

**IN THE STATE OF ALASKA
LOCAL BOUNDARY COMMISSION**

IN RE:)	PETITION ACCEPTED FOR FILING
)	NOVEMBER 30, 2023
PETITION BY THE CITY OF)	
HOONAH FOR THE)	BEFORE COMMISSIONERS
INCORPORATION OF THE)	Larry Wood, Chair
XUNAA BOROUGH AS A HOME)	John Harrington, Vice Chair
RULE BOROUGH AND)	Ely Cyrus
DISSOLUTION OF THE CITY OF)	Clayton Trotter
HOONAH		Clay Walker

CITY OF TENAKEE SPRINGS’ REQUEST FOR RECONSIDERATION

The City of Tenakee Springs (“Tenakee” or “City”) respectfully requests that the Local Boundary Commission (“LBC” or “Commission”) reconsider its approval of the Petition by the City of Hoonah for Incorporation of the Xunaa Borough as a Home Rule Borough, and Dissolution of the City of Hoonah (“Petition”).¹ Reconsideration is required under 3 AAC 110.580 because the Commission failed to address a controlling principle of law in its written statement of decision issued on December 20, 2024 (“Decision”) and a substantial procedural error occurred during the Commission’s November 12, 2024 decisional meeting (“Decisional Meeting”). Tenakee demonstrates below that: the Commission failed to address a controlling principle of law when it (1) mistakenly applied the mandatory presumption in AAC 110.060(d) as permissive; (2)

¹ The City of Hoonah is referred to in this request for reconsideration as “Hoonah” and the proposed borough as “Xunaa Borough” or “Borough.”

mistakenly found that Tenakee would not be an enclave within the Borough; (3) mistakenly failed to reject the Petition which is not in the best interests of the state; and (4) made a substantial procedural error by entering executive session to clarify a Commissioner's vote.

I. Tenakee Springs.

Tenakee is a second-class city located in Tenakee Inlet on the northern part of Chichagof Island.² It is a small town with roughly 100 residents. The community has no road, just a narrow trail wide enough for a pickup with a fuel tank and the town's small fire truck.³

Tenakee is not capable of handling large numbers of visitors since it does not have a solid waste system in place. It also does not have water treatment, waste or drinking. Central to the community is a natural hot spring which provides bathing for many, the Community Center, and a small but very good library.

Tenakee is in the process of constructing a hydroelectric plant. The damsite is about a mile up Indian River which is about a mile East of the Tenakee harbor. Access is via an old Forest Service road. The plant is partially constructed and Tenakee is submitting for grant funds to finish the penstock and powerhouse and connect the facility to the existing town power grid.

² Exhibit B, City of Tenakee Springs Resolution 2024-07, Jan. 18, 2024.

³ See Final Report to the Local Boundary Commission, Aug. 5, 2024 ("Final Report") at 36 (referencing Tenakee's restrictions on motor vehicles within its city limits).

The new Borough will completely encompass the land around Tenakee including the watershed for Tenakee's hydroelectric damsite.⁴

II. Standard for Reconsideration.

Requests for reconsideration of a Commission decision are governed by 3 AAC

110.580. The Commission will grant reconsideration if it determines:

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law; or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.⁵

The Commission may grant reconsideration on its own motion within 30 days after mailing a written statement of decision.⁶

⁴ Exhibit C (Petition at Ex. C, C3); Final Report at 16 (“The proposed Xunaa boundary does encroach on geographical features that are of interest to the neighboring communities, including a Tenakee Springs hydroelectric dam[.]”).

⁵ 3 AAC 110.580(e).

⁶ 3 AAC 110.580(b).

III. The Commission Failed to Address a Controlling Principle of Law When It Misapplied 3 AAC 110.060(d).

To meet constitutional⁷ and statutory⁸ requirements, “the boundaries of a proposed borough... must include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level.”⁹ 3 AAC 110.060 subsections (a) and (b) provide permissive criteria for the Commission to consider when it makes a determination on this issue.¹⁰ In contrast, subsection (d) contains a mandatory presumption that the Commission is required to apply unless there is a specific and persuasive showing to the contrary. The regulation states:

Absent a specific and persuasive showing to the contrary, *the commission will presume* that an area proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to

⁷ Art. X, Sec. 3, Constitution of the State of Alaska:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

⁸ AS 29.05.031(a)(2):

[t]he boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services.

