

IN THE STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

IN RE: PETITION BY THE CITY OF HOONAH )
FOR THE INCORPORATION OF THE XUNAA )
BOROUGH AS A HOME RULE BOROUGH )
AND DISSOLUTION OF THE CITY OF HOONAH )

REQUEST FOR RECONSIDERATION BY CITY OF GUSTAVUS AND ELFIN COVE

The City of Gustavus<sup>1</sup> (hereafter “Gustavus”) and the community of Elfin Cove<sup>2</sup> (hereafter “Elfin Cove”) request that the Local Boundary Commission (hereafter “LBC”) reconsider its decision granting the petition to dissolve the City of Hoonah (a First-Class City) and incorporate the Xunaa Borough pursuant to 3AAC 110.580.

The City of Hoonah petitioned to create a new borough that takes control over large areas of land and water without adding any significant population to govern. The approved Xunaa Borough adds over 10,000 square miles of land and water to the control of Hoonah, while only providing services (beyond the minimum required by law) to the current City of Hoonah townsite. The large area contains the small communities of Elfin Cove and Game Creek, and dispersed recreational cabins and lodges. The creation of the Xunaa Borough will prevent large groups of people living in the existing cities of Gustavus, Pelican, and Tenakee Springs from being able to expand and utilize the resources surrounding their communities. The reasoning for the LBC to allow the City of

<sup>1</sup> Gustavus is a Second-Class City.

<sup>2</sup> Elfin Cove is an incorporated non-profit entity in Alaska. The reconsideration request is filed on behalf of the community of Elfin Cove. Paul Johnson, a year-round resident of Gull Cove and owner of Gull Cove Lodge (within the boundaries of the proposed borough), has joined as part of the Elfin Cove group for purposes of this reconsideration request. John MacKinnon (summer resident of Idaho Inlet, winter resident of Juneau) also has joined with Elfin Cove for purposes of this reconsideration request.

Hoonah to incorporate a large area of land that does not benefit a significant number of people violates the goals of the Alaska Constitution and does not comply with the Alaska standards for formation of a borough.<sup>3</sup> It does not provide any benefits to Alaska residents other than possibly those currently living within the City of Hoonah.

Gustavus and Elfin Cove seek reconsideration for the following reasons:

**I. Reconsideration is requested under 3 AAC 110.580(e)(1) because the decision on 11/12/2024 was marred by substantial procedural errors.**

Reconsideration is appropriate when a substantial procedural error occurred in the original proceeding.<sup>4</sup> The process used by the LBC to make the decision at the November 12, 2024 decisional meeting contained substantial procedural errors that invalidated the LBC's approval of the Xunaa Borough. The LBC did not find that each required standard had been met. The ultimate decision to grant the petition was made in violation of the Open Meetings Act.

A. At the LBC decisional meeting, the commissioners failed to have adequate votes of "yes" for two of the requirements necessary to approve the borough.<sup>5</sup> There were not three "yes" votes on the boundaries standard or on whether it was in the best interest of the state to approve the borough.<sup>6</sup> This is not reflected in the written "decision." The written decision cannot change the votes or the decisions made at the decisional meeting. The discussion and apparent vote on the boundaries standard reflects that the majority of the LBC Commissioners (Mr. Walker, Mr. Wood, and Mr. Harrington) found that the

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<sup>3</sup> See AS 29.05.100; AS 29.35.031.

<sup>4</sup> 3 AAC 110.580(e)(1).

<sup>5</sup> Statutory standards at AS 29.05.031. A borough is required to be in the best interests of the state for approval under AS 29.05.100.

<sup>6</sup> 11/12/2024 Transcript, at 61-62, 99-100, 138, 148. This transcript was obtained from a Juneau area court reporter. There is no record or a transcript of the decisional meeting provided on the LBC website.

standard was not met.<sup>7</sup> Similarly, there were not three “yes” votes on whether the approval of the borough was in the best interests of the state.<sup>8</sup> These were required to approve the Xunaa Borough. The Alaska statutes required the LBC to find that all the standards for incorporation were met, and further find that the proposed borough was in the best interests of the state.<sup>9</sup> If even only one standard is deficient, a petition shall be rejected.<sup>10</sup> There is nothing in Alaska law that allows the LBC discretion to grant a petition when the standards are not met. A reversal of the approval is required.

B. Despite the lack of a majority finding that two of the necessary standards had been met, three commissioners voted yes on the ultimate decision.<sup>11</sup> This was against the Alaska Constitution and the Alaska statutes.<sup>12</sup> There cannot be a granting of the petition for borough formation unless all necessary standards have been met. Chairperson Wood understood the law when he asked Commissioner Harrington if he intended to vote “yes” on the borough approval despite agreeing in the discussion that two standards had not been met.<sup>13</sup> Commissioner Harrington stated that he did mean to vote yes, but that he

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<sup>7</sup> 11/12/2024 Transcript, at 61-62, 99-100.

<sup>8</sup> 11/12/2024 Transcript, at 138, 148.

<sup>9</sup> AS 29.05.100 (a) After providing public notice of each proposed amendment or condition and an opportunity for public comment, the Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. **Otherwise, it shall reject the petition.** (*emphasis added*).

<sup>10</sup> AS 29.05.100; AS 29.35.031.

<sup>11</sup> 11/12/2024 Transcript, at 151.

<sup>12</sup> See Article X, Section 3 of the Alaska Constitution and AS 29.05.100.

<sup>13</sup> 11/12/2024 Transcript, at 151.

had planned to talk about addendums to the decision.<sup>14</sup> Fairness requires that the decision be reconsidered. The decision to grant the borough must be reversed.

C. After the vote on the borough approval, the LBC staff explained the process for preparing the written decision.<sup>15</sup> Then without warning, the state attorney Gene Hickey requested that the LBC go into executive session: “Would it be possible to go into executive session on a legal issue before we move any further?”<sup>16</sup> The Chairperson asked for a motion, and the “motion” was made by attorney Mr. Hickey on the basis of a vague statement: “That would be pursuant to Open Meetings Act 44.62.310(c) for the purposes of obtaining legal advice on a legal issue that I see with respect to the issues before the commission.”<sup>17</sup> That motion was made in violation of the Open Meetings Act.<sup>18</sup> The motion to go into executive session was not made with specificity.<sup>19</sup> The motion was not approved by a majority vote as required.<sup>20</sup> The Open Meetings Act is to be narrowly interpreted to avoid inappropriate executive sessions.<sup>21</sup> The LBC meetings are public

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<sup>14</sup> 11/12/2024 Transcript, at 151-152. (There were no discussions or votes on an addendum, other than a “suggestion” to add the communities in the future. This is addressed later in this request for reconsideration).

<sup>15</sup> 11/12/2024 Transcript, at 153-154.

<sup>16</sup> 11/12/2024 Transcript, at 154.

<sup>17</sup> 11/12/2024 Transcript, at 154-155.

<sup>18</sup> AS 44.62.310-.312. See specifically AS 44.62.310(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

<sup>19</sup> AS 44.62.310(c).

<sup>20</sup> AS 44.62.310(b) “the question of holding an executive session to discuss matters listed in (c) of this section shall be determined by a majority vote of the governmental body.” The “motion” for executive session was moved by Chairperson Wood, and seconded by Commissioner Harrington, but no majority vote was held.

<sup>21</sup> See AS 44.62.310(c); AS 44.62.312; See also the State of Alaska Local Government Resource Desk on Executive Session: “State policy found in AS 44.62.312 backs up the provision that the OMA is to be narrowly interpreted to avoid unnecessary executive sessions.” Available on the world wide web,

meetings and the Open Meetings Act applies.<sup>22</sup> Executive Sessions are limited by statute to four reasons, none which form the basis of the motion by Mr. Hickey.<sup>23</sup> “Legal advice” to discuss potential problems does not form a legal basis for moving into executive session.<sup>24</sup> The State of Alaska guidance on the Open Meetings Act outlines this exact scenario as inappropriate:

**Can a governing body enter into executive session to discuss potential problem issues or receive general legal advice from their attorney?**

No. Executive session procedures require that a reason for calling the executive session be **clearly stated**; it is not enough to state “personnel issues” or “legal advice” as the reason for going into executive session. (*Emphasis in original*).<sup>25</sup>

After the executive session, Gene Hickey stated that there “was a little confusion” going through the standards and then the vote on the approval of the standards.<sup>26</sup> Mr. Hickey stated that:

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.

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<https://www.commerce.alaska.gov/web/dcra/LocalGovernmentResourceDesk/LocalGovernmentElectedOfficials/MeetingsHeldinExecutiveSession.aspx>, last accessed January 10, 2025.

<sup>22</sup> AS 44.33.814 “All meetings and hearings shall be public.” See also 3 AAC 110.680 Meetings.

<sup>23</sup> AS 44.62.310(c) The following subjects may be considered in an executive session: (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.

<sup>24</sup> AS 44.62.310(c); See also the State of Alaska Local Government Resource Desk on Executive Session: Available on the world wide web,

<https://www.commerce.alaska.gov/web/dcra/LocalGovernmentResourceDesk/LocalGovernmentElectedOfficials/MeetingsHeldinExecutiveSession.aspx>, last accessed January 10, 2025.

<sup>25</sup> See the State of Alaska Local Government Resource Desk on Executive Session: Available on the world wide web,

<https://www.commerce.alaska.gov/web/dcra/LocalGovernmentResourceDesk/LocalGovernmentElectedOfficials/MeetingsHeldinExecutiveSession.aspx>, last accessed January 10, 2025.

<sup>26</sup> 11/12/2024 Transcript, at 156.

And I was concerned with Commissioner Harrington indicating that he had concerns on the record about some of those standards. In particular, discussions concerning boundaries and the 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.

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 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 on the evidence he reviewed.<sup>27</sup>

This dialogue by Mr. Hickey further supports that the executive session was made in violation of the Open Meetings Act. There was no indication that the executive session was about the votes on the standards or the ultimate decision when the “motion” was made.<sup>28</sup> The decision by the LBC was to be made openly, by the Commissioners.<sup>29</sup> Mr. Hickey could have offered clarifying questions to the LBC in open session; Mr. Hickey could have offered a suggestion in public session to take a clear vote on each standard. (This was not done). The discussion on the legal standards on the petition was required to be made in open session, at a public meeting. The basis for each commissioner's decision

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<sup>27</sup> 11/12/2024 Transcript, at 156-157.

<sup>28</sup> Under AS 44.62.310(c), that would not have been a valid basis for an executive session even if “motion” had indicated that this was the reason.

<sup>29</sup> This outlined in Alaska Statutes: AS 44.33.814 regarding the LBC: “All meetings and hearings shall be public”; AS 44.62.310(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection; AS 44.62.312(a)(1): “it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly.” See also State of Alaska website on the LBC: “the commission's public process and actions are subject to State of Alaska's statutes AS 44.62.310. Government Meetings Public”, available on the world wide web: <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission.aspx>; last accessed on January 10, 2025.

is a public issue, to be made at a public meeting.<sup>30</sup> Commissioner Harrington listened several times to Chairperson Wood summarizing that Commissioner Harrington agreed that the boundaries standard and the best interests requirement had not been met. (See above). That all happened during the public session, and the discussion during each standard highlights that Commissioner Harrington found that those standards had not been met. This violation of the Alaska Open Meetings Act necessitates reconsideration of the decision.<sup>31</sup>

After the executive session and after Mr. Hickey's statement after the executive session, Commissioner Harrington made the following statement:

I believe that the best interest of the state clearly is to establish this borough. And I believe that the standards have all been met, including the boundaries. I do have concerns, and I will bring that up in a motion after we are finished with this, and nothing binding regarding this petition, merely a position with the LBC moving forward.<sup>32</sup>

This change in position by Commissioner Harrington shows that private guidance in violation of the Open Meetings Act was made during the executive session to change the vote of Mr. Harrington. The public does not know what was discussed in the executive session to have Mr. Harrington clarify and change his mind in regards to the boundaries standard and the best interests requirement; the public has a right to know.

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<sup>30</sup> 3 AAC 110.570; AS 44.33.814.

<sup>31</sup> See AS 44.62.310(f): Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action... A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. See also the State of Alaska Local Government Resource Desk on the open meetings act, "The governing body can attempt an informal cure by holding another meeting in compliance with the Open Meetings Act and conducting a substantial and public reconsideration of the matters." Available on the world wide web, <https://www.commerce.alaska.gov/web/dgra/LocalGovernmentResourceDesk/LocalGovernmentElectedOfficials/OpenMeetingsAct.aspx>, last accessed January 10, 2025.

<sup>32</sup> 11/12/2024 Transcript, at 157-158.

This necessitates reversal. The decision to grant the petition for the borough and the basis for the decision was required to be made in an open public meeting with a full public discussion as to the votes of each commissioner on each standard.<sup>33</sup>

D. In addition to the Open Meetings Act violation, the decisional meeting lacked formal votes by the commissioners as to whether each specific standard had been met or whether each factor of each standard had been met. This is despite the staff providing a clear roadmap for the commissioners to follow by providing a checklist, which listed and described each essential standard and the relevant factors. The LBC was required to find that the Xunaa Borough met the standards listed in AS 29.05.031 prior to granting the petition for the Xunaa Borough.<sup>34</sup> The lack of formal voting on each standard makes the record of the decision incomplete and prevents a fair and adequate evaluation of what each commissioner evaluated for each standard. The incomplete record obstructs the ability of a court to review the decision on appeal.<sup>35</sup>

E. The LBC disregarded the findings, analysis, and recommendations of the professional staff on the petition. The staff is an advisor to the LBC.<sup>36</sup> While the LBC is allowed to differ from the final staff report, the LBC failed to document why they viewed the staff report as incorrect. The LBC further failed to justify how they concluded differently than the staff and why they disregarded each point by staff on the

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<sup>33</sup> AS 44.62.310(f); 3 AAC 110.570.

<sup>34</sup> Alaska Constitution, Article X Section 3; AS 29.05.031; See also AS 29.05.100 (a) After providing public notice of each proposed amendment or condition and an opportunity for public comment, the Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or AS 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise, it shall reject the petition; 3 AAC 110.570(c).

<sup>35</sup> A LBC decision is appealable to the Alaska Superior Court under AS 44.62 and AS 29.05.100(b).

<sup>36</sup> AS 44.33.20(a)(4); 3 AAC 110.435.



qualifications under each specific standard. The LBC failed to explain their justifications from differing from the staff on the ultimate decision to approve the Xunaa Borough. As explained in the Final Staff report, the LBC has “historically considered the LBC staff’s analyses and recommendations to be an important component of the record in municipal boundary proceedings.”<sup>37</sup>

F. The LBC failed to take into consideration at the decisional meeting the public comment and testimony by regional communities surrounding the proposed borough that strongly opposed approval of the petition. The chair acknowledged that these comments had taken place,<sup>38</sup> but the LBC failed to document how and why they disagreed with the objections those communities raised.

G. Despite the petition concurrently dissolving the current City of Hoonah, the LBC failed to address the standards for dissolution of a City.<sup>39</sup> The transcript of the decisional meeting reflects a misunderstanding that the petition did not include a dissolution.<sup>40</sup>

H. The written decision does not adequately summarize or explain what happened at the November 12, 2024 decisional meeting. To adequately understand what occurred, the decisional meeting needs to be reviewed. The LBC’s website does not contain the transcript of the decisional meeting, or a copy of the audio recording of the decisional meeting. Interested parties and members of the public are not able to review

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<sup>37</sup> LBC Final Staff Report, at 13.

<sup>38</sup> 11/12/2024 Transcript, at 24.

<sup>39</sup> See 3 AAC 110.280, 3 AAC 110.300. These were also provided in the checklist to the LBC commissioners at the decisional meeting.

<sup>40</sup> 11/12/2024 Transcript, at 138.

the full basis of the LBC decision unless they were present at the November 12, 2024 meeting or understood to request an audio recording from the LBC. This is a violation of the open process that the LBC is required to follow.

Reconsideration is appropriate under 3 AAC 110.580(e)(1) due to the substantial procedural errors outlined above. Reconsideration is also the appropriate remedy for the violation of the Open Meetings Act that occurred at the decisional meeting.<sup>41</sup>

**II. Reconsideration is also requested pursuant to 3AAC 110.580(e)(3) as the Local Boundary Commission “failed to address a material issue of fact or a controlling principle of law.”**

Reconsideration is also appropriate when the LBC failed to address at least one material issue of fact or controlling principle of law.<sup>42</sup> The LBC, in approving the Xunaa Borough, failed to find that the petition met all the required standards for borough formation under Alaska law. The LBC also failed to address several material issues of fact that were submitted by the respondents and public. This is further clarified and discussed below.

A. The LBC failed to apply Article X, Section 3 of the Alaska Constitution in evaluating the proposed Xunaa Borough. The LBC’s evaluation of the Alaska Constitution in approving the Xunaa Borough despite it not meeting the required standards is contrary to Alaska law. Article X Section 3 states:

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

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<sup>41</sup> AS 44.62.310(f).

<sup>42</sup> 3 AAC 110.580(e)(3).

and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

B. The LBC failed to apply Alaska law, specifically Alaska Statute 29.05.100(a), which requires that the LBC reject a petition when it fails to meet applicable standards under the Alaska Constitution or the commission regulations, or failed to meet the standards for incorporation under 29.05.031.<sup>43</sup> The Alaska statutes specifically provide that the LBC must determine prior to acceptance that the incorporation “meets applicable standards under the state constitution and commission regulations, meets the standard of incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state.”<sup>44</sup> Each standard has to be met.

C. The LBC failed to adequately apply AS 29.05.031 in granting approval to the Xunaa Borough. As noted by the LBC staff, incorporation must meet the Alaska standards, specifically AS 29.05.031<sup>45</sup>, which states:

(a) An area that meets the following standards may incorporate as a home rule, first class, or second-class borough, or as a unified municipality:

- (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
- (2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;
- (3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area’s economy includes land use, property values, total economic base, total personal

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<sup>43</sup> AS 29.05.100(a).

<sup>44</sup> AS 29.05.100(a).

<sup>45</sup> Final Staff Report, at 13. This document and others cited in this brief are publicly available on the LBC website for the Xunaa petition, so they are not being resubmitted with this reconsideration request. The 11/12/2024 hearing transcript is not available on the LBC website, and therefore the relevant pages have been attached to this request.

income, resources and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality; (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

The LBC did not adequately find that the Xunaa Borough met all these standards.

D. Population and Relationship of Interests Standards: The LBC did not adequately address the requirements of Alaska Statute 29.05.031(a)(1) on the population of the proposed borough area. The LBC ignored the requirement when it granted the Xunaa Borough, despite the Petitioner admitting that the new borough lands would only add approximately 49 residents,<sup>46</sup> and that the Borough services would only be applied in the current City of Hoonah.<sup>47</sup>

1. The LBC states that the first standard to review under AS 29.05.031(a)(1) is the “Relationship of Interests,” and references Alaska regulation 3 AAC 110.045.<sup>48</sup> This was referred to as the “Community of Interest standard” in the LBC decisional meeting.<sup>49</sup> The opening clause of 3 AAC 110.045 states that “On a regional scale suitable for borough government, the social, cultural, and economic characteristics and activities of people in the proposed borough must be interrelated and integrated in accordance with AS 29.05.031(a)(1) and art. X, sec. 3, Constitution of State of Alaska.” The regulation then outlines 5 factors to be considered under AS 29.05.031(a).<sup>50</sup> The LBC decision contains a conclusory statement that the outlying areas that will become part of the new

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<sup>46</sup> Final Petition, at 5.

<sup>47</sup> Final Petition, Sections 6 and 14; Exhibit F Transition Plan Sections 4.0, 5.0. and 6.0.

<sup>48</sup> LBC Written Decision, at 16.

<sup>49</sup> 11/12/2024 Transcript, at 64.

<sup>50</sup> 3 AAC 110.045(a)(1-5).

Xunaa Borough are “clearly compatible”, and states that they share “commercial activities and economic lifestyles” without actually going into the details of the new areas of the borough and analyzing how this standard was met.<sup>51</sup> There was a lack of discussion on the economy and lifestyles of Elfin Cove, for instance, the only actual outlying community to be part of the new borough. The LBC majority admits that the Horse and Colt Islands contain recreational cabins;<sup>52</sup> Funter Bay also is a cluster of recreational cabins.<sup>53</sup> These locations seemingly do not have economies outside of the location where the majority of cabin owners live, which is Juneau.<sup>54</sup> Game Creek appears to be on the road system to Hoonah, and may be able to be annexed to the City of Hoonah without the need for the creation of a large borough.

The LBC did not address the concerns from the City of Gustavus regarding the Glacier Bay National Park and Preserve (hereafter “Park”) and the relationship between the Park and Gustavus.<sup>55</sup> Gustavus is the hub and gateway to the Park. The Park administrative headquarters, marine docks, and park visitor services at Barlett Cove are all within the City of Gustavus, as is the entry road into the Park. The Park’s electric power is generated in and transmitted from the Gustavus hydroelectric system. Any outside contractors working in the park are housed in Gustavus. The Park has no dependence on Hoonah, nor does Hoonah have the capability to provide services to the Park.

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<sup>51</sup> LBC Written Decision, at 18.

<sup>52</sup> See Resolution of the City and Borough of Juneau (hereafter CBJ) and the attachments submitted to the LBC by the CBJ.

<sup>53</sup> *Id.* The Petitioner admits that Funter Bay does not have a recognizable population and will not add new residents to the borough. (Final Petition Sections 9 and 17).

<sup>54</sup> See Resolution and attachments submitted by the CBJ to the LBC.

<sup>55</sup> See Gustavus comments, at 1.

The LBC decision does not address all the factors that are listed in the Alaska regulation: compatibility of urban and rural lifestyles (3 AAC 110.045(a)(1)), compatibility of economic lifestyles and industrial or commercial activities (3 AAC 110.045(a)(2)); existence throughout the proposed borough of customary and simple transportation and communication patterns (3 AAC 110.045(a)(3); extent and accommodation of spoken language differences throughout the proposed borough (3 AAC 110.045(a)(4)); or existence throughout the proposed borough of organized volunteer services such as fire departments or other emergency services. (3 AAC 110.045(a)(5)).<sup>56</sup> The LBC does not analyze how the population standard was met in a way that can be evaluated on appeal.<sup>57</sup>

There was no basis for the LBC majority to declare that the borough “clearly met the standard” without addressing that the standard requires a “regional scale.”<sup>58</sup> Commissioner Walker did question at the decisional meeting whether the new borough could be considered “regional” in accordance with this standard because it brought so few additional people into the borough government, which Chairperson Wood agreed, and cited the staff conclusion that the population increase was negligible.<sup>59</sup> Chairperson Wood stated that the “petition lacks persuading facts demonstrating the constitutional

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<sup>56</sup> One Commissioner at the decisional meeting noted a 2003 report that found the population had similar interests (Transcript, at 37), but this report is outdated. It was written before Hoonah had a large cruise ship economy and also references many standards and regulations which have been repealed. (For example, See 2003 Unorganized Areas of Alaska that Meet Borough Incorporation standards at 122-123 “Hoonah’s economy is influenced by commercial fishing, logging, and subsistence activities.”)

