point Native Corporation formed under ANCSA (Saguyak Incorporated) "protesting" the Dillingham annexation and supporting the Clark's Point annexation. On June 12, 1986 the Department received a letter from the Dillingham Native Corporation formed under ANCSA (Choggiung Limited) objecting to "certain portions, if not all, of this annexation". On July 24, the Department received a letter from the Secretary for the City Council of Manokotak opposing the petition from the City of Dillingham.

On October 4, 1986, a public hearing was conducted by the LBC in Dillingham and one in Clark's Point. At that time the City of Dillingham presented a revised boundary request to the LBC. It reduced the territory proposed for annexation by approximately one-half. However, the City testified that the original boundaries of the proposed annexation were justified, though the City redrew the boundaries to accommodate landowners in the area.

At this point it became apparent that the submission of competing annexation requests was motivated by the desire of each City to obtain the revenue generated by raw fish taxes. This revenue would be available to them only through annexation of at least a portion of Nushagak Bay. The LBC directed the two Cities to examine the conflict and on November 10, 1986, present it with any proposed compromise in terms of boundaries or agreements for the sharing of revenues and municipal services. Work sessions were held between the Councils of the respective Cities, and staff from the Department of Community and Regional Affairs participated in a meeting held on October 24. Ultimately the two Cities were unable to come to an agreeable solution to the conflict. On November 6, 1986, the City Council of Dillingham passed Resolution #86-66. This resolution requested the LBC judge the competing annexation petitions on their own merits.

On November 3, 1986 the Bristol Bay Native Corporation submitted a letter to the Department regarding the proposed annexation from Dillingham. Although the letter states that the corporation takes no position on the City of Dillingham's annexation petition, it raises several issues of concern, many of which were reflected in the Department's report and recommendation to the LBC.

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On November 4, 1986, Marie Luckhurst submitted to the Department a letter and an accompanying "protest petition" signed by approximately 70 landowners in the area proposed for annexation. This petition argued that the respective landowners believed the area failed to warrant annexation. In response to this, Mr. John Pearson, Councilmember of the City of Dillingham, submitted a letter rebutting the arguments presented by the protest petitioners. This was received by the Department on November 21, 1986. On that same day another letter suggesting the City of Dillingham drop the annexation proposal was received by the Department. The letter was submitted by William P. Johnson and it questioned the revised western boundaries of the annexation area. It noted that "the City Council pulled back the boundaries sufficiently to exclude all City Council and immediate family members who staked land within the State open to entry area".

The Alaska Attorney General's Office was requested to provide advice on how the LBC should handle two proposals for annexation where the proposals overlap in the area to be annexed. On November 13, 1986, the Attorney General advised the Department of Community and Regional Affairs that the common law doctrine of "prior jurisdiction" should be applied in this instance. This requires the LBC to consider and act upon the petition submitted first, in this case, that from the City of Clark's Point. A decisional session of the LBC was conducted on November 22, at which time the LBC considered and acted upon the proposed annexation request from the City of Clark's Point and subsequently considered and acted upon the proposed annexation request from the City of Dillingham.

PROFILE OF PROPOSED ANNEXATION

The area originally proposed for annexation is located generally to the northwest, west and south of the existing municipal boundaries of the City of Dillingham. It includes waterways of Nushagak Bay and lands south and west of the City of Aleknagik and east of the City of Manokotak. In the course of the boundary's southeastern traverse it borders the existing corporate limits of the City of Clark's Point. The western territory includes Nunavaugaluk Lake, headwaters of the Snake River.

The area is rural in nature. Onshore areas are inhabited on a seasonal basis by local and non-local residents for purposes of subsistence and commercial fisheries activities. There are an unspecified number of fish camps and set-net sites in the territory. The permanent population of the area is estimated at 75.

The petitioner has asserted that the area proposed for annexation is in need of municipal services which the City can provide more efficiently than another municipality. This contention is based upon the belief that seasonal and permanent residents of the area require and already utilize City services to the extent that annexation of the waterways and land areas are warranted. The petitioner also believes that current and anticipated development in the area requires control and regulation which the City will provide. Additionally, the petitioner feels that the health, welfare or well-being of City residents is endangered by conditions existing in the area proposed for annexation, and that annexation will enable the City to remove or relieve these conditions. The City of Dillingham further desires to enhance its revenues by receipt of the raw fish taxes available from floating processors within the territory proposed for annexation. It is felt by the City that these additional revenues will offset the anticipated decline in state and federal assistance.

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At its November 22 decisional meeting, the LBC approved an approximate 40 square mile area for annexation to the City of Dillingham. It is referred to as "the identified 40 square mile area northwest of the City of Dillingham" in the remainder of this statement.

FINDINGS OF FACT

In arriving at its findings, the LBC has considered documents and evidence including, but not limited to: the petition for annexation, accompanying brief, revised boundary request and City Resolution #86-66 all from the City of Dillingham; the report and recommendation of the Department of Community and Regional Affairs; the letters of non-support from Saguyak Corporation, Choggiung Limited, Bristol Bay Native Corporation, City Secretary of Manokotak, Marie Luckhurst, and William Johnson; the letter of support from John Pearson; and oral testimony provided at the October 4, 1986, public hearing. As listed below, findings of fact are not necessarily limited to the standards provided in state regulations.

1. THE CONTIGUOUS TERRITORY IS NOT TOTALLY SURROUNDED BY THE CITY'S BOUNDARIES [19 AAC 10.070(1)].
2. THE LAND IN THE TERRITORY IS NOT WHOLLY OWNED BY THE CITY [19 AAC 10.070(2)].
3. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE TERRITORY IS NOT URBAN IN CHARACTER [19 AAC 10.070(3)].