⁹ 3 AAC 110.060(a).

¹⁰ Compare 3 AAC 110(a)(1)-(7) 3 AAC 110.060(b)(1)-(6) that “the commission *may* consider” with 3 AAC 110(e) “the commission *will* presume[.]” (italics added).

allow for the full development of essential municipal services on an efficient, cost-effective level.¹¹

If a proposed borough contains enclaves the Commission is required to presume (i.e. “will presume”) that it does not “include all areas necessary for full development of municipal services[.]”¹²

A. *The Commission Mistakenly Applied 3 AAC 110.060(d) as Permissive and not Mandatory at the Decisional Meeting.*

During the Decisional Meeting, Commission Chairperson Larry Wood explained his belief that Tenakee, as well as the cities of Pelican and Gustavus, were enclaves:

I know there’s some debate about what is an enclave, but I think when you look at this map you realize that these communities in particular of Pelican, Tenakee Springs, and Gustavus are going to be put in position of – okay. Here’s the right screen – put in the position of being, in effect, enclaves between, here in this case, Sitka and Xunaa Borough for Pelican, same with Tenakee Springs, Gustavus would be potentially between Haines and Hoonah. So I think it’s fair to say those are enclave if – maybe not in the physical sense but certainly in the governmental sense.¹³

I know there’s been some discussion in the briefing about whether these three entities, these communities become enclaves. I think that they do, at least in terms of local government isolation.¹⁴

¹¹ 3 AAC 110.060(d) (emphasis added).

¹² AS 29.05.031(2).

¹³ Exhibit A, pg. 3-4 (In the Matter Of: *DCCED Division of Community and Regional Affairs LBC Xunaa Borough Decisional Meeting*, Nov. 12, 2024 at Tr. 27:16 – 28:4. All transcript citations in this request for reconsideration are from the Decisional Meeting.)

¹⁴ Exhibit A, pg. 5 (Tr. 49:16-20).

Commissioner Trotter then expressed his opinion on the Borough boundaries as follows:

If we make the presumption that an area proposed for incorporation contains enclaves and we're supposedly imposed a presumption on us that it does not include all land and water necessary, *then in accordance with that presumption, we have no choice, which I don't think is accurate.* So I still would say that there's enough land and water necessary to provide full development, so I would still say "yes." Unless, of course when we say "the commission may consider relevant factors," and may consider these list of things that this -- having enclaves is a presumption that is not something we may consider, it's just -- it's one of many. You know, *if it's an absolute presumption, then I would say "no."* But *it's not an absolute presumption, so I still would say "yes."*¹⁵

Here, the Commissioner states that the presumption in 3 AAC 110.060(d) is "not an absolute presumption" and on that basis reaches the conclusion that the Borough meets the "boundaries" requirement. But this reading of the regulation is incorrect. The presumption is mandatory, absent a specific showing to the contrary which was not addressed. The misapplication of 3 AAC 110.060(d) requires reconsideration of the Petition.

B. The Commission Misapplied 3 AAC 110.060(d) by Mistakenly Finding No Enclaves in the Borough.

Despite the lack of dispute during the Decisional Meeting regarding Chair Wood's statements that Tenakee, Gustavus, and Pelican were enclaves, in the Written Decision, the Commission found no enclaves are created by the Borough boundaries.¹⁶ The Commission

¹⁵ Exhibit A, pg. 6 (Tr. 60:1-18 (emphasis added)).

¹⁶ Decision at 2, 27.

cited the LBC Staff Preliminary Report as support for this finding.¹⁷ Yet, in its Final Report LBC Staff did find that the Xunaa Borough creates enclaves:

LBC staff maintains the Commission made an improper ruling by excluding Hyder and creating an enclave [in an earlier proceeding], and cannot recommend approval of the Xunaa Borough petition, as it *creates enclaves with the exclusions of Pelican, Tenakee Springs, and Gustavus*. Each of these communities would be left lacking the geographical resource to form their own borough.¹⁸

The Commission did not address this finding.