<sup>57</sup> At the decisional meeting the LBC recognized that staff determined that the petition mostly met the community of interests standard, but that the point was moot because the population increase was negligible. (11/12/2024 Transcript, at 64).

<sup>58</sup> “Region” is defined at 3 AAC 110.990(28). “Regional” is defined as having the characteristics of a region. (3 AAC 110.990(29)).

<sup>59</sup> 11/12/2024 Transcript, at 67-68.

requirement has been met for a regional borough government.”<sup>60</sup> None of the other commissioners addressed the “regional scale” part of the community of interests.<sup>61</sup>

2. The second part of the standard under AS 29.05.031(a)(1) is labeled as the “population” standard by the LBC.<sup>62</sup> To evaluate this standard, the commission may consider 7 different factors.<sup>63</sup> The LBC determined that this standard had been met by looking at the current population of the City of Hoonah. There was no discussion about the very small number of people that would be added by the creation of the borough.<sup>64</sup> The LBC mentions how the City of Hoonah was able to “capitalize on the tourism industry and cruise ship industry” and that “it has kept up with technological changes and operates efficiently.”<sup>65</sup> They conclude that “this level of functioning will transition well to the Borough.”<sup>66</sup> The written decision fails to address that the new borough will not expand any operations outside of the existing townsite of the City of Hoonah.

E. Boundary Standard: The LBC decision cannot find that the boundaries of the proposed Xunaa Borough met the requirements under AS 29.05.031(a)(2).

1. At the decisional meeting, during two different discussions on the boundaries standard, three commissioners agreed or did not disagree with the Chairperson that the Boundaries standard had not been met.<sup>67</sup> Then during the summary of the standards, the Chairperson again repeated that he had marked down three

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<sup>60</sup> 11/12/2024 Transcript, at 71.

<sup>61</sup> See discussion at 11/12/2024 Transcript, at 61-71.

<sup>62</sup> LBC Written Decision, at 18.

<sup>63</sup> 3 AAC 110.050.

<sup>64</sup> LBC Written Decision, at 18-20.

<sup>65</sup> LBC Written Decision, at 19.

<sup>66</sup> LBC Written Decision at 19.

<sup>67</sup> 11/12/2024 Transcript, at 61-62, 99-100.

commissioners as not finding the boundaries standard satisfied.<sup>68</sup> The borough can only be granted if all the requirements listed in AS 29.05.031 had been met. With three commissioners finding that the boundary standard had not been met, the borough cannot be approved as the required standards for borough incorporation were not met. Despite this, at the summary conclusion vote on the borough, the LBC granted the petition.

2. The written LBC decision states that all the commission members agreed that the borough included all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective basis, and that the factors of transportation, commercial and economic activities, ethnicity and culture were met.<sup>69</sup> The record of the decisional meeting does not reflect that.

3. The Xunaa Borough includes a very large area (the 8<sup>th</sup> largest Borough in Alaska), but a population growth of less than 50 people.<sup>70</sup> The boundary of the Xunaa Borough precludes the City of Gustavus (and other communities) from being able to expand.<sup>71</sup>

4. The LBC did not properly consider the Alaska regulations that apply the boundary requirement to the formation of a new borough.<sup>72</sup>

i. The LBC misunderstood the factual evidence as to boundaries (3 AAC 110.060) and there was no evidence presented to the LBC upon which it could conclude that the proposed borough “included all land and water necessary to provide the full

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<sup>68</sup> 11/12/2024 Transcript, at 148.

<sup>69</sup> LBC Written Decision, at 25.

<sup>70</sup> Final Staff Report at 2; Final Petition Sections 9 and 17.

<sup>71</sup> See City of Gustavus’ comments, at 2-4; City of Pelican Responsive Brief at 2; City of Pelican Resolution 2024-4; City of Tenakee Resolution 2024-07; 9.5.2024 testimony at 177-179.

<sup>72</sup> 3 AAC 110.060.



development of essential borough services on an efficient, cost-effective level.” The LBC acknowledged that Petitioners proposed to only provide borough services in the current location of the City of Hoonah, and that the Petitioners do not plan to provide services in new Borough area outside of the current City of Hoonah.<sup>73</sup> Therefore the Commission had no basis to grant the petition on this standard.

ii. The LBC did not explain how they found that the proposed Borough “promotes the minimum number of local government units” as required in accordance with Art. X Section 1 of the Alaska Constitution. Despite the large boundaries drawn, the Xunaa Borough swaps one government (the City of Hoonah, a First Class City) for one Borough (a non-unified home rule municipality). It does not promote a minimum number of local government units. It does not incorporate any additional government units that would make creation of the Xunaa Borough efficient and reduce reliance on state resources.<sup>74</sup> It does not combine school districts. The LBC did not show how the required boundary standard was met.

The LBC acknowledges the issues with the boundaries, and explains how “boroughs were always intended to serve as regional governments.”<sup>75</sup> Rather than explain how the Xunaa Borough will create a regional government in accordance with the Alaska standards, the LBC discusses prior borough creations that apparently deviated from the

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<sup>73</sup> The LBC, in its written decision to grant the petition, is now requiring platting, zoning, and planning to occur throughout the Borough.

<sup>74</sup> The recreational cabin areas of Funter Bay, Horse Island, Colt Island are not “government units.” The religious group of Game Creek is also not a government unit. See [www.seconference.org/game-creek/](http://www.seconference.org/game-creek/), last accessed on December 31, 2024. See also the comments by Game Creek. Elfin Cove is a non-profit corporation providing some government-type facilities, but is not a recognized Alaska city government unit.

<sup>75</sup> LBC Written Decision, at 26.

model boundaries and possibly the required standards.<sup>76</sup> Elfin Cove and Gustavus do not know the nuances of these decisions to be able to accurately argue whether these other prior boroughs were properly granted, however it appears debatable whether these other boroughs actually met the borough standards, or created less-than-ideal situations. Regardless, they should have no precedent on the LBC's decision on this matter. The LBC is required, under the law, to evaluate the standards individually for each borough proposal. The LBC failed to do so, instead making a conclusory statement that "the record is replete with facts that support approval of the petition."<sup>77</sup> As the LBC staff did not find facts to support the boundary standard having been met,<sup>78</sup> it does not seem that the record is "replete" with facts to support. The LBC was required to analyze the boundary standard and explain how they found that the boundary standard was met. The LBC does not outline what these facts are, or how they meet the borough standards.

iii. The LBC ignored the required standards when it approved the Xunaa Borough despite the boundary creating three enclaves. The City of Gustavus, the City of Tenakee Springs, and the City of Pelican all will be bordered by existing Boroughs. These communities have essentially the same population in total as the City of Hoonah.<sup>79</sup> The City of Gustavus is perhaps the fastest growing City in Southeast; Gustavus grew from a population of 442 in 2010 to a population of 655 in 2023, an increase of over

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<sup>76</sup> LBC Written Decision, at 27.

<sup>77</sup> LBC Written Decision, at 27.

<sup>78</sup> LBC Final Report, at 31-36.

<sup>79</sup> See demographic information at the Alaska Department of Commerce and Community Development, Community Database available on the world wide web at <https://www.commerce.alaska.gov/web/dcra/communityinformation.aspx>, last accessed January 13, 2025. In 2023 Pelican had a population of 90, Tenakee had a population of 123, and Gustavus had a population of 655. Total with those three communities is 868. City of Hoonah's population in 2023 was 885.

30%.<sup>80</sup> By comparison, the City of Hoonah went from a population of 760 to 885 between 2010 to 2023, an increase of 14%.<sup>81</sup> Hoonah’s own witness agreed that Gustavus was also at the top for having job and wage growth.<sup>82</sup> The decision prevents these existing cities from expanding their own boundaries or creating a comprehensive borough government.<sup>83</sup> Alaska regulations contain a presumption that an area containing enclaves does not include all land and water necessary to allow for the full development of essential municipal services unless specific evidence proves contrary.<sup>84</sup>

The LBC skirts this issue, by referring to prior decisions of the LBC that created enclaves.<sup>85</sup> The LBC highlights other boroughs (Haines and Ketchikan) that created enclaves in support for why the Xunaa Borough should be approved.<sup>86</sup> Alaska law provides that enclaves should be avoided if at all possible, and that an area that contains enclaves is presumed to not meet the boundary standard unless there is specific and persuasive evidence to the contrary.<sup>87</sup> Whether a prior LBC granted petitions that created enclaves should not be precedential. It is also arguable whether the LBC made the right decisions at those times.<sup>88</sup> The Ketchikan Gateway Borough’s (“Ketchikan”) 2007 annexation was approved on the condition that the borough file a petition within five years to annex Hyder, and not leave it as an enclave.<sup>89</sup> The petition to annex Hyder has

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 9/5/2024 Hearing testimony, at 57.

<sup>83</sup> See concerns expressed by the City of Gustavus; Pelican’s Responsive Brief at 2-4,

<sup>84</sup> 3 AAC 110.060(d).

<sup>85</sup> LBC Written Decision, at 27.

<sup>86</sup> LBC Written Decision, at 27.

<sup>87</sup> 3 AAC 110.060(d).

<sup>88</sup> This was brought up in the decisional meeting by Commissioner Harrington. 11/12/2024 Transcript, at 30-31.

<sup>89</sup> See discussion in Final Staff Report, at 16-17.

not occurred despite 17 years having passed, which shows the issues with approving Ketchikan’s 2007 annexation. The LBC staff, in its Final Report, noted that the prior LBC made an improper ruling in allowing the 2007 Ketchikan annexation despite creating the Hyder enclave.<sup>90</sup>

The LBC is required to make decisions in accordance with Alaska law and only in the best interests of the state. The LBC should strive to make ideal boroughs, and not rubber stamp a petition because prior LBCs may have made a wrong decision in allowing enclaves. There is no basis for the LBC to grant the Xunaa Borough because another borough has created enclaves. The LBC confuses this issue by stating that the Xunaa Borough does not create any enclaves, while admitting that the existing cities of Tenakee, Gustavus, and Pelican will be surrounded by Boroughs, and that these communities will not be able to continue to grow.<sup>91</sup> The LBC appears to forcefully require these communities to join one of the existing boroughs rather than allowing growth or incorporation as their own borough.<sup>92</sup>

iv. The LBC granted the Xunaa Borough without explaining how the required boundary standard was met. The written decision states that the petitioner made “good faith efforts” to include the other communities within the borough boundaries, and that “regardless of the effort put forth by the Petitioner, none of these neighboring municipalities would have agreed to participate in this proposed Borough.”<sup>93</sup> The fact that none of the neighboring municipalities agreed to participate in the proposed borough

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<sup>90</sup> Final Staff report, at 17.

<sup>91</sup> LBC Written Decision, at 27.

<sup>92</sup> LBC Written Decision, at 27.

<sup>93</sup> LBC Written Decision, at 28.

should have given the LBC pause, not bolster the LBC to find support for Hoonah despite the concern from Hoonah's neighbors. The LBC's role is not to punish the neighboring communities for wanting a role in self-governance. The LBC's role is not to push through a proposal because it agrees with the economy of the community requesting expansion into a borough.<sup>94</sup> The LBC's role is to evaluate the petition and only grant the creation of a borough when all the legal standards have been met and when the borough is in the best interests of the state.<sup>95</sup>

The LBC, in granting the petition, despite the issues highlighted and despite the neighboring communities not agreeing to the borough as proposed, lost the opportunity to reject the petition, with suggestions to the communities to attempt to work together on one or more regional governments and resubmit at a later date. The LBC does not explain the rush in moving forward with the Xunaa petition; effort and care should be taken to allow for and approve a regional government that complies with the Alaska standard. The LBC appears to treat the City of Hoonah as somehow worthy of more governing ability and capabilities than the neighboring existing cities. At least one of LBC commissioners hinted to a belief that cruise-ship based tourism was a better economy than provided in the other communities.<sup>96</sup>

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<sup>94</sup> The City of Hoonah's economy is booming based on large-scale cruise ship tourism; the success or demise of the community is based on the cruise economy. It is not a diverse economy. The testimony of Hoonah's witnesses at the 9/5/2024 public hearing was focused on expressing how the cruise ship economy was booming in Hoonah. (See 9/5/2024 Transcript, testimony of Meilani Schijvens at 50-51, and 54, discussing how the number of cruise ship passengers tripled between 2018 and 2024; See also testimony of Icy Strait Point's Special Project Director at 9/5/2024 Transcript, at 60-62). Hoonah's witness also testified that a reduction in cruise ships in 2021 resulted in Hoonah having the worst economic outlook in the region at that time. (9/5/2024 Transcript, at 51).

<sup>95</sup> See AS 29.05.100; AS 29.35.031.

<sup>96</sup> 11/12/2024 Transcript, at 122.

While the LBC devoted five pages to the boundary issue in its written decision, the LBC did not actually explain how the proposed Xunaa Borough met the relevant factors.<sup>97</sup> The LBC used this area of the decision to apparently attempt to explain why the borough was granted despite not including the neighboring cities of Tenakee, Gustavus, and the Pelican.<sup>98</sup> While admitting that the LBC must base its decision on appropriate evidence in the record, the LBC does not explain what evidence they used to make the decision to grant the Xunaa Borough under the boundary standard.<sup>99</sup> For example, the LBC did not discuss in the decision the factors relating to existing and reasonably related transportation patterns and facilities,<sup>100</sup> or the existing and reasonably anticipated industrial, commercial, and resource development within the proposed borough,<sup>101</sup> and how those supported approval of the new borough, both of which were brought up as issues in comments by the public and respondents.<sup>102</sup> Comments from adjacent communities had largely criticized the 10,000+ square miles to be encompassed by the Xunaa Borough as encroaching unacceptably on lands, waters, and resources critical to those communities and as creating unacceptable enclaves for the three regional communities excluded from the borough. The LBC just concluded that the “petitioner has met these standards for boundaries.”<sup>103</sup>

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<sup>97</sup> LBC Written Decision, at 25-30.

<sup>98</sup> LBC Written Decision, at 26-29.

<sup>99</sup> LBC Written Decision, at 29.

<sup>100</sup> 3 AAC 110.060(a)(4).

<sup>101</sup> 3 AAC 110.060(a)(7).

<sup>102</sup> See Responsive Briefs filed by Elfin Cove and Pelican, and the comments filed by the City of Gustavus, Tanaku Lodge, letter from Tenakee Springs, and comments from Norm Carson for example.

<sup>103</sup> LBC Written Decision, at 29.

v. The LBC did not adequately explain why their decision on the boundaries was a complete reversal of the LBC’s staff determination that the boundary did not meet the regulatory requirements. The final LBC staff report analyzed in detail the boundaries standard and found that the qualification was not met.<sup>104</sup> The LBC final staff report discusses the boundary issues at length:

The question of whether the proposed borough “will embrace an area and population with common interests to the maximum degree possible” is challenged by what is essentially a single community borough surrounded by three neighboring municipalities that share natural resources, yet are not included in the proposed boundary. Many of the properties that are included in the proposed borough boundary are owned by residents of other parts of the state, and therefore the proposal does not extend local government to a significant population. Rather, it offers asylum from those seeking to avoid annexation by the City and Borough of Juneau. Nor does the petitioner propose to offer any actual local government services to the areas beyond the Hoonah townsite.<sup>105</sup>

The LBC staff also noted the issues with the enclaves that would be created by approval of the petition, when quoting the language of 3 AAC 110.060(d) and stating:

The petitioner claims that the proposed boundary does not create enclaves; however, by excluding the communities of Gustavus, Pelican, and Tenakee Springs, the petitioner effectively creates new enclaves within the unorganized borough, limiting the ability for the excluded communities to self-determine a future regional government of their own, with options restricted to joining a nearby borough which may or may not share a contiguous boundary or being annexed by the Xunaa borough at a later date.<sup>106</sup>

The staff concluded that the boundaries, as proposed, would deny the cities of Gustavus, Pelican, and Tenakee Springs from a seat in any regional government decision-making despite being surrounded by the very waters and lands the petitioner claims are abundant and rich in resources, and deny these communities from any collective

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<sup>104</sup> Final LBC Staff report, at 21-36.

<sup>105</sup> Final LBC Staff report, at 35.

<sup>106</sup> Final LBC Staff report, at 36.

benefits.<sup>107</sup> They created impermissible enclaves with the cities of Gustavus, Tenakee Springs, and Pelican. These determinations by the LBC staff in the final staff report are not mentioned in the LBC written decision. Instead, the LBC cited the staff’s preliminary report as a basis for its decision.<sup>108</sup> There is no explanation by the LBC for why it completely disregarded the LBC staff’s final report.

vi. The LBC, at the decisional meeting on November 12, 2024, expressed concerns with the boundary issue, which is not adequately reflected in the written decision. The LBC staff had provided a checklist with the standards to be met and the factors to evaluate.<sup>109</sup> Chairperson Woods began the discussion of essential standards with the standard for Boundaries. Commissioner Harrington stated that the boundaries were the “crux of the matter,” and that if the petition did not meet the boundaries standard then the petition could be disqualified without needing to discuss the other standards.<sup>110</sup> The decisional meeting transcript reflects in two separate sections that three commissioners agreed the boundary standard had not been met.<sup>111</sup> No further consideration was required and the Xunaa Borough should have been denied.

Following the “vote” to approve the new borough, there was a discussion that the failure to meet the boundary standards could be remedied by asking Hoonah to encourage the three enclaved cities to just join the Xunaa Borough.<sup>112</sup> This appears to be an

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<sup>107</sup> Final Staff report, at 39.

<sup>108</sup> LBC Written Decision at 27, footnote 42.

<sup>109</sup> For instance, on the bottom of page 3 of the checklist, regarding enclaves, it stated: The commission will presume that an area proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.

<sup>110</sup> 11/12/2024 Transcript, at 31-32.

<sup>111</sup> 11/12/2024 Transcript, at 61-62; 99-100.

<sup>112</sup> 11/12/2024 Transcript, at 158-161.



admittance by the LBC that the proposed borough did not meet the boundary standard because enclaves were created. The LBC failed to discharge its duties under AS 29.05.100(a), which required the commission to determine and approve only the “most appropriate boundaries” for the borough.<sup>113</sup> The LBC passed a motion including that recommendation to the new borough to encourage the three cities to join the borough.<sup>114</sup> The three communities have declined to join the Xunaa Borough as it was proposed. The recommendation by the LBC to join the Xunaa Borough ignores the fact that the petitioned borough design has no provisions to include or accommodate other cities.<sup>115</sup> The Xunaa Borough dissolves the one existing City of Hoonah, leaving no cities within the proposed borough. The borough structure and services would need to be entirely redesigned to absorb and accommodate cities within it and to provide required services beyond the Hoonah town site. Even if the other communities would be annexed later to the borough, they would be without adequate representation, as the borough charter provides for areawide assembly.<sup>116</sup> Chairperson Wood on 11/12/2024 brought up the possibility of voter districts, as a way to “provide proper and actual and fair representation on the –on the borough assembly”, but this was ultimately never voted on or otherwise discussed.<sup>117</sup> By approving the petition as drawn, the LBC created

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<sup>113</sup> See *Petitioners for the Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 726 (Alaska 1995).

<sup>114</sup> 11/12/2024 Transcript, at 158-161.

<sup>115</sup> This was recognized by the LBC Staff, see Final Report at 39: “The proposed Xunaa Borough charter is drafted in such a way as to not incentivize inclusion of additional communities should they decide to opt into the borough in the future. A borough that fragments the region would create inequality among the communities within and outside the proposed borough boundary.” See also page 41: “An at-large assembly as proposed in the charter would not necessarily achieve that goal and could be a barrier to proper regional representation for the smaller communities.”

<sup>116</sup> Charter 2.03(B): Election. Assembly members shall be elected at large for individual staggered seats by the qualified voters of the borough, including the mayor. An assembly member represents all voters of the borough.

<sup>117</sup> 11/12/2024 Transcript, at 45.

permanent enclaves. Furthermore, even if the petition was written differently, and had included accommodations to allow cities to later join the borough, approval of a borough on the possibility of other communities joining later is not a remedy to overcome three Alaska statutes and regulations that require that borough standards be met at the time of approval. A borough granted on the suggestion that other communities should join to preclude the enclave issue means the supposed remedy will have failed where the communities continue to decline to be part of the borough. This is seemingly what happened with Hyder and the Ketchikan Gateway Borough. The Xunaa Borough was granted in violation of the Alaska standards.

In disregarding the enclaves, the LBC failed to address a material issue of fact or a controlling principle of law and in accordance with 3AAC 110.580 (e) the approval of the petition must be reconsidered. The enclave issue must be remedied either by rejection of the entire petition or by directing adjustments to the borough boundaries that eliminate the enclave violations.

vii. The boundary problems demonstrate that the petitioners did not design a true regional government as required by statute for the benefit of regional citizens and the best interests of the State. The boundaries severely disadvantage, harm, and permanently isolate as enclaves the cities of Gustavus, Pelican, and Tenakee Springs. The unincorporated community of Elfin Cove also objected to being locked into the Xunaa Borough boundaries and is now precluded from possible future formation of a separate borough with the other three cities with whom they share common interests. Because the Xunaa Borough would not serve the intent of being a true regional government, and it

would not reduce dependency on the State, it is not in the best interests of the State as further discussed below.

F. Resources Issue: The LBC did not find that the economy of the proposed Xunaa Borough met the requirements under AS 29.05.031(a)(3) “the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area’s economy includes land use, property values, total economic base, total personal income, resources and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality.”

1. Alaska regulations state that the LBC “will consider” ten (10) factors, including several subparts, to determine that the economy of the proposed borough includes the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level.<sup>118</sup> These are required factors for consideration. The LBC does not analyze each of these factors in its decision. This is a controlling principle of law and in accordance with 3AAC 110.580 (e) the approval of the petition must be reconsidered

2. The LBC misapplied the resources standard and appeared to suggest by one commissioner that since Xunaa had a “robust” tourism economy, that they should be granted the ability to govern the lands in the new area.<sup>119</sup>

3. The LBC Chairperson, at the decisional meeting, mentioned that no services would be provided outside the City of Hoonah townsite.<sup>120</sup> The Chairperson also

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<sup>118</sup> 3 AAC 110.055(1)(A-J). The regulation notes that the commission “will consider” these factors. Additional factors that “may” be considered are listed at 3 AAC 110.055(2).

