

**LOCAL BOUNDARY COMMISSION**

**STATE OF ALASKA**

In the matter of the Petition by the City of )  
Manokotak to Annex the Weary/Snake River )  
Tract, The Snake River Section and Igushik )  
Section of the Nushagak Commercial Salmon )  
District, and the Igushik Village Tract, )  
Altogether Consisting of Approximately 37 )  
Square Miles of Land and 118 Square Miles )  
Of Water, by the Legislative Review Method )  
and )  
In the matter of the Petition by the City of )  
Dillingham to Annex 396 Square Miles of )  
Water and 3 Square Miles of Islands )

**SUPPLEMENTAL COMMENT OF THE CITY OF MANOKOTAK TO THE JUNE 2016  
PRELIMINARY REPORT TO THE LOCAL BOUNDARY COMMISSION**

The City of Manokotak (hereinafter "Manokotak") files this supplemental comment to staff's June 16, 2016 Preliminary Report herein.

- I. THE PRELIMINARY REPORT APPEARS TO HAVE RESULTED FROM IMPROPER DEPARTMENTAL INTERFERENCE WITH STAFF'S INDEPENDENT ANALYSIS, DIVERTING STAFF FROM ITS PROPER FUNCTION OF ANALYZING ANNEXATION PETITIONS BEFORE THE COMMISSION.

The Commission extended the time for comment on the Preliminary Report Draft until September 19, in response to a request from Jim Baldwin, attorney for the Village of Ekuk, et. al. Mr. Baldwin's request was based upon a letter dated July 15, 2016 from DCCED Commissioner Chris Hladick, which recommended that the LBC not pursue borough formation, as recommended by the Preliminary Report, but to instead approve both the Dillingham and Manokotak annexation petitions, resolving their "overlap" area by granting the Igushik Section to Dillingham. Mr. Baldwin's letter

suggested that the Commissioner's letter amounted to a new position taken by LBC staff in its Preliminary Report, because staff exists within the Division of Community and Regional Affairs (DCRA), within DCCED.

To the extent the DCCED Commissioner's letter may be viewed as improper influence upon LBC staff, the irony is that the Commissioner's letter came after months of apparent improper influence on staff by DCRA and DCCED officials who appear to have been seeking to enlist staff in promoting a borough for the subject area, so as to negate approval of the pending city annexation petitions. This prior involvement of departmental officials in interfering with the LBC's advisory staff independent role only came to light at the time of the prior deadline for comment on the Preliminary Report, July 15, 2016. Documents evidencing departmental interference were among those which were disclosed to Manokotak in response to its prior Public Records Request, and are discussed in subheading A, below.<sup>1</sup>

The ordinary function of the LBC's staff, when the LBC is presented with competing city annexation petitions, is to analyze the petitions and make

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<sup>1</sup> The documents discussed in subheading A, some of which are included in Attachment A hereto, were obtained by Manokotak from DCCED in response to a June 21, 2016 public records request (also included in the attachment), under the state's Public Records Act, A.S. 40.25.110 *et.seq.* This generally requested all communications within DCCED regarding a proposal to form a borough in the Dillingham Census area. DCCED granted itself an extension of time to respond to the records request, such that only a portion of the documents were disclosed on July 8, 2016, with the bulk of them not disclosed until July 13, 2016; this was too late to permit use of the disclosed information in Manokotak's July 14 comment on the Preliminary Report. Moreover, many documents were not disclosed. Attached hereto is a July 13, 2016 letter from Assistant Attorney General Mary Macsalka, on behalf of DCCED, which referenced a "privilege log" itemizing a number of documents that were withheld or redacted on grounds that they were part of the "Deliberative Process." This is a dubious ground for withholding documents, in that the decisionmaker in local boundary matters is not DCCED or DCRA, but rather the LBC. Neither DCCED nor DCRA properly have a role in the deliberative process of the LBC or its staff.