Further, the definition of “enclave” relied upon by Hoonah supports finding that Tenakee is in fact an enclave.¹⁹ “Enclave” is defined as “a distinct, cultural, or social unit enclosed within or as if within foreign territory.”²⁰ “Enclosed” is defined as “closed in or fenced off.”²¹ The Xunaa Borough boundary clips off the northern bit of Chichagof Island at Tenakee rather than following the natural geography.²² The Xunaa Borough completely encompasses the land surrounding Tenakee and fences the City off from the rest of Chichagof Island. Tenakee is left “as if within foreign territory” on the island. The Commission’s finding that the Xunaa Borough does not create enclaves is in error and results in a misapplication of the presumption in 3 AAC 110.060(d).

¹⁷ Decision at 27 fn. 43.

¹⁸ Final Report at 17 (italic added).

¹⁹ Hoonah relies on the *Merriam Webster* dictionary definition for enclave and enclosed.

²⁰ <https://www.merriam-webster.com/dictionary/enclave>

²¹ <https://www.merriam-webster.com/dictionary/enclosed>

²² Petition at Ex. C, C3.

IV. The Proposed Borough is Not in the Best Interests of the State.

The Commission is required to reject a petition for incorporation that is not “in the best interests of the state.”²³ To make its best interest determination the Commission evaluates whether incorporation “promotes maximum local self-government”²⁴ and “promotes a minimum number of local government units”²⁵ among other factors.

A. The Proposed Borough Does Not Extend Local Government to a Significant Population.

3 AAC 110.981 provides the criteria for the Commission’s analysis of “maximum local self-government.” Under that regulation, the Commission is directed to consider whether the proposed borough will “extend local government on a regional scale to a significant area and population of the unorganized borough.”²⁶

The population increase from the existing City of Hoonah to incorporation of the Xunaa Borough is negligible. The LBC Staff Final Report stated that “[l]ess than one percent of Hoonah’s population would be added to the borough.”²⁷

In its discussion on whether incorporation extended local government to a significant population, the Commission noted the term “significant” was relative and found that addition of the populations of Elfin Cove, Colt and Horse Islands, who currently have

²³ AS 29.05.100(a).

²⁴ 3 AAC 110.065(1); 3 AAC 110.981.

²⁵ 3 AAC 110.065(2); 3 AAC 110.982; Alaska Const. art. X, § 1.

²⁶ 3 AAC 110.981(1).

²⁷ Final Report at 21.

no form of organized government, met the criteria.²⁸ This is a misapplication of 3 AAC 110.981.

“Significant” is defined as “having or likely to have influence or effect” and also “of a noticeably or measurably large amount.”²⁹ The population of the City of Hoonah is 885, and the Xunaa Borough would increase that amount by less than 75 residents with an expanded area more than 10,000 square miles beyond the current city limits.³⁰ This number of residents compared to the expanded area is not “likely to have influence or effect” and is certainly not a noticeable or measurable “large amount.” The Commission should reconsider its Decision and find that the proposed Borough does not extend local government to a significant population.

B. The Proposed Borough Does Not Promote a Minimum Number of Local Government Units.

As the Commission is well aware, the proposed Borough will extend Hoonah’s boundaries to Elfin Cove and Game Creek, plus northern Admiralty Island. It will exclude Tenakee, Pelican, and Gustavus. Because of these exclusions, Commissioner Harrington characterized the Xunaa Borough as “substandard” during the Decisional Meeting.³¹

Incorporation of the Xunaa Borough will do nothing to reduce the number of local government entities. Rather it simply replaces one local government unit, the City of

²⁸ Decision at 31-32.

²⁹ <https://www.merriam-webster.com/dictionary/significant>.

³⁰ Final Report at 38.

³¹ Exhibit A, pg. 2 (Tr. 21:7).

