

**LOCAL BOUNDARY COMMISSION  
STATE OF ALASKA**

In the Matter of the 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 OF SERVICE**

STATE OF ALASKA )  
 ) ss  
FIRST JUDICIAL DISTRICT )

I, Paul H. Grant, certify that I represent the City of Pelican, Alaska, in this proceeding and that on the 15<sup>th</sup> Day of January 2025, in accordance with 3 AAC 110.580, I caused true and correct copies of the REQUEST BY THE CITY OF PELICAN FOR RECONSIDERATION OF THE DECISION BY THE LOCAL BOUNDARY COMMISSION and attachments to be served via U.S. mail, postage prepaid, on:

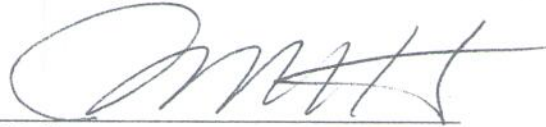
Local Boundary Commission  
Attn: Jedidiah Smith  
550 W. 7<sup>th</sup> Ave., Suite 1650  
Anchorage, AK 99501-3510  
[Original and five copies]

Hayden Meier, Chairman  
Board of Directors,  
Elfin Cove  
6433 S. Constellation Way  
Boise, ID 83709

City of Hoonah  
Attn: Dennis Gray, City Administrator  
300 Front Street  
Hoonah, AK 99829

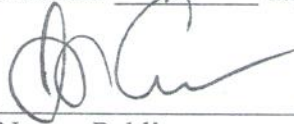
With an additional copy sent via electronic mail to each party.

DATED this 15<sup>th</sup> Day of January, 2025



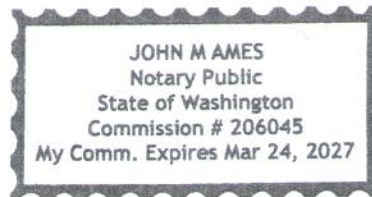
Paul H. Grant

SUBSCRIBED AND SWORN before me this 15<sup>th</sup> day of January, 2025



Notary Public

My commission expires 03/24/2027





**LOCAL BOUNDARY COMMISSION  
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**REQUEST BY THE CITY OF PELICAN FOR RECONSIDERATION  
OF THE DECISION OF THE LOCAL BOUNDARY COMMISSION**

Pursuant to the provisions of 3 AAC 110.580, The City of Pelican respectfully requests that the Local Boundary Commission (hereinafter “LBC” or “Commission”) reconsider its December 20, 2025, Decision (hereinafter “Majority Decision”) approving the City of Hoonah’s (hereinafter “Hoonah”) Petition to form the proposed Xunaa Borough. For the reasons set forth below, the Commission’s Majority Decision does not comply with applicable standards for approving a borough because it fails to adequately or accurately address several material issues of fact and ignores or fails to meet the requirements of applicable law. Accordingly, on reconsideration, the Petition as submitted must be rejected.<sup>1</sup>

This matter comes back before the Commission as the result of a close vote, with three commissioners adopting the Majority Decision of December 20, 2024, and two commissioners producing a Statement of Dissent (hereinafter “Dissent”) on the same date. These conflicting decisions conclude a process that included an extensive and thoroughly considered Commission staff analysis, the “Final Report to The Local Boundary Commission,” August 5, 2024

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<sup>1</sup> As the Alaska Supreme Court has ruled, the Commission “shall” deny a petition that does not meet applicable standards. *Yakutat v. Local Boundary Com’n*, 900 P.2d 721, 724 (Alaska 1995). As the Supreme Court noted, approval of a flawed petition is not appropriate; rejection is the only action. However, if the Commission seeks to approve the petition, the way to do so is to change the boundary to meet applicable standards. *Id.*

(hereinafter “Staff Report”), overwhelmingly negative public testimony and submissions from affected communities and individuals, and of course Hoonah’s petition to form a borough.

## **I. SUMMARY OF THE BASIS FOR RECONSIDERATION**

Hoonah’s petition fails to meet the standards for approval of a borough.<sup>2</sup> Throughout the Majority Decision, the Dissent, and the Staff Report, this conclusion is inescapable. The myriad ways in which Hoonah’s proposal fails to meet even the minimum standards for borough approval are recounted here at length in this Request for Reconsideration. Yet in the face of a major problems identified in the administrative record, the Majority Decision ignored and glossed over its own evidence and findings in order to approve a one-sided, self-interested borough proposal, favorable to Hoonah and detrimental to Pelican and at least two other established cities in the region. By doing so, the Majority Decision contravenes the Commission’s fundamental mandate, mission, purpose, applicable standards, and best interests of all parties.