The area proposed for annexation is largely uninhabited. There is a significant, though relatively small section currently developed. This development is residential and consists of approximately 75 people adjacent to the Aleknagik Lake Road. They reside in single and multiple family dwellings. The majority of these residents are located in four subdivisions, portions of which are within the City limits and portions of which are outside the City limits but within the territory proposed for annexation. These are known as Ahklun View Estates, Ahklun View Estates North, Ahklun Subdivision III and Lars D. Nelson Subdivision.

The ratios of permanent residents to each square mile within the original and revised areas proposed for annexation do not approximate that of the annexing City. The settlement patterns of the City suggest that only the residents located north of the City along the Aleknagik Lake Road, particularly those in the above noted subdivisions, are indeed located there as a result of natural growth of the City beyond its legal boundaries. With the exception of this inhabited area, the territory proposed for annexation is not generally close to the population center of the City. Again, with the exception of the area adjacent to the Aleknagik Lake Road, the territory proposed for annexation is not accessible to a major land transportation route. With the exception of the property in this same area, the territory is not served nor can it be served in the immediate future by public services and utilities (e.g. water, sewer, electricity and telephone). Thus, the factors which collectively identify urban territory apply to only that portion of the identified 40 square mile area northwest of the City of Dillingham.

4. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE TERRITORY IS NOT IN NEED OF MUNICIPAL SERVICES TO THE EXTENT THAT ANNEXATION OF THE TERRITORY IS WARRANTED [19 AAC 10.070(4)].

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The City of Dillingham has made a number of City services available to the seasonal and permanent residents of the area proposed for annexation. These services include operation and maintenance of the sanitary landfill, provision of police and fire protection, emergency medical and education services. The permanent residents of the identified 40 square mile area northwest of the current City boundaries avail themselves of these services on a year-round basis. The seasonal processors and their crews may, on occasion, receive some of these services three months of the year. The critical issue is the relative degree to which these services are required. With the exception of the identified 40 square mile area northwest of the current boundaries of the City, it has not been demonstrated that these services are required to the extent that annexation is warranted.

5. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE DEGREE OF LIKELIHOOD THAT FUTURE GROWTH AND DEVELOPMENT WILL OCCUR WITHIN THE TERRITORY IS INSUFFICIENT TO WARRANT ANNEXATION [19 AAC 10.070(5)].

Given the settlement patterns occurring from usual urban growth, it appears likely that the identified 40 square mile territory northwest of the current boundaries of the City will experience additional settlement. Additionally, the State "Open to Entry" land disposal within the area to the northwest of the current City boundaries has been subdivided. This is an area generally accessible by road and these facts collectively demonstrate there is adequate potential for development in this area to warrant annexation.

For areas within the territory proposed for annexation other than those noted above, the "development" referenced by the petitioner consists of the floating processors who anchor within the waters of Nushagak Bay. While recognizing that floating processors represent "development", they do not constitute the type of development applied in this standard. The development suggested here is of one impacting a community on a permanent, constant and year-round basis.

6. THE HEALTH, WELFARE OR SAFETY OF CITY RESIDENTS ARE NOT ENDANGERED BY CONDITIONS EXISTING OR DEVELOPING IN THE TERRITORY [19 AAC 10.070(6)].

The petitioner has presented no evidence to confirm that there are conditions in the area proposed for annexation which endanger the City residents. It has been suggested that residents along the north end of the Aleknagik Lake Road who dispose of their solid waste at an unauthorized gravel pit present a danger to the health, welfare or safety of City residents, the nearest of whom is ten miles away. This has not been demonstrated. Nor has it been demonstrated that the health, welfare or safety of City residents is endangered by the floating processors who may discharge refuse in the waters of Nushagak Bay. It is observed that, for the most part, these same processors burn their garbage onboard or dispose of it at the Clark's Point sanitary landfill. No conditions have been presented to demonstrate that annexation of the territory is warranted based on this standard.

7. THE EXTENSION INTO THE TERRITORY OF CITY SERVICES OR FACILITIES IS NOT NECESSARY TO ENABLE THE CITY TO PROVIDE ADEQUATE SERVICE TO CITY RESIDENTS NOR IS IT IMPOSSIBLE OR IMPRACTICAL FOR THE CITY TO EXTEND THE FACILITIES OR SERVICES UNLESS THE TERRITORY IS WITHIN THE CITY'S BOUNDARIES [19 AAC 10.070(7)].

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The petitioner has presented no evidence which satisfies the application of this standard:

8. WITH THE EXCEPTION THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, RESIDENTS OR PROPERTY OWNERS WITHIN THE TERRITORY DO NOT RECEIVE OR ARE NOT REASONABLY EXPECTED TO RECEIVE, DIRECTLY OR INDIRECTLY, THE BENEFIT OF CITY GOVERNMENT WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS, TO THE EXTENT THAT ANNEXATION OF THE TERRITORY IS WARRANTED [19 AAC 10.070(8)].

The seasonal residents of the area do occasionally receive the type of City services referenced in this standard, (services provided by the City's general fund, e.g. fire, solid waste disposal, emergency medical services). It should be noted that although property taxes assist in funding some of these services, in many cases additional revenues could be obtained through user fees. This notwithstanding, when the services are rendered, they are not been rendered to the degree or frequency that justifies annexation of the entire territory under this standard. However, the permanent residents of the identified 40 square mile area northwest of the City of Dillingham do receive these City services to the degree and frequency to warrant annexation of that area.