Hoonah, with another, the Xunaa Borough. This zero-sum game does not promote “a minimum number of local government units in accordance with art. X, sec. 1” of the Alaska Constitution.³²

V. The Commission made a Substantial Procedural Error by Holding Executive Session During the Decisional Meeting.

The Commission made a substantial procedural error when it went into executive session during its November 12, 2024 Decisional Meeting on the Petition. Toward the end of the meeting, counsel for the Commission requested that they go into executive session “on a legal issue.”³³ LBC counsel further stated:

That would be pursuant the Open Meetings Act 44.62.310(c) for the purpose of obtaining legal advice on a legal issue that I can see with respect to the issues before the commission.³⁴

When the Commission returned from executive session LBC Counsel stated further:

Just to clarify for the commission and the public what the executive session was for, there seemed to be a little confusion concerning the -- going through the standards and then the vote on the approval of the petition. As the commission went through the standards, it didn't take a formal vote on any of the standards as to whether or not they had met -- been met or not met.

And I was a little concerned with Commissioner Harrington indicating that he had concerns on the record about some of those standards. In particular, discussions concerning boundaries and best interests of the state. And there was an indication, I think by the Chair, just paraphrasing that people were either for or against whether a particular standard had been met.

³² 3 AAC 110.982.

³³ Exhibit A, pg. 7 (Tr. 154:4-6).

³⁴ *Id.* at Tr. 154:11-15.

And I just wanted to clarify with Commissioner Harrington that he did actually find that the standards for both resources -- I'm sorry, for boundaries and best interests of the state were, in fact, met. And I think he should put that on the record just so it's clear that -- that he understood his vote was to approve the petition and that those standards had, in fact, been met, based upon the evidence that he reviewed.³⁵

According to the transcript, the Commission went into executive session to “clarify” the vote of a Commissioner. This clarification was done without any ability for the public to hear the discussion, debate, or explanation provided while the Commission was in executive session.

The statute cited as justification for the executive session, AS 44.62.310(c), limits executive session to:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential;
- (4) matters involving consideration of government records that by law are not subject to public disclosure.³⁶

Clarification of a board member vote is not one of the enumerated justifications for executive session contemplated by the statute.

Alaska law does recognize an exception to the open meetings act for a board to receive attorney-client privileged advice of counsel during litigation.³⁷ But, “The privilege

³⁵ Exhibit A, pg. 8 – 9 (Tr. 156:13-157:16).

³⁶ AS 44.62.310(c).

³⁷ *Cool Homes, Inc. v. Fairbanks N. Star Borough*, 860 P.2d 1248 (Alaska 1993).

should not be applied blindly. It is not enough that the public body be involved in litigation. Rather, the rationale for the confidentiality of the specific communication at issue must be one which the confidentiality doctrine seeks to protect: candid discussion of the facts and litigation strategies.”³⁸ The exception is not appropriate for “general legal advice or opinion.”³⁹ Here, the Commission went into executive session for general “legal advice” on a “legal issue.” This is not an appropriate justification. The Commission made a substantial procedural error by entering executive session regarding a Commissioner’s vote and reconsideration is required.

VI. Conclusion.

In its written Decision, the Commission referred to a statement comparing opposition to Hoonah’s Application to crabs in a barrel.⁴⁰ Tenakee submits that a more apt analogy is the division of a pie – Hoonah is attempting to slice and take the majority of the “pie,” leaving crumbs for Tenakee, Pelican, and Gustavus. “Each of these communities would be left lacking the geographical resource to form their own borough.”⁴¹ This does not advance the best interests of the state.

The Commission should reconsider its decision and deny the Application.

³⁸ *Id.* at 1262.

³⁹ *Id.* at 1261-62.

⁴⁰ Decision at 28.

⁴¹ Final Report at 17.

VII. Designation of Representative.

The City of Tenakee Springs designates John P. Wood of the law firm Dillon Findley & Simonian, P.C. as their representative for purposes of this request for reconsideration and any proceedings regarding the City of Hoonah’s Petition:

John P. Wood
1049 W. 5th Avenue, Suite 100
Anchorage, Alaska 99501
Phone: (907) 277-5400
Fax : (907) 227-9896
Email: jp@dillonfindley.com

DATED this 15th day of January 2025, at Anchorage, Alaska.