<sup>119</sup> 11/12/2024 Transcript, at 122.

discussed how the regulations allowing for detachment from a borough allows for detachment when the commission determines that it is impossible or impracticable for the borough to extend facilities or services to the area and where residents or property owners within the area have not received, and do not reasonably expect to receive, directly or indirectly, the benefit of borough government without significant additional tax contributions.<sup>121</sup> As hinted by Chairperson Wood, the regulations do not make sense where a lack of services provides the avenue for detachment from a borough, but there is seemingly not a consideration of whether services can be extended to new areas in evaluating whether to include areas in a new borough. The resources standard does state that the “economy of the proposed borough must include the human and financial resources necessary to provide the development of municipal services on an efficient and cost-effective basis.”<sup>122</sup> This hints to the indication that the drafters of the regulation intended this to apply to services provided within a new borough. Chairperson Wood adequately stated that it was not going to be possible for the new borough to provide comprehensive municipal services outside of the current City of Hoonah townsite.<sup>123</sup> The new borough did not even originally intend to provide planning and platting resources within the new borough lands outside the City of Hoonah townsite,<sup>124</sup> although this was required to be added by the LBC in their written decision (despite not being voted on at the decisional meeting). The LBC did not consider that the proposed borough assumed

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<sup>120</sup> 11/12/2024 Transcript, at 83.

<sup>121</sup> 11/12/2024 Transcript, at 88-89 discussing 3 AAC 110.273(2).

<sup>122</sup> 3 AAC 110.055.

<sup>123</sup> 11/12/2024 Transcript, at 84.

<sup>124</sup> See Final Petition, at Section 6, 14, Exhibit E at 2. See 11/12/2024 Transcript, at 23, 83, 142.

there would be no need to expand any school district resources outside the City of Hoonah townsite or address the capability of the City of Hoonah to provide municipal resources or educational resources if the population were to expand outside of the City of Hoonah.

4. There were unresolved questions present at the decisional meeting which are not resolved; these questions showcase the lack of evidence to support this standard. Commissioner Harrington (despite signing the written decision) mentioned a meeting he had off the record with attorney Gene Hickey, where they talked about concerns he had with the fact that Elfin Cove was going to be taxed without services. He stated that:

[A]s I understood it, normally when you collect a tax from an area, it is to be spent in that area. And as such, what we ought to be looking at or asking about is Elfin Cove going to become a service area within that borough? And as such, will the service area, board—whichever they will have—have some control of how the revenues raised in that area be spent in that area? ...I think it's something we need to be taking a look at and maybe discussing later.<sup>125</sup>

There was no later discussion of this issue, and it was not addressed in the written decision by the LBC.

Commissioner Harrington brought this up again in the meeting in regards to Elfin Cove not having representation on the new Borough assembly as the assembly will be elected at-large:

[S]mall communities have a difficult time getting elected to an areawide position, correct. But I think in both cases the whole service area model makes a lot of sense, given they—and Hoonah, the City of, and the other communities really, by rights, should have service area established so that there is a representative elected from those areas to speak for the communities to the assembly and bring those issues of what needs to happen for public services in those areas.<sup>126</sup>

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<sup>125</sup> 11/12/2024 Transcript, at 90.

<sup>126</sup> 11/12/2024 Transcript, at 141.

He then admits that there was no discussion of service areas in the Hoonah petition, and that “I would really like to—to push for a more specific set on—of information regarding services areas in that borough.”<sup>127</sup> Chairperson Wood responded that it may be something the LBC could consider appending to its order if the petition was granted.<sup>128</sup> This dialogue shows that there are concerns with the lack of services provided.

5. The LBC concludes the “City of Hoonah does an admirable job of providing municipal services in an efficient and cost-effective manner.”<sup>129</sup> The LBC admits that the new borough did not plan to provide municipal services to areas outside of the Hoonah townsite despite taxing the new borough locations. The LBC conditioned the approval on the new Xunaa Borough performing the mandatory powers of planning, platting, and zoning within the borough, while allowing the new Borough to decide what regulations to adopt.<sup>130</sup>

Gustavus currently provides fire and emergency response services for significant events within the Glacier Bay National Park, as well as search and rescue, and hazardous materials response within the Park through a mutual aid agreement.<sup>131</sup> Gustavus dispatches ambulances and emergency responders to the Park to transport cruise ship passengers from the dock to the airport for medevac. Gustavus also has a fire protection agreement with the USDA Forest Service for mutual aid in furnishing fire protection in

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<sup>127</sup> 11/12/2024 Transcript, at 141.

<sup>128</sup> 11/12/2024 Transcript, at 141.

<sup>129</sup> LBC Written Decision, at 21.

<sup>130</sup> LBC Written Decision, at 23.

<sup>131</sup> See mutual aid agreement, attached as Exhibit A.

the vicinity of the Tongass National Forest administered lands. All of this information was provided by Gustavus in response to the petition.<sup>132</sup> Any emergencies outside of Bartlett Cove would now be taking place in the proposed borough. The petitioner does not provide for any police, fire, or emergency services outside of the City of Hoonah townsite. The petition contains no information on whether these services would be transferred to the new borough or whether the proposed borough will enter into an agreement with the City of Gustavus for the costs of these services, equipment, supplies, and manpower involved.

Pelican, Elfin Cove and Gustavus have all provided mutual aid emergency response in the past.<sup>133</sup> If the mutual aid continues, it will be provided to Elfin Cove within the new borough without financial support from the proposed borough, but with support from the cities outside the borough. Since the Petitioner plans to provide no services outside of the current City of Hoonah townsite, it is assumed that the Xunaa Borough will not be taking over these services or providing any funding.

6. The LBC did not adequately address the anticipated resource and commercial development in the new borough.<sup>134</sup>

i. The Xunaa Borough proposes an areawide sales tax. They completely ignored the potential negative ramifications to the surrounding communities on the

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<sup>132</sup> See City of Gustavus comments, at 2-3.

<sup>133</sup> City of Gustavus comments, at 2-3.

<sup>134</sup> 3 AAC 110.055(I).

proposed sales tax to the large land and water area approved for the Xunaa Borough. This was brought forward as concern by the surrounding communities.<sup>135</sup>

ii. The petition hints at a fish tax, in stating that “the waters surrounding the proposed borough represent untapped wealth, that, through fair and uniform taxation, can better the lives of everyone in the borough.”<sup>136</sup> While the reply brief by Hoonah says that it will not tax vessels transiting through borough waters or fishing in borough waters unless the sale was to occur in the borough, it is not clear that this would not happen in the future.<sup>137</sup> The LBC staff recognized this issue in comparing the Xunaa Borough with the Ketchikan Gateway Borough 2007 annexation, and describes that:

[T]he abundant fishing waters of Icy Strait contain a resource of common interest to the aforementioned communities. Conversations leading up to the submittal of the petition, at least implicitly, indicate Hoonah may pursue an excise tax on the fish of Icy Strait and the Gulf of Alaska waters within its proposed boundary.<sup>138</sup>

The community of Elfin Cove has a strong commercial fishing presence; commercial fishing is also active in the neighboring communities. The Petitioner and the LBC ignored the negative impacts to the communities within and outside the proposed borough on these potential new taxes.

iii. The LBC did not address the concerns from the City of Gustavus regarding Glacier Bay National Park and Preserve.<sup>139</sup> LBC staff recognized that the proposed Xunaa Boundary encroached on areas of interest to the communities, such as the

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<sup>135</sup> See City of Gustavus comments, at 3-4; City of Pelican Responsive Brief, at 2.

<sup>136</sup> Final Petition, at Section 6.

<sup>137</sup> Hoonah’s Reply Brief, at 5.

<sup>138</sup> LBC Staff Final Report, at 16.

<sup>139</sup> See Gustavus comments, throughout.



hydroelectric dam in Tenakee Springs and the Glacier Bay National Park infrastructure that Gustavus depended on.<sup>140</sup>

G. Transportation Standard: The LBC does not document how the transportation facilities of the proposed Xunaa Borough met the requirements under AS 29.05.031(a)(4). The LBC's written decision does not contain a section on the transportation standard of AS 29.05.031(a)(4) despite this being a required standard to be met before a borough can be approved.<sup>141</sup> This is a failure to address a controlling principle of law and reconsideration is required under 3 AAC 110.580(e)(3).

The standard requires the LBC to determine that the communications media and land, water, and air transportation facilities throughout the proposed borough must allow for the level of communication and exchange necessary to develop an integrated borough government.<sup>142</sup> 3 AAC 110.045(c-d) outlines the factors the commission may consider in evaluating whether the transportation standard required under AS 29.05.031(a)(4) had been met: transportation schedules and costs, geographical and climatic impediments, telephonic and teleconferencing facilities, and electronic media use by the public.<sup>143</sup> The LBC may also consider whether the communities are connected to the borough seat by a public roadway, regularly scheduled airline flights, regularly ferry service, charter flight service or other means of travel, or sufficient electronic media communications, and whether the communications and exchange patterns will adequately facilitate

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<sup>140</sup> LBC Final Staff Report, at 16.

<sup>141</sup> AS 29.05.031.

<sup>142</sup> AS 29.05.031(a)(4); Art x. Sec. 3 Alaska Constitution; 3 AAC 110.045(c).

<sup>143</sup> 3 AAC 110.045(c)(1-4).

interrelationships or integration of the people in the borough.<sup>144</sup> The LBC did not evaluate any of these factors in the written decision dated December 20, 2024.<sup>145</sup> There were summary statements provided on page 18 of the decision, that the “airplane and watercraft are primary modes of transportation” and that “Hoonah has built an infrastructure of capital investment and tourism, and as such, possesses the technological capacity for strong communication in the region.”<sup>146</sup> The LBC failed to consider the cost of airplane and watercraft travel throughout the proposed borough, the time it would take for private boat travel throughout the borough, or the electronic communication capabilities outside of the current City of Hoonah. As explained by Elfin Cove, there are no direct flights between Elfin Cove and Hoonah, and air flights would first need to go through Juneau.<sup>147</sup> It appears the LBC is assuming that members of the outlying locations in the new borough would not actually travel to the Hoonah townsite for assembly meetings, but the LBC does not analyze that issue, or whether the transportation standard has been met. Further, if the LBC is assuming that new borough residents outside the townsite of Hoonah will join public assembly meetings by electronic communication, is there high-speed internet available for any outlying cabins in Funter Cove, Game Creek, or Elfin Cove to be present during Assembly meetings? Elfin Cove explained that phone service can be spotty in the Cove.<sup>148</sup> None of these issues were discussed or analyzed in the written decision. Commissioner Walker mentioned this issue at the 11/12/2024

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<sup>144</sup> 3 AAC 110.045(d).

<sup>145</sup> See Written Decision, in entirety.

<sup>146</sup> LBC decision at 18.

<sup>147</sup> Elfin Cove’s Responsive Brief, at 3.

<sup>148</sup> Elfin Cove’s Responsive Brief, at 4.

decisional meeting in the community of interests part of the meeting, but it was not taken into adequate consideration.<sup>149</sup> The LBC did not address 3AAC 110.045(d) in the same manner it failed to address 3AAC 110.045(c), and similarly, the Commission’s actions are contrary to the regulation. LBC failed to adequately address the transportation standard as required under AS 29.05.031(a)(4).<sup>150</sup>

H. Best Interests Requirement: The LBC did not properly consider the Alaska law that requires a new borough to be in the Best Interests of the State before approval.<sup>151</sup> 3 AAC 110.065 states:

In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough’s dissolution.

1. At the decisional meeting, two commissioners initially found that this standard had not been met, and a third expressed issues with this standard.<sup>152</sup>

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<sup>149</sup> 11/12/2024 Transcript, at 66-67.

<sup>150</sup> It is not entirely clear the LBC understands the different nuances with travel in this region. The public hearing transcript reflects that a “tour” was given by the City of Hoonah, but nothing has been documented regarding a tour of the entire new borough area. (See 9/5/2024 transcript at 3). 3 AAC 110.550(f) states: “In conjunction with a public hearing under this section, the commission may tour the area or territory. The purpose of a tour is to enable the commission to gain first-hand perceptions regarding the characteristics of the area or territory. If a tour is conducted, (1) the tour will be recorded; and (2) conversations relating to the pending petition will be limited to factual questions by commission members to the department staff and concise factual answers by the department staff.”

<sup>151</sup> 3 AAC 110.065 and 3 AAC 110.300.

<sup>152</sup> 11/12/2024 Transcript, at 107.

Commissioner Harrington, stated that “I wish there was a step process to allow it, but I am not going to fight you guys if you say ‘no’.”<sup>153</sup> During the “vote” on whether the best interests standard had been met, three commissioners were marked down as “no”: Larry Wood, John Harrington, and Clay Walker.”<sup>154</sup> Three “no” votes were reiterated again during the summary of the standards.<sup>155</sup> The majority of the LBC determined that the Best Interests requirement had not been met. Only after the executive session in violation of the Open Meetings Act, and with no public discussion, did a commissioner decide to change his vote and agree that the Best Interests requirement had been met.

2. To determine whether the proposed boundary promoted maximum self-government under Alaska Constitution Art. X, Sec.1, the commission was required to consider whether the proposal would extend local government on a regional scale to a significant area and population of the unorganized borough.<sup>156</sup> The LBC admits this is required in the written decision.<sup>157</sup> The LBC final staff report noted that there was not a significant population, and that instead that a significant population had been deliberately excluded from the proposed borough, which was noted at the decisional meeting.<sup>158</sup> There was no further discussion of the “significant population” requirement at the decisional meeting, and that alone warrants reconsideration.

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<sup>153</sup> 11/12/2024 Transcript, at 107.

<sup>154</sup> 11/12/2024 Transcript, at 138.

<sup>155</sup> 11/12/2024 Transcript, at 148.

<sup>156</sup> 3 AAC 110.981(a).

<sup>157</sup> LBC Written Decision, at 31, citing 3 AAC 110.981(1).

<sup>158</sup> 11/12/2024 Transcript, at 105.

At the decisional meeting during the discussion on community of interests, the LBC recognized that the “population increase was negligible.”<sup>159</sup> There was discussion on how the borough “brings in so few additional residents.”<sup>160</sup> There was no debate about the size of the population increase. Despite this discussion occurring under a different standard (the community of interests standard), the fact remains that the population increase was negligible. There is no basis for the LBC to determine that the proposed borough extends local government to a significant population of the unorganized borough. The LBC fails to admit that the new borough does not extend to a “significant” population and that this standard is not met.

The petitioner admits that the population in the new borough will only be 49 new residents.<sup>161</sup> The LBC points out Horse and Colt Islands, and Elfin Cove as adding “significant population.”<sup>162</sup> The Horse and Colt Islands contain recreational cabins—there is little to no population living full time—the population that owns the recreational cabins are not residents of the unorganized borough, but are residents of other local governments.<sup>163</sup> The Elfin Cove census counts 24 people year-round, this is hardly significant on a regional scale. The LBC does not cite any legal precedent to establish that the addition of 49 new residents is significant to support the creation of a new borough.

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<sup>159</sup> 11/12/2024 Transcript, at 64.

<sup>160</sup> 11/12/2024 Transcript, at 68.

<sup>161</sup> See Final Petition, Sections 9 and 17.

<sup>162</sup> LBC Written Decision, at 32.

<sup>163</sup> See the Resolution by the CBJ in response to the Hoonah petition, and attachments filed by the CBJ.

3. The LBC did not explain how the borough met the threshold of providing the minimum number of local government units.<sup>164</sup> The Xunaa Borough dissolves one Alaska government unit, the City of Hoonah, and creates one Borough. It is essentially creating one government for another. There is no net benefit to the government units by the creation of the Xunaa Borough. This was pointed out at the 11/12/2024 decisional meeting by Commissioner Trotter; Commissioner Walker and Wood also agreed.<sup>165</sup> LBC does not address this Constitutional failure in the written decision.

4. The LBC did not address how the creation of the borough will relieve the state government of the responsibility of providing local services.<sup>166</sup> The LBC states that “services can be provided on an areawide basis and there is no need to establish service areas or create other cities within the Borough to provide these services.”<sup>167</sup> This ignores the comments made at the meeting regarding service areas. The Xunaa Borough did not plan to provide any services outside of the existing City of Hoonah Townsite.<sup>168</sup> The LBC, in the written decision, is requiring the new Borough to provide the minimal essential services required by law (planning, platting, and land use regulation). This was not proposed by the Petitioner. Regardless, despite the Xunaa Borough’s plan to have a sales tax borough wide, there are no other services being provided outside the existing City of Hoonah; there is no plan to provide emergency services or public safety outside the existing City of Hoonah townsite, for example. State Troopers will continue to be

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<sup>164</sup> Alaska Constitution Article X Section 1.

<sup>165</sup> 11/12/2024 Transcript, at 46-47.

<sup>166</sup> 3 AAC 110.065(c).

<sup>167</sup> LBC Written Decision, at 32.

<sup>168</sup> See Final Petition, at Section 6, 14, Exhibit E at 2. See 11/12/2024 Transcript, at 23, 83, 142.

called from Juneau to respond to any needs within the borough outside of the City of Hoonah townsite.<sup>169</sup> The LBC avoids this discussion.

The Best Interest requirement cannot be met. Hoonah is not the center for transportation or communication and will have very limited ability to extend services to any other community, including Elfin Cove. This was explained in Elfin Cove's responsive brief as well as the briefs and comments filed by the City of Pelican and the City of Gustavus. Without effective transportation between Elfin Cove and Hoonah, it would be very impractical, and at least ineffective, to provide services from Hoonah. The LBC ignored this practicality as did the Petitioner. The clear signal is that these services will not be provided by the Xunaa Borough.

5. Commissioner Walker accurately highlighted the lack of increased efficiencies with the creation of the borough, and how the borough as presented was not in the best interests of the state.<sup>170</sup>

6. Commissioner Cyrus appeared to suggest that the new borough may actually provide services outside the City of Hoonah townsite, despite the petition stating explicitly that they would not. He stated that:

Again, its hard to quantify what—you know, what role of the voters in that potential borough, the services they may allocate funds to, what services they may provide that—that would negate the state's need to provide those services, is really hard to say, from my point of view.<sup>171</sup>

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<sup>169</sup> See Final Petition, Section 14.

<sup>170</sup> 11/12/2024 Transcript, at 110-112.

<sup>171</sup> 11/12/2024 Transcript, at 112.

The vote to approve this standard was made despite not being reflective of the information provided in the petition.<sup>172</sup>

7. The LBC overstepped their roles in deciding that the Xunaa Borough was “better than nothing” despite it not meeting the statutory standards in accordance with Alaska law.<sup>173</sup>

8. The Local Boundary Commission did not address Elfin Cove in its decision, which is the only “community” within the new Borough. There was no discussion of negative impacts to Elfin Cove during the decisional meeting or the written decision. Elfin Cove filed a responsive brief that highlighted their concerns with the new borough, and why the standards were not met.<sup>174</sup> This was not addressed by the LBC.

i. Elfin Cove, a non-profit corporation, currently maintains the community’s access to fuel, electricity, safe water, emergency medical services, a United States Postal Service office, an indoor recreation area, meeting rooms, and a museum.<sup>175</sup> Elfin Cove has a volunteer fire department, a utility commission, a water utility, and a fuel dock.<sup>176</sup> The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) owns the boardwalk that is in Elfin Cove, which is how the entire community accesses the store, post office, and recreational facility; there are no typical vehicular “roads” within the community. Elfin Cove has worked with many State and Federal agencies to obtain grants and replace and upgrade docks for the seaplane base, the dredging of

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<sup>172</sup> 11/12/2024 Transcript, at 112-138.

<sup>173</sup> 11/12/2024 Transcript, at 22.

<sup>174</sup> Elfin Cove’s Responsive Brief.

<sup>175</sup> Elfin Cove’s Responsive Brief at 1.

<sup>176</sup> Elfin Cove’s Responsive Brief at 6.



channels, repair and maintenance of the boardwalks, including working with the State of Alaska to maintain and repair ADOT&PF owned docks and pilings.<sup>177</sup> The petition does not address these facilities that would typically be maintained by a municipal government or the State of Alaska. Hoonah does not plan to take over any of these services or add anything to the local community. The new borough will not provide any of these services to Elfin Cove, despite collecting sales taxes within Elfin Cove. There is no benefit to the Elfin Cove or the State by the Xunaa Borough formation.

ii. The LBC did not address the concerns brought forward by Elfin Cove regarding the State of Alaska Community Assistance Program (CAP) Funding. Elfin Cove has been granted approximately \$25,000 a year in this program and uses the funds to help with maintenance of community buildings, boardwalks, and harbors.<sup>178</sup> There was no evaluation about the possible impact the borough formation would have on this funding or on the maintenance of the community resources in Elfin Cove. The decision did not address negative impacts to the residents of Elfin Cove.

iii. Elfin Cove businesses will be required to collect an areawide sales tax, and remit this to the new Borough. There was no consideration of negative impacts to Elfin Cove due to this new sales tax. The LBC failed to address who is going to pay for these new administrative burdens on Elfin Cove. This is also true for any outlying businesses outside of Elfin Cove but within the new borough.<sup>179</sup>

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<sup>177</sup> Elfin Cove's Responsive Brief, at 2.

<sup>178</sup> Elfin Cove Responsive Brief, at 5.

<sup>179</sup> For example, see the public comments provided by the Johnson Family and Alice Montgomery, who own businesses in Gull Cove. They explained the burden the sales tax will have on their businesses, and how no services will be provided to these residents by the Xunaa Borough. Mr. Paul Johnson has joined with Elfin Cove for purposes of this reconsideration request.

iv. In addition to the lack of services to Elfin Cove, Elfin Cove also expressed concerns with being able to access the Hoonah government.<sup>180</sup> To reach the borough government, citizens of Elfin Cove would have to travel several hours by small boat—there was no discussion on how these residents would be able to apply for building permits, or other approvals required by the new borough. If an Elfin Cove resident wanted to travel to attend a borough assembly meeting, there are concerns regarding the lack of housing facilities to stay at in Hoonah, more extremely during the summer months (the typical time of year when boating would be the “safest”) when all the housing is used by tourists or the tourism workers. These were not considered by the LBC.

v. The Petition provides that the new borough assembly will be voted from the area-wide borough population.<sup>181</sup> As a practical matter, this means that the residents of Elfin Cove will be taxed, but will be without representation.<sup>182</sup> Chairperson Wood on 11/12/2024 brought up the possibility of voter districts, as a way to “provide proper and actual and fair representation on the—on the borough assembly,” but this was ultimately never voted on or otherwise discussed.<sup>183</sup> Elfin Cove and the other rural residents in the new Borough will suffer from rural vote dilution in the new borough. Elfin Cove will not have actual or fair representation on the Xunaa Borough Assembly.

9. The Local Boundary Commission failed to consider the negative impacts to the existing communities of the City of Gustavus, the City of Pelican, and the City of

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<sup>180</sup> Elfin Cove’s Responsive Brief at 2-3. Hoonah is approximately 5 hours by boat from Elfin Cove; Gustavus is half as far from Elfin Cove.

<sup>181</sup> Charter 2.02 and 2.03.

<sup>182</sup> Elfin Cove has a population of 24, Hoonah has a population of 885.

<sup>183</sup> 11/12/2024 Transcript, at 45.