9. THE ANNEXATION IS NOT OTHERWISE NECESSARY TO ACCOMPLISH A VALID PUBLIC PURPOSE.

No evidence was presented to identify accomplishment of a valid public purpose through the annexation.

10. THE ANNEXING CITY HAS DEMONSTRATED THAT IT IS CAPABLE OF AND WILLING TO EXTEND FULL MUNICIPAL SERVICES TO THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM IMMEDIATELY UPON ANNEXATION.

The City of Dillingham has demonstrated that it is capable of and willing to extend full municipal services to the area approved for annexation immediately upon annexation.

11. ANNEXATION OF THE WATER AREAS SOUGHT BY THE CITIES OF CLARK'S POINT AND DILLINGHAM WOULD ULTIMATELY REDUCE THE INCENTIVES FOR THE FORMATION OF A BOROUGH IN THE AREA.

If either City annexes any of the waterways as proposed, that City can expect to receive increased raw fish taxes. This would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, but it would constrain the area in terms of a potential revenue base for any future borough. The ultimate result would be a disincentive for borough formation.

12. IN THE PRESENT SITUATION, THE PROBLEMS EXPRESSED BY THE CITIES OF CLARK'S POINT AND DILLINGHAM ARE DEFINITELY REGIONAL IN NATURE.

Clearly, the problems of service delivery, revenue enhancement, public health and welfare threats, and management of "development" are shared by these two Cities located fifteen miles apart. The Cities claim these problems are largely generated by an industry upon which they both share an economic dependence. With these concerns in mind, the door must remain open for these regional problems to be addressed by a regional form of government. Approval of this annexation would discourage this from occurring.

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13. THE STATUTES AND REGULATIONS ESTABLISHING STANDARDS FOR INCORPORATION OF CITIES AND BOROUGHES SHOULD BE CONSIDERED IN THIS ANNEXATION PROPOSAL. WHEN DOING SO, THEY DO NOT SUPPORT THIS PETITION.

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.

14. USE OF A METHOD OTHER THAN LEGISLATIVE REVIEW FOR ANNEXATION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM WOULD HAVE BEEN INAPPROPRIATE.

In accordance with 19 AAC 10.600, the LBC has considered alternative methods of annexation. For the reasons stated below, the legislative review method is the most appropriate.

The four alternative processes are not viable for the following reasons.

Local Action/Election - The process of local election by the voters residing within the territory proposed for annexation is impractical because the voters within the area proposed for annexation have not initiated the action and there are no indications they want to do so, or will do so.

Additionally, this process is inappropriate because it fails to adequately protect the interests of all property owners of the area. The size of the territory proposed for annexation is 918.25 square miles and the number of permanent residents is estimated at 75. However, the number of registered voters within the area is estimated to be only 35 based upon the percentage of resident registered voters statewide. The ratio of resident voters to the size of the area is disproportionately large. With such a disparity between the size of the area proposed for annexation and the number of voters residing within the area, the interests of non-resident property owners appear to be inadequately represented. This local action/election method was not designed for use in situations where there is such disparity in size of the territory and number of voters deciding the question.

Local Action/Municipally owned property - The process of annexation through local ordinance of the adjoining City if the territory proposed for annexation is solely and entirely owned by the adjoining City is unavailable because the City of Dillingham does not own the territory proposed for annexation.

Local Action/100% of Voters and Property Owners - The process of annexation through local ordinance of the adjoining City if all property owners and registered voters within the area petition the City Council for annexation is impractical because these individuals have not petitioned the City for annexation of territory and there is no indication they want or are willing to do so.

Step Annexation - The process of local election and legislative review with graduated extension of services is inappropriate because the disparity in size of the territory and number of

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residents makes local election an unfair and inappropriate method of annexation.

CONCLUSIONS OF LAW

The proposed annexation of approximately 918.25 square miles of territory to the City of Dillingham does not, in its entirety, satisfy the applicable requirements of state statute and regulation regarding annexation of contiguous territory to a City. There is an approximate 40 square mile area northwest of the City which has been found to satisfy the requirements for annexation of contiguous territory.

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, IT IS ORDERED THAT the following described territory shall be annexed to the City of Dillingham upon tacit approval of the First Session of the Fifteenth Legislature, in accordance with the provisions of Article X Section 12 of the State Constitution:

Beginning at the northwest corner of Section 7, Township 12 South, Range 56 West, Seward Meridian (S.M.); thence south to the southwest corner of Section 18, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of Section 18, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of the northwest one-quarter of Section 29, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of the northeast one-quarter of Section 28, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 12 South, Range 56 West, S.M.; thence east to the northwest corner of Section 3, Township 13 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 13 South, Range 56 West, S.M.; thence east to a point at 158 degrees 35 minutes West Longitude; thence due south to a point at 59 degrees 00 minutes North Latitude; thence east to a point on the line of mean low water of Nushagak Bay; thence northerly and easterly along the mean low water line of Nushagak Bay and the Nushagak River to the mean low water line on the right bank of the Wood River; thence northerly along the mean low water line on the right bank of the Wood River to a point on the northern section line of Section 9, Township 12 South, Range 55 West, S.M.; thence west to the northwest corner of Section 9, Township 12 South, Range 55 West, S.M.; thence south to the southwest corner of Section 16, Township 12 South, Range 55 West, S.M.; thence west to the northwest corner of Section 24, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 14 Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 15, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 9, Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 7, Township 12 South, Range 56 West, S.M.; the point of beginning, excluding the territory presently within the boundaries of the City of Dillingham.