DILLON FINDLEY & SIMONIAN, P.C.
Attorney for the City of Tenakee Springs

By: /s/John P. Wood
John P. Wood, ABA No. 0211056
1049 W. 5th Avenue, Suite 100
Anchorage, Alaska 99501
Phone: (907) 277-5400
Fax: (907) 277-9896
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**IN THE STATE OF ALASKA
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HOONAH FOR THE) BEFORE COMMISSIONERS
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DISSOLUTION OF THE CITY OF) Clayton Trotter
HOONAH) Clay Walker

AFFIDAVIT OF JOHN P. WOOD

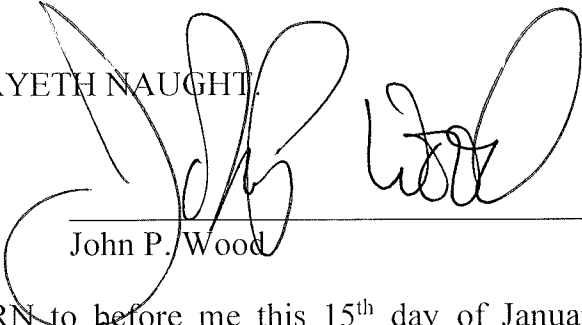
STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, John P. Wood, being first duly sworn, state as follows:

1. I am an attorney with the law firm of Dillon Findley & Simonian, P.C., the firm that represents the City of Tenakee Springs in this matter.
2. On January 15, 2025, the City of Tenakee Springs submitted to the Alaska Local Boundary Commission a request for reconsideration to the Commission’s Decision dated December 20, 2024.
3. As required by 3 AAC 110.580(c), I affirm to the best of my knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

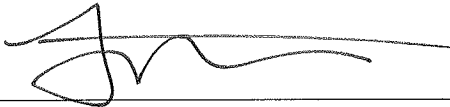
4. The original and five (5) copies of the City of Tenakee Springs' Request for Reconsideration have been filed with the Commission.

FURTHER THIS AFFIANT SAYETH NAUGHT.



John P. Wood

SUBSCRIBED AND SWORN to before me this 15th day of January 2025, at Anchorage, Alaska.



Notary Public for the State of Alaska
My Commission Expires: 9/10/28



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AFFIDAVIT OF JOHN P. WOOD

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, John P. Wood, being first duly sworn, state as follows:

1. I am an attorney with the law firm of Dillon Findley & Simonian, P.C., the firm that represents the City of Tenakee Springs in this matter.
2. As required by 3 AAC 110.580(c), I hereby certify that a true and correct copy of the City of Tenakee Springs' Request for Reconsideration was served on the petitioner and each respondent by email and regular mail at the following addresses:

Petitioner - Hoonah:

Dennis Gray, Jr.
City Administrator
P.O. Box 360
Hoonah, AK, 99829
Email: dgrayjr@cityofhoonah.org

James Sheehan
Barbara Hagstrom
Andrew Juneau
c/o Simpson Tillinghast Sheehan, P.C.
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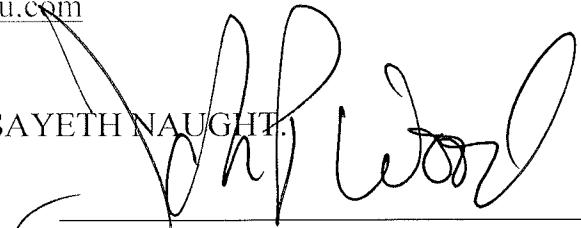
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Pelican:

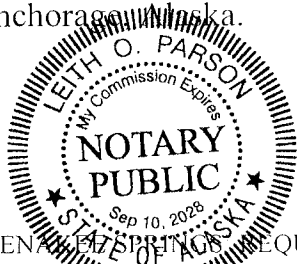
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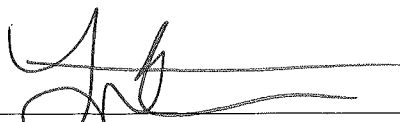
FURTHER THIS AFFIANT SAYETH NAUGHT.