It is simply not the Commission’s role, in a misguided effort to force creation of a borough on all the other the communities in the region, representing half the population, to support what amounts to a hostile takeover of the entire region’s assets by one single community. The Majority Decision will impoverish at least three municipalities and leave them without prospects other than joining a borough later, on highly unfavorable terms. This is not a legitimate outcome. Indeed, as Commission itself noted in the case of Dillingham’s proposed

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<sup>2</sup> It is worth noting that the first two pages of the Final Staff Report eloquently state most of the reasons why Hoonah’s petition must be rejected. The Majority Decision fails to respond to or counter those relevant points raised by staff, instead seeking to ignore or override them, primarily for the sake of forcing establishment of another borough after a long hiatus, and to punish Pelican and the other excluded communities for raising any objections or concerns.

annexation, “the LBC’s role is to make decisions in the best interests of the state, not based on the best interests of a single community, and . . . it is not equitable to allow one city to acquire revenue from a regional resource.”<sup>3</sup> Yet in this case, that is precisely the effect of the Majority’s Decision.

By ignoring the obvious facts that Hoonah’s petition does not meet applicable standards to establish a borough, and by buying into a false sense of urgency and misguided mandate skillfully generated by Hoonah and its counsel, the Majority Decision fails to serve the best interests of the state. The Majority Decision does not meet the necessary legal and regulatory requirements, fails to adequately to address numerous critically relevant factors, and appears to be based on an improper factors and considerations, an incomplete public record, and irregular procedural decision making. Each of these shortcomings, which together and individually warrant reversal, is addressed in the sections that follow.

It is not too late to reverse course. It is in the best interests of all the Glacier Bay region’s communities, the Commission, and the State of Alaska to ensure that the communities are truly cooperating and collaborating as equals, to join forces in an agreed-on governance model. Hoonah’s proposal so disadvantages the long-term interests of Pelican, Gustavus, and Tenakee Springs that it will be difficult if not impossible to rectify, except through years of subsequent legal action. To salvage this situation and correct its errors, the Commission must reconsider the Majority Decision and reject Hoonah’s proposal. Then, and only then, can the communities of

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<sup>3</sup> *Local Boundary Commission State of Decision on Reconsideration, In the matter of the July 3, 2017, request by respondents Native Village of Ekuk, et al., for the LBC to reconsider the decision approving the City of Dillingham Annexation Petition*, at 6. While the exact question on reconsideration in that annexation was factually different, the principal is directly applicable here, and is a reasoned exercise of the Commission’s duty to make decisions about boundaries for municipalities that are in the best interest of the state.

the Glacier Bay region come together and on an equal basis find a governance model that serves all their shared interests and needs.

## **II. THE MAJORITY DECISION DOES NOT MEET THE REQUIREMENTS FOR INCORPORATION OF BOROUGHES**

### **A. The Majority Decision Erroneously Imposes Unfavorable Conditions on Pelican and Other Communities In Order to Force Them Into A Borough**

The framers of the Alaska Constitution recognized that there was a vital need to guide the formation and management of municipal boundaries in the new state. To that end, they created the Local Boundary Commission. The framers determined to divide the state into either the Organized or Unorganized Borough. A key responsibility of the Commission is to help communities in the Unorganized Borough, when they are ready, willing, and able, to form new boroughs so they can undertake the responsibilities of regional government.

As the Alaska Supreme Court has noted, there is a need for a statewide Local Boundary Commission because “local political decisions do not usually create proper boundaries” and the Commission would assure that “area-wide or state-wide needs can be taken into account.”<sup>4</sup> It acts as a third-party where “arguments for and against a boundary change can be analyzed objectively” (emphasis added).<sup>5</sup> The Majority Decision here fails at that most basic of functions, by approving a petition that is explicitly designed to benefit only Hoonah at the expense of the broader area-wide needs of the other communities of the Glacier Bay region. Despite clear language in the Staff Report saying “there is no intent or effort from [the Commission] to impose borough government formation on the unorganized

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<sup>4</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d. 540, 543 (Alaska 1962)