recommendations regarding the petitions by (1) determining compliance of the respective petitions with the LBC's annexation regulations and (2) recommending resolution of conflicts where the competing annexation petitions overlap. The Preliminary Report departed from these ordinary functions by (1) making only a superficial and mechanistic analysis of compliance with annexation regulations, largely colored by staff's predisposition favoring a borough, and by (2) completely avoiding the central issue of resolving the contested Igushik Section overlap, by stating (p. 57) that "[t]he LBC cannot grant both of them because their proposed boundaries overlap." This was a remarkable conclusion, in that the LBC has quite often resolved boundary issues where competing petitions seek overlapping areas. Yet the Preliminary Report failed to even scratch the surface of the substantial facts and arguments brought forward by Manokotak, and to some extent by Dillingham, in support of their respective connections with the contested Igushik Section. Instead, at the behest of departmental officials, the Report embarked upon an advocacy effort to supplant the annexation petitions with staff's proposed LBC recommendation to the Legislature for formation of a borough. As discussed below, this effort featured (1) improper contacts by department officials with LBC staff, resulting in loss of the independent perspective of the staff, upon which the Commission relies and depends, and in (2) the Preliminary Report's pursuit of a recommended course of action - - LBC recommendation of a borough to the Legislature - - which would be contrary to the Alaska Constitution and Alaska statutes.

Moreover, all of the comments on the Preliminary Report which were filed by the July 15 deadline disfavored the Report's recommendation that the LBC seek a

legislatively ordained borough to be imposed on the region without an election. Even those comments which generally favored a borough argued that such a borough should, in essence, be “home-grown”, that is conceived, initiated and supported by local residents rather than resulting from a “top-down” approach. As was pointed out by both annexation petitioners and others, approval of an annexation now would in no way foreclose an effort to form a locally initiated borough later.

A. Role of LBC Staff, and Indications of Departmental Interference with its Independence.

The independent role of the Local Boundary Commission, as a constitutionally established body under Article X of the Alaska Constitution, is beyond argument and requires no discussion. In order to perform its functions, the LBC has been assigned a staff to investigate, analyze and make recommendations to it regarding the boundary petitions pending before it. While the LBC’s staff is housed within DCCED and DCRA for administrative and budgetary support, LBC regulations underscore the fact that the staff remains an advisory adjunct to the LBC, and does not function as an arm of the Administration, DCCED or DCRA. A regulation entitled “Role of department staff”, 3 AAC 110.435, states, in pertinent part:

(a) A department employee assigned under A.S. 44.33.020(a)(4) as a member of the [local boundary] commission staff serves as an advisor. The advisory staff may not act in an advocacy capacity as a petitioner under 3 AAC 110.410.

(b) during a proceeding, the advisory staff to the commission may provide technical assistance, information and forms to petitioners, respondents, and interested persons who have procedural questions regarding local government or boundary issues. If the commissioner [of DCCED], a department subdivision, or a department employee not assigned under A.S. 44.33.020(a)(4) to the commission’s

advisory staff serves in an official capacity as a petitioner in a case before the commission,

(1) communications with the commission's advisory staff regarding the case are subject to the limitations of this subsection and 3 AAC 110.500; and

(2) communications with members of the commission are subject to ex parte limitations of 3 AAC 110.500.

(Emphasis added.)

The referenced limitations of 3 AAC 110.500 include strict limitations against ex parte contacts:

A member of the Commission is prohibited from ex parte contact and communication with any person except the staff of the Commission, concerning a matter pending before the Commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the Commission, including the last date of proceedings of the Commission ordered by a court of competent jurisdiction.

In other words, the department's communications with staff are, in the circumstance stated in the regulation, also subject to the same rule against ex parte communications as are communications with the LBC Commissioners themselves.

To summarize the import of these regulations, LBC staff is not to act in an advocacy capacity as a petitioner; and the department, when it acts as a petitioner, is not to engage in ex parte contacts with LBC staff regarding facts or arguments concerning the petition. Although no formal petition has been filed in this case by either LBC staff or DCCED/DCRA, the Preliminary Report and departmental actions preceding it have walked right up to the line and appear to have in fact interfered with staff's role by, in essence, influencing it to make a recommendation to the Commission

which is tantamount to bringing a borough petition itself.<sup>2</sup>

DCCED Commissioner Hladick's July 15, 2016 letter came only after a series of departmental actions which caused the LBC's staff to issue a Preliminary Report advocating a borough in lieu of city annexations. The first of these efforts began over a year ago, and were then somewhat known to the petitioners. During August and September, 2015, certain DCRA officials, including John Nickels, prepared a draft petition to the LBC to incorporate a "Tikchik Borough" as a second class borough "using the legislative review method." There was nothing improper about this, to the extent that it originated with DCRA officials, and was proposed independently from involvement of LBC staff; however, this was not the case. A fiscal analysis of the proposed borough was circulated<sup>3</sup> among departmental officials, and brought to Commissioner Hladick's attention, with a statement from LBC staff that "the analysis shows that such a borough is definitely fiscally viable".