Tenakee Springs by the approval of the Xunaa Borough. Negative impacts to other communities and cities are not within the best interests of the State. In addition to negative impacts not being in the best interests of the state, the regulation governing dissolution of cities (the petition dissolves the City of Hoonah) explicitly includes the social and economic impacts and financial stability of other communities and municipalities as a factor to consider.<sup>184</sup>

The LBC decision did not analyze the financial impacts to the other communities. It was statutorily required for the LBC to consider these impacts; if the information provided by the petitioner was deficient, the LBC should have requested more financial impact information. The LBC also should have evaluated whether smaller boundaries could have been considered, that had a lesser impact on the other communities that depend on the natural resources for their income. There are financial considerations to neighboring communities that should have been evaluated as part of the approval process. The potential negative impacts include:

i. Impacts to these communities of a potential reduction in federal Payment in Lieu of Taxes “PILT” and the National Forest Timber Receipts due to the new borough. The concern with the new Borough reducing PILT and the Forest timber receipts were made in comments by the communities.<sup>185</sup> These concerns were brought up even in 2018, and still remain.<sup>186</sup>

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<sup>184</sup> See 3 AAC 110.300 (a)(5) and (6). This was provided in the checklist to the commissioners at the 11/12/2024 meeting, at page 4.

<sup>185</sup> See City of Gustavus comments, at 6; City of Pelican’s Responsive Brief at 5; City of Pelican Resolution 2024-4; City of Tenakee Springs Resolution 2024-2; Gustavus Visitor Center comments at 2.

<sup>186</sup> See testimony at the 9/5/2024 hearing, at 136, 161.

The LBC staff estimated that impacts to PILT would be minimal, and based on the population of the existing communities.<sup>187</sup> Yet, when Gustavus attempted to obtain an answer about potential impacts through the creation of the borough, they received information from the federal Department of Interior PILT program that the amount of PILT funds granted to the State of Alaska for cities outside boroughs is not solely based on population, but has variables including the acreage.<sup>188</sup> The question remains as to what type of impacts the new borough may have on available PILT funds for the existing cities outside of the borough.

The LBC staff found that approval of the Xunaa Borough boundary would reduce the shared revenues of the National Forest Receipts to the cities of Gustavus, Pelican, and Tenakee Springs.<sup>189</sup> This remains a concern. National Forest Receipts are used for roads and schools.<sup>190</sup> Chairperson Wood brought these concerns at the 11/12/2024 meeting, and whether the charter could be amended in the borough formation process to protect the revenue sources or whether the communities could work that out with a different formation if the Hoonah petition was denied.<sup>191</sup> It is not clear what type of amendment can be made to the charter that would protect the National Forest Receipts for the other communities, and there was no further discussion on this. The LBC did not make any motions to direct the petitioners to make these changes to their charter and resubmit for adoption, and there was no effort to protect the revenue sources of the other communities.

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<sup>187</sup> LBC Final Report, at 29.

<sup>188</sup> See email from Dionna Kiernan DOI to Gustavus mayor, attached as Exhibit B.

<sup>189</sup> LBC Final Report, at 28-29. The regulations on the National Forest Receipts are at 3 AAC 132.010 et seq.

<sup>190</sup> 3 AAC 132.020.

<sup>191</sup> 11/12/2024 Transcript, at 45, 120, 134.

Intentionally depriving small communities from an important federal funding source highlights the constitutional and statutory issues with the LBC decision and particularly the executive session used to engineer a change of vote on the standards.

ii. The LBC failed to address impacts to these communities by potential taxes on fish harvested within the new borough. The potential fish taxes were brought up as a concern by the communities and fisherman.<sup>192</sup> The LBC staff also recognized this potential issue.<sup>193</sup> During the public hearing, representatives of the City of Hoonah expressed that they did not think a fish excise tax would be created in the future, but as adequately represented by Commissioner Wood, there is nothing preventing that.<sup>194</sup> There was no mention of this concern in the LBC written decision, nor a discussion at the 11/12/2024 decisional meeting.

iii. The LBC failed to consider the lack of information on how the sales tax would be applied and the point of sale. As provided by the City of Gustavus' comment letter, Hoonah's City Manager relayed to at least one charter operation that the Borough sales tax would be applied to charter fishing that was based in Gustavus if the boats entered waters within the borough boundary.<sup>195</sup> The City of Pelican had similar concerns, that the proposed borough sales tax would apply to businesses in Pelican that provided

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<sup>192</sup> See City of Gustavus comment, at 4; City of Pelican Responsive Brief at 2-9; City of Pelican Resolution 2024-4; Gustavus Visitor Center comments at 2. See also testimony by the Pelican Mayor on 9.5.2024, Transcript at 26-27.

<sup>193</sup> See 9/5/2024 public hearing, at 12-13; See also LBC Final Staff Report, at 16: "[T]he abundant fishing waters of Icy Strait contain a resource of common interest to the aforementioned communities. Conversations leading up to the submittal of the petition, at least implicitly, indicate Hoonah may pursue an excise tax on the fish of Icy Strait and the Gulf of Alaska waters within its proposed boundary."

<sup>194</sup> See discussion at the 9.5.2024 public hearing, at 46-47.

<sup>195</sup> See City of Gustavus comment, at 4.

charter fishing and other services within the waters now proposed for the borough.<sup>196</sup>

This would directly result in taxation without representation. An area-wide sales tax that applied to services provided within the borough but sold outside the borough would be an economic burden to the residents of Gustavus and the other surrounding communities. Gustavus' residents have businesses that operate within the Glacier Bay National Park and the waters within the proposed borough and would be negatively impacted.<sup>197</sup>

Hoonah's reply brief references the existing sales tax code for the City Hoonah, and states that the borough's sales tax code will be the same as the current City Code and defines sales as within the city.<sup>198</sup> There is nothing preventing the new borough from amending the code to change the definition of sale after the borough is created.<sup>199</sup> The email from the Hoonah City Manager hints at this future plan. The LBC staff report discussed this as a concern.<sup>200</sup> An areawide sales tax will have a negative impact on business within the City of Gustavus and Elfin Cove.

iv. The LBC failed to adequately consider that approval of the Xunaa Borough put a severe disadvantage on the existing cities outside the Borough that are left as enclaves with limited ability to expand and unable to create a larger municipal government. The decision essentially puts the desires of the City of Hoonah above the population, economy, and potential expansion of three other existing Alaska

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<sup>196</sup> City of Pelican's Responsive Brief, at 2.

<sup>197</sup> City of Gustavus comments, at 4.

<sup>198</sup> Hoonah Reply Brief, at 5.

<sup>199</sup> See for example the City and Borough of Juneau Code (CBJ) 69.05.020 (a) and (b) which provides that the taxability of a service is determined by where the service performed is received. See also the proposed Xunaa Borough charter Section 11.02(A) and (C), providing that "nothing in this subsection limits the authority of the assembly to amend the rate or terms of such sales tax, subject to the ratification requirement..."

<sup>200</sup> LBC Final Staff report, at 16.

governmental units (City of Gustavus, City of Pelican, City of Tenakee Springs), in addition to the community of Elfin Cove and any individuals residing outside these cities. There was also no discussion on what types of development may occur near the existing cities of Gustavus, Tenakee Springs, or Pelican in lands that the new borough may select from the State, and how that may impact resource utilization by residents of these existing communities.

10. The LBC ignored the fact that the only people in the proposed borough who gave some support for the borough were individuals with vacation homes in Funter Bay and Horse and Colt Islands, who have primary residences in areas other than within the City of Hoonah or within the new Xunaa Boundary.<sup>201</sup> This information was provided by the City and Borough of Juneau in their comments on the petition.<sup>202</sup> The LBC staff also understood this:

Many of the remote properties that are included in the proposed borough boundary are owned by residents of other parts of the state; therefore the proposal does not extend local government to a significant population. Rather it offers a refuge for those seeking to avoid annexation by the City and Borough of Juneau.<sup>203</sup>

The individuals with cabins in these locations provided limited comments in support; the support was given on the idea that they would prefer to be left alone, but if not possible, that the support was given on the understanding that their property would

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<sup>201</sup> See the Resolution and Resolution and Attachments by the City and Borough Juneau. The petitioner knows that these are recreational areas and that they will not add to the population of the new Borough. (See Final Petition at Sections 9 and 17); See also testimony at the 9.5.2024 hearing, at 157. It is possible that there are two couples that live year-round at Horse or Colt Island, according to one speaker. 9.5.2024 Hearing Transcript, at 167.

<sup>202</sup> See Resolution and attachments from the CBJ submitted to the LBC in response to the Xunaa petition.

<sup>203</sup> Final LBC Staff Report, at 3.

never be taxed in the Xunaa Borough.<sup>204</sup> Property owners in the other outlying areas did not support the Xunaa Borough.<sup>205</sup>

11. The LBC failed to explain on the record how they determined that the Xunaa Borough was in the Best Interests of the State, despite being contrary to the LBC final staff report. The staff report evaluated the petition’s qualifications on the Best Interests requirement as follows:

While the proposal includes a significant geographic area, a significant population that could benefit from borough incorporation has been deliberately excluded...

What is clear from the petitioner and the response from the neighboring communities is that the region has not developed a coherent consensus on borough government...

LBC staff therefore recommends to the LBC that it be determined this proposal does not meet the best interests of the state standard, nor does it meet the maximum local self-government standard, because the petition does not extend local government to a significant population. ...

Since the petition does not “maximize an area and population with common interests,” LBC staff concludes that the petition does not meet the standard for a minimum number of local government units.<sup>206</sup>

The LBC final staff report concluded that the proposed Xunaa Borough did not meet the standards necessary for borough approval:

To approve the boundary as proposed while excluding the neighboring communities of Gustavus, Pelican, and Tenakee Springs, which are surrounded by the very waters and lands the petitioner claims are abundant and rich in resources, would deny them a seat at any regional government decision-making regarding those resources, not to mention a portion of any collective benefits. A borough that further fragments the region would create inequality among the communities

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<sup>204</sup> See for example comments by: McPherson, Osborn (2 comments), Harrison. See also letter from Simpson representing Horse and Colt property owners. “[T]hey did not want to be in an organized borough that could subject them to taxation without representation or services.”

<sup>205</sup> See public comments by: the Johnson Family of Gull Cove, the Montgomery family of Gull Cove, John and Anna MacKinnon of Idaho Inlet, and D. Manion of Wheeler Creek.

<sup>206</sup> Final LBC Staff Report, at 37.



within and outside the proposed borough boundary. Such a division would not be in the best interests of the state.

By excluding Pelican, Gustavus, and Tenakee Springs, the LBC would eliminate any possibility those three communities could form a contiguous borough, since they would be geographically isolated from one another by the proposed Xunaa Borough boundaries. These municipalities could conceivably join one of the existing boroughs in northern Southeast Alaska, but their prospects to do so are limited. For example, should the cities of Tenakee Springs or Pelican join the unified City and Borough of Sitka, their existing city governments would be dissolved, and local decision-making would be greatly reduced. LBC staff cannot speculate on the interest of such a potential annexation because the City and Borough of Sitka did not submit comments on the initial petition, nor did the Haines Borough.<sup>207</sup>

And continuing:

The City of Hoonah is to be commended for taking a bold step in initiating a borough proposal; however, the omission of the three neighboring municipalities, recognizing their request to be excluded is at odds with the constitutional and statutory standards for regional borough incorporation. Their exclusion would not be in the best interest of the state, nor would approving the petition as presented.

LBC staff therefore presents that the petition does not adequately fulfill the constitutional requirements or the intent of the framers in achieving a true regional government. The petitioner has made sound arguments for its capacity and economic capability within the City of Hoonah. Nevertheless, the boundary as proposed does not appear to benefit anyone but the residents of the Hoonah townsite.

LBC staff cannot recommend the Commission modify the petition to expand the boundaries to include the entire Glacier Bay region, as such a recommendation would be appropriate only with broad-based community support that this petition currently lacks.<sup>208</sup>

The LBC failed to address at the decisional meeting or in their written decision why their determination was in complete opposition to the LBC's staff determination that approval of the Xunaa Borough was not in the best interests of the state.

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<sup>207</sup> Final LBC Staff Report, at 39-40.

<sup>208</sup> Final LBC Staff Report, at 41.

I. Non-Discrimination: There are unresolved issues regarding the “taxation without representation” and discrimination to the community of Elfin Cove and any outlying residents. This was discussed at the decisional meeting in regards to the Statement of Non-discrimination. 3 AAC 110.910 requires that the LBC determine that the proposed change did not deny any person the enjoyment of any civil or political right, including voting rights. Commissioner Harrington stated in regards to Elfin Cove not having representation on the new Borough assembly as the assembly will be elected at-large:

[S]mall communities have a difficult time getting elected to an areawide position, correct. But I think in both cases the whole service area model makes a lot of sense, given they—and Hoonah, the City of, and the other communities really, by rights, should have service area established so that there is a representative elected from those areas to speak for the communities to the assembly and bring those issues of what needs to happen for public services in those areas.<sup>209</sup>

He then admits that there was no discussion of service areas in the Hoonah petition, and that “I would really like to—to push for a more specific set on—of information regarding services areas in that borough.”<sup>210</sup> Chairperson Wood responded that it may be something the LBC could consider appending to its order if the petition was granted.<sup>211</sup>

Commissioner Walker pointed out that:

Elfin Cove, Game Creek, you know, have a right to representation, and what—whether or not they actually have a representative on the borough assembly from that community, but I didn’t see much in the petition, as proposed, that would guarantee access, you know, whether it be virtually or just, you know, access to the assembly and representation through economic development... I’d love to see

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<sup>209</sup> 11/12/2024 Transcript, at 140-141.

<sup>210</sup> 11/12/2024 Transcript, at 141.

<sup>211</sup> 11/12/2024 Transcript, at 141.

some structure that's in the charter that would—that would—you know, guarantee that everybody—that those communities are represented in terms of economic development.<sup>212</sup>

In response, Commissioner Wood mentioned the possibility of voter districts, where an assembly-member would be required to live in the particular outlying voting district, and again pointed out that the LBC may want to consider attaching that condition to the order if the petition was granted.<sup>213</sup> This was left out of the written decision and there is no provision providing Elfin Cove or any other outlying residents from having adequate representation on the new borough assembly. The Xunaa Borough as approved does not provide for adequate representation on the Assembly of the new borough areas. The borough structure as approved denies the residents of Elfin Cove and the outlying areas from representation in the borough assembly. The effective denial of representation on the proposed new borough assembly for persons living in Elfin Cove alone requires reconsideration of the petition as unconstitutional.<sup>214</sup>

J. Borough granted in violation of standards. The LBC granted the Xunaa Borough despite it not meeting the state standards as outlined above, which is a violation of law, and warrants reconsideration under 3 AAC 110.580.

1. The LBC overstepped their role in deciding to grant the Xunaa Borough despite it not meeting the Alaska statutory standards, for reasons that appear political. There was an opinion made that the current standards and regulations “were not working.” One commissioner described the “need to develop a system in Alaska---that

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<sup>212</sup> 11/12/2024 Transcript, 142-143.

<sup>213</sup> 11/12/2024 Transcript, at 144.

<sup>214</sup> Elfin Cove has 24 residents; Hoonah has 855.

will make and create or give people a way to create a community if they desire, and then support that community.”<sup>215</sup> The City of Gustavus is its own governmental entity. Elfin Cove has created such community. This is currently happening; approval of the Xunaa Borough is completely contrary to the efforts by the citizens in these communities and diminishes any chance for them to grow. Another commissioner stated that “the system’s not working. I want to say that. The system of deciding how we have municipalities and cities and so forth in Alaska is simply not working.”<sup>216</sup> The same commissioner then mentions that

[T]here ought to be a couple hundred communities, whether you want to call them municipalities or cities or counties, or whatever, there should be a couple of hundred individual communities now in Alaska so they could develop, so they could develop their own systems, so they could put in place opportunities.<sup>217</sup>

Despite this opinion, the commissioner voting yes on the Xunaa Borough will have a negative impact on the small communities that are becoming enclaves (Tenakee, Gustavus, and Pelican), as well as Elfin Cove inside the borough. Rather than admit the Xunaa petition is deficient, these commissioners voted to approve the borough to make a statement regarding the system. The LBC appeared to grant the petition in violation of the standards for political reasons. The LBC ignored the best interest requirement outlined in regulation,<sup>218</sup> and instead made a decision with some new ideas of what is in the best interests of the State. This is inappropriate and not in accordance with Alaska law. It is not the LBC’s role to make their own determinations of what the standards

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<sup>215</sup> 11/12/2024 Transcript, at 115.

<sup>216</sup> 11/12/2024 Transcript, at 122.

<sup>217</sup> 11/12/2024 Transcript, at 123.

<sup>218</sup> 3 AAC 110.065 and 3AAC 110.300.

should be; the LBC by law is required to address the standards that are written in statute, with the regulations to guide their process.

At least one commissioner appeared to vote for the borough because he was impressed with the cruise ship economy based in Hoonah.<sup>219</sup> This is not part of the standards or factors to be evaluated. Commissioner Cyrus appeared to believe that Hoonah had an increase in wealth that could be “spread throughout” the outlying areas of the new borough,<sup>220</sup> but this was never mentioned anywhere in the petition, and in fact the petition states that no services will be provided to the new areas of the borough.<sup>221</sup> Commissioner Trotter stated on the record that “it seems to me that it would be in the best interests of the state to cherry-pick a community that’s making entrepreneurially good decisions, doing a good job for their community that is producing revenue.”<sup>222</sup> Then later discussing taxes on cruise ship beverages, stating that “I guess—I guess, maybe I come from an entrepreneurial family, and I like to see entrepreneurship rewarded.”<sup>223</sup> Whether two commissioners like the chosen type of large-scale cruise ship tourism in the City of Hoonah does not matter for determining whether the petition met the standards for Borough formation under Alaska law. In fact, the outlying locations that will become part of the new borough are not low income in need of support to change to a large cruise ship economy. Elfin Cove (the only “community”) has a successful economy of fishing lodges and commercial fishing. There is no indication that Game Creek is in need. The

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<sup>219</sup> 11/12/2024 Transcript, at 113.

<sup>220</sup> 11/12/2024 Transcript at 113.

<sup>221</sup> See Final Petition, at Section 6, 14, Exhibit E at 2.

<sup>222</sup> 11/12/2024 Transcript, at 122.

<sup>223</sup> 11/12/2024 Transcript, at 122.

other locations that will become part of the borough are generally recreational cabins, not full-time residences, with several lodges and commercial fisherman dispersed.

2. The “vote” by one commissioner to approve the new borough was made despite the commissioner agreeing two standards had not been met. The same commissioner prior to voting had thought approval of the borough should be conditioned on a requirement that the borough extend to the three excluded communities.<sup>224</sup> Voting yes while admitting that the proposed borough did not meet the standards was a violation of Alaska Constitution, Alaska statutes, and the regulations cited above.

3. Towards the end of the decisional meeting, after the illegal executive session, Commissioner Harrington made a motion to “put on the record” that the ideal boundaries would include the three communities that were “left out” and that he would encourage the future borough to seek out and attempt to include them in the borough.<sup>225</sup> The appropriate mechanism if the LBC thought the three communities needed to be part of a borough in order to meet the best interests of the State would be to reject the petition as proposed, with guidance that a new petition could be proposed with the additional of outlying communities. Chairperson Wood agreed that the borough look “for ways they can amend their charter, if need be, to deal with some of the key issues” like how to represent the people and how to provide services.”<sup>226</sup> This discussion highlights that the commissioners knew the borough as proposed did not meet the Alaska standards. It also

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<sup>224</sup> 11/12/2024 Transcript, at 130-135.

<sup>225</sup> 11/12/2024 Transcript at 158-159.

<sup>226</sup> 11/12/2024 Transcript, at 161.

highlights the issues to Elfin Cove with the lack of services and representation in the borough assembly.

4. The LBC failed to explain why its determination to grant the petition diverged so significantly from the LBC staff. The final sentence of the staff report reads: “Staff recommends the petition be denied, but that future consideration be paid to the petitioner if a new proposal is brought forward with greater community support and inclusion.”<sup>227</sup> The LBC staff concluded, (as does Gustavus and Elfin Cove), that the petitioner has not proposed a true and inclusive regional government as required by the Alaska statutes and that the proposed government as designed is not in the best interests of the State of Alaska. The staff report recommended that the petition be denied. The LBC did not explain at the decisional meeting of 11/12/2024 or in the written decision why their decision was in complete opposite to the LBC’s staff.

### **CONCLUSION:**

The public is entitled to a fair and open process for the LBC’s evaluation of the Xunaa Borough petition. Substantial procedural errors occurred in the November 12, 2024 decisional meeting, including a violation of the Open Meetings Act that impacted the votes on the standards and the ultimate decision to grant the Xunaa Borough. The decision should be reconsidered in accordance with 3 AAC 110.580(e)(1). The

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<sup>227</sup> Final LBC Staff Report, at 41.

appropriate cure for the Open Meetings Act violation is also a reconsideration of the decision.<sup>228</sup>

The record does not establish that the LBC voted on and made a legal finding that the proposed borough met each requirement necessary to approve the borough. The LBC failed to address the Alaska law necessary for borough formation, and there are material issues of fact in regard to controlling principles of law. For these reasons, the LBC's approval of the petition must be reconsidered in accordance with 3 AAC 110.580(e)(3). When a petition is deficient on only one essential standard, Alaska law provides that the LBC has no option but to deny the petition as presented in accordance with AS 29.06.040(a). The Xunaa petition was deficient in at least one standard, and Gustavus and Elfin Cove respectfully request that the LBC grant reconsideration and deny the petition in accordance with Alaska law.

DATED: January 15<sup>th</sup>, 2025

FOGHORN LAW OFFICE, LLC

By   
Megan J. Costello AK Bar No. 1212141  
Of Attorneys for City of Gustavus and Elfin  
Cove

<sup>228</sup> See AS 44.62.310(f): “. . . A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting.”



IN THE STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

IN RE: PETITION BY THE CITY OF HOONAH )
FOR THE INCORPORATION OF THE XUNAA )
BOROUGH AS A HOME RULE BOROUGH )
AND DISSOLUTION OF THE CITY OF HOONAH )

AFFIDAVIT BY REPRESENTATIVE OF CITY OF GUSTAVUS

STATE OF ALASKA )
)ss.:
FIRST JUDICIAL DISTRICT )

I, Sally McLaughlin, being first duly sworn, depose and state as follows:

1. I am the mayor of the City of Gustavus. I am the City of Gustavus' designated representative for their request to the Local Boundary Commission to reconsider its decision granting the petition to dissolve the City of Hoonah and incorporate a Xunaa Borough.

2. 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 cause unnecessary delay or needless expense in the cost of processing the Petition for Incorporation of the Xunaa Borough.

Dated this 14th day of January 2025.

