

BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcfaklaw.com

August 29, 2016

Via Electronic Mail

Brent Williams
Local Government Specialist
State of Alaska
Local Boundary Commission
550 W. 7th Ave., Suite 1640
Anchorage, AK 99501

RE: Dillingham Annexation Petition- LBC August 30 Meeting

Dear Brent:

Dillingham was not invited to respond to Ekuk's request to provide written comments to the comments submitted by Commissioner Hladick so is providing this letter in advance of the Commission's consideration of this topic at its August 30 meeting. Dillingham assumes the Commission is considering this request distinct from the extension of the comment period for comments on staff's preliminary report.

Ekuk claims the Commissioner was submitting late comments on the petitions. It is obvious the comments were in response to the preliminary report. The gist of the Commissioner's comments were that both petitions should be granted and borough formation should be addressed separately from annexation. Forced borough formation was not proposed in either petition, only in the preliminary report. Claiming the letter was commenting on the petitions ignores the substance and breadth of the Commissioner's comments.

Ekuk's responsive briefs provided in great detail Ekuk's position on whether either or both annexation petitions should be granted. And, Ekuk also commented on the legislative review borough formation proposal contained in Staff's preliminary report. Ekuk will have an additional opportunity to amplify its position on both annexation petitions and forced borough formation at the public hearing. There is no valid "due process" basis to grant Ekuk's request and Ekuk's claim, there is no "opportunity" to comment is wrong. There will be both notice in the form of staff's final report and a hearing before the Commission makes its final decision.

Ekuk's claim it is entitled to comment per LBC regulation is also wrong. Only comments "pertaining directly to the preliminary report" are authorized by regulation. 3 AAC 110.530(c). Ekuk is asking to be able to comment on something else entirely - the Commissioner's letter.

Brent Williams
August 29, 2016
Page 2 of 2

Obviously, the Commissioner is not on the same page as LBC staff. 3 AAC 110.435(c) allows staff to provide additional information to the Commission that “questions or refutes” the Commissioner’s position. The difference between Staff’s preliminary report and the Commissioner’s letter may or may not be resolved in Staff’s final report. Regardless, the final report will be issued sufficiently in advance of the public hearing so as to provide ample opportunity for Ekuk to be heard prior to a final Commission decision. That is why the initial staff report is labeled “preliminary”. The process recognizes the possibility of a change in position between issuance of the preliminary report and preparation of the final report. And in some instances, changes in the final report trigger an additional opportunity for comment. See, 3 AAC 110.530(e). So it is premature to characterize either the preliminary report or Commissioner Hladick’s comment letter as the Department’s final recommendation to the Commission. Much as Dillingham would appreciate a withdrawal of the Staff preliminary report in this particular instance, Dillingham does not consider withdrawal of the preliminary report (as appears to be what is being requested by Ekuk in suggesting the preliminary report be repeated, Ekuk motion at p.5) legally required in order to provide Dillingham citizens due process.

Sincerely,

BOYD, CHANDLER &
FALCONER, LLP

By: 

Brooks W. Chandler

BWC/lr
cc: Rose Loera (via electronic mail)