DCRA director Katherine Eldemar, on August 21, requested a decision from

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<sup>2</sup> In discussing this subject and the attached documentation of intradepartmental communication, it is not the intent of petitioner Manokotak to suggest that agency officials or LBC staff engaged in wrongdoing. Instead, what appears to have occurred here are the sometimes confused actions of well-meaning state employees acting under what became uncertain lines of authority. In the undersigned's experience with the LBC and its staff spanning some 30 years, staff has always been recognized as serving the LBC, and not the Administration or its agencies. Yet DCRA Director Eldemar's September 16, 2015 email states that "the LBC staff has two masters, one is the commissioner and the second is the LBC". Manokotak strongly disagrees with this view. The LBC staff is intended to have only one master: the LBC. Although there was nothing improper about LBC staff providing the agency with a "heads-up" as to the direction the staff would be taking in its Preliminary Report, it was improper for staff to be taking orders from a departmental supervisor and to subject its draft report to review and approval by departmental officials; this resulted in the LBC's staff being effectively hijacked by the Department.

<sup>3</sup> See emails dated August 14 and 17, 2015. All documents in the attached "Departmental Communications" are in chronological order.

DCCED Commissioner Hladick as to whether she could proceed with bringing a borough petition forward, but a week later, this was not approved by the Commissioner. As of August 27, 2015 Deputy Commissioner Fred Parady was seeking confirmation from Commissioner Hladick that he was “declining to put forward a petition for a potential Tikchik Borough.”

Nevertheless, a September 10, 2015 email from LBC staff Brent Williams to parties interested in the annexation notified them of an upcoming, September 16 meeting of the LBC to discuss not only potential consolidation of the annexation petitions, but also whether the Commission should designate a “person” to submit a petition for potential borough incorporation in the Dillingham Census Area. At that meeting, the LBC rejected by a 2 -2 vote a motion to designate such a person. A September 14 email from DCRA official John Nickels said that consideration had been given to providing the LBC a petition for a “Western Bristol Bay Borough”, which was drafted by DCRA staff, but that they had subsequently learned that the “Commissioner is unable to initiate such a petition.”

However, during this time period the draft Tikchik Borough petition had been transmitted by LBC staff to various interested parties. This apparently raised the ire of Deputy DCCED Commissioner Parady who, on September 16, inquired of DCRA and LBC staff as to how this had occurred, since it had already been decided that the Department would not submit a petition to the LBC. An explanation was given by DCRA Director Eldemar in a September 16 email stating that LBC/DCRA had “worked

to have a draft petition prepared”; that she had provided a “decision memo”<sup>4</sup> to the Commissioner; and that LBC staff was “disappointed” that the DCCED Commissioner would “not be forwarding the petition”. On September 18, the Deputy Commissioner still needed an answer to the question “...how...DCRA staff came to draft and submit a petition to form a borough when the Commissioner had decided not to?”, and a September 21 email from Deputy Commissioner Parady indicates his continued dissatisfaction with the draft borough petition going “outside our department.” This, according to his September 22 email, was outside the standard DCRA practice of including materials on a matter the Commissioner had decided against pursuing.

Nevertheless, DCRA's idea of pursuing a borough in place of the city annexations did not die. According to a May 26, 2016 email from State Assessor Marty McGee, whose position exists within DCRA, he had been

...asked to supervise, assist and counsel, the staff assigned to support the commission. Our reorganization and my roll [sic] was not welcome news to the chairman of the Commission. We now have a reasonable working relationship but I am often reminded of their [the LBC's] independent authority.