By: [Signature]
Sally McLaughlin, Mayor
City of Gustavus

SUBSCRIBED AND SWORN before me this 14th day of January 2025

NOTARY PUBLIC
LIESL M. BARKER
STATE OF ALASKA
My Commission Expires with Office

[Signature]
Notary Public State of Alaska
My commission expires: with office



IN THE STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

IN RE: PETITION BY THE CITY OF HOONAH )
FOR THE INCORPORATION OF THE XUNAA )
BOROUGH AS A HOME RULE BOROUGH )
AND DISSOLUTION OF THE CITY OF HOONAH )

AFFIDAVIT BY REPRESENTATIVE OF ELFIN COVE

STATE OF IDAHO )
)ss.:
COUNTY OF Ada )

I, Hayden Meier, being first duly sworn, depose and state as follows:

1. I am the President of the Elfin Cove non-profit corporation. I am the community of Elfin Cove's designated representative for their request to the Local Boundary Commission to reconsider its decision granting the petition to dissolve the City of Hoonah and incorporate a Xunaa Borough.

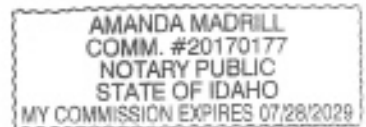
2. To the best of my knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact and is not submitted to harass or cause unnecessary delay or needless expense in the cost of processing the Petition for Incorporation of the Xunaa Borough.

Dated this 15 day of January 2025.

By: [Signature]
Hayden Meier
Community of Elfin Cove

SUBSCRIBED AND SWORN before me this 15 day of January 2025

[Signature]
Notary Public State of Idaho
My commission expires: 7/28/2029





**GENERAL AGREEMENT**  
**Between**  
**DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**  
**GLACIER BAY NATIONAL PARK AND PRESERVE**

And

The City of GUSTAVUS,  
**GUSTAVUS VOLUNTEER FIRE DEPARTMENT**

To

PROVIDE SUPPORT AND EQUIPMENT REQUIRED TO PROTECT  
LIFE AND PROPERTY ON LANDS AND WATERS IN AND AROUND  
GLACIER BAY NATIONAL PARK AND PRESERVE

**Article I. Background and Objectives**

The purpose of this General Agreement (GA) is to provide support and equipment required for structural fire prevention and suppression, emergency medical services, search and rescue incidents, and hazardous material incidents and spills, to protect life and property on lands and waters administered by Glacier Bay National Park and Preserve (GLBA) and within the City of Gustavus.

The statutes found at 42 U.S.C. 1856-1856d and 54 U.S.C. 102711 provide authority for the National Park Service (NPS) to enter into reciprocal agreements with local agencies to provide emergency and cooperative assistance for firefighting, search and rescue (SAR) operations, and emergency medical services (EMS).

It is recognized that GLBA and the Gustavus Volunteer Fire Department (GVFD) each have equipment, abilities and expertise that would benefit the total effort to address local fire, EMS, and SAR incidents. It is further recognized by both parties that there will be incidents when either party will require the emergency assistance, technical abilities, or specialized equipment of the other.

The City of Gustavus Fire Chief has signature authority to enter into this GA with GLBA for mutual aid and assistance for structural fire prevention and suppression, emergency medical services, and search and rescue incidents. The GLBA Superintendent has signature authority to enter into this GA with GVFD for mutual aid and assistance for structural fire prevention and suppression, emergency medical services, and search and rescue incidents.

**Article II. Statements of Work**

**A. Incident on GLBA Administered Lands and Waters**

1. In the event of a significant fire, EMS, SAR or hazardous material incident, the GVFD agrees to:

*Rev. 5-27-2021*

- a. Respond to the incident with available equipment and qualified personnel when requested by GLBA.
  - b. Cooperate with park staff in the immediate response to the incident.
  - c. Recognize that GLBA policies and requirements may necessitate special procedures that may differ from GVFD procedures as established in Title 06.02 (Fire Department Ordinance), of The City of Gustavus Municipal Code. The GVFD will adhere to GLBA/NPS requirements when requested to do so by the Park Superintendent or designated representative as long as such procedures do not conflict with AS 1870.010 and AS 29.60.130.
2. For the purposes of this GA, the following persons will be considered, in descending order, as the Superintendent's designated representative:
- a. GLBA Chief Ranger
  - b. GLBA Supervisory Ranger
  - c. GLBA Incident Commander
3. GLBA agrees to:
- a. Establish a clear command structure utilizing the Incident Command System (ICS) and provide orders and instructions to GVFD personnel.
  - b. All emergencies occurring within the City of Gustavus will be reported to GVFD as soon as possible.

**B. Incident within the City of Gustavus**

1. In the event of a significant fire, EMS or SAR incident, GLBA agrees to:
- a. Respond to the incident with available qualified personnel and equipment at the request of the City of Gustavus.
  - b. Cooperate with GVFD personnel in the incident response.
  - c. Recognize that City of Gustavus policies and requirements may necessitate special procedures that may differ from GLBA procedures. GLBA will adhere to the City's requirements when requested to do so by the Mayor of Gustavus or designated representative, as long as the procedures do not conflict with NPS requirements or policies.
2. For the purposes of this GA, the following persons will be considered, in descending order, as the Mayor's designated representative:
- a. GVFD Fire Chief
  - b. GVFD Incident Commander

*Rev. 5-27-2021*

3. GVFD agrees to:

- a. Establish a clear command structure utilizing ICS and provide orders and instructions to GLBA response personnel.
- b. All emergencies occurring within the City of Gustavus which threatens life or property within GLBA will be reported to the NPS as soon as possible.

C. Operations

1. Personnel and equipment will be activated as follows:

- a. GLBA will request assistance by contacting the GVFD dispatcher by radio, or by phoning 911.
- b. GVFD will request emergency assistance by contacting the GLBA dispatch (Alaska Region Communications Center – ARCC) at: 907-697-2651 or 907-683-2276.

D. General Provisions

1. GLBA and the GVFD mutually agree to the following:

- a. In the execution of this GA, members or agents of the GVFD are not considered employees of GLBA or NPS; members or agents of GLBA or NPS are not considered employees of the City of Gustavus.
- b. GLBA shall not be bound to make any expenditures under this GA, except as may be appropriated by the Congress of the United States.
- c. GLBA and the GVFD waive all claims against each other for compensation for loss, damage, personal injury, or death occurring in consequence of activities pursuant to this GA.
- d. All fire suppression qualified personnel will meet, as a minimum, the requirements found in NPS Directors Order 58/Resource Manual 58 or State of Alaska Firefighter certification requirements.
- e. All EMS qualified personnel will meet State of Alaska and/or Directors Order 51 certification requirements.
- f. All operations will be carried out in accordance with standards and safety protocols established by NFPA and OSHA.
- g. Participate in joint training exercises/drills in areas covered by this GA at least bi-annually.
- h. Annually review effectiveness of this GA.

### **Article III. Term of Agreement**

The term of this GA is five (5) years, commencing upon the date of signature of the final signatory party to the GA.

### **Article IV. Key Officials**

Key official representing GLBA is the Superintendent stationed in Gustavus, Alaska.

Key official representing GVFD is the Mayor located in Gustavus, Alaska.

### **Article V. Property Utilization**

1. GLBA and the GVFD mutually agree to the following:

- a. Both parties agree to loan each other available equipment, supplies and materials in support of incident responses, and personnel training and safety programs.
- b. The loan will be at no cost to the borrowing party except to replace/repair lost or damaged equipment or used supplies and materials.
- c. Property receipts, Form DI-105, will be used to track federal capitalized equipment on loan between the parties. All GLBA and GVFD equipment will be marked as to their respective agency ownership.
- d. GLBA will make excess federal property available to the GVFD, through the State administered Federal Surplus Property Program and contingent upon federal property regulations and policies, where doing so is clearly in the interest of enhancing the GVFD's response capabilities with respect to this GA.
- e. GLBA and the GVFD will share radio frequencies and radio systems in support of mutual aid responses. Radio use procedures for each system will be provided and followed by GLBA and the GVFD.
- f. The GVFD will provide oxygen and air refill services to GLBA for EMS patient care tanks and SCBA fire response tanks.

### **Article VI. Prior Approval**

The parties will jointly review the results of this GA at the end of each calendar year. The GA may be amended at any time by the written mutual consent of the parties. The approved amendment will immediately become part of this GA.

*Rev. 5-27-2021*

**Article VII. Reports**

Each party is responsible for its respective timekeeping and other required records and reports. Standard incident documentation, not relating to potential tort claims or criminal investigations, will be made available to either party.

**Article VIII. Termination**

This GA may be terminated by either party by providing sixty (60) days' notice to the other party.

**Article IX. Required Clauses**

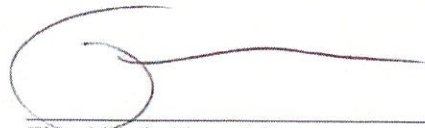
During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise there from, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

The undersigned agree to the terms of this General Agreement.

6-8-21

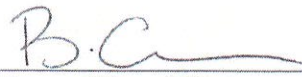
Date



Fire Chief, City of Gustavus

6.7.21

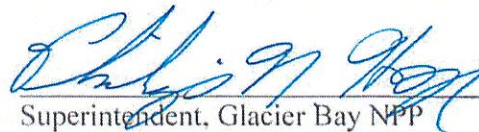
Date



Mayor, City of Gustavus

6-10-21

Date



Superintendent, Glacier Bay NPP

**From:** [Kiernan, Dionna M](#) on behalf of [PILT, DOI](#)  
**To:** [Shelley Owens](#); [samantha.lannet@alaska.gov](mailto:samantha.lannet@alaska.gov)  
**Cc:** [Kathy Leary](#); [Liesl Barker](#)  
**Subject:** Re: [EXTERNAL] RE: PILT questions  
**Date:** Friday, February 2, 2024 8:03:27 AM  
**Attachments:** [PILT County Information Sheet - Hoonah-Angoon Census Area.pdf](#)

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Good morning,

While your email was not directed specifically to the PILT program, we wanted to offer some information that might be helpful. While we cannot provide payment projections based on proposed change, we can provide some program overview information.

Payment in Lieu of Taxes (PILT) payments are made for tax-exempt federal lands administered by the Department of the Interior's bureaus, including the Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, and National Park Service. In addition, PILT payments cover federal lands administered by the U.S. Forest Service, the U.S. Army Corps of Engineers, and the Utah Reclamation Mitigation and Conservation Commission. Payments are calculated based on the number of entitlement acres of federal land within each county or jurisdiction and the population of that county or jurisdiction.

Changes to any of the four key variables; inflation, population, acreage, and certain prior year revenue sharing payments may impact the payment a county government receives. To assist you in understanding how payments are calculated, I have included a PILT information sheet for Hoonah-Angoon Census Area.

One more thing of note. In Alaska, PILT payments for Boroughs are issued directly to the local government. Payments for Census Areas are issued to the State where any further distribution is handled locally outside of the purview of the PILT program.

Additional program information can be found in the FAQs section of the PILT website.

<https://www.doi.gov/pilt/resources/faqs>

Thank you,

PILT Team

Website: <https://doi.gov/pilt>

Email: [DOI\\_PILT@ios.doi.gov](mailto:DOI_PILT@ios.doi.gov)

Phone: 202-341-2066 / 724-249-9022

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**From:** Shelley Owens <[shelley.owens@gustavus-ak.gov](mailto:shelley.owens@gustavus-ak.gov)>

**Sent:** Thursday, February 1, 2024 7:45 PM

**To:** [samantha.lannet@alaska.gov](mailto:samantha.lannet@alaska.gov) <[samantha.lannet@alaska.gov](mailto:samantha.lannet@alaska.gov)>

**Cc:** PILT, DOI <[DOI\\_PILT@ios.doi.gov](mailto:DOI_PILT@ios.doi.gov)>; [Kathy Leary](mailto:kathy.leary@gustavus-ak.gov) <[kathy.leary@gustavus-ak.gov](mailto:kathy.leary@gustavus-ak.gov)>; [Liesl Barker](mailto:liesl.barker@gustavus-ak.gov) <[liesl.barker@gustavus-ak.gov](mailto:liesl.barker@gustavus-ak.gov)>



**Subject:** [EXTERNAL] RE: PILT questions

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hi Sam,

The public comment period for the Hoonah Borough Petition runs out on February 29<sup>th</sup> and we have been unable to get an answer regarding the impact of the proposed borough on the unincorporated borough lands which form the basis of our PILT and timber receipts funding. We have requested current PILT maps from BLM without success and the Local Boundary Commission says the PILT issue is on their radar. The timber receipts form the basis for our road maintenance and the current PILT and Timber receipts are a significant portion of our annual income. We are unable to get information regarding current and proposed acreage.

I hope you can direct me where we can get answers to our questions to assist us in making public comment regarding the impact of the borough as proposed.

Thank you,

Shelley

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**From:** Shelley Owens  
**Sent:** Tuesday, December 19, 2023 12:59 PM  
**To:** samantha.lannet@alaska.gov  
**Cc:** DOI\_PILT@ios.doi.gov  
**Subject:** PILT questions

Hi Sam,

Thank you for returning my call. Gustavus is the gateway community to Glacier Bay National Park and Preserve, located 40 miles west of Juneau. As I mentioned, the community of Hoonah has filed a petition with the Local Boundary Commission to incorporate unorganized borough land as the Xunaa Borough. The unorganized borough property includes a large amount of surface water in Glacier Bay, Icy Strait, Icy Passage, Cross Sound, and the Fairweather fishing grounds in the Gulf of Alaska. As shown in the attached map in orange, the Gustavus City boundary includes Bartlett Cove in Glacier Bay.

We have just begun to review the petition and materials which arrived in the mail yesterday, and have some preliminary questions:

1. Number of acres of entitlement lands. The DCED informational material describing the PILT formula lists factors of population and number of acres of entitlement lands located within

the local government. I didn't find the acreage in our files and wonder if you could provide the acreage calculation for Gustavus.

2. Does Gustavus stand to lose our PILT eligibility for the entitlement lands and formula funding if the Borough petition is approved?
3. Will we lose National Forest Receipts funding as well?
4. Are there other receipts tied to entitlement lands that we might lose?
5. Our combined PILT and Forest receipts for FY23 exceeds \$200,000. Would you know if the financial impact on excluded communities is a factor that is taken into consideration by the Local Boundary Commission?

Thank you very much for your help.

With best regards,

Shelley

*Shelley K. Owens*

*Mayor, City of Gustavus*

*Office: (907) 697-2451*

*P.O. Box 1, Gustavus, AK 99826*

[\*shelley.owens@gustavus-ak.gov\*](mailto:shelley.owens@gustavus-ak.gov)

[\*https://cms.gustavus-ak.gov/\*](https://cms.gustavus-ak.gov/)

*PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email are subject to provisions of the Alaska Statutes and may be made available to the public upon request.*

**In The Matter Of:**  
*DCCED Division of Community and Regional Affairs*  
*LBC Xunaa Borough Decisional Meeting*

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*Transcript of Proceedings*  
*November 12, 2024*

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*Glacier Stenographic Reporters Inc.*  
*P.O. Box 32340*  
*Juneau, Alaska 99803*  
*www.glaciersteno.com*



Original File LBC Xunaa Borough Decisional Meeting 11-12-2024.txt  
Min-U-Script® with Word Index

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 clarification. So you may hear that going back  
2 and forth. That is permitted by the regulation.

3 It could also be requested, either by the  
4 departments being represented today or the  
5 commissioners, to break into executive session.  
6 If that happens, it usually pertains to a matter  
7 of law. And it would be announced at the time.

8 Minutes are being kept. So as a reminder to  
9 us commissioners, specially to me -- including  
10 me, I should say, speak slowly and clearly so a  
11 good record can be kept.

12 This is our discussion time and we need to  
13 identify who is speaking but, in my opinion,  
14 it's okay just to drop the titles. Larry is  
15 speaking. Clay is speaking -- well, in our  
16 case, Clay Trotter or Clay Walker is speaking.  
17 And we'll try and remind ourselves to identify  
18 who is speaking so we can, as they say, keep a  
19 clean record.

20 So after today, within 30 days, a written  
21 decision will be issued. And that particular  
22 decision -- I'm sorry -- written decision will  
23 explain the major considerations of the  
24 decision, whatever it might be. And like a  
25 court, the LBC sitting in a quasi-judicial role,

1 they probably won't go rapidly toward creating  
2 that major perfect borough, if you will, but at  
3 this point I'm kind of leaning toward that  
4 perfect is always the enemy of the good, and  
5 having some borough form is better than nothing.

6 CHAIRPERSON WOOD: Thank you, John.

7 Other thoughts?

8 COMMISSIONER WALKER: Yeah, Chairman, this  
9 is Clay walker. And thank you, Mr. Harrington,  
10 for that perspective, and your considerable  
11 experience and knowledge in this realm. And I  
12 appreciate Chairman wood starting off with the  
13 boundaries. It is, to me, also the crux of this  
14 issue as to whether or not this petition is in  
15 the state's best interests. And specifically,  
16 as was discussed, you know, the exclusion of  
17 those communities and the issues that it creates  
18 in the future and the limitations it puts on  
19 those communities to exert, you know, maximum  
20 local self-government in the future, raises  
21 significant concerns with the petition as  
22 presented.

23 And -- and I really echo Chairman wood's  
24 appreciation of -- of Hoonah's hospitality and  
25 demonstration of capacity, as it's great to see

1 a thriving community in Alaska. And the  
2 proposed boundaries, you know, they just don't  
3 incorporate many new people into the boundary;  
4 they don't extend services to new residents in  
5 the unorganized of any -- of a significant  
6 nature. And -- and at the same time, you know,  
7 the resources that are included in those  
8 potential lands not benefiting those neighboring  
9 excluded communities raises issues for me. And  
10 to anybody -- and to -- looking at this on a  
11 statewide level as to -- in terms of fairness.

12 So I was heartened to hear the cooperation  
13 that's happening currently between communities,  
14 between specifically Hoonah and Gustavus. And I  
15 was heartened to hear, you know, openness to  
16 continuing conversations about a regional  
17 government and about ways that they could work  
18 together. And -- and I do believe that the  
19 petition should allow for an easier way to bring  
20 forward those -- those communities into a  
21 regional government if that's the true  
22 intention. And I -- I don't see that currently  
23 in the petition as presented.

24 CHAIRPERSON WOOD: Thank you, Clay.

25 Let me weigh in again. I agree with the

1 points you've been making, gentlemen. I think  
 2 the real difficulty is finding a way forward.

3 And, John, you've identified one, I mean,  
 4 narrow the boundaries. We took a look at that  
 5 during the comment period. I mean, we  
 6 considered that. We got lots and lots of  
 7 comments. I meant earlier to ask Jed to repeat  
 8 the number of comments. I forgot to do that.  
 9 But, Jed, I believe there were 140-something?  
 10 Is that right?

11 JED SMITH: Yeah, that's approximately  
 12 correct, Mr. Chair.

13 CHAIRPERSON WOOD: Yeah. Thank you.

14 And he's got -- he wrote in part of the  
 15 report how those broke out between communities,  
 16 how many were in a positive. The vast  
 17 overwhelming majority were not positive. And it  
 18 all hovered on this question of boundaries.

19 Now, Clay, as you've pointed out, there was  
 20 rays of hope expressed. You remember me asking  
 21 maybe too many questions at the hearing. But  
 22 one of the questions of both of our Hoonah folks  
 23 and the guests on the line were, you know, "Are  
 24 you open to talk?" And certainly they were in  
 25 Hoonah. And I heard some expressions of



1 out of all of us, you have more tenure on this  
 2 commission.

3 COMMISSIONER HARRINGTON: Clearly my  
 4 experience is locum, so -- with the decision to  
 5 expand the Ketchikan Gateway Borough boundaries  
 6 we had the two little enclaves of Hyder and -- a  
 7 little bay up north. And at that time Wrangell  
 8 had come through with an alternative and -- as  
 9 they wanted to establish the borough. And they  
 10 asked essentially to annex half of the Cleveland  
 11 Peninsula and all of that area north of the  
 12 Ketchikan Gateway Borough model boundaries.

13 And that solved two problems. First the  
 14 Meyers Chuck people were not -- were tied to  
 15 Ketchikan by ownership and transportation but  
 16 were not wanting to be part of the Ketchikan  
 17 Gateway Borough. And Wrangell wanted them and  
 18 everybody agreed that was fine, and that took  
 19 place. However, that Hyder south of the area  
 20 which was an enclave, essentially, stuck between  
 21 Ketchikan Gateway Borough and Canada, and the  
 22 commission at that time directed the borough to  
 23 annex that area within five years. Five years  
 24 came up, and at the end of that five years -- I  
 25 was on the Local Boundary Commission and on this

1 Ketchikan Gateway Borough Assembly -- I asked  
 2 the borough assembly if they were willing to  
 3 start the process. The answer was, "no." I  
 4 asked the Local Boundary Commission, would they  
 5 go against -- start the process independently?  
 6 And they said, "no." Everybody knew there was a  
 7 good reason to do that. Nobody was willing to  
 8 move forward.

9 So you're right. If there's opposition to  
 10 annexation, we -- our hands are really tied  
 11 short of legislative action.

12 CHAIRPERSON WOOD: well, let's do this.  
 13 Let's go back to our checklist, make sure we've  
 14 considered all these various elements that staff  
 15 has kindly reminded us to consider. The bold  
 16 language simply (indiscernible) --

17 Go ahead, John.

18 COMMISSIONER HARRINGTON: This is the crux  
 19 in my mind. If we do not have three votes to go  
 20 forward to say we've met this, I don't think we  
 21 need to carry on much longer of a meeting,  
 22 because if we can't get past that, if they just  
 23 granted all the rest of things that are  
 24 acceptable, we still would not have a borough  
 25 functioning there.

1 CHAIRPERSON WOOD: Thank you, John.

2 COMMISSIONER HARRINGTON: You can go through  
3 the exercise if that's what you prefer, sure.

4 CHAIRPERSON WOOD: No. This was just the  
5 exercise on boundaries. So let's begin there,  
6 shall we? Because we are talking about the  
7 boundaries standard. Why don't we work our way  
8 through that and take up your (indiscernible)  
9 point then. We at least want to cover best  
10 interests of the state.

11 So, "boundaries:" The boundaries of a  
12 proposed borough must conform generally to  
13 natural geography, must be on a regional scale  
14 suitable for borough government and must include  
15 all land and water necessary to provide the full  
16 development and essential municipal services on  
17 efficient cost-effective level.

18 The commission may consider relevant factors  
19 including land use and ownership patterns,  
20 ethnicity and cultures, existing and reasonable  
21 anticipated transportation patterns and  
22 facilities, natural geographical features and  
23 environmental factors and existing and  
24 reasonably anticipated industrial, commercial,  
25 and research the development within the proposed

1 long.

2 So it occurred to me during the break that  
3 what I was talking about when Ely came back to  
4 us was the situation involving share revenues,  
5 ensuring of -- under the forest taxes, the PILT  
6 money, and whether those are issues that these  
7 communities can work on. I think they can. I  
8 was reading that you might be able to, in your  
9 charter or otherwise, in a borough formation,  
10 figure out a way for the borough to protect --  
11 the new borough to protect the revenue sources.