John P. Wood

SUBSCRIBED AND SWORN to before me this 15th day of January 2025, at Anchorage, Alaska.





Notary Public for the State of Alaska
My Commission Expires: 9/10/28

1 DEPARTMENT OF COMMERCE, COMMUNITY,
2 AND ECONOMIC DEVELOPMENT
3 DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

4 LOCAL BOUNDARY COMMISSION
5 XUNAA BOROUGH DECISIONAL MEETING

6
7 TRANSCRIPT OF PROCEEDINGS

8
9
10 CONDUCTED VIA ZOOM
11 NOVEMBER 12, 2024

12
13
14
15 PRESENT:

- 16 Chair Larry Wood
17 John Harrington
18 Ely Cyrus
19 Richard "Clayton" Trotter
20 Clay Walker

21 ALSO PRESENT:

- 22 Jon Tillinghast, Esq.
23 Eugene Hickey, Esq.
24 Ned Smith
25

1 rural nature organized, I don't see us ever
 2 getting there short of a legislative statement
 3 creating it. I may be wrong, but as I look
 4 through the history of what we've done, I don't
 5 see it getting there.

6 So the question to me is, do we identify a
 7 substandard borough of Hoonah and direct them
 8 over the next 20 years to incorporate those
 9 three communities into their greater borough?
 10 Or do we say to the state, look at -- your
 11 obstacles to forming borough government are too
 12 big; you need to take a bigger role in this
 13 process and establish it yourself. I don't
 14 expect the legislature to do that, but I think,
 15 one way or the other, either we have to take
 16 (indiscernible) move forward with an analysis
 17 that says the perfect borough in this region is
 18 not accessible without legislative delegation or
 19 without a step process.

20 And at this point the only thing I see us
 21 able to do is either say, "No," or I give them
 22 the steps and the direction to say that you are
 23 to create a bigger borough using the model
 24 borough boundaries, essentially, and your
 25 existing Xunaa Borough. And then realizing that

1 for me to say, that may represent those city
 2 boroughs that Mr. Fischer was discussing. And
 3 as Mr. Tillinghast has pointed out in his
 4 briefing, is that a precedent from which we can
 5 no longer extract ourselves from? I don't think
 6 that's the case, because I harken back to what
 7 Mr. Fischer also said, that these cases are all
 8 different. Should Wrangell have been part of
 9 Petersburg? Should Skagway be part of Haines?
 10 what happened to Klukwan in the Skagway
 11 decision?

12 So I think we're going to be, at least from
 13 my perspective, desiring to look at the facts
 14 here. And as I am doing that, I'm looking at
 15 the map that accompanied the Hoonah petition.
 16 And it clearly shows that there are -- I know
 17 there's some debate about what is an enclave,
 18 but I think when you look at this map you
 19 realize that these communities in particular of
 20 Pelican, Tenakee Springs, and Gustavus are going
 21 to be put in position of -- okay. Here's the
 22 right screen -- put in the position of being, in
 23 effect, enclaves between, here in this case,
 24 Sitka and Xunaa Borough for Pelican, same with
 25 Tenakee Springs, Gustavus would be potentially

1 between Haines and Hoonah. So I think it's fair
2 to say those are enclaves if -- maybe not in the
3 physical sense but certainly in the governmental
4 sense. They're going to be unique in the sense
5 that they will have a borough government. And
6 that is contrary-wise to the regulation and
7 statutes that I just read.

8 Now, I guess I will remind myself more than
9 anyone else, we looked at this question of
10 modifying the boundaries, at least I looked at
11 it in my deliberations on my own, because this
12 is the first time we talked about this, being
13 able to do it specifically. But even if you cut
14 back and followed these comments, you know, from
15 Pelican, we had comments from Tenakee Springs,
16 Gustavus, cutting Glacier Bay out of the
17 picture, cutting way back on the western
18 boundary, cutting way back on the eastern
19 boundary, cutting back on the southern boundary.
20 Now -- then we have two problems; first of all,
21 we've greatly disappointed Hoonah for all the
22 reasons I've read. I mean, now Hoonah doesn't
23 have the benefit of the regional resources that
24 might otherwise be available to a unified
25 regional communities.