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ORDERED THIS 10th DAY OF December, 1986.

ALASKA LOCAL BOUNDARY COMMISSION

BY:

Robert O Eder
Robert Eder, Chairman

ATTEST:

Gene King
Staff

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
OFFICE OF THE COMMISSIONER
JUNEAU, ALASKA

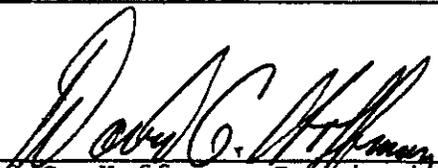
CERTIFICATE

BOUNDARIES OF THE CITY OF DILLINGHAM, ALASKA

I, David G. Hoffman, Commissioner of the Alaska Department of Community & Regional Affairs, hereby certify that the following is a true and accurate description of the jurisdictional boundaries of the City of Dillingham, Alaska. The boundaries described below include territory tacitly approved for annexation by the Second Session of the Fifteenth Alaska State Legislature effective February 29, 1988, consisting of approximately 12.25 square miles of territory plus that water area beginning 1,000 feet east of the northern boundary of the City of Dillingham and paralleling the mean low water line on the right banks of the Wood and Nushagak Rivers to a point at 59 degrees 00 minutes North Latitude.

Beginning at the northwest corner of protracted Section 31, T12S, R55W, Seward Meridian (S.M.); thence east to a point 1,000 feet east of the mean low water line on the right bank of the Wood River; thence meandering in southeasterly, southerly and southwesterly directions along a line 1,000 feet east of and paralleling the mean low water line on the right banks of the Wood and Nushagak Rivers to a point at 59 degrees 00 minutes North Latitude; thence west to the intersection with the line common to Sections 3 and 4, T14S, R56W, S.M.; thence north to the northwest corner of Section 3, T13S, R56W, S.M.; thence west to the southwest corner of Section 31, T12S, R55W, S.M.; thence north to the northwest corner of Section 31, T12S, R55W, S.M., the point of beginning, containing 36.5 square miles, more or less, all in the Third Judicial District, State of Alaska.

Signed this 2nd day of MARCH, 1988.



David G. Hoffman, Commissioner
Alaska Department of Community
and Regional Affairs

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ACKNOWLEDGMENT

STATE OF ALASKA)
)
) SS.
)

This is to certify that on the 2 day of March, 1988, before me, the undersigned, a Notary Public, duly commissioned and sworn as such, personally came David G. Hoffman, to me known to be the Commissioner of the Alaska Department of Community & Regional Affairs, who signed this foregoing Certificate of Boundaries of the City of Dillingham, Alaska.

William Rolger
Notary Public



My commission expires: 3/12/91

Record in Bristol Bay Recording District and return to:
Dan Bockhorst
Municipal and Regional Assistance Division
949 E. 36th Ave., Suite 404
Anchorage, AK 99508

(No Charge, State Business)

88-140

RECORDED - FILED	NC
BRISTOL BAY REC. DIST.	
DATE	<u>3-25</u> 19 <u>88</u>
TIME	<u>1:00</u> P M
Requested by	<u>Municipal</u>
Address	<u>Regional Assistance Division</u>

STEVE COWPER , GOVERNOR

Dept. of Community & Regional Affairs

OFFICE OF THE COMMISSIONER

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.

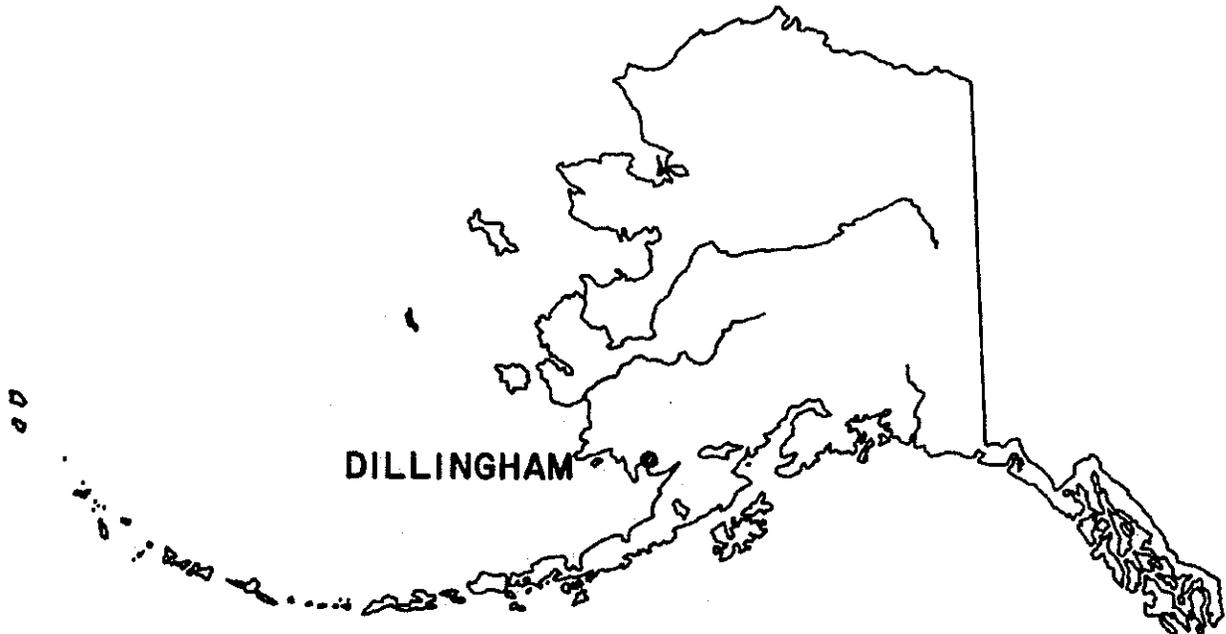


Exhibit 5
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SEPTEMBER 1987

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INTRODUCTION

Prior to examination of the degree to which the department finds that the present annexation petition meets required standards, it is important to briefly portray the findings of the LBC with regard to a 1986 proposal from the City of Dillingham and a 1986 proposal from the City of Clark's Point to annex all or portions of Nushagak Bay. This section of the report looks at these findings as well as more recent activity regarding an examination of the feasibility of borough government in the area.