12 I did pick up on Mr. Tillinghast's arguments  
13 that, wait a minute, past commissions haven't  
14 relied on those as a steady source of revenue  
15 that otherwise complicate, if not prevent,  
16 borough incorporation. But getting back to the  
17 idea of a negotiated resolution of that issue, I  
18 think there is ways to do that. I did some  
19 additional reading that there's ways of dealing  
20 with the issue of how do you provide proper and  
21 actual and fair representation on the -- on the  
22 borough assembly, the proposed assembly.  
23 There's ways to deal with that with voter  
24 districts. So I think all of these issues can  
25 be worked out if people are motivated to do so.

1 But it's that motivation that I know  
 2 (indiscernible) Hoonah's approach, but  
 3 nonetheless I read in these comments that there  
 4 are some folks, and our staff's report alludes  
 5 to them, who leave the door open to further  
 6 conversations.

7 Now, I asked this question repeatedly during  
 8 our hearing on September 5 regarding the  
 9 availability and willingness to people to talk.  
 10 And I do know that Hoonah feels like they tried,  
 11 and further effort is unwarranted and won't be  
 12 successful. Mr. Tillinghast says it is a pipe  
 13 dream, but I would hope that there would be hope  
 14 along those lines.

15 So without further ado, let's get back to  
 16 boundaries, the discussion on boundaries. I had  
 17 opened the floor to a question. And this was  
 18 whether the proposed proposal promotes a minimum  
 19 number of local government units as determined  
 20 under 3 AAC 110.982, and whether the proposed  
 21 borough boundaries are the optimum boundaries  
 22 for that region in accordance with the Alaska  
 23 Constitution. would anyone like to comment on  
 24 that, optimum boundary?

25 COMMISSIONER TROTTER: well, it appears to

1 me that they're losing one government unit and  
 2 they're gaining a government unit. So the net  
 3 effect on government units is nil. So you get  
 4 rid of the city and you start a borough, so  
 5 looks like, to me, that it's a, you know, it's  
 6 not -- it's not affected one way or the other.

7 CHAIRPERSON WOOD: Yeah. Thank you, Clay.  
 8 That was also a comment in our (indiscernible)  
 9 this is Larry again. Are there other comments?

10 COMMISSIONER WALKER: Thank you, Chairman.  
 11 This is Clay walker. And, yeah, I would -- I  
 12 would find that the answer would be "no" to  
 13 whether the proposed borough boundaries are the  
 14 optimum boundaries for that region in accordance  
 15 with the Alaska Constitution.

16 CHAIRPERSON WOOD: I tend to agree. I  
 17 wanted to read -- if I can find it -- in  
 18 Mr. Tillinghast's opening statement, he said  
 19 this in a rather humorous way, but in a rather  
 20 truthful way, actually. Page 5 -- page 5 on my  
 21 copy: Look, would it be better if we were able  
 22 to add Gustavus, Pelican, and Tenakee Springs to  
 23 the borough? Of course it would. And it would  
 24 also be better if I were 25 years old again, but  
 25 some things just aren't possible. And your

1 was some talk about combining Haines and Skagway  
2 as well, but that was one of those early -- what  
3 year was it? -- early incorporations of a city  
4 into a borough.

5 So I, again, go back to the fact -- and I  
6 believe it is a fact -- that all these cases  
7 need to be weighed on their particular facts.  
8 In this particular case, we have three  
9 communities there, and seem to be -- and are  
10 equally part of this region. If you look at  
11 Glacier Bay -- and I believe it is a region --  
12 that is different than what you see had happened  
13 in Skagway, which I am more familiar with than  
14 some of these others.

15 However, I think if we go through all of  
16 those cases one by one, we will find that there  
17 were necessarily, as the final report points  
18 out, factual differences. And here I find that  
19 we've got three communities who have a stake in  
20 the region who maybe and aren't, apparently,  
21 motivated as strongly as Hoonah. But I think we  
22 need to be concerned about, as you point out,  
23 John, that this is really the first formal  
24 effort in the sense of coming before this  
25 commission. It needn't be the last, but I also

1 land and water.

2 CHAIRPERSON WOOD: Okay. So I guess you're  
3 of that opinion, so we will mark you down as  
4 one.

5 And I think -- although, please speak up,  
6 gentlemen -- I've heard, I believe, Clay and  
7 John -- Clay Walker and John and myself would be  
8 finding that the borough standard boundaries  
9 have not been met.

10 Ely, are you of -- which mind are you?

11 COMMISSIONER CYRUS: I believe they have.

12 CHAIRPERSON WOOD: They have. Okay.

13 Well, let's go on with these other  
14 standards.

15 Back to the beginning. That first one is  
16 "community of interests." So if you go to --  
17 looking for the page on the final report. Okay.  
18 Look on page 17 of the final report, not only  
19 restates the standard in -- stated in the  
20 regulations, but it has an entire discussion.  
21 And here's the standard: On a regional scale --  
22 and this is repeated here on this checklist --  
23 on a regional scale suitable for borough  
24 government, social, cultural and economic  
25 characteristics and activities of the people in



1 a proposed borough must be interrelated and  
2 integrated in accordance with -- cites the  
3 statute, cites the constitution.

4 Now under that, and if you have got your  
5 book of regulations in front of you, this --  
6 this questionnaire just paraphrases what that  
7 states in the regulation. So let me read the  
8 paraphrase from the checklist you have in front  
9 of you: The commission may consider relevant  
10 factors including the compatibility of urban and  
11 rural areas within the proposed borough, the  
12 compatibility of economic and lifestyles and  
13 industrial or commercial activities; existence  
14 throughout the proposed borough of customary and  
15 supple -- transportation and communication  
16 patterns; the extent and a combination of spoke  
17 language differences -- must be "spoken" --  
18 spoken language differences throughout the  
19 proposed borough; the existence throughout the  
20 proposed borough of organized volunteer services  
21 such as fire departments or other emergency  
22 services; the communications media and land,  
23 water, and transportation facilities throughout.  
24 The proposed borough must allow for the level of  
25 communications in exchange necessary to develop

1 an integrated borough government. The  
 2 commission may consider transportation schedules  
 3 and costs, geographical and climatic  
 4 impediments, telephone and teleconferencing  
 5 facilities and electronic media used by the  
 6 public.

7 And then, finally, in determining whether  
 8 communication and exchange patterns are  
 9 sufficient a commission may consider whether all  
 10 communities within a proposed borough are  
 11 connected to the proposed borough seat by public  
 12 roadway, regular scheduled airline flights on at  
 13 least a weekly basis, regular ferry service on  
 14 at least a weekly basis, a charter flight  
 15 service based one a proposed borough, other  
 16 customary means of travel, including boats and  
 17 snowmachines or sufficient electronic media  
 18 communications and communication and exchange  
 19 pattern will adequately facilitate  
 20 interrelationships and integration of the people  
 21 in a proposed borough.

22 So if you go from there, from page 17, to  
 23 page 19, here's the conclusion of staff: As  
 24 mentioned in the previous section, there is not  
 25 presently a scheduled air taxi or marine highway

1 system service between the City of Hoonah and  
 2 the communities of Elfin Cove or Northern  
 3 Admiralty Island. The City and Borough of  
 4 Juneau submitted evidence that the residents of  
 5 Northern Admiralty Island, Funter Bay, Horse  
 6 Island, and Colt Island frequently travel to  
 7 Juneau for supplies or services. Personal  
 8 watercraft are used throughout the region for  
 9 personal and commercial use.

10 LBC staff determined the petition mostly  
 11 meets the community of interest standard,  
 12 though, because the population increase is so  
 13 negligible. The point is rendered moot.  
 14 Furthermore the Funter Bay community is in  
 15 closer proximity to Juneau and has more direct  
 16 contact with Juneau and does not truly  
 17 constitute a community by the definition of --  
 18 cites the regulation.

19 So in between the opening lines of that  
 20 discussion on page 17 through the conclusion on  
 21 page 19, let me just open the floor, does anyone  
 22 want to weigh in on what's been written here?  
 23 In the report and your feelings?

24 COMMISSIONER HARRINGTON: I would.

25 CHAIRPERSON WOOD: Go ahead, John.

1           COMMISSIONER HARRINGTON: A quick analysis,  
 2 here. Community interests bit, it is unified  
 3 rural area; everything tends to be rural. They  
 4 seem to have compatible lifestyles, most of --  
 5 the transportation is customary, personal boats,  
 6 et cetera. The initial staff report indicated  
 7 that it mostly meets the standards, and as such  
 8 it is similar in most rural areas that there are  
 9 going to be some areas of -- sorry about that.  
 10 (Indiscernible) in the organized borough. So I  
 11 would say the community interests pretty well  
 12 establishes that it passes this. The one caveat  
 13 regarding the close proximity of those -- the  
 14 area which had ties with Juneau, transportation  
 15 with Juneau, they are personally wanting to be  
 16 part of the Hoonah, and as such they are also  
 17 rural, not urban as is the Juneau claim. So I  
 18 would -- I would expect that they would meet  
 19 that community standard of interest as well.

20           CHAIRPERSON WOOD: Thank you, John.  
 21 Other comments?

22           COMMISSIONER TROTTER: I guess I agree with  
 23 John.

24           CHAIRPERSON WOOD: Elfin Cove weighed in  
 25 heavily on this one in saying that there was

1 insignificant ties with Hoonah and inability to  
 2 actually get there to interact with borough  
 3 government. It was either on this standard or  
 4 another -- our staff reported that the charter  
 5 kind of presumes that the members of the  
 6 proposed assembly would necessarily be on site.  
 7 In other words, would be present. They did have  
 8 a teleconferencing provision -- I guess I'm  
 9 talking about the communication section.

10 Let me rephrase that conversation to say  
 11 that -- so this would be within the proposed  
 12 borough. I guess I would say I -- I agree that  
 13 I think the community of interest box would be  
 14 checked "yes."

15 Clay or Ely, do you care to weigh in on this  
 16 one?

17 COMMISSIONER WALKER: Yeah, thanks,  
 18 Chairman.

19 The borough as proposed, again doesn't --  
 20 you know, doesn't bring in the residents of Game  
 21 Creek and Elfin Cove and Funter Bay and that  
 22 area. And as such, it does seem that there's a  
 23 compatibility. Although I do share concerns of  
 24 representation of folks from, specifically,  
 25 Elfin Cove to participate in their local

1 government under this proposal which has been  
 2 brought forward. And that's my main concern in  
 3 terms of meeting this community of interest  
 4 standard.

5 And the other is that the statute begins  
 6 with "on a regional scale suitable for borough  
 7 government" and, you know, that question as to  
 8 whether this proposal really does bring regional  
 9 government to the area.

10 CHAIRPERSON WOOD: Thank you, Clay.

11 I guess I was right. This does have to do  
 12 with the communications issue. I mean, that's  
 13 the difficulty in rural Alaska, be it where we  
 14 live up in Southcentral or whether it's in  
 15 Southeast Alaska, the proof that I am -- I  
 16 haven't got it -- I'm sure there are Elfin Cove  
 17 folks listening in, we do have that means.

18 Clay, your concern about representation,  
 19 we've seen that comment in the Elfin Cove  
 20 remarks. So, Clay, may I ask which way you're  
 21 going to go on community of interest?

22 COMMISSIONER WALKER: Great question. I  
 23 had, in my prior analysis, I had circled "no"  
 24 for the regional scale. And the fact that this  
 25 proposal, you know, brings in so few additional

1 residents from -- from the proposed dissolution  
2 of the City of Hoonah, that I didn't feel that  
3 it truly met the regional scale.

4 CHAIRPERSON WOOD: I can have a look at that  
5 regulation. And it does specifically say "on a  
6 regional scale suitable for borough government."  
7 "Must be interrelated" -- so.

8 Our staff concluded that "it would be a moot  
9 point because the population increase is so  
10 negligible. Furthermore, the Funter Bay  
11 community is closer proximity to Juneau and has  
12 more direct contact with Juneau, it does not  
13 truly constitute a community by the  
14 definition" -- names the regulation.

15 well, I guess I would have to share Clay's  
16 concern about regional; is it on a regional  
17 scale? And, again, my concern lies in not  
18 having these other communities a part of that  
19 region.

20 So, Clay, I'm going to mark us as "no" on  
21 that one.

22 Ely?

23 COMMISSIONER TROTTER: Larry, as you mark  
24 that I just want to say I just disagree again.  
25 This community's been there since before the

1 establishment of the state of Alaska. And they  
2 have been communicating quite effectively. And  
3 they have built an infrastructure of capital  
4 investment tourism, and it takes a lot of  
5 communication and interrelationships to do that.  
6 And, you know, I just can't -- I just can't say  
7 they're not a regional community that's existed  
8 for maybe even thousands of years. So,  
9 anyway -- I mean, they've been using boats there  
10 for a long time to get around and communicate  
11 and get people together. And I saw an awful lot  
12 of boats in Hoonah when I was there. And they  
13 have a highway, it's called water. And I  
14 mean -- you know, it's just -- I couldn't agree  
15 with that.

16 CHAIRPERSON WOOD: well, I don't disagree  
17 that they are -- have been very effective  
18 historically in staying in touch with others,  
19 but take a look at the map, Clayton, we're not  
20 just talking about the area around Hoonah. This  
21 is, I think they had pointed out maybe, the  
22 third borough geographically in the state. So  
23 the community of interest --

24 COMMISSIONER TROTTER: -- (indiscernible)  
25 Anchorage Borough, it's a pretty big one. The



1 size of a borough is just, kind of, irrelevant.  
2 If you're talking about a community, though,  
3 they're a community, guys. I can't -- I can't  
4 say they're not a community; they're not a  
5 sufficient community, I just can't say that  
6 community.

7 CHAIRPERSON WOOD: Okay.

8 Ely, did you want to weigh in on this?

9 COMMISSIONER CYRUS: No. I also agree with  
10 that. I mean, the majority of the land selected  
11 is of historical ancestral usage, and it is a  
12 bit challenging geographically compared to other  
13 boroughs. I don't live anywhere near the coast,  
14 and 100 miles away or so, but I don't know what  
15 it's like in Southeast Alaska, and primarily  
16 using boats to get around. A lot of the rural  
17 boroughs outside of the cities, they're not  
18 interconnected either in traditional ways, it's  
19 either -- you know, most have airports, some  
20 don't. But I don't believe communications are a  
21 barrier and I don't believe the geographical  
22 selections in the petition are an issue either.

23 CHAIRPERSON WOOD: Okay. We'll mark you  
24 down as "yes."

25 So we have three that are feeling that that

1 standard has been met and two that are  
2 concerned. I will keep mulling that over. I'm  
3 sure Clay is, too.

4 Let's move on, though. (Indiscernible)  
5 Population -- turn to page 2 of the checklist,  
6 and in the report that would have begun on page  
7 19. Article X, section 3 of the Alaska  
8 Constitution calls for each borough to, quote,  
9 embrace an area and population with common  
10 interests to the maximum degree possible. And  
11 then on our checklist it paraphrases some of  
12 this other language where it says the population  
13 of a proposed borough must be sufficiently large  
14 and stable to support the proposed borough  
15 government. In this regard the commission may  
16 consider relevant factors including census  
17 enumerations, durations of residency, historical  
18 population patterns, seasonal population  
19 changes, age distributions, contemporary and  
20 historical public schools enrollment data, all  
21 nonconfidential data from the Department of  
22 Revenue regarding applications for permanent  
23 fund dividends.

24 In determining whether the population of a  
25 proposed borough is sufficiently large and

1 the proposed borough, evaluations of taxable  
 2 property within the borough, land use within the  
 3 borough, existing and reasonably anticipated  
 4 industrial, commercial, and resource development  
 5 and personal income of residents.

6 The commission may also consider the need  
 7 for and availability of employable skilled and  
 8 unskilled persons to serve the proposed borough  
 9 government, and a reasonably predictable level  
 10 of commitment and interest of the population in  
 11 sustaining a borough government.

12 So, gentlemen, the comments we received  
 13 from -- as staff points out -- Elfin Cove, were  
 14 not positive. Staff is concerned that lack of  
 15 that interest anticipates that providing  
 16 services to that community, at least, will be  
 17 difficult. In fact, Hoonah has said that even  
 18 though seasonal sales tax will be collected,  
 19 there won't be services anticipated there. But  
 20 they make mention of the mandatory ones;  
 21 education, taxation, and planning.

22 Are there comments on this standard?

23 COMMISSIONER WALKER: Mr. Chairman, this is  
 24 Clay walker. Again, I kind of feel like my  
 25 answer is a "yes" with reservations in that the

1 proposed borough does include the human and  
2 financial resources necessary to provide for the  
3 development of essential municipal services on  
4 an efficient, cost-effective level, but there  
5 are some concerns.

6 And I'm not sure if this is the place to  
7 raise it or in the best interests of the state  
8 section, but the commitment to planning and --  
9 and the stated concept of relying on DNR as the  
10 plotting authority going forward when, you know,  
11 a -- an effective regional borough government  
12 would take on planning and platting powers.  
13 And -- and apply those to the entirety of the  
14 borough and would, you know, seek to engage  
15 residents of those other communities in the  
16 planning processes for land planning. So that  
17 was one concern I had in terms of, you know,  
18 carrying out those duties.

19 But overall I think it's mainly a "yes"  
20 here, that they have the human and financial  
21 resources to carry out the borough as proposed.

22 CHAIRPERSON WOOD: Thank you, Clay.

23 I was reading somewhere in the submittal by  
24 the petitioner that, if requested to do so by  
25 the commission, it would rephrase how they're

1 the service for Elfin Cove? That's been a  
2 concern that they have, and Elfin Cove  
3 expressed. And that reminds me to mention  
4 something rather odd. And I don't know why the  
5 regulations have been written like this;  
6 however, hats off to who -- all the prior  
7 commissioners and staff who wrote them. They  
8 are, on a whole, quite well done.

9 But I just, per chance, tripped on 3 AAC  
10 110.273. Talks about legislative review method  
11 for detachments from boroughs. So  
12 interestingly: An area that meets the  
13 detachment standards specified in -- names the  
14 regulations -- may detach from a borough by the  
15 legislative review process if the commission  
16 also determines that any one of the following  
17 circumstances exists.

18 In one of those -- oh, two of those say  
19 this: Item 2, it is impossible or impractical  
20 for the borough to extend facilities or services  
21 to the area; 3, residents or property owners  
22 within the area have not received, and do not  
23 reasonably expect to receive directly or  
24 indirectly the benefit of borough government  
25 without significant additional tax

1 contributions.

2 So that's kind of expressed in a negative  
 3 way on the detachment end. I don't know why  
 4 that verbiage doesn't appear on the  
 5 incorporation end but I didn't find it anywhere.  
 6 So in other words, there's no real finding or  
 7 consideration of whether the borough is  
 8 extending the facilities it proposes to do so on  
 9 a practical level to the entire area, or whether  
 10 they are anticipating to extend services on a  
 11 reasonable schedule to those that are in the  
 12 area.

13 So I guess I want to add I'm kind of with  
 14 Clay on a lot of these, is that I have concerns.  
 15 I kind of see it, but then if I were in Elfin  
 16 Cove I would probably be concerned, what's  
 17 (indiscernible) there that I can anticipate.

18 Anyone want to weigh in on resources?

19 John?

20 COMMISSIONER HARRINGTON: Yes, sir.

21 I had the same two concerns regarding  
 22 planning and Elfin Cove. I assume we will hear  
 23 about planning before too long. But Elfin Cove,  
 24 during the presentations at the hearing, after  
 25 one of them I pulled Gene Hickey aside and

1 talked about the concerns coming out of there  
2 and a tax being collected from them. And, as I  
3 understood it, normally when you collect a tax  
4 from an area, it is to be spent in that area.  
5 And as such, what we ought to be looking at or  
6 asking about is is Elfin Cove going to become a  
7 service area within that borough? And as such,  
8 will the service area, board -- whichever they  
9 will have -- have some control of how the  
10 revenues raised in that area can be spent in  
11 that area?

12 Just throwing that out. I think it's  
13 something we need to be taking a look at and  
14 maybe discussing later.

15 CHAIRPERSON WOOD: Yeah. Well, this might  
16 be an appropriate time to talk about it, John.  
17 I think that it's a legitimate concern that  
18 folks have a reasonable anticipation of what the  
19 borough government can bring to them, at least  
20 in time. I realize that, for Hoonah's point of  
21 view is, look, we're trying to minimize the  
22 impact of government on folks that would just as  
23 soon not deal with another level of government.  
24 But by the same token, it's kind of like the  
25 detachment criteria. Apparently -- not just

1 resources needed. So I am going to vote "yes"  
2 too.

3 So let's move on to "boundaries." Before we  
4 move on to boundaries, Ely, you made a comment a  
5 few minutes ago. And I think what you said was  
6 under boundaries -- or at least you were  
7 concerned about the boundaries that have been  
8 proposed, not including these three communities;  
9 is that correct? Should I mark you as concerned  
10 about under the boundaries? We've got Clayton  
11 indicated that he would vote -- that he felt  
12 that, yes, it had been -- boundaries had been  
13 established which were appropriate. There are  
14 three of us said that we were concerned and  
15 would vote "no" -- at least -- yeah, that felt  
16 that standard had not been satisfied.

17 Now, you had said, I think, in a comment  
18 here a minute ago that you felt like these other  
19 communities ought to have been included. Should  
20 I mark you also as a "no" on boundaries?

21 COMMISSIONER CYRUS: I believe it would be a  
22 "yes," but I do share the concern about the  
23 boundaries and I do recognize that there's  
24 political implications from the borough, and  
25 including those communities if that -- I believe



1 that was part of the concern in the final  
2 report.

3 CHAIRPERSON WOOD: Okay. So I will just  
4 leave you as a "yes" on boundaries. And then we  
5 have myself, Clay, and John feeling like  
6 boundaries had not been satisfied.

7 Okay. Going on to best "interests of the  
8 state." You'll find that on page 4.

9 UNIDENTIFIED SPEAKER: Mr. Chair, can I  
10 suggest a five-minute break?

11 CHAIRPERSON WOOD: Yes. So let's see, it's  
12 1:00. Let's meet -- I should say let's go back  
13 on the record at 1:15.

14 (Off record.)

15 CHAIRPERSON WOOD: It is 1:15. Are we ready  
16 to go back on the record? All commissioners  
17 present?

18 I see Clayton, and Clay, and John.

19 Ely, are you amongst us?

20 COMMISSIONER CYRUS: Yeah, I am. Thank you.

21 CHAIRPERSON WOOD: Okay. Thanks.

22 Back on the record. I forgot to ask Grace  
23 and Jed, are you ready for us to go back on the  
24 record?

25 JED SMITH: We are.

1 commission will consider, number one, for  
 2 borough incorporation, whether the proposed  
 3 proposal would extend local government on a  
 4 regional scale to a significant area and  
 5 population of the unorganized borough; and --  
 6 then he lists Number 14 -- whether the petition  
 7 proposes incorporation of a home rule  
 8 municipality.

9 "The petitioner proposes" -- the final  
 10 report states -- "to extend local government to  
 11 a, quote, significant area and population of the  
 12 organized borough, end of quote. while other  
 13 proposal includes a significant geographic area,  
 14 a significant population that could benefit from  
 15 borough incorporation has been deliberately  
 16 excluded." The reasons for the exclusion are  
 17 somewhat unsatisfactorily explained in the  
 18 petitioner's brief, Exhibit E, starting at page  
 19 25."