<sup>5</sup> *Id.*

borough”<sup>6</sup> the Majority Decision is driven by an unfounded belief that it is under a time sensitive mandate to organize the unorganized borough, lamenting that “there has not been a borough formed in Alaska since Petersburg in 2013.”<sup>7</sup> It goes on to complain about the impediments to borough formation within the unorganized borough including, ironically, that the process of borough formation “pits the potentially contrasting views and geographic regions against each other.”<sup>8</sup> Yet in its motivation and haste to force formation of a borough in the Glacier Bay region, the Majority Decision says the Commission must approve a flawed and one-sided proposal because to do otherwise is simply too difficult.<sup>9</sup>

It is no wonder why the other communities are reticent to go along. Stepping back and looking at Hoonah’s borough proposal as a whole, it is remarkably focused on only the needs of that one community, offering only taxation (not platting<sup>10</sup> or schools) to those communities subsumed within it. By excluding three existing municipalities hemmed into incredibly narrowly drawn enclaves, it allows Hoonah to secure valuable economic benefits seized from the whole Glacier Bay area, including at the very doorstep of those excluded communities.

That is not a mistake. It is Hoonah’s explicit intent. For example, Hoonah expressly states that it is unwilling for political and ideological reasons to levy property tax that would fund services for local residents.<sup>11</sup> Hence, it is seeking to take the economic base from Pelican and the other two cities in the region and alter education funding, depriving the

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<sup>6</sup> Staff Report, at 39.

<sup>7</sup> Majority Decision, at 14.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* Contrast the Minority Decision, at 6, which takes the opposite view.

<sup>10</sup> Although the Majority Decision premises its approval on the extension of platting and zoning beyond the Hoonah townsite, the Staff Report points out such Commission requirements have in the past been ignored for as long as 17 years and the Commission has no effective mechanism to enforce them. Staff Report, at p. 17.

<sup>11</sup> Testimony of Dennis Gray, September 5, 2024 Public Hearing, Transcript at 45.



children in those neighboring communities of the school funding they now receive. Rather than an effort to cooperatively share the bounties of the region, Hoonah’s proposal is more analogous to a hostile corporate takeover, stripping the resources of the excluded communities by seizing the exclusive right to tax the resource base on which those communities depend, denying their future growth or ability to join any borough in the future on favorable terms, and offering nothing in return. The City of Pelican questions how Hoonah’s proposal can possibly be seen as even minimally meeting the standards for borough formation given the enormous inequities it creates, and the numerous unaddressed specific issues raised by stakeholders and the Staff Report. When the specific qualifying criteria are examined, it is patently obvious that the petition falls far short of the best interests test.

**B. The Boundaries of the Proposed Borough Are Needlessly Expansive and Create Unpermitted Enclaves**

In considering the boundaries of a proposed borough, the Commission must determine whether they meet the criteria set forth in 3 AAC 110.060. Specifically, subsection 3 AAC 110.060(d) presumes that enclaves established in a proposed borough boundary demonstrate it does not meet the test of including “all the land and water necessary...”<sup>12</sup> Perhaps the most unsupportable and egregious aspect of the Hoonah’s proposed borough is the drawing of boundaries that would incorporate virtually all the lands and waters within the Glacier Bay Model Borough region, with the exception of tiny enclaves around the other three communities. The Majority Decision’s conclusory assertion that these enclaves are not really enclaves is not only logically absurd but is also contrary to the factual findings of

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<sup>12</sup> The deciding vote to form the Majority appears to have been based on Commissioner Trotter simply disagreeing with the requirements of the regulation. Transcript of Decisional Hearing, at 60.

staff,<sup>13</sup> the Dissent,<sup>14</sup> and even Commissioner’s statements at their own Decisional Hearing.<sup>15</sup>

The Staff Report notes that the proposed borough boundaries would arrogate to Hoonah the vast majority of the revenue-generating economic resources of the region and would transfer the benefits of those currently shared economic benefits from the excluded communities to Hoonah.<sup>16</sup> The Majority Decision fails to evaluate the impact of Hoonah’s proposal on the ability of the excluded communities to survive and continue to function. It is self-evident that with a dramatically reduced taxation base, as well as loss of control over adjacent lands, waters, and natural resources, they are severely disadvantaged by being relegated to tiny enclaves outside the boundaries of the proposed borough.