E. 1. PRIOR PETITIONS FOR ANNEXATION OF NUSHAGAK BAY

In December, 1986, the LBC acted upon separate proposals from the Cities of Dillingham and Clark's Point for annexation of all or significant portions of Nushagak Bay. Following its examination of these proposals, the commission concluded that:

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. (Except, of course, that cities and unincorporated communities within boroughs are also part of boroughs and are served by them.) Thus, the LBC concluded, 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.
3. 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.

Circumstances have not changed since the commission made these findings. Given the clarity of its position with respect to annexation of significant portions of Nushagak Bay

by any city, the department concludes that there is no purpose in examining the annexation of this waterway as presently proposed by the City of Dillingham. Rather, it is presumed that the commission will reject this aspect of the current proposal as it did four months prior to the submission of the current petition.

E. 2. SOUTHWEST REGION BOROUGH STUDY

Recently, a number of local governments and school districts encompassed by the Southwest Region REAA boundaries expressed interest in identifying a means to improve services or to maintain existing services in the face of declining revenues. The interest was principally generated in response to reductions in levels of State financial aid to local entities.

In response, Fred Zharoff, State Senator for Senate District N, requested the department conduct a study of the feasibility of establishing a borough in the region. The department has agreed to undertake the study, which is scheduled to be completed in January, 1988.

In an effort to ensure local involvement in the study, the department has made provisions to establish a regional advisory committee. The committee will be comprised of seventeen members as outlined below.

One representative from each of the following cities:

Aleknagik	Ekwok
Clark's Point	Manokotak
Dillingham	New Stuyahok
Togiak	

One representative from each of the following unincorporated communities:

Ekuk
Koliganek
Levelock
Portage Creek
Twin Hills

One representative from each of the following organizations:

Southwest Region REAA
Dillingham School District
Bristol Bay Native Corporation
Bristol Bay Coastal Resource Service Area

One representative to collectively represent the village corporations in the region.

Of course, the study itself will not result in the creation of a borough. Under existing law, a borough may be created only with the approval of the voters in the area proposed for incorporation.

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Permit Holder and Crew Member Counts by Census Area & City of Residence

Click here for a detailed explanation of this report.

YEAR	CENSUS AREA	CITY	NUMBER OF PERMIT HOLDERS	NUMBER OF CREW MEMBERS
2009	070 DILLINGHAM CA	ALEKNAGIK	24	34
		CLARKS POINT	11	17
		DILLINGHAM	227	259
		EKUK	0	0
		EKWOK	3	1
		IGUSHIK	0	0
		KASHIAGAMTUT	0	0
		KOLIGANEK	18	25
		MANOKOTAK	84	93
		NEW STUYAHOK	25	39
		NUNACHUAK	0	0
		NUSHAGAK	0	0
		PORTAGE CREEK	0	0
		TOGIAK	224	117
		TWIN HILLS	7	2
		UNGALIKTHLUK	0	0
		CENSUS AREA TOTAL	623	587

Footnotes:

- Permit Holders
 - Residency of permit holders is based on the residency claimed on their permit application or renewal. Any permit holders claiming nonresidency, regardless of the address provided, are grouped under the category Nonresident. Any permit holders with a non-Alaskan address who claim residence are grouped under the category Alaska Resident, Unknown City.
 - Only current holders of permits were included in this report.
 - Holders of vessel permits and special use permits such as experimental, test fishing, educational, reservation, and hatchery are excluded from this report.
- Crewmembers
 - Crewmember license data for this report are static and were provided by the Alaska Dept. of Fish and Game, Administrative Services Division. Any corrections, updates or changes made to the crewmember license file after CFEC received the data will not appear in this report.
 - Crewmembers who are permit holders in other fisheries are not required to purchase a crew license. Therefore, they may not appear in the crewmember license data.
 - Individuals who may have held both a permit and a crew license are not counted as crewmembers in this report to avoid double counting.
 - Crewmembers who did not provide a social security number when purchasing a crew license are not included in this report.
 - Residency of crewmembers is based on the address they provided on their crewmember license application. Crew records where the state is recorded as other than Alaska are grouped under the category Nonresident. Crew records where the state is recorded as Alaska but the city does not match federal census city data are grouped under Alaska Resident, Unknown City.

Alaska Department of Fish and Game
Division of Commercial Fisheries

Bristol Bay District where Vessels with Harvest in Naknek-Kvichak District Made their First Harvest, 2009

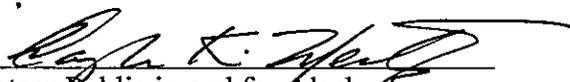
Title: **Bristol Bay District where Vessels with Harvest in Naknek-Kvichak District Made their First Harvest, 2009**
 For: **Jim Baldwin, (907) 586-9988, redalderlaw@ak.net**
 Contact: **Cathy Tide, PO Box 115526, Juneau, AK 99811-5526, P. 907.465.6133, cathy.tide@alaska.gov**
 Data Source: **ADF&G Zephyr fish ticket database; Run 09/27/2010**

Year	First District	Vessel Count	Percentage
2009	Ugashik	16	2.2%
2009	Egegik	180	25.2%
2009	Naknek-Kvichak	444	62.1%
2009	Nushagak	75	10.5%
2009	Togiak	0	0.0%
	Total	715	100.0%

Dated at Juneau, Alaska this 29th day of September, 2010.