20 "Hoonah's communication with the three  
 21 neighboring municipalities are documented with  
 22 minimal context of the dialogue with those  
 23 communities. Unlike a municipal annexation  
 24 petition, there is no regulatory requirement to  
 25 hold a public hearing prior to an incorporation

1 dependence on the Alaska Marine Highway System.  
 2 Since the petition does not quote, maximize an  
 3 area and population with common interests, end  
 4 of quote, LBC staff concludes that the petition  
 5 does not meet the standard for a minimum number  
 6 of local and government units."

7 So, gentlemen, based on my previous  
 8 comments, I am going to say that I don't believe  
 9 that standard's been met, from my point of view.  
 10 How about yours?

11 COMMISSIONER HARRINGTON: I might as well  
 12 speak up. Harrington here.

13 First of all, the state is constitutionally  
 14 obligated to divide this area into organized and  
 15 unorganized boroughs. They have failed  
 16 miserably in that area. The unorganized borough  
 17 is not a borough; it's a conglomeration of all  
 18 the nonorganized. And in addition to that, the  
 19 obstacles that have been put in the way of  
 20 borough formation is not in the state's best  
 21 interests, even though there's ones that did it.  
 22 I am just going to put that on the record, and  
 23 say we need to have the state do something if  
 24 they can't let us do it.

25 I think, essentially, given this petition,

1           it is not perfect. It is a step in the right  
2           direction, but unfortunately with the  
3           communities that were left out, it leaves lots  
4           to be desired. I wish there was a step process  
5           to allow it, but I'm not going to fight you guys  
6           if you say "no." But I think this is something  
7           we need to take head-on with the State of  
8           Alaska. I will stop there.

9           CHAIRPERSON WOOD: John, if I can quickly  
10          jump back in, say I agree with you 100 percent.  
11          The governor asked me to step on board this  
12          commission five years ago, I will be honest,  
13          even though in my legal practice I had covered a  
14          lot of ground, I hadn't really done much with  
15          the Local Boundary Commission, nor did I know  
16          there was this huge issue lying out there of  
17          borough formation.

18          And then, as I mentioned during last  
19          session's legislative consideration of a couple  
20          of bills that would even restrict -- put more  
21          restriction on borough formation, 65 years of  
22          history of this controversial issue. And I read  
23          part of that this morning that had to do with  
24          this one study done in '03. But getting --  
25          digging out all these various -- what can I say?

1 in boroughs that were not voluntarily formed.

2 I forgot to mention that if you go into that  
3 '03 report that I alluded to, there's some  
4 interest history about what Clem Tillion said  
5 after the 1963 Mandatory Borough Act. He was  
6 expecting and anticipated that the rest of the  
7 state would also be considered for incorporation  
8 as boroughs, but that never happened. And as  
9 Hoonah has quite wisely set out after this  
10 feasibility study in, I think, '07 there was a  
11 move afoot to implement the Glacier Bay Region  
12 as a borough, but apparently that didn't get out  
13 of committee. I don't know what the result was.

14 But, again, I say with some sadness, this is  
15 not being done and we would certainly want to  
16 talk about what we can do to raise this issue  
17 again in our annual report. And that meeting is  
18 coming up, probably, in December.

19 So, other commissioners want to weigh in?

20 COMMISSIONER WALKER: Thanks, Chairman Wood,  
21 for that.

22 As I considered the best interests of the  
23 state, you know, you look for increased  
24 efficiencies and, yeah, transference of  
25 responsibility, and, yeah, even funding away

1 from the state, towards -- towards local  
2 governments. And when they form and take on new  
3 powers and exercise new powers -- we mentioned,  
4 you know, planning and platting. Education is  
5 mentioned in the final report, but, you know, we  
6 know that this -- the model Glacier Bay area  
7 constitutes basically currently three different  
8 school districts and, you know, consolidation of  
9 school districts. We do have 59 of them,  
10 including one of them -- I think the smallest in  
11 the state is the City of Pelican School  
12 District. There are inefficiencies in such a  
13 system. And best interests of the state is to  
14 create greater economies of scale and greater  
15 efficiencies.

16 And this proposal, while commendable in so  
17 many ways, doesn't hit that target. It doesn't  
18 create any new benefits to the state, greater  
19 efficiencies on some of bigger cost drivers.  
20 But ultimately I'd agree with the final report's  
21 conclusion that since the petition does not  
22 maximize an area in population with common  
23 interests, the staff concludes that the petition  
24 does not meet the standard for the minimum local  
25 number of government units. And that's --

1 that's a big one. So that's where, you know, I  
2 agree with our -- the report on that, on that  
3 finding.

4 CHAIRPERSON WOOD: Thank you, Clay.  
5 Clayton or Ely?

6 Clayton, are you muted, by chance?

7 COMMISSIONER TROTTER: Yeah, I was muted.  
8 And I was going to let Ely go ahead.

9 CHAIRPERSON WOOD: Thank you.

10 Ely, do you care to comment on whether the  
11 best interests of the state standard is met?

12 COMMISSIONER CYRUS: Again, it's hard to  
13 quantify what -- you know, what the role of the  
14 voters in that potential borough, the services  
15 they may allocate funds to, what services they  
16 may provide that -- that would negate the  
17 state's need to provide those services, is  
18 really hard to say, from my point of view. I  
19 don't know if I have a "yes" or "no" on it at  
20 this point.

21 CHAIRPERSON WOOD: Okay. That's fine.  
22 Let's see, Clayton?

23 COMMISSIONER TROTTER: Well, I've been  
24 pondering this whole process a great deal. I  
25 see a community in Hoonah that seems to be --

1 and, frankly, it has been recognized as an  
2 award-winning community that has developed these  
3 resources in an excellent and very, very, I  
4 think, progressive way. And -- and rather than  
5 us encourage that and the increase -- basically,  
6 looking at it as a business person -- the  
7 increase in wealth that has come to that  
8 community and could be spread throughout a  
9 regional area because of the -- I guess, the  
10 diligence and the wisdom that's being exercised  
11 in that community, and other communities --  
12 well, I had a friend who is a business law  
13 professor once and he talked about crabs in a  
14 barrel. And that you put a bunch of crabs in a  
15 barrel and one of the crabs starts to climb out  
16 of the barrel, and sees progress and  
17 development, and the other crabs climb up the  
18 back of that crab and pull him back down into  
19 the barrel.

20 And that's what's going on here, is Hoonah  
21 has done an exemplary job of resource management  
22 and getting community behind them. And now they  
23 want to extend that. And I'm not saying it's  
24 us, I think it is a structural problem with the  
25 whole idea of forming new communities or forming



1 new boroughs, but they just about got out of the  
 2 barrel and they're being pulled back down by the  
 3 very people that asked to join them, who ignored  
 4 them, said, no, we don't want to join you, but  
 5 now we don't want you advancing. That's not in  
 6 the best interests of the state; it's simply  
 7 not.

8 Now maybe my perspective is too  
 9 business-oriented, you know, I teach business  
 10 law. I am a -- I'm a guy that thinks  
 11 entrepreneurialism and financial development by  
 12 a community is a good thing, very good thing.  
 13 But it seems to me that the state's interest is  
 14 being exercised to squash that. And, you know,  
 15 I mean I'm not saying that our perceptions are  
 16 not accurate, but we five guys are going to  
 17 decide what's going to happen to that entire  
 18 region. That's what voting's for, guys. That's  
 19 why the public should be allowed to vote, so  
 20 that's why I would be in favor of granting the  
 21 petition. Let the people decide. Let them  
 22 vote. That's what this is. It's not -- it's  
 23 not the legislature deciding for them, it's not  
 24 the five of us deciding for them, it's the  
 25 people themselves.

1           Now, again, I'm saying that we have some  
2           difficulties with the structure. I'm not  
3           talking about us. It's not just -- it's --  
4           obviously we're dealing with the situation we've  
5           been presented with. But somehow --

6           well, let me just say that there are some  
7           states that the first thing they did was form  
8           200-some-odd counties when they first formed.  
9           And when we developed, you know, across the  
10          United States, what we did is we built a  
11          railroad and we gave a section here with a  
12          township, and a section here with a township,  
13          and then the next -- the next one went the other  
14          way, the other railroad. So we created sections  
15          of land with townships in them, but nobody was  
16          living there. But they had the structure, if  
17          they wanted to live there, that they could go  
18          out and do so.

19          Because one of the problems, guys, is I'm a  
20          professor, I get -- I get into all kind of  
21          ideas, but somehow we need to develop a system  
22          in Alaska that -- that will make and create or  
23          give the people a way to create a community if  
24          they desire, and then support that community.

25          It just -- anyway, I disagree with much in

1 the assessment of the report to the committee  
 2 and I don't know what I am going to do about  
 3 that. But I think to prospectively imagine  
 4 what's going to happen and what is in the best  
 5 interests of the state, it's a crystal ball  
 6 gazing that I can -- have a hard time engaging  
 7 in.

8 So anyway, I said my piece. Thank you for  
 9 listening.

10 CHAIRPERSON WOOD: Thank you, Clayton.

11 If you have a copy of the map of the  
 12 proposed borough in front of you, Clayton, I  
 13 would ask you to look at it.

14 COMMISSIONER TROTTER: I did have it. It's  
 15 here.

16 CHAIRPERSON WOOD: Because here's the rub.  
 17 You mentioned people should be able to vote.

18 COMMISSIONER TROTTER: Yes, I have a map  
 19 here of the Glacier Bay Model Borough  
 20 Boundaries, is that the one?

21 CHAIRPERSON WOOD: Yeah. Well, no. I was  
 22 talking about the borough map that's --  
 23 (indiscernible) by Hoonah. It would be part of  
 24 their package or their petition. Let me  
 25 describe it if you don't have it in front of

1           you.

2           COMMISSIONER TROTTER: well --

3           CHAIRPERSON WOOD: Bring it up.

4           COMMISSIONER TROTTER: Yeah, I said Proposed  
5 Xunaa Borough Boundary. I see that.

6           CHAIRPERSON WOOD: Got it?

7           COMMISSIONER TROTTER: Yeah, I've got it.

8           CHAIRPERSON WOOD: Lot of offshore water  
9 there, but it includes, if you can make it out,  
10 all of this area of Glacier Bay.

11          COMMISSIONER TROTTER: Yes.

12          CHAIRPERSON WOOD: Over there to Funter Bay,  
13 Mansfield Peninsula, Horse and Colt Islands.  
14 It's a big swath. I think I remember it would  
15 become the third largest geographic area of a  
16 borough in our state.

17          Now, you mentioned voting. well, the people  
18 that would vote on this would -- would likely  
19 vote for it, because these -- these folks are  
20 represented by the petitioner, and I assume that  
21 they've got the support of their communities;  
22 some number over 900 people. I've got that  
23 number here somewhere. The ones that are --  
24 (indiscernible - simultaneous speech).

25          COMMISSIONER TROTTER: I am not saying in

1 this instance --

2 CHAIRPERSON WOOD: -- that voting is --

3 COMMISSIONER TROTTER: I'm not saying in  
4 this instance. When I'm talking about letting  
5 the people vote, there should be a way in  
6 this -- if you're going to have a vast area like  
7 this included in a municipal decision, then  
8 everybody in that area should be able to vote.  
9 I mean, it shouldn't be, you know, Glacier Bay  
10 being excluded or any of these other communities  
11 being excluded; they should all be included.

12 CHAIRPERSON WOOD: well, Clayton, can I  
13 interrupt? That's where I wanted to get to with  
14 my comment was --

15 COMMISSIONER TROTTER: Okay.

16 CHAIRPERSON WOOD: -- these three  
17 communities have been (indiscernible) as they're  
18 likely not going to vote for it because -- for  
19 various reasons, everything from what service  
20 are we going to get? Or we don't want local  
21 government. Or we were -- never participated in  
22 discussions regarding the borough -- now, I know  
23 that's a contested area. Hoonah went to some  
24 great lengths to demonstrate -- and rightfully  
25 so -- that they had invited conversations with

1 Gustavus, Pelican, Tenakee, Elfin Cove, et  
2 cetera, Funter Bay, but the rub is that if you  
3 open -- see, this is a petition by local action,  
4 it's not a petition by legislative review. So,  
5 therefore, Hoonah was quite, you know, I would  
6 say, understandably concerned that if they  
7 include these others, or we should include them,  
8 as Mr. Tillinghast reminded us, this is dead on  
9 arrival; this is a no-go, because these other  
10 areas will likely vote it down.

11 Now, the other part of this equation is  
12 that, okay, if you say you're going to grant the  
13 petition, but now you have communities like  
14 Gustavus, Pelican, Tenakee Springs that have a  
15 common interest in the area, and they have been  
16 identified as such by the model borough  
17 boundaries -- I talked about that earlier today.  
18 And now they no longer have a say in what's  
19 happening, or necessarily a stronger voice in  
20 what's happening in Glacier Bay, for example,  
21 then that's equally unfair, inequitable.

22 So getting back to John's point is that we  
23 lack a mechanism to say to these communities,  
24 look, you need to get together and work this  
25 out, and then take your vote. And then find out

1 if you can reach accommodation on issues like,  
 2 hey, where is the borough seat going to be? How  
 3 are communities going to be represented? How do  
 4 you deal with PILT? How do you deal with  
 5 forest -- I forgot the acronym now -- but forest  
 6 revenues, shared fisheries tax, how's that going  
 7 to be dealt with? Because those communities do  
 8 have an interest. How are we going to be  
 9 represented on it? Those are all questions that  
 10 haven't been worked out (indiscernible),  
 11 Clayton. And consequently, I just wanted to try  
 12 and point those things out.

13 COMMISSIONER TROTTER: well, I mean, I  
 14 concur with you there on a lot of that. I  
 15 recognize difficulties (indiscernible) is faced  
 16 with.

17 But how long has it been since the  
 18 constitution of Alaska was passed? 16 --

19 CHAIRPERSON WOOD: well, passed and accepted  
 20 by the people? The convention was what, '56,  
 21 '57 --

22 COMMISSIONER TROTTER: 1959 --

23 CHAIRPERSON WOOD: -- and then the people  
 24 voted on it. I want to say -- statehood was  
 25 '59.

1           COMMISSIONER TROTTER: Okay. Statehood.  
2 Let's just use statehood. Since statehood, how  
3 many boroughs have been created? Big picture.

4           CHAIRPERSON WOOD: 19.

5           COMMISSIONER TROTTER: Okay.

6           CHAIRPERSON WOOD: But it's --

7           COMMISSIONER TROTTER: I mean -- and I  
8 hate -- it seems to me that the problem is is  
9 there's too many interests that are playing out  
10 here. I know, for example, that the Glacier Bay  
11 community, it's a lot of federal money. One of  
12 these communities that's objecting has kind of a  
13 nonprofit focus and they've got their system in  
14 place and they're prospering, so is Glacier Bay.  
15 And it is, frankly, irrational for smallish  
16 communities that are prospering to want to join  
17 a municipality. I mean, why would you want to  
18 pay taxes to another entity that may not give  
19 you services? I get that. You know, no  
20 taxation without representation, we've heard  
21 that before, haven't we?

22           And it's -- I am just struggling with the  
23 whole thing. I apologize, Larry. And it's just  
24 it seems to me that it would be in the best  
25 interests of the state to cherry-pick a



1 community that's making entrepreneurially good  
2 decisions, doing a good job for their community  
3 that is producing revenue.

4 I mean, I remember one of the conversations  
5 I had with those guys. They were talking about  
6 taxing the beverages sold on those cruise ships.  
7 They were talking about millions of -- you know,  
8 I'm not in favor of taxation, generally, okay.  
9 But they were talking about millions of dollars  
10 of revenue to the community, you know, by just  
11 putting -- I'd have to call it an alcohol tax on  
12 the beverages people take off the cruise ships.  
13 It's a really good idea, by the way, from a  
14 business law perspective. And it would give  
15 revenues to that community, enabling them to do  
16 things.

17 I guess -- I guess, maybe I come from  
18 an entrepreneurial family, and I like to see  
19 entrepreneurship rewarded. So anyway, I've said  
20 too much already. But I just think that the  
21 system's not working. I want to say that. The  
22 system of deciding how we have municipalities  
23 and cities and so forth in Alaska simply is not  
24 working. And I know I am a newcomer, but I'm  
25 looking back at the record. Frankly, there

1 ought to be a couple of hundred communities,  
 2 whether you want to call them municipalities or  
 3 cities or counties, or whatever, there should be  
 4 a couple of hundred individual communities now  
 5 in Alaska so they could develop, so they could  
 6 develop their own systems, so they could put in  
 7 place the opportunities.

8           Anyway, that's -- again, that's my opinion.  
 9 I'm sticking to it. Have a good one. I --  
 10 again, I may be ranting, but I don't like  
 11 ranting, so I apologize.

12           CHAIRPERSON WOOD: well, Clayton, let me ask  
 13 you the question of, do you feel that the best  
 14 interests of the state standard have been met or  
 15 not? I've marked "no" for Larry, John, and  
 16 Clay.

17           How say you, sir?

18           COMMISSIONER CYRUS: Sorry. Was that  
 19 directed at me? I thought you were talking to  
 20 Clayton.

21           CHAIRPERSON WOOD: It was Clayton.

22           But, Ely, why don't you go ahead --

23           COMMISSIONER TROTTER: I'm sorry. I had the  
 24 mute on. I would say that this would benefit  
 25 the State of Alaska to go forward with it. And

1           it would benefit it and it would open up an  
2           opportunity for a community to grow, which, to  
3           me, both economically and in just about every  
4           other way. And I can't see that that would be a  
5           bad thing for the State of Alaska. So I think  
6           it is in the best interests -- (indiscernible).

7           CHAIRPERSON WOOD: So I will mark you  
8           (indiscernible). That's right.

9           So, Clayton, is this the one where you were  
10          kind of undecided on best interests? I'm sorry.  
11          Ely?

12          COMMISSIONER CYRUS: No. I -- I tried to --  
13          I wanted to rephrase how I stated it earlier.  
14          It took me kind of a little bit to, you know,  
15          kind of come around to a way of stating it that  
16          made sense. But I appreciated the comments that  
17          Clayton made as far as, you know, the intent of  
18          the community and intent of the area. None of  
19          us are from that voting district. None of us  
20          can predict in the future how the assembly, how  
21          the voters may provide services, may choose not  
22          to provide services, that's completely up to the  
23          voters and the assembly within that proposed  
24          borough. In the future, I don't think any of us  
25          can predict what may or may not happen.

1           And I recognize that, you know, earlier we  
2 discussed about mechanisms for communities who  
3 don't feel they are receiving adequate services  
4 from a borough mechanism for them to leave. I  
5 feel, and I agree with Clayton, that I think  
6 it's in the state's best interests to allow the  
7 formation of a new borough. Because, you know,  
8 I think we have to recognize that, you know, a  
9 community took an initiative to do this work, to  
10 do the legwork, to do -- get it to petition, to  
11 the point where it is now where we're discussing  
12 it. And that's just not happening anywhere else  
13 in Alaska, really, at this point.

14           And there's so many communities in Alaska  
15 that aren't in an incorporated borough. And the  
16 final report, to me, it seemed a little biased  
17 against, you know, formations of this type. And  
18 I just want to applaud the community for putting  
19 the petition together and the work that they put  
20 into it, because it's just not -- I just don't  
21 see this happening, really, anywhere else in  
22 Alaska, and it's unfortunate. And I agree that,  
23 you know, it's been decades since the formation  
24 of the state, and we still have so many, you  
25 know, communities not within boroughs as was

1 intended.

2 And I also agree with the comments that  
3 petition does have some flaws, but I believe in  
4 the intent of the petition. And the intent of  
5 the petition was to better the area, provide  
6 more (indiscernible).

7 CHAIRPERSON WOOD: So to recap, Ely, would  
8 you be thinking this satisfies the best  
9 interests of the state's standard, even though  
10 it excludes the communities of Gustavus, Tenakee  
11 Springs, and Pelican from its boundaries?

12 COMMISSIONER TROTTER: May I address that  
13 while he's thinking?

14 CHAIRPERSON WOOD: Ely, did you -- okay.  
15 well -- okay. Clayton, I have you down as  
16 saying "yes," you would say the standard is met,  
17 even though the communities that I mentioned are  
18 excluded. Did you want to talk some more about  
19 that?

20 COMMISSIONER TROTTER: well, I just wanted  
21 to say that the communities have been excluded  
22 because they decided to be excluded. They had  
23 to fish or cut bait, and they decided they  
24 wanted to cut bait; they didn't want to fish.  
25 You know, it's a free country --

1 CHAIRPERSON WOOD: well --

2 COMMISSIONER TROTTER: -- and they decided  
3 they didn't want to join this. And then they  
4 come along and say, well, we don't want to join  
5 it; we don't want it happening either.

6 CHAIRPERSON WOOD: well --

7 COMMISSIONER TROTTER: And to me the issue  
8 is not are they being excluded, the issue is  
9 they have voluntarily excluded themselves from  
10 this, and then they want to stop it.

11 CHAIRPERSON WOOD: Clayton?

12 COMMISSIONER TROTTER: That's the way I look  
13 at this. It's -- it's --

14 CHAIRPERSON WOOD: -- we don't know --

15 (Indiscernible - simultaneous speech.)

16 COMMISSIONER TROTTER: -- you know, it's not  
17 something Hoonah's doing to them, it's something  
18 they did to themselves. They chose it.

19 CHAIRPERSON WOOD: I think --

20 COMMISSIONER TROTTER: -- I don't like it.  
21 I'm sorry. It's a free country, you know.  
22 Anyway, I'm sorry. I'm going to try to be  
23 quiet.

24 CHAIRPERSON WOOD: So you may have missed  
25 something in the report, the final report, that

1           there have been comments from these communities  
2           that they didn't -- I can remember explicitly a  
3           comment from Gustavus that they were wondering  
4           why Hoonah went ahead with this when the last  
5           conversation they had was still interest in  
6           borough formation. So when you say "they  
7           excluded themselves," we don't have a mechanism  
8           like that in place, nor do we have evidence in  
9           the record that firmly establishes that these  
10          three communities by -- you know, will always  
11          say no.

12                 In fact, if you go through the letters --  
13                 and I hope you have -- that have come in from  
14                 all of these other locations, there are people  
15                 who say, yes, we don't want to, we don't want to  
16                 be involved; leave us alone.

17                 And if I can find it --

18                 Jed, maybe we should read it. But in the  
19                 report there is a statement regarding comments  
20                 where our staff had written that the comments  
21                 that seemed to be most pertinent -- and I forgot  
22                 how he expressed that -- are the ones where  
23                 folks were suggesting that it would be open to  
24                 those discussions, Clayton. So I don't want our  
25                 conversation to go forward without clarifying

1 that. You know, it's not like a court thing  
2 where --

3 COMMISSIONER TROTTER: I know --

4 (indiscernible - simultaneous speech.)