1 some importance to trying to see if these things
2 could be worked out.

3 There was also a comment from an individual
4 from Gustavus to a similar extent. I can't put
5 my hands on it right now. If I find it I will
6 share it with you.

7 Lastly, the commission will presume that an
8 area proposed for incorporation that is
9 noncontiguous or that contains enclaves does not
10 include all land and water necessary to allow
11 for the full development of essential municipal
12 services on an efficient, cost-effective level.
13 And when we began the conversation today, I
14 harkened back to the statute and regulation
15 where that same language we find.

16 I know there's been some discussion in the
17 briefing about whether these three entities,
18 these communities become enclaves. I think that
19 they do, at least in terms of local government
20 isolation. And by revising the boundaries, as I
21 pointed out earlier, I think we just make those
22 enclaves bigger, we really don't resolve the
23 problem of the capabilities of those communities
24 to join in the regional government of Glacier
25 Bay.

1 think it's the bottom one. If we make the
 2 presumption that an area proposed for
 3 incorporation contains enclaves and we're
 4 supposedly imposed a presumption on us that it
 5 does not include all land and water necessary,
 6 then in accordance with that presumption, we
 7 have no choice, which I don't think is accurate.
 8 So I still would say that there's enough land
 9 and water necessary to provide full development,
 10 so I would still say "yes." Unless, of course
 11 when we say "the commission may consider
 12 relevant factors," and may consider these list
 13 of things that this -- having enclaves is a
 14 presumption that is not something we may
 15 consider, it's just -- it's one of many. You
 16 know, if it's an absolute presumption, then I
 17 would say "no." But it's not an absolute
 18 presumption, so I still would say "yes." I'm
 19 sorry, I am thinking like a law clerk now.

20 CHAIRPERSON WOOD: Okay. So I guess it's
 21 your view that the boundaries standard of the
 22 incorporation process has been satisfied.

23 COMMISSIONER TROTTER: It's an awful lot of
 24 land and water; yes, I do. They can do a
 25 cost-effective (indiscernible) basis with that

1 if I can for a moment.

2 CHAIRPERSON WOOD: Sure, Mr. Hickey. Thank
3 you.

4 GENE HICKEY: would it be possible to go
5 into executive session on a legal issue before
6 we move any further?

7 CHAIRPERSON WOOD: Absolutely. Is there a
8 motion to convene into executive session to
9 obtain legal (indiscernible) from the Department
10 of Law?

11 GENE HICKEY: That would be pursuant to the
12 Open Meetings Act 44.62.310(c) for the purpose
13 of obtaining legal advice on a legal issue that
14 I see with respect to the issues before the
15 commission.

16 UNIDENTIFIED SPEAKER: So moved.

17 CHAIRPERSON WOOD: So moved.

18 Is there a second?

19 COMMISSIONER HARRINGTON: Second.

20 CHAIRPERSON WOOD: Was that Mr. Harrington?

21 COMMISSIONER HARRINGTON: It was.

22 CHAIRPERSON WOOD: Okay. It's been moved
23 and seconded that we move into executive session
24 for the purposes of receiving legal advice. I
25 will let Mr. Gene Hickey's description suffice

1 Teams meeting, so I have a caveat. I will try
2 to get there.

3 JED SMITH: It may be something -- there
4 should be a phone number you can just call in
5 to.

6 COMMISSIONER TROTTER: Okay. Thank you.

7 (Off record - executive session held.)

8 CHAIRPERSON WOOD: Okay. We're back on the
9 record at 3:21 PM.

10 I'll go ahead and turn the microphone over
11 briefly to our attorney, Mr. Gene Hickey, from
12 the Alaska Department of Law. Mr. Hickey.