Gregg K. Erickson

SUBSCRIBED AND SWORN TO before me this 29th day of September,
2010.


Notary Public in and for Alaska
My commission expires: 9/30/13

September 29, 2010

Mr. Jim Baldwin
Attorney at law
227 Harris Street
Juneau, AK 99801-1212

Re: City of Dillingham annexation petition

Dear Mr. Baldwin:

You asked me to evaluate and report on the several economic issues related to the City of Dillingham's 2010 proposal to annex 396 square miles of salmon-rich waters in the Nushagak and Wood River areas adjacent to the city.¹

Effect of the annexation on the viability of a future borough

Prior studies

Most importantly, you asked me to analyze and report on the likely effects of the proposed annexation on the economic and financial viability of a future borough regional government to serve the Dillingham-Nushagak-Togiak region. These economic effects are important because the Alaska Constitution², state law³, and the Alaska Administrative Code⁴ establish a presumption in favor of providing a regional government through organized boroughs, and against annexations that would preempt or discourage creation of a regional government.⁵ In 1986 the Local Boundary Commission, rejecting competing proposals by Dillingham and the City of Clark's Point to annex the Nushagak waters, explained the reasoning behind this policy.

If either city annexes any of the waterways as proposed then the City can expect to receive increased [state] raw fish taxes. This would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, but it would constrain the area in terms of a potential revenue base for any future borough. The ultimate result would be a disincentive for borough formation.⁶

¹ *Annexation Petition by the City of Dillingham by Local Action for Approximately 396 Square Miles of Submerged Land and 3 Square Miles of Land* (hereafter, "Dillingham Petition").

² The Alaska Constitution, Article X, Section 1, states, "The 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." Article X, Section 3, states, "The entire state shall be divided into boroughs, organized or unorganized"

³ AS 29.05.031, AS 29.05.100 (providing standards for the incorporation of boroughs).

⁴ "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" 3 AAC 110.090 (b).

⁵ This presumption is a legal matter about which I do not offer any expert economic opinion.

⁶ Local Boundary Commission, *Statement of Decision in the matter of the petition for annexation of territory to the*

Since this landmark decision several studies have addressed the economic and financial effects of various Dillingham-area annexation or borough formation proposals. All have concluded that the tax base of the Nushagak waters would be crucial to the establishment of any regional government in the area.⁷

In 1988 the Dept. of Community and Regional Affairs (DCRA), responding to the Local Boundary Commission's 1986 rejection of the attempts by nearby cities to annex the Nushagak waters, analyzed the economic and financial feasibility of a hypothetical borough encompassing the City of Dillingham, and the surrounding Southwest Region Regional Education Attendance Area (REAA), including the contested Nushagak waters.⁸

The study concluded that an organized borough in the region was financially viable.

At the request of officials of certain communities in the Southwest Region REAA, in 1989, DCRA examined the prospect of forming a borough in what was termed the "Northwest Bristol Bay Region." The area in question included much of the Southwest Region REAA, but excluded Dillingham. DCRA concluded that such a proposal would be financially viable, but considered the exclusion of Dillingham to be problematic in terms of satisfying the standards for borough formation.⁹

The issue of the economic and financial viability of a Dillingham-area borough was next revisited in 1993.¹⁰

Since 1988, a number of events have taken place so that borough organization is again under review. Those events include:

- o Decline in state revenues for such basic local needs as education, capital improvements and fisheries protection and enhancement;
- o Changing international market forces causing major concern about the future of the local economy;
- o The cost of education in the region and need to find alternative funding sources to provide for the system in the future; and
- o The need for a stronger voice in regional and state issues.¹¹

The 1993 study provided a detailed examination of the costs and potential revenues that could be generated by a hypothetical borough that included Dillingham.

A cornerstone of the borough finances should be a raw fish tax. Residents are adamantly opposed to a property tax. A raw fish tax is generally easy to administer and is viewed as fair and equitable. Other municipalities in the southwest part of the state have had similar taxes in place for over 20 years. This study looks at a one and two percent raw fish tax. It estimates revenues based on long-term harvest levels at three

City of Dillingham, Alaska, December 10, 1986 (finding of fact 11), [as quoted at p. 49, *Dillingham Petition*].

⁷ The area is encompassed specifically by the Nushagak Bay Commercial Salmon District.

⁸ *Borough Feasibility Study Southwest Region School District and the City of Dillingham*, Dept. of Community & Regional Development, 1988.

⁹ *Chronicle of Borough Developments in the Bristol Bay Region and Update of Revenue Projections Concerning the Proposed Annexation to the Lake and Peninsula Borough*, Dept. of Community and Economic Development, March 2000. The Dept. of Community and Economic Development (DCED) was created in 2000 by the merger of DCRA and the Dept. of Commerce and Economic Development.

¹⁰ *Supplemental Borough Feasibility Study Southwest Region School District and the City of Dillingham*, Bristol Bay Coastal Resource Service Area, August 1993.