5 COMMISSIONER TROTTER: I'm just saying we've  
6 read different parts of the record. I mean,  
7 I've seen things in the record that indicate  
8 otherwise than what those letters indicate. And  
9 mostly from -- obviously, from Hoonah. So, you  
10 know, that's -- that's a question of fact. Too  
11 bad we don't have a jury; right? Anyway.

12 CHAIRPERSON WOOD: Jed, can I ask for a  
13 point of information? In the report, I think  
14 there is a comment regarding this very issue of  
15 comments regarding people that were open to  
16 further discussion about borough formation. Can  
17 you help me find that, or is my memory just  
18 going awry here again?

19 JED SMITH: Mr. Chairman, it would take me a  
20 few minutes to sift through some of the comments  
21 and find the citation you're referencing, but I  
22 believe that is somewhere in the report. Stand  
23 by. I can find that information for you.

24 CHAIRPERSON WOOD: while you're looking, let  
25 me go back to Ely and ask, Ely, did you have a



1 feeling on whether you felt the best interests  
 2 of the state were served by or met by the  
 3 petition, even though it excluded these three  
 4 communities? were you a "yea" or a "no" on  
 5 that?

6 So far I have Clayton as a "yes." Larry,  
 7 John, and Clay as a "no" for the reasons that  
 8 have been explained.

9 JED SMITH: Commissioner Cyrus actually  
 10 dropped off right after his last comments.

11 Commissioner Harrington has his hand up.

12 CHAIRPERSON WOOD: Oh. John?

13 COMMISSIONER HARRINGTON: Yes, sir. I am --  
 14 I saw the same comment in there about their  
 15 willingness to move -- continue discussions.  
 16 But the part that I saw was we're not -- we were  
 17 open to this discussion, just not this one,  
 18 meaning this application. whereas, I think if  
 19 we can move forward with this, I would say we  
 20 need to put a stipulation in it that if the  
 21 borough is -- if we approve the borough, they  
 22 are required to make -- extend it -- you know,  
 23 extend to those three communities for inclusion  
 24 in it and go into discussions about that.

25 CHAIRPERSON WOOD: You mean consider a

1 condition be placed on the petition?

2 COMMISSIONER HARRINGTON: Similar to what  
3 the LBC did to Ketchikan regarding Hyder, but  
4 not so specific as to say "you must do it within  
5 five years," but to submit -- requiring them to  
6 reach out to the three communities and start  
7 dialogs on how they could be part of this  
8 borough.

9 CHAIRPERSON WOOD: would that place those  
10 communities on equal footing with Hoonah or  
11 would that put them at a disadvantage?

12 COMMISSIONER HARRINGTON: well, there's --  
13 once you have them part of it, they  
14 (indiscernible) Hoonah. So it's going to be  
15 representative if they get the three communities  
16 into that borough. And then you definitely have  
17 the improvement of services, and education, and  
18 potential development of that whole area.

19 CHAIRPERSON WOOD: So -- just so I  
20 understand, you would be talking about the  
21 possibility of extending this boundary to  
22 include those three communities, number one, so  
23 you'd amend the boundaries. Number 2, you'd  
24 place a condition that Hoonah reach agreement  
25 with those three communities before, what, they

1 got their certificate of incorporation?

2 COMMISSIONER HARRINGTON: Nothing we do can  
3 be that binding. I would say that in good faith  
4 we should be saying to them we view this borough  
5 as including those three communities and, as  
6 such, they don't want to be in at the moment but  
7 you need to spend the time and energy to extend  
8 an olive branch, if you will, by way so they can  
9 be included in the bigger borough.

10 CHAIRPERSON WOOD: Okay. So I'm still  
11 not -- I've got to get my head around this. Are  
12 you saying that you amend the boundaries or you  
13 tell Hoonah that, look, you've got to consider  
14 your willingness to annex these communities if  
15 you could develop an agreement on  
16 (indiscernible) I mean, help -- just not quite  
17 following you.

18 COMMISSIONER HARRINGTON: They've already  
19 said in their -- some of that information that  
20 they realize that it would be best to have all  
21 of those communities together in the borough,  
22 but that was essentially a no-go, as I remember  
23 reading, but it's been a while, so my head may  
24 be foggy, but to continue those conversations so  
25 that they understand this isn't a closed book,

1 we're getting started, now we can open it up to  
 2 include these three communities. And they could  
 3 be added at piecemeal or all at once. Again,  
 4 it's only -- the only way I see we can get this  
 5 going.

6 CHAIRPERSON WOOD: So just to reiterate --  
 7 sorry to be slow on this -- but you would kind  
 8 of grant this petition the way it's been written  
 9 with the condition that Hoonah invite these  
 10 three communities to be a part of further  
 11 conversations about joining the borough and, I  
 12 guess, by annexation at that point?

13 COMMISSIONER HARRINGTON: That's correct.

14 COMMISSIONER TROTTER: I believe very  
 15 strongly in the principle of one man, one vote.  
 16 And I also believe very strongly in the  
 17 principle of no taxation without representation;  
 18 it's been around a long time. And to give  
 19 maximum representation in the area is something  
 20 that I certainly would agree with; it makes a  
 21 whole lot of sense. Now, Hoonah might not like  
 22 that because they're in the minority once you  
 23 incorporate those other communities. But it  
 24 does seem that those communities are part of  
 25 this region, and for some reason they've been

1 left out.

2 CHAIRPERSON WOOD: (Indiscernible) the point  
 3 that several of us have been saying pretty much  
 4 all of our meeting today is that, yes, it's a  
 5 region, but anyone's definition. But the  
 6 problem, John, I have with that thought is that,  
 7 number one, if I were in one of those  
 8 communities I would wonder what sort of  
 9 motivation there would be for Hoonah to really  
 10 want to come to the table on key issues like we  
 11 mentioned earlier, like representation, taxes,  
 12 sharing of revenues, PILT, et cetera, et cetera.

13 It would be preferable, in my mind, if you  
 14 could have a level playing field in any  
 15 negotiation so that parties would be -- it would  
 16 be incumbent upon those parties to become  
 17 motivated to resolve those things.

18 Now, we're talking about a local option  
 19 petition. So it's not just about these  
 20 community leaders being on board, then the next  
 21 stage would be a campaign. Meantime, we have  
 22 these other disincentives that you talked about  
 23 in part, John, like the moment a borough is  
 24 formed, now there's going to a contribution  
 25 requirement by the Department of Education

1 regarding public education that's going to  
2 impact, in particular, Gustavus and Tenakee  
3 Springs. So --

4 COMMISSIONER HARRINGTON: There is another  
5 option, and that would be for the Local Boundary  
6 Commission to send letters to those three  
7 communities saying if you are interested in  
8 joining this, give us an application for the,  
9 you know, legislative review, and we'll get this  
10 done.

11 CHAIRPERSON WOOD: Okay. I --

12 COMMISSIONER TROTTER: Do they have a motion  
13 for intervention option in the rules?  
14 (indiscernible) intervene in the proceedings? I  
15 don't think they do, do they?

16 CHAIRPERSON WOOD: No. There's no such --  
17 but I don't know who the intervening would be  
18 done by anyway, Clayton.

19 COMMISSIONER TROTTER: I mean, if they're  
20 interested, I've done that.

21 CHAIRPERSON WOOD: So, for those that are  
22 listening, I think you see the aggravation and  
23 the frustration of the rules that sort of bind  
24 our hands. And we've been talking about the  
25 standards today, and we need to move forward

1           been met by the petition.

2           On the "no" side of things I've got Larry,  
3           John, and Clay.

4           Ely, I don't know if you had any further  
5           thoughts about whether the best interests of the  
6           state were served by the -- the petition. And,  
7           again, it does not include these three  
8           communities that we've been talking about.

9           COMMISSIONER CYRUS: Yes.

10          CHAIRPERSON WOOD: So you would say that,  
11          yes, it has been? Best interests?

12          COMMISSIONER CYRUS: Yes.

13          CHAIRPERSON WOOD: Okay. All right,  
14          gentlemen. Now, if you keep looking on the  
15          sheet, the checklist, this is not a dissolution  
16          of a city, so we don't cover that one, so turn  
17          to page 5. Does the petition include a  
18          practical plan that demonstrates the capacity of  
19          the municipal government to extend essential  
20          municipal services into the boundaries proposed  
21          for change in the shortest practical time after  
22          the effective date of the proposed change?

23          well, look at page 38 of your final report  
24          at the top. "The petitioner satisfies the  
25          requirement of providing a transition plan,

1 will not discriminate against either Alaska  
 2 Natives or any minority." The report says, "LBC  
 3 staff recognizes the statement meets the  
 4 standard, but also recognizes the concern from  
 5 residents of Elfin Cove and Game Creek, who  
 6 express skepticism that a representative from  
 7 their community would be elected to an at-large  
 8 borough assembly."

9 And we did talk about that. And that,  
 10 again, is the concern about how -- how would  
 11 these folks from Elfin Cove, Game Creek -- which  
 12 are notably smaller communities -- how would  
 13 they be represented on the borough assembly.

14 Any further comment on that particular item?

15 COMMISSIONER HARRINGTON: Yes.

16 CHAIRPERSON WOOD: Go ahead.

17 COMMISSIONER HARRINGTON: Small communities  
 18 have a difficult time getting elected to an  
 19 areawide position, correct. But I think in both  
 20 cases the whole service area model makes a lot  
 21 of sense, given they -- and Hoonah, the City of,  
 22 and the other communities really, by rights,  
 23 should have service area established so that  
 24 there is a representative elected from those  
 25 areas to speak for the communities to the



1 assembly and bring those issues of what needs to  
2 happen for public services in those areas.

3 So I realize they have not -- I have not  
4 seen any service area discussion in their  
5 application. That doesn't mean it's not there,  
6 because there's a whole lot of stuff there we  
7 had to go through. But I would really like  
8 to -- to push for a more specific set on -- of  
9 information regarding service areas in that  
10 borough.

11 CHAIRPERSON WOOD: Thank you, John. I  
12 suppose if the petition is granted, that may be  
13 something the commission would want to consider  
14 appending to its order.

15 Any other comments on statement about  
16 nondiscrimination?

17 The next one, if you look at your report  
18 page 38; determination of essential municipal  
19 services. And this is from the regulation  
20 3 AAC 110.970(b): The commission may determine  
21 essential municipal services for a borough to  
22 include (5) other services that the commission  
23 considers reasonably necessary to meet the  
24 borough governmental need of the residents of  
25 the area.

1           This is a comment from the report: The  
2 petitioner is proposing to provide non-areawide  
3 services to the Hoonah townsite only. Residents  
4 of Game Creek and Elfin Cove raised questions  
5 about the lack of services borough government  
6 would provide to their communities.

7           And, indeed, they did. So there's going --  
8 it proposes a seasonal sales tax and the  
9 questions coming in from the small communities,  
10 or at least Elfin Cove, is what services can we  
11 anticipate. And the answer is that none were  
12 anticipated areawide, at least for the near  
13 term.

14           Any comments about that one?

15           COMMISSIONER WALKER: Thank you, Chairman.  
16 This is Clay Walker. I understand the delivery  
17 of those essential services. At the same time,  
18 Elfin Cove, Game Creek, you know, have a right  
19 to representation, and what -- whether or not  
20 they actually have a representative on the  
21 borough assembly from that community, but I  
22 didn't see much in the petition, as proposed,  
23 that would guarantee access, you know, whether  
24 it be virtually or just, you know, access to the  
25 assembly and representation through economic

1 development.

2 It looks like Elfin Cove has done a fair  
3 amount on a nonprofit basis and they would then  
4 need to work with the borough to further  
5 economic development and some of those needs  
6 that they have there in terms of footpaths and  
7 such. And there would need to be that  
8 collaboration.

9 And, you know, I'd love to see some  
10 structure that's in the charter that would --  
11 that would, you know, guarantee that  
12 everybody -- that those communities are  
13 represented in terms of economic development.

14 CHAIRPERSON WOOD: Thank you, Clay. I  
15 remember reading in Hoonah's materials that the  
16 concern would be if Elfin Cove or these other  
17 communities, small communities, had  
18 representation on the assembly that might be a  
19 disproportionate influence on all that was being  
20 considered at the assembly level.

21 I was reading -- I think I mentioned this  
22 earlier -- that one possible solution is to have  
23 a voter district made up of maybe that  
24 community. And then everybody in the borough  
25 votes on that particular seat. In effect, it's

1 an area-wide seat, but you have to live in a  
2 particular district to qualify for it. And that  
3 might meet some -- you know, any constraints of  
4 some of the voter registration requirements.  
5 But, again, I think that if this petition goes  
6 forward, the commission would want to consider  
7 the potential of, you know, attaching those  
8 conditions to the -- to its order.

9 The next thing listed on page 38 is the  
10 regulation 3 AAC 110.981, determination of  
11 maximum local self-government: For borough  
12 incorporation whether the proposal would extend  
13 local government on a regional scale to a  
14 significant area and population of the  
15 unorganized borough.

16 And the report states: The petition  
17 proposes to expand local government in area but  
18 not significantly in population. The current  
19 population for the City of Hoonah is 885. The  
20 population of the proposed borough would  
21 increase by fewer than 75 residents, yet extend  
22 its governance over 10,000 square miles beyond  
23 the current city limits.

24 Hoonah can achieve maximum local  
25 self-governance by adopting a home rule charter

1 yes on population. That's page 2.

2 Clay had reservations on "resources," which  
3 was -- Clay walker, on page 2, but he also voted  
4 yes, so, again, that was unanimous.

5 "Boundaries." I have Clay walker, John,  
6 Larry feeling like, no, this standard was not  
7 satisfied. Clayton and Ely voting -- or not  
8 voting -- indicating that, yes, it was.

9 "Best interests of the state." I have  
10 Clayton and Ely feeling like, yes, this petition  
11 does satisfy that standard. Larry, John, and  
12 Clay, indicating otherwise.

13 Okay. Gentlemen, have I repeated that  
14 appropriately? Any changes?

15 COMMISSIONER HARRINGTON: Can you repeat on  
16 the boundaries what you said?

17 CHAIRPERSON WOOD: Yeah. Okay.

18 On "boundaries," John, I have Clayton and  
19 Ely feeling like, yes, boundaries standard was  
20 satisfied. I have Clay walker, John  
21 (indiscernible) feeling like it hadn't been.

22 Any other questions?

23 I want to give an opportunity before we call  
24 the question for everybody to provide closing  
25 comments. But as part of mine, I wanted to read

1 the petition is denied.

2 For this, roll call vote is required, and  
3 I'm going to ask for staff, Jed Smith, to  
4 administer a roll call vote.

5 JED SMITH: Thank you, Mr. Chair.  
6 Commissioner Harrington?

7 COMMISSIONER HARRINGTON: Yes.

8 JED SMITH: Commissioner Cyrus?

9 COMMISSIONER CYRUS: Yes.

10 JED SMITH: Commissioner Trotter?

11 COMMISSIONER TROTTER: Yes.

12 JED SMITH: Commissioner walker?

13 COMMISSIONER WALKER: No.

14 JED SMITH: Chair wood?

15 CHAIRPERSON WOOD: No.

16 Oh. Let me ask Commissioner Harrington, did  
17 you understand -- because you had suggested  
18 otherwise during our conversation; did you mean  
19 to vote the way you voted?

20 COMMISSIONER HARRINGTON: I'm sorry?

21 CHAIRPERSON WOOD: Did you intend to vote  
22 that the petition be granted as proposed?

23 COMMISSIONER HARRINGTON: I'm hoping we can  
24 talk about some addendums to this, but, yes, I'm  
25 in favor of granting the petition, but there are

1 so many concerns I have moving forward that if  
2 we're going to get to a sound basis, we've got  
3 to start with the borough to work with.

4 CHAIRPERSON WOOD: What were the results of  
5 the vote?

6 JED SMITH: The motion passes, three votes  
7 to two; the petition is accepted.

8 CHAIRPERSON WOOD: Are there other motions?

9 Commissioner Harrington, if -- I'm sorry,  
10 are there other questions? I'm sorry, are there  
11 other motions? I mean, the majority has  
12 accepted the petition as presented and you were  
13 suggesting, based on your last comments, that  
14 you had concerns that you felt --

15 COMMISSIONER HARRINGTON: I have concerns --  
16 yeah. And I was hoping to add an addendum -- if  
17 I may throw another motion on the table?

18 CHAIRPERSON WOOD: That's what I am  
19 suggesting. If you have another motion, this  
20 would be the time.

21 COMMISSIONER HARRINGTON: I have to think  
22 about that for a while.

23 I will pass for now, but go ahead.

24 CHAIRPERSON WOOD: Mr. Jed Smith, would you  
25 explain the rest of the process, how this is

1 going to unfold with the written decision,  
2 please.

3 JED SMITH: Yeah. Thank you, Mr. Chair. As  
4 the commission concludes its business today, the  
5 commission will have 30 days to issue a written  
6 decision, that puts the release of a written  
7 decision on approximately Thursday, December 12.  
8 And at that point, the department will notify  
9 the (indiscernible) to begin the process of  
10 scheduling an election in the region on this  
11 matter.

12 CHAIRPERSON WOOD: So as I understand the  
13 bylaws, after the written -- the draft of the  
14 written decision is available to us  
15 commissioners, we have eight days to convene  
16 another meeting to edit the draft, if there are  
17 edits, and then get it issued by the deadline;  
18 correct?

19 JED SMITH: We'll begin circulating a draft  
20 as soon as one is prepared, but the final draft  
21 should be released by Thursday, December the  
22 12th.

23 CHAIRPERSON WOOD: And then let me -- do you  
24 have -- let me look for the bylaws here.

25 GENE HICKEY: Chair wood, it's Gene Hickey,



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 for the minutes.

2 Is there any objection to the motion?

3 Hearing none, that motion passes.

4 We're going to adjourn into executive  
5 session, folks.

6 And, Jed, I think you have to set up a  
7 separate call; is that correct?

8 JED SMITH: Yeah. I think -- thank you,  
9 Mr. Chair. What I am going to try to do right  
10 now is suggest that we keep this Zoom meeting  
11 open. Commissioners, you can log off of this  
12 Zoom meeting. I will send you an invitation for  
13 a Teams meeting here. So that should be on its  
14 way now.

15 COMMISSIONER WALKER: A Zoom, not a Teams;  
16 right?

17 JED SMITH: Correct.

18 CHAIRPERSON WOOD: No, it's a Teams -- going  
19 to be a Teams meeting.

20 COMMISSIONER WALKER: Teams. Okay. I'll  
21 switch platforms.

22 JED SMITH: So we will keep this Zoom  
23 meeting open for the members of the public, and  
24 return when the executive session has concluded.

25 COMMISSIONER TROTTER: I have never done a

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

1 motion after we are finished with this, and  
2 nothing binding regarding this petition, merely  
3 a position with the LBC regarding moving  
4 forward.

5 CHAIRPERSON WOOD: Thank you, Mr.  
6 Harrington. And thank you, Mr. Hickey.

7 Mr. Harrington, did you have a motion?

8 COMMISSIONER HARRINGTON: Yes, sir. I  
9 move that the LBC put on the record that we view  
10 the boundaries of this -- the ideal boundaries  
11 of this area would include those three  
12 communities that were left out. Nothing having  
13 to do with this petition, merely that it is our  
14 attitude that those three should eventually be  
15 included in this borough.

16 CHAIRPERSON WOOD: Just to clarify, did you  
17 have any additional verbiage about how that  
18 might be accomplished?

19 COMMISSIONER HARRINGTON: Was there a  
20 question I missed? Sorry, my hearing's --

21 CHAIRPERSON WOOD: Well, so far I have that  
22 you reviewed the boundaries to be ideal, would  
23 include these three communities that should  
24 eventually be part of the borough. But I'm just  
25 asking if that is the end of that, or did you

1 have some mechanism in mind?

2 COMMISSIONER HARRINGTON: At this point we  
3 have no binding way to get there. I would like  
4 to put it -- to make it binding but they can be  
5 ignored. I would encourage the future borough  
6 assembly to seek out both -- all three of those  
7 communities and attempt to include them in the  
8 borough, as would save a monumental list of  
9 problems if they would, but I don't think we can  
10 bind them to do that.

11 CHAIRPERSON WOOD: Mr. Smith, do you have a  
12 good sense for the verbiage of that motion? If  
13 so, could you repeat it?

14 JED SMITH: Thank you, Mr. Chair.

15 I just have the commissioner Harrington  
16 moved that the LBC put in the record that it  
17 view the boundaries as -- the ideal boundaries  
18 would include neighboring communities,  
19 presumably Pelican, Tenakee Springs, and  
20 Gustavus, and that the borough should eventually  
21 include those communities.

22 COMMISSIONER HARRINGTON: Correct. Thank  
23 you.

24 CHAIRPERSON WOOD: Thank you, Jed.

25 Commissioner Harrington, is that an accurate

1 restatement of your motion?

2 COMMISSIONER HARRINGTON: Yes.

3 CHAIRPERSON WOOD: Do we have a second of  
4 the commissioner's motion?

5 COMMISSIONER TROTTER: I second the motion.

6 CHAIRPERSON WOOD: Thank you, Commissioner  
7 Trotter.

8 Discussion?

9 well, even though I voted against the motion  
10 of the -- I should say the petition as  
11 presented, I find that that is a very important  
12 concern. And as we started out today,  
13 boundaries is the crux of this case, or of this  
14 situation. And Commissioner Harrington is  
15 correct, we don't have a vehicle on regulation  
16 or statute right now that provides the  
17 commission with the ability to mandate a  
18 conversation, but I agree with him that  
19 sometime -- or sometime soon those -- that  
20 Hoonah -- and -- and again, I joined in  
21 Commissioner Walker's and others positive  
22 comments about the leadership there that they  
23 take the bull by the horns and initiate these  
24 conversations, make them happen, look for ways  
25 that they can amend their charter, if need be,

1 to deal with some of these key issues that I  
2 mentioned earlier today, like how are we going  
3 to represent these people? How are they going  
4 to provide services? All those things that  
5 would naturally come up, and have come up in  
6 those borough feasibility studies. So end of  
7 speech. I'm going to be voting for this motion.

8 Any other comments?

9 COMMISSIONER TROTTER: Just hear, hear.

10 CHAIRPERSON WOOD: I'm sorry, is that  
11 Commissioner Trotter?

12 COMMISSIONER TROTTER: Yes. I was just  
13 saying "hear, hear," as they would say, over in  
14 jolly 'ol England. Hear, hear, good speech.

15 CHAIRPERSON WOOD: Thank you, Commissioner.  
16 Any other comments before we take a vote?  
17 Mr. Smith, could you do a roll call vote,  
18 please?

19 JED SMITH: Commissioner Harrington?

20 COMMISSIONER HARRINGTON: Yes.

21 JED SMITH: Commissioner Cyrus?

22 COMMISSIONER CYRUS: Yes.

23 JED SMITH: Commissioner Trotter?

24 COMMISSIONER TROTTER: Yes.

25 JED SMITH: Commissioner walker?