Mr. McGee's message does not indicate who asked him to “supervise” staff. According to an August 25, 2016 letter from DCRA director Eldemar, the only two staff members assigned to assist the LBC are Brent Williams and Eileen Collins; Mr. McGee has not been identified as assigned LBC staff. Yet drafts of the Preliminary Report were first sent to Mr. McGee, and a June 17, 2016 message from Mr. McGee to LBC staff Brent Williams appears to give him supervisory direction:

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<sup>4</sup> The “decision memo” provided to the Commissioner, and other documents, have been withheld from the public record request on the grounds that it was a “deliberative” document.



You must place the highest priority on producing a draft report for the Dillingham and Manokotak petitions and the issue of possible borough formation. We need well-reasoned, and well supported statements about how the two petitions do or do not conform with the criteria for annexation. We also need a very well supported statement about the authority of the LBC to move for the formation of a borough. We need to produce in a timely manner that allows review and participation on the part of the Commissioner of Commerce and may very well include participation from the Governor. Given the time frame you have provided there is very little time available to meet these needs. Producing a document for review at the last minute will not be acceptable. In my opinion you do not have time to expend on other issues.

Although many documents have been either withheld or redacted in response to Manokotak's public records request, those which have been disclosed evidence a concerted effort by DCRA officials to have LBC staff essentially bring forth to the LBC a borough concept in place of the annexation petitions. When this effort was first belatedly countermanded by the DCCED Commissioner in September, 2015, it arose again in 2016, accompanied by appointment, apparently by DCRA, of a new "supervisor" to have LBC staff bring forward an initiative for a borough, utilizing staff's role as the developer of a Preliminary Report to the LBC.

The Preliminary Report was the result of that effort. Whatever importance may now be placed upon Commissioner's Hladick's July 15, 2016 letter, which was ostensibly only a "comment", what is important now is recognition that the Preliminary Report was fatally flawed by what amounted in substance, if not in form, to a formal effort of DCRA to seek LBC approval of a borough. This effort violated the spirit, if not the letter, of regulations designed to preserve the loyalty of LBC staff to the Commission, and to not assign LBC staff to carry the Administration's water in local boundary matters. .

B. The Preliminary Report's recommendation for the LBC to propose a borough to the Legislature is contrary to Constitution and statute.

Manokotak, in its July 14, 2016 initial Comment to the Preliminary Report, at pp. 2 – 7, has previously set forth provisions of the Alaska Constitution, Alaska statutes and a seminal Alaska Supreme Court decision regarding the authority of the Local Boundary Commission, all demonstrating that the Commission does not have legal authority to submit a proposed borough incorporation to the Legislature under the guise that it is a “boundary change”, like an annexation Manokotak’s argument may be summarized as follows: the Alaska Constitution and statutes make a straightforward distinction between (1) “a local government boundary change” under which proposed annexations may be proposed to the Legislature, and (2) organization and incorporation of boroughs, which may only be done under the borough incorporation statutes and regulations. A borough incorporation may not be accomplished under the authority for a “boundary change”, which is only intended for use in annexations.

In Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974), the Supreme Court found that the Legislature's power to create boroughs did not derive from Article X, Section 12, pertaining to “boundary changes”, but that the Legislature’s power to create boroughs instead came from Article X, Section 3 which required that boroughs be established “in a manner and according to standards provided by law” - - in other words, by Title 29 statutes. This annexation/incorporation dichotomy is reinforced by the separate statutes governing annexation (under Title 44) and borough incorporation (under Title 29).

A.S. 44.33.812, enumerating the LBC's powers and duties respecting annexations, states that the LBC may

...consider a local government boundary change requested of it by the Legislature, the Commissioner of Commerce, Community and Economic Development, or a political subdivision of the state; "boundary change" may not be construed to include a borough incorporation;....

Similarly, a borough incorporation statute, A.S. 29.05.115(b) states that

...this section may not be construed as granting authority to the Local Boundary Commission to propose a borough incorporation under art. X, sec. 12, Constitution of the State of Alaska. (Emphasis added.)

The latter reference to Article X, Section 12 is to the "boundary change" article which, as stated in Mobil, applies only to annexations.

In summary, both the Constitutional section and the Alaska statute which pertains to a "boundary change" may not be used by the LBC to recommend incorporation of a borough to the Legislature. The only way for a borough to be incorporated is "in a manner and according to standards provided by law", meaning under the borough incorporation statutes, which require a petition to be first approved by the LBC and then adopted by an affirmative vote of the affected residents.