This is of course the fundamental reason why state law and regulations strongly disfavor the creation of enclaves within or adjacent to proposed borough boundaries. Yet the Majority Decision inexplicably relies on an earlier preliminary Staff Report,<sup>17</sup> to suggest the enclaves are not really enclaves. The Majority conveniently ignores the subsequent, final Staff Report which states the contrary and obvious fact that the proposal does create enclaves for Pelican and the other excluded municipalities.<sup>18</sup> The Dissent recognizes the infirmity of the Majority Decision and in several sections questions the Majority’s conclusion, strongly suggesting it will not survive judicial review, because the proposed

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<sup>13</sup> Staff Report, at 36. “The petitioner effectively creates new enclaves in the unorganized borough....”

<sup>14</sup> Dissent, at 5. Calling the boundaries “likely enclaves.”

<sup>15</sup> E.g., Transcript of Decisional Hearing, at 28. This transcript, inexplicably not available on the Local Boundary Commission website, is attached to this brief so it can be included in the official administrative record.

<sup>16</sup> Staff Report, at 2.

<sup>17</sup> Majority Decision, at 27, citing Preliminary Staff Report from July 2024.

<sup>18</sup> Staff Report, at 36.

boundary excludes “nearly half of the population and all of the other municipalities in the region.”<sup>19</sup>

The Majority Decision also admits that the inclusion of all four communities in the region “would absolutely be in the best interests of the state”<sup>20</sup> but excuses this shortcoming as allegedly impossible.<sup>21</sup> It counters by relying on Hoonah’s assertion that other Commission decisions have permitted similar exceptions to the rule, relying not on applicable legal standards, but merely citing to inapplicable examples from the Haines and Ketchikan Boroughs.<sup>22</sup> The Dissent Statement also refutes that claim directly, saying “[s]uch an expansive precedent seems not to exist in LBC’s annals.”<sup>23</sup> The Commission did not take the time to seriously consider how the situations that resulted in those other exclusions are factually very different from Hoonah’s proposal and do not support the enclaves here. The reason such extensive gerrymandering has not been permitted in the past is that it makes a mockery of the regulatory guidelines and the statutory standards. Hoonah proposes not just a single enclave but three, widely separated, which contain the majorities of the cities in the region, representing half the area population.

### **C. The Majority Erred in Permitting Hoonah to Form a Single City Borough**

The Majority erred in accepting Hoonah’s assertion that previous Commission decisions provide support for approving a single city borough in this case. Hoonah asserted, and the Majority accepted, that the Skagway, Wrangell, and Yakutat borough decisions provide precedent to justify excluding three of the four communities in the Glacier Bay region.<sup>24</sup>

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<sup>19</sup> See, e.g., Minority Decision, at 9.

<sup>20</sup> Majority Decision, at 31.

<sup>21</sup> *Id.*, at 29.

<sup>22</sup> *Id.*, at 27.

<sup>23</sup> Minority Decision, at 9.

<sup>24</sup> Majority Decision, at 27.

Those examples are not at all comparable nor typical, as Hoonah insisted. In each of those examples there was only one city in the natural boundaries of the proposed borough, and no other excluded cities objecting to the proposed boundary.

#### **D. The Proposed Boundaries Improperly Discriminate Against the Excluded Communities**

One of the factual issues that is not in any dispute is the core reason that Hoonah proposes excluding its neighboring communities: they do not favor the proposal as written and are likely to reject it if allowed to participate in an election to ratify the decision. This is a clear theme throughout the Majority Decision, the Dissent Statement, the Staff Report, Hoonah's Petition, and the public testimony. It is important to note here that Pelican's concern was with the specific, deeply flawed borough proposal offered by Hoonah, but not necessarily with the concept of joining a well-structured and fairly-governed borough.

The Majority Decision is heavily influenced by an unreasoning prejudice against the excluded communities, essentially blaming them for the shortcomings in the Hoonah proposal, because the excluded communities allegedly just want to "keep the status quo" and are "thus thwarting the framer's intent to minimize the number of local governments."<sup>25</sup> There are at least two ways in which this attitude is inappropriate. First, there is no requirement anywhere in the Constitution or state law that communities accept another community's borough proposal or come up with an alternative before they can object. All reviewers are responding to the petition that has been filed. Second, since the Hoonah proposal itself is directly contrary to the alleged framer's intent, failing to minimize the

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<sup>25</sup> *Id.* at 16.

number of local governments, objections by the excluded communities are completely appropriate and well-founded.