13 GENE HICKEY: Thank you, Chair Wood. Just
14 to clarify for the commission and the public
15 what the executive session was for, there seemed
16 to be a little confusion concerning the -- going
17 through the standards and then the vote on the
18 approval of the petition. As the commission
19 went through the standards, it didn't take a
20 formal vote on any of the standards as to
21 whether or not they had met -- been met or not
22 met.

23 And I was a little concerned with
24 Commissioner Harrington indicating that he had
25 concerns on the record about some of those

1 standards. In particular, discussions
 2 concerning boundaries and best interests of the
 3 state. And there was an indication, I think by
 4 the Chair, just paraphrasing that people were
 5 either for or against whether a particular
 6 standard had been met.

7 And I just wanted to clarify with
 8 Commissioner Harrington that he did actually
 9 find that the standards for both resources --
 10 I'm sorry, for boundaries and best interests of
 11 the state were, in fact, met. And I think he
 12 should put that on the record just so it's clear
 13 that -- that he understood his vote was to
 14 approve the petition and that those standards
 15 had, in fact, been met, based upon the evidence
 16 that he reviewed.

17 So I'd like to turn that over to
 18 Commissioner Harrington, if we could.

19 COMMISSIONER HARRINGTON: Thank you, sir.
 20 And I apologize for any confusion that may have
 21 taken place. I believe that the best interests
 22 of the state clearly is to establish this
 23 borough. And I believe that the standards have
 24 all been met, including the boundaries. I do
 25 have concerns, and I will bring that up in a

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C E R T I F I C A T E

SUPERIOR COURT)
) SS.
STATE OF ALASKA)

I, Britney E. Dudley, Registered Professional Reporter, hereby certify that the foregoing pages contain a full, true and correct transcript of proceedings in the above-referenced matter, transcribed by me to the best of my knowledge and ability, or at my direction, from the electronic sound recording.

DATED at Juneau, Alaska this 25th day of November 2024.



Britney E. Dudley, RPR
Notary Public for Alaska
My commission expires:
10/10/27

**City of Tenakee Springs
RESOLUTION 2024-07**

In the Council
January 18, 2024

Introduced by
Council President

**A RESOLUTION FOR THE CITY OF TENAKEE SPRINGS, ALASKA, OPPOSING
THE PROPOSED FORMATION OF THE XUNAA (HOONAH) BOROUGH**

WHEREAS, the City of Hoonah is a first-class city and the City of Tenakee Springs is a second-class city located in Tenakee Inlet; and

WHEREAS, the proposed boundary of the Xunaa Borough would completely encompass the City of Tenakee Springs; and

WHEREAS, we feel this boundary would severely affect our subsistence, cultural, and economic use of Tenakee Inlet and surrounding lands; and

WHEREAS, the formation of this proposed borough could have negative impacts on PILT funding and potential fishery taxes; and

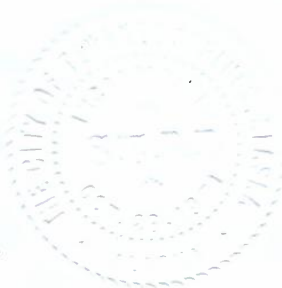
WHEREAS, the formation of this proposed borough could also potentially open opportunity to implement long-opposed road connections in the area; and

WHEREAS, the proposed borough would also encompass our hydroelectric site and its watershed; then

THEREFORE BE IT RESOLVED THAT: The Common Council of the City of Tenakee Springs by this resolution opposes the proposed Xunaa (Hoonah) Borough;

NOW BE IT FURTHER RESOLVED THAT: If the borough is formed, the City of Tenakee Springs would like to decrease the size of the boundary such that the Tenakee Inlet watersheds are not included in the borough.

ADOPTED 7 ayes **THIS** 18th **DAY OF** January, **2024**



A handwritten signature in black ink, appearing to read "Linnea Lospenosochatel".

Linnea Lospenosochatel
City Council President
Ex officio MAYOR

ATTEST:

A handwritten signature in black ink, appearing to read "Nicole Pegues".

Nicole Pegues, City Clerk

EXHIBIT C - BOROUGH MAP

**PROPOSED HOONAH BOROUGH BOUNDARY MAP
OPTION No.1**