The road down which the Preliminary Report would attempt to steer the LBC has been espoused by others, including former Senator Wilken, who in 2007 authored an opinion letter that the LBC could use its authority to propose a local government boundary change, under Article X, Section 12 of the Constitution, to seek incorporation of local governments.<sup>5</sup> Senator Wilken relied upon ancient state Attorney General's

<sup>5</sup> Then-Senator Wilken had previously, in 2003, used this logic to co-sponsor a proposed concurrent resolution for the Legislature to form four boroughs (but not one in the Nugushak Bay region), which failed to pass.

office opinion letters which had been superseded by the Alaska Supreme Court's 1974 decision in Mobil Oil Corporation v. LBC, a decision which the Wilken letter all but ignores. His opinion letter has also been later rebutted by the express language in the 2005 amendment to A.S. 44.33.812(a)(3), which provides that "boundary change" may not be construed to include a borough incorporation, and by the 2006 enactment of A.S. 29.05.115(b) stating that this section, in the borough incorporation statutes, may not be construed as granting authority to the LBC to propose a borough incorporation under the "boundary change" article of the Constitution.

At this point, any argument that a borough incorporation can be proposed to the Legislature as a "local government boundary change" has been fully resolved; it cannot.

II. PROPER ANALYSIS SHOWS THAT MANOKOTAK'S ANNEXATION PETITION MEETS THE ANNEXATION STANDARDS, AND HAS STRONGER CONNECTIONS WITH THE CONTESTED IGUSHIK SECTION THAN DOES DILLINGHAM.

The unwarranted diversion of staff's Preliminary Report on city annexation petitions to instead pursue an ill-considered and poorly defined borough proposal has resulted in insufficient attention being given in the Preliminary Report to the factual support for Manokotak's connections with Igushik Village and the Igushik Section. This can be remedied in the staff's Final Report.

The substantial factual support previously furnished by Manokotak demonstrates both compliance of its petition with the annexation standards and that, with respect to the contested Igushik Section, Manokotak shows greater compliance with the annexation standards than does Dillingham's petition.

A. Manokotak's proposed annexation would meet all regulatory standards.

It is important to note an additional casualty of the Report's effort to support a legislatively-mandated borough: Staff improperly used the alternative of a legislative borough as a new, and unauthorized, standard for rejecting Manokotak's annexation petition. Specifically, with the exception of only two of the regulatory standards which the Preliminary Report asserts Manokotak did not meet, the staff's intention to propose a borough was itself used as the substantive basis for finding that Mankotak did not meet other standards embodied in actual regulations.

The Preliminary Report concluded that Manokotak did not meet standards 110.130(c)(1) and (c)(2) (Boundaries standard) because it asserted that the scale of the annexation, particularly for Tract B (the Igushik Section) "is more suitable for a borough," or "more appropriately in a borough." Similar language was used to find that the Manokotak petition did not satisfy standards 3 AAC 110.040(b)(1) and (2) (Boundaries). That a borough would be "more appropriate" was also the basis for the Report concluding that "the best interests of the state" standard under 3 AAC 110.042 was not met. The Report found that the 3 AAC 110.970 "standard"<sup>6</sup> was not met because some essential services, "such as planning" could be "more efficiently and effectively" be provided by a borough. In finding that Manokotak failed to satisfy the 3 AAC 110.135 "best interests of state" standard, the Report states that "the bay" (all of Nushagak Bay? Or just the discreet Igushik Section dominated by Manokotak fishermen?) is a "regional resource" which "should not be divided between two or more

<sup>6</sup> As pointed out in Manokotak's previous (July 14, 2016) Comment on the Preliminary Report, section .970 does not purport to set forth a separate "standard" for annexation; it is instead a regulatory definition of "essential municipal services", as used under other standards.

cities”, but should instead be used for the “common good”. Again, such basis for denying a city annexation does not exist in the regulations, nor in the numerous past LBC decisions approving city annexations of nearby fisheries or waters of paramount economic importance to the city. Similarly, the Preliminary Report found that Manokotak did not satisfy the standard in 3 AAC 110.140(9) (constitutional and statutory policies, and best interests of the state) “because Nushagak Bay and its fish are a regional resource and should not be divided among cities.” Manokotak is not seeking to annex all of Nushagak Bay, but only that discrete fishery, the Igushik Section, which is dominated by Manokotak fishermen. Adjacent waters such as the Igushik Section have never been withheld from city annexation on grounds that any harvestable fish therein are a “regional resource” which should be in a borough instead of being annexed to a city whose economy and subsistence is directly and uniquely most dependent on this resource.