Nevertheless, Commissioner Trotter expressed his prejudice by comparing the excluded communities to “crabs in a barrel”<sup>26</sup> and going so far as to say that this obviously unfavorable proposal is not something that Hoonah did to the communities but “they did [it] to themselves. They chose it.”<sup>27</sup>

The concerns of the excluded communities are not their fault. That assertion is absurd, offensive, and evidences a lack of statutorily required objectivity on the part of the Commission.<sup>28</sup> Ignoring the issues raised, the Majority simply waves them aside, asserting against the factual record and testimony that “none of these neighboring municipalities would have agreed to participate” in the proposed borough.<sup>29</sup> The Dissent Statement and the Staff Report contravene that conclusion and point out various places in the hearing record and public comments where the excluded communities have offered support for the concept of a borough, but not for this specific proposal. The Majority Decision ignores this evidence and simply sides with Hoonah’s self-interested claims of frustration.

The Commission does not have the authority to simply discount and dismiss the very serious and legitimate concerns raised by Pelican and other communities and individual stakeholders, especially where the terms of the proposed borough will permanently disadvantage and impoverish them. It is no surprise they have objections, and those should be treated respectfully and fully addressed. It is the responsibility of the Commission to

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<sup>26</sup> Transcript of Decisional Hearing, at 113-114.

<sup>27</sup> Id. At 127.

<sup>28</sup> Reviewing the Decisional Hearing Transcript demonstrates the exceptional influence of Hoonah’s counsel, who is quoted at length by the Commissioners during their deliberations. That appears to be the primary source of the Majority’s assertion that the excluded communities have been uncooperative and obstructionist. Other extensive evidence contradicts that view, and it is factually unwarranted.

<sup>29</sup> Majority Decision at 28.

objectively analyze the merits of a proposal, not to sarcastically characterize it as some sort of crustacean gladiator show.

Nor should the Commission approve Hoonah's intentional gerrymandering of the public vote required to approve the proposal. Here too the reasons for excluding the aggrieved communities are based on preventing them from voting against the proposal. The 14<sup>th</sup> Amendment to the U.S. Constitution and Article 1, Section 1 of the Alaska Constitution guarantee equal treatment under the law for similarly situated citizens. Allowing Hoonah to exclude the communities they think would vote against the proposal deprives the residents of the excluded communities of their Constitutional right to participate in a decision directly impacting their economic interests, on a completely impermissible basis, yet this is exactly why the excluded communities are being denied the right to vote.<sup>30</sup> Based on extensive evidence in the record, there can be no dispute that this situation directly and substantially impacts the communities that are being excluded from an opportunity to participate.

The Commission cannot therefore allow Hoonah to deny the excluded communities, representing the majority of the municipalities and half the regional population, the right to vote. While the Commission may believe that it can authorize municipal boundary changes without the approval of those affected, it behooves the Commission to avoid making a decision that will lead to litigation, the need for future action, and the creation of regional divisions that may take decades to resolve.

Finally, as should be obvious, the Staff Report concedes that approval of the Hoonah borough enclaves disadvantages their future prospects for either joining the Hoonah

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<sup>30</sup> That Hoonah intentionally sought to exclude the other communities from being able to vote, because it feared they would vote against the proposal, was acknowledged by the Commissioners in the November 12 Decisional Meeting. Transcript of Decisional Meeting, at 116-119.

borough or being forced into joining another existing or prospective borough.<sup>31</sup> Further, while the evidence of adverse impacts is clear, the extent is not. Yet the Majority simply ignores the Staff recommendation that an updated “Borough Feasibility Study” be prepared, which would inform efforts to ameliorate those impacts.

The Majority Decision appears to consider the pain of being forced to go along with Hoonah’s self-serving proposal as just punishment for the purported intransigence of the excluded communities.<sup>32</sup> And punishment it is. The Staff Report notes that the proposed Xunaa Borough charter “is drafted in such a way as not to incentivize inclusion of additional communities” should they want to join that borough in the future.<sup>33</sup> Indeed, Hoonah has designed its proposed form of government in a way that makes it nearly impossible for members of any other communities to serve as elected representatives, in great part because there is no provision for other, later included communities to have dedicated seats on the council. Nor could the excluded communities form their own borough, since the Xunaa Borough would have isolated them from each other geographically. Joining another existing borough is also disadvantageous, requiring them to dissolve their city governments for scant benefit, as noted by the Staff Report.<sup>34</sup> Hoonah’s gain comes at the expense of all of its neighbor communities’ rights, and discriminates against them without justification, against the best interests of the region and the State.