¹¹ *Ibid.*, p. 1-1.

price scenarios. Given the likelihood of low to moderate prices in the future, the area needs to consider at least a two percent raw fish tax. One percent is simply inadequate. There are too many unknown and unpredictable factors surrounding other revenue sources to rely on only a one percent tax.¹²

The raw fish tax base, though rich, was highly variable, with production and prices subject to wide and unpredictable variations. A strength of the 1993 study was its recognition that this variability required analysis of multiple revenue scenarios, and consideration of the likely volatility of what the authors expected to be the new borough's principal source of revenue.

Even the lowest revenue scenario without considering annual surpluses would be adequate to fund a prospective borough but only until FY1997. However, this minimal tax level is not a positive nor constructive public policy approach to meet the expected and unexpected long term revenue needs for the study area. Again, the study area needs to consider a higher tax level, at least two percent on both raw fish and the recreational industry to adequately fund borough services.¹³

Between 1988 and 1993 the average price of Bristol Bay sockeye salmon had plunged from an all-time high \$2.11 to a near all-time low \$0.67 per pound. The "low-price" scenario incorporated in the 1993 study was \$0.65 per pound. The fear that the downward trend in salmon prices would continue caused local officials to ask DCRA to develop new financial projections based on prices ranging from a high of \$0.65 to a low of \$0.35 per pound.

DCRA responded and published its resulting study in April 1994, concluding that the 2 percent raw fish and recreational industry (lodge) tax contemplated in the 1993 study would *not* be sufficient to support a financially viable borough under even the "high," \$0.65 price scenario. Viability could be achieved only by bumping the tax rates to 4 percent and/or imposing a general sales tax (see Table 1, on the following page).¹⁴

These findings contradicted the 1993 study's conclusion that revenues under a 2 percent tax and \$0.65 per pound scenario would be sufficient to support a borough. Based on a more detailed and current model of state's complex education aid formula, authors of the 1994 study found that the required borough contribution for participation in the state's education aid program would be \$265,000 more than estimated in 1993. Correction of the misestimate for education wiped out the \$240,000 surplus projected in 1993.¹⁵

¹² *Ibid.*, p. 1-3.

¹³ *Ibid.*

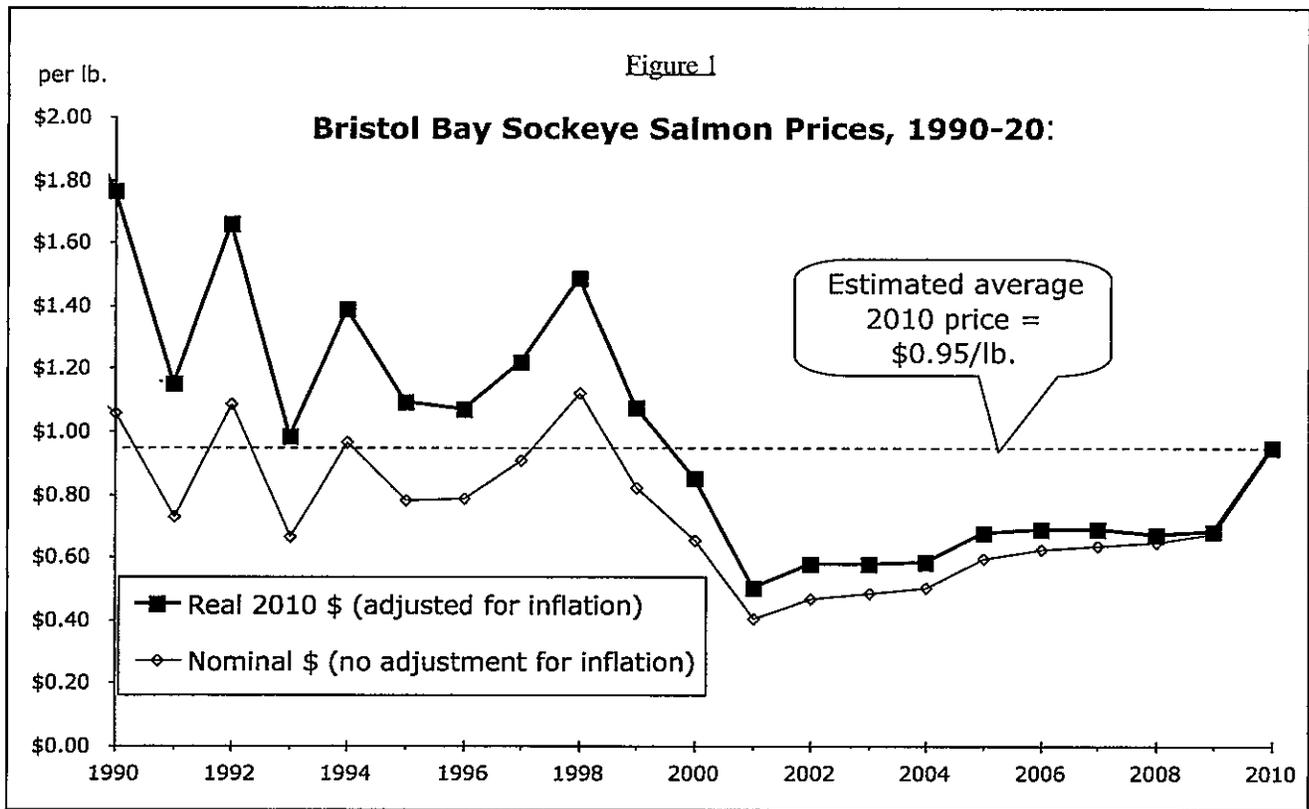
¹⁴ *Budget Projections for a Prospective Dillingham Census Area Borough*, Local Boundary Commission staff report, Dept. of Community & Regional Affairs, April 1994.