Shorn of its conclusions that specific annexation standards were not met by Manokotak because a borough was preferred in place of a city annexation - - which again, is not a proper basis - - the Preliminary Report determines that the Manokotak petitions was deficient under only two standards: 3 AAC 110.090(a) (“Need”) and 3 AAC 110.110 (“Resources”). The Report’s reasoning was faulty as to each of these.

Under the “Need” standard (section .090(a)), the Preliminary Report incongruously found that, with respect to Manokotak’s annexation, Tract B (the Igushik Section of Nushugak Bay) is not a territory which exhibits a reasonable need for a city government, but that, under the Dillingham petition, Tract B, and in fact all Nushugak Bay, is a territory that exhibits a need for city government. The issue under the

regulation is whether “the territory” exhibits a reasonable need for a city government, and the Preliminary Report’s conclusion that this standard is met for Dillingham but not for Manokotak makes no sense. In fact, the Report describes how Manokotak’s proposed annexation of Tract A and Tract C do show a reasonable need for city government, because of the facilities and services the City could provide there would support these areas. But the support for Tracts A and C are the same as for Tract B, because the Igushik Section fishery is the primary activity of residents on the adjacent shore land. Support for the fishing in Tract B, including both search and rescue activity at sea and fishing support facilities ashore, is inseparable for all tracts that comprise the territory sought in Manokotak’s petition.

The Preliminary Report found that Manokotak did not meet the “resources” annexation standard in 3 AAC 110.110 because it was concerned about the City’s capacity to collect raw fish taxes, based upon the City having had difficulty collecting back sales taxes. In fact, there is no continuing problem here. Sales tax payments were in arrears from one local store business, in which the taxpayer’s arrears of \$30,627 were brought current in June, 2016. Manokotak’s delayed receipt of back sales taxes from one business is no basis to conclude that it will have any difficulty collecting severance taxes from Nushugak Bay fish buyers.

In summary, Manokotak’s petition meets all of the annexation standards set forth in regulation, and its petition should not be denied on the basis of a preference for borough standard which does not exist in the regulations.

- B. Manokotak/Igushik has much more intense connections with the contested Igushik Section than Dillingham.

The central and remaining issue for discussion is whether Manokotak or

Dillingham has more intense ties, in relation to the standards for annexation, to the Igushik Section of Nushagak Bay. This commercial fishing section, identified by ADF&G for the purpose of discrete regulation of a discrete fishery, is Tract B in Manokotak's petition, but is only a small part of the entire Nushagak Bay sought in Dillingham's petition. The obvious approach to this issue is to assess each petition against the applicable standards, on a comparative basis to determine which petition better meets the standards, in relation to the Igushik Section. Yet the Preliminary Report completely fails to make this comparison. Again, this was apparently because the Report preferred a borough over annexation by either city.

As a result, the Preliminary Report erroneously treated the entire Nushagak Commercial Salmon District as a single fishery. This precluded any effort to assess the comparative merits of the competing petitions relative to the only area in dispute, the Igushik Section. The Igushik Section is a relatively small portion of Nushagak Bay and of the Nushagak Commercial Salmon District, and Manokotak has not opposed Dillingham's effort to annex the remainder of the Bay. The focus of a comparative analysis should only be on the Igushik Section, wherein the fish that are harvested and sold are predominately destined for the Igushik River. ADF&G regulations, management policies and statistical reports uniformly reflect that the Nushagak Commercial Salmon District is composed of several distinct river systems (Igushik, Wood and Nushagak rivers), each with its own distinct fishery stock and fishery management regime, stating that



Igushik River sockeye salmon will be managed independently of the Nushagak-Wood River sockeye salmon stocks.<sup>7</sup>

The Igushik River supports extensive local commercial and subsistence set net fisheries which are shore-based in the immediate environs of the summer Village of Igushik, it also supports a smaller offshore driftnet fishery in which residents of Manokotak and elsewhere participate.<sup>8</sup> By blindly lumping these separate fisheries into a single fishery, the Preliminary Report denied itself the ability to assess the relative merits of Manokotak's and Dillingham's competing petitions to annex the Igushik Section.