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<sup>31</sup> *See, e.g.*, Staff Report, at 36.

<sup>32</sup> Transcript of Decisional Hearing, at 127.

<sup>33</sup> Staff Report, at 39.

<sup>34</sup> *Id.*

### **E. The Decision Does Not Promote Maximum Local Self Government with a Minimum of Local Government Units**

3 AAC 110.042 requires that in determining whether a proposed borough meets the best interests of the state it must “promote maximum local self-government” with a “minimum number of government units.” The Staff Report and the Minority are clear in several places that Hoonah’s petition fails both parts of this test.<sup>35</sup> First, the proposal does not lead to a minimum number of local government units because it does not change the number at all. There would be four governments both before and after borough formation. In addition, the proposal does nothing to promote maximum local self-government and in fact compromises self-government for Pelican and the other communities by diminishing their taxing, planning and school functions.

It is the fundamental purpose of borough formation to join neighboring communities under an overarching government, maximizing the efficiency and effectiveness of delivery of mandatory services (taxation, land use planning, and maintenance of schools) and other desirable government services to the area.<sup>36</sup> While in some cases the isolated nature of communities has led to exceptions where single communities have been allowed to form boroughs, in none of those cases were there several excluded communities, the majority of them, representing half the area population.<sup>37</sup> Thus, those previous examples are easily distinguishable as noted previously, and do not support drawing a borough so narrowly that it does not include any other the other established municipalities in the region.

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<sup>35</sup> Staff Report, at 38; Dissent, at 6.

<sup>36</sup> 3 AAC 110.982, requiring consideration of whether the proposal promotes a minimum number of local government units.

<sup>37</sup> Once again, the Commission acknowledged this in its decisional meeting but reached a decision that ignores this significant fact.



That Hoonah's proposal is essentially no more than an effort to expand its tax base to the very front door of its neighboring communities can be seen in what it proposes to offer to the other handful of settlements within the boundary. Of the mandatory responsibilities, Hoonah only offers very limited taxation (indeed, its likely unenforceable promises not to levy a property tax in the future is one of the only things that won support from outside the Hoonah community). It ignores land use, zoning, and maintaining schools. Though the Majority Decision purported to impose zoning responsibility on Hoonah, the Commission does not have the authority to enforce that intent, a point made abundantly clear in the Staff Report.<sup>38</sup> Moreover, without representation from the excluded communities or the included settlements outside Hoonah, the proposed borough will have no local knowledge, interest, or input as it proposes land use rules right up to the border of the excluded communities, making the Commission's Majority Decision unworkable to properly implement. As for schools, the other settlements selected for inclusion in the borough conveniently do not require school services at this time, but it is also clear that if they do in the future Hoonah will not be providing such. However, by impinging on the areas Pelican and the other excluded communities require to fund their schools, the proposed borough actually diminishes the overall ability of the region to provide for education services, without any remedy or compensation for this diminishment.

#### **F. The Majority Decision Relies on Inappropriate Criteria to Justify the Expansive Boundaries of the Proposed Borough**

It is indisputable that historically the Alaska Native peoples inhabited and owned all of Alaska, including the area of the proposed borough. With all due respect to that history and acknowledging the ongoing efforts of Alaska Natives to regain their lands and rights, the Majority Decision's reliance on it as a basis for supporting the expansive proposed boundaries

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<sup>38</sup> Staff Report, at 16-17. *See, e.g.*, Transcript of Decisional Meeting, at 97.

of the borough is inappropriate. In making its case for borough status, Hoonah conflates the historical tenure and ongoing pursuit of the rights of federally recognized Indian Tribes with the formation and management of a borough under Alaska State law. Whether residents of the Glacier Bay region have been present since time immemorial or have arrived and established citizenship within the last week, state and federal law requires that they be treated equally and not discriminated against. Hoonah is a city, not a federally-recognized Tribe. It does not even have a majority Native population,<sup>39</sup> but nevertheless premises its expansive borough boundary claims on the historical territory of Native clans living in the Hoonah area. In fact, the Commission is completely unqualified and unauthorized to make the necessary determinations required to determine Tribal land ownership.<sup>40</sup> Inexplicably, however, the Majority Decision inappropriately relied on historical Tribal use as a factor justifying the proposed expansive boundaries. And, curiously, the Majority Decision does not explain why the Huna Tlingit's historical use area suddenly terminates at the borders of Pelican, Gustavus, and Tenakee, suggesting that the carefully carved borough borders were in fact driven by other factors than historical or current Tribal rights.