¹⁵ The 1994 analysis also projected \$153,000 less revenue for the proposed borough, an outcome that would have exacerbated the expected shortfall in the new borough's finances.

entities levy various raw fish taxes, but offers no financial or economic analysis to support the conclusion that Dillingham’s proposed tax would not affect the viability of a Dillingham-area borough, or that the situations in the other areas they cite are comparable to the situation that would be faced by a Dillingham-area borough.

Setting these claims aside, it is nevertheless reasonable to ask if “conditions on the grounds,” as the city terms them,¹⁹ are materially different from what they were in 1993 and 1994. I see little evidence to suggest that is the case. The expected value per pound has not materially changed — when adjusted for inflation the \$0.65 price per pound scenario used in 1994 translates to \$0.94 per pound in 2010 dollars, close to the base Bristol Bay sockeye price set for 2010.²⁰

That price is also close to the \$0.97 per pound average real (inflation-adjusted, 2010 dollars) value over the last 20 years. Figure 1, below, shows average annual nominal and real prices in comparison with the \$0.95 estimated for 2010.²¹ I’ve drawn a dashed horizontal line at the \$0.95 level to help show how the 2010 estimated price compares with history.



¹⁹ *Dillingham Petition*, p. 49.

²⁰ “Huge haul, high prices for Alaska salmon catch,” Laine Welch, *Capital City Weekly*, Sept. 1, 2010.

²¹ The nominal price for 2010 is estimated (see note 20, above); the 2008 price is from *The Importance of the Bristol Bay Salmon Fisheries to the Region and its Residents*, Northern Economics for the Bristol Bay Economic Development Corporation, October 2009; all other nominal price data in Figure 1 is from the Alaska Commercial Fisheries Entry Commission, <http://www.cfec.state.ak.us/bit/MNUSALM.htm>, accessed on Sept. 28, 2010; I benchmarked the real prices to the Anchorage Consumer Price Index, using the first half of 2010 as the base.

Some things *have* changed. A non-profit trade association established in 2005 in the Bristol Bay region was formed and now levies a 1 percent salmon marketing assessment that operates like sales tax on raw fish. State law allows this assessment to reach as high as 2 percent.²²

Other factors that are different now from 1994 are the higher costs associated with providing the services of regional government, and the lower level of financial assistance a borough can expect from the state. For example, the municipal assistance and revenue sharing programs that existed in 1994 are no more, and the program recently adopted in their place provides much less municipal aid. Other state programs to assist municipalities, such as support for the costs of defined benefit retirement obligations, would provide no resources to a new borough.

Based on the prior studies of the economic viability of a proposed Dillingham regional government and my assessment of current economic and financial conditions, I see no reason to assume that the fundamental conclusions of the prior studies have been overturned. To the contrary, based on sockeye prices and production levels, revenues available from other sources, and trends in costs of providing borough services, it is likely that the financial viability of a Dillingham borough is more marginal today.

For this reason, it is my opinion that

(1) Dillingham's claim that there is enough revenue potential to be derived from the sale of raw fish in the region to support two taxing jurisdictions at the rates predicted in the past is questionable and without a firm basis in fact;

(2) Dillingham's intent to impose a 2.5 percent sales tax on raw fish sales in the Nushagak Commercial Salmon District, considered along with other taxes levied on that revenue source, creates a significant disincentive to formation of a borough in the region.

Other economic issues

You asked me evaluate and report on the several other economic issues related to City of Dillingham's annexation proposal.

Who pays the taxes now levied by the City of Dillingham?

At several points in its petition the city asserts that residents of Dillingham, through their payment of sales and property taxes, support services that are used and useful to non-residents.²³ I am prepared to testify and offer evidence that non-residents already bear a high proportion of the burden of Dillingham's current sales tax, property tax, and user fees.

Revenue from the city's proposed to 2.5 percent tax is essential to support services benefiting the region as a whole

According to the city, "This annexation and the accompanying local severance and sales tax on raw fish will provide more revenue to the City of Dillingham to help pay for services and facilities

²² See AS 43.76.350 – 43.76.399.

²³ "Currently, a significant number of non-residents receive the benefit of these services that directly assist them in their fishing business without contributing equitably to operation and maintenance of the city services and facilities." *Dillingham Petition*, p. 6.

that the region's commercial fishermen and fleet use while in town and will help make the community more financially sustainable."²⁴

The annexation will certainly provide the city with more revenue, but the implication that this revenue is either "needed" or "necessary" to support city services is problematic. In its most recent audited financial statement, for the year ending June 30, 2009, Dillingham reports \$6.5 million of liquid reserves, an unrestricted surplus equal to 109 percent of the city's reported expenditures in fiscal year 2009.

While small municipalities such as Dillingham, have a legitimate need to maintain liquid reserves, I am prepared to testify and offer evidence that the reported reserves are more than sufficient to fund the additional services the city proposed to offer if its annexation proposal is approved.

The annexation will promote economic development of the region

The city states that, "A stronger financial picture for the City of Dillingham as a result of annexation will allow it to better assist and support [economic development in the adjacent waters] through improved facilities and service."²⁵ I am prepared to testify and offer evidence that nothing in the city's petition provides any factual basis to conclude that the annexation will have any effect on the trajectory of the region's economic development.

Sincerely,



Gregg Erickson
ERICKSON & ASSOCIATES

²⁴ *Dillingham Petition*, p. 7.

²⁵ *Dillingham Petition*, p. 42.