Highly critical to any assessment of the competing petitions is recognition that the activities of both the commercial and subsistence shore-based set net fishers who fish the Igushik Section are inseparably associated with the adjacent uplands.<sup>9</sup> The commercial and subsistence set net fishery, whose sites dot the western shore of Nushagak Bay by Igushik Village, is the primary fishery in the Igushik Section.<sup>10</sup> Attachment B hereto are photographs taken during the summer of 2015, showing set net fishery activities in or around Igushik Village. These include photographs of

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<sup>7</sup> Alaska Department of Fish and Game, Division of Commercial Fisheries, April 4, 2016 Bristol Bay 2016 Outlook for Commercial Salmon Fishing, Juneau.

<sup>8</sup> Manokotak fishers comprise approximately one-third of the Igushik drift net fleet, Dillingham based fishers less than ten percent, with the balance of fishers being from elsewhere. See Manokotak's Reply Brief, dated March 18, 2016, p. 9, n. 12.

<sup>9</sup> The Preliminary Report ignores fishery realities in finding that Tracts A and C meet the "need" standard but Tract B does not. As shown in Manokotak's petition and under the annexation standards, Tract B is inseparable from Tracts A and C. The whole territory is integrally associated with the Igushik fishery activities that are vital to the Manokotak/Igushik Village community.

<sup>10</sup> ADF&G management policies for the Igushik Section give the set net harvest priority over the drift net harvest. Alaska Department of Fish and Game, op.cit.

fishermen tending set nets with skiffs, mending a set net ashore, and using four-wheelers along the beach to support family set net operations; as well as photos depicting shoreside activities, including fish drying and the location and occupation of residences in Igushik Village. Summer life in Igushik Village is oriented toward fishing in the Igushik Section, which is the lifeblood of Manokotak's commercial and subsistence economies.

The disputed territory is the very reason the LBC consolidated the two petitions. Attachment C hereto compares the two petitions against key factors in the annexation standards with specific respect to the disputed Igushik Section. The comparison is based on the petitions, briefs and comments submitted by Manokotak and Dillingham. Manokotak's petition and briefs present extensive evidence of its particular and superior ties to the Igushik Section. Dillingham, in effect, has forfeited its opportunity to show its connections specific to the Igushik Section with respect to the relevant annexation standards. Notwithstanding the "overlap" issue raised by Manokotak's competing annexation petition, which brought only the Igushik Section into dispute, nearly all of the facts and arguments offered by Dillingham (in its initial petition and in later briefing) apply in broadbrush fashion only towards the entirety of Nushagak Bay, rather than to the specifically contested Igushik Section territory. Perhaps this was not an oversight on Dillingham's part, because any reasonable factual comparison demonstrates the far greater connection with the Igushik Section and its fishery of Manokotak/Igushik than of Dillingham.

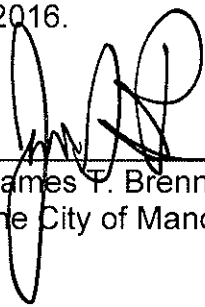
Manokotak urges the LBC staff, and the Commission itself, to review and carefully weigh the factors as summarized in the attached comparison chart. A pivotal

issue for assessing the claims of the competing petitions is the answer to this question: Does Manokotak or Dillingham have more to lose from lack of jurisdiction over the Igushik Section?

### III. CONCLUSION

The City of Manokotak requests that the Final Report evaluate anew Manokotak's compliance with the annexation standards, free from a predisposition to favor an immediate borough, and with an informed appreciation of the diverse nature of the fisheries in the Nushagak Commercial Salmon District. The petitioner requests that the final report, unlike the Preliminary Report, perform a comparison of the relative connections of Manokotak/Igushik, and of Dillingham, with the contested Igushik Section. Manokotak requests that the Local Boundary Commission approve its petition to annex the entire territory, including the Igushik Section, which is integral to the territory.

Dated this 19<sup>th</sup> day of September, 2016.



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James T. Brennan, Attorney for  
the City of Manokotak