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<sup>39</sup> Staff Report, at 20. Only “34 percent of Hoonah’s population identify as American Indian or Alaska Native... with the remaining 25 percent of two or more races....” So, the City of Hoonah is not predominantly an Alaska Native community, nor can it limit itself to only including Alaska Native membership. Therefore, nor can a proposed borough, which must by law admit any citizen of any race, equate itself with a federally recognized Alaska Native tribe, whose members must meet strictly controlled tribal membership criteria. The City of Hoonah nevertheless seeks to bootstrap a substantial but overall minority Native component of its population into justification for seizing all the land that historically belonged to the Alaska Native tribes located in that region. The Commission cannot justify taking away from other communities the rights to use lands, waters, and resources simply because they are primarily inhabited by more recent settlers in Alaska.

<sup>40</sup> Proving use and occupancy of land by Indigenous peoples requires an in depth academic and technical analysis and is normally conducted by federal courts or agencies to establish federal Tribal rights. This is not within the Commission’s purview or area of expertise. As evidence of the inability of the Commission to effectively consider and address these complex matters, it seems to have entirely ignored the City of Angoon’s objections that the portion of the Xunaa Borough on Admiralty Island infringes on the well-known traditional lands of their Native community. See, City of Angoon Resolution 24-03, submitted to the LBC.

### **III. THE MAJORITY DECISION FAILED TO ADEQUATELY CONSIDER RELEVANT FACTORS RAISED IN THE STAFF REPORT**

It is settled administrative law and the explicit basis for reconsideration of a Commission decision that a decision must have considered “a material issue of fact or a controlling principle of law.”<sup>41</sup> The extensive, well-researched, and clearly reasoned Staff Report concluded that Hoonah’s borough petition should be rejected for a variety of reasons that are not addressed adequately in the Majority Decision. Though the Petitioners here note that the Staff Report is, in its entirety, an analysis of points that must be considered in order to make a final decision, the incompletely addressed material issues include at least the following points:

- The proposed Xunaa Borough boundaries create unacceptable enclaves, excluding communities that are directly impacted by the decision, preventing them from benefitting from the borough and seizing an unwarranted share of lands, waters, and resources sustaining those excluded communities.
- The proposed Xunaa Borough does not qualify as a borough based on the lack of mandatory services that should be offered to the other settlements incorporated within the boundaries and there is no practical way to enforce conditions the Commission could impose to assure provision of those services.
- The proposed Xunaa Borough does not reduce the number of municipalities in the Glacier Bay region, but simply absorbs several scattered settlements and excludes the three other established municipalities.
- There were inadequate and incomplete analyses of critical budgetary and financial data available to the Commission in order for it to be able to analyze the impact of the proposed borough formation on the excluded communities, including how it would reduce the availability of tax revenues and benefits like PILT and timber receipts.
- There is inadequate information available on the negative impact of the borough formation on the schools in the excluded communities and the Chatham REAA.

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<sup>41</sup> 3 AAC 110.580.

- There was inadequate consideration by the Commission of the alternative for Hoonah to form a home rule community, rather than a borough that did not meet the legal criteria.

Furthermore, the Commission did not consider or adequately evaluate the implications of the divergence of the Hoonah borough proposal from its own Model Boroughs for Glacier Bay and Chatham. The extensive analysis and decision-making, as well as the public process, utilized to adopt the state's model boroughs, represents a pre-existing administrative decision. The Glacier Bay Model Borough was adopted on May 8, 1992, and included Hoonah, Elfin Cove, Gustavus, Pelican and Tenakee. Deviating from that recommendation is permitted but only when and if the Commission explains the reasons why such deviation is warranted and preferable to its previous decision creating the Model Borough. The Majority Decision recognizes that inclusion of all the municipalities in the region would lead to a much better decision but then concludes it would be impossible to implement. This is an irrational and illogical conclusion, since the Commission holds broad powers to modify a proposed to meet the criteria set forth in the Constitution, statutes, and regulation.

#### **IV. THE COMMISSION'S DECISION IS UNDERMINED BY SUBSTANTIAL PROCEDURAL ERRORS**

The Commission's deliberations leading up to and including the December 20 Decisions are undermined by substantial procedural errors. First, the Commission has made no official transcript available to the public on the Commission's web site detailing the proceedings of the November 12 Decisional Hearing, despite the fact that both the Majority and Minority Decisions purport to quote from it, and it is perhaps the most important

missing element from the Commission’s deliberations. <sup>42</sup>Counsel for Pelican asked Commission staff for a copy of the Decisional Hearing transcript just two days ago, January 13, and were told it did not exist. An audio recording of the proceedings was offered instead.

Thankfully, Pelican has obtained a copy of the transcript of that meeting first commissioned by Hoonah’s counsel, the existence of which was accidentally discovered by counsel for another party, which paid for another copy and shared it with the other excluded communities. In order to complete the official administrative record, the City of Pelican offers here a copy of the transcript. It is attached to this filing.

However, our belated effort to include all relevant records in the official proceedings does not cure the Commission’s failure to do so itself, in a timely fashion. Without that transcript, other parties and the general public have had no way to fully evaluate the Majority Decision or the Minority’s objections. The unavailability of this transcript during the window for filing petitions for reconsideration is a fatal procedural error.

Second, the Transcript of the Decisional Hearing confirms that the Commissioners went into executive session during their deliberations to discuss the enforcement powers available to the Commission to assure that its ruling could be carried out. The use of executive session is highly constrained by state law, and deliberations of the Commission on the issues before it regarding whether to approve the borough proposal clearly would not be allowable subjects. The question apparently justifying the resort to executive session was

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<sup>42</sup> 3 AAC 110.570 (e) requires the Commission to “keep written minutes of a decisional meeting. Each vote taken by the Commission will be entered in the minutes. The approved minutes are a public record.” Clearly the failure to provide a written transcript of the Deliberative Hearing is a violation of this requirement. Furthermore, any discussion of voting during executive session would also violate the regulation.

“clarification” of previously stated voting positions.”<sup>43</sup> This is not a legally appropriate basis for executive session and raises serious procedural questions about taking a critical conversation off the record, keeping from all parties vital information about why the Commissioners voted the way they did. Given the highly relevant conversation apparently hidden from the public, this is also a fatal procedural error.

## **V. CONCLUSION AND RECOMMENDED RELIEF**

For the reasons outlined above, the Majority Decision should be reconsidered, and Hoonah’s proposed borough be rejected in its current, deeply flawed form. Hoonah has put forward a self-serving vision of a borough that meets its needs at the expense of all other municipalities in the region. Pelican, Gustavus, and Tenakee have been written out of the proposal, and Hoonah has drawn proposed borough boundaries that cheat its neighbors of their right to vote on a matter with major impacts on the future viability and prosperity of their communities. It is not the proper function of the Commission to take sides in a disagreement about how to move forward fairly and effectively with regional government.

As the Minority and the Staff Report make clear, the lack of progress towards formation of a borough in the Glacier Bay area is not the fault of the communities that have raised concerns about Hoonah’s proposed takeover of the region. It is unfair and inappropriate for any of the Commissioners to engage in partisanship. The reaction of the three excluded communities is the result of natural wariness about community advancing a proposal that serves its own interest, at the expense of the others, and intentionally prevents the other communities from participating in the decision. It is clear from the record that, contrary to

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<sup>43</sup> Transcript of Deliberative Hearing, 154-158.

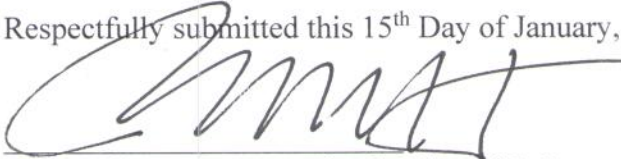
the Majority Decision, this situation is not the result of intractable, unreasonable resistance to any borough, but instead comes from concerns about the terms of this proposed borough. This perceived impasse stems from the continued lack of an objective, unbiased party conducting negotiations that will maximize effective and efficient governance of the region with the minimum of government bodies.

The primary function of the Commission is not to force adoption of an unbalanced, unfair borough structure at the behest of one party, but rather to meet its obligations under law and use its powers to advance the state and regional interest over that of any one community, and only approve a borough petition that meets the best interests of the region and the state. The Minority, while failing to fully consider certain key details, urges a rejection of the Hoonah proposal in favor of a different, more collaborative approach. The Staff Report is also clear that adoption of a flawed, incomplete borough proposal is not in the best interests of the state or the Glacier Bay region and would do more harm than it would resolve. Petitioner asks that the Commission follow the course advocated by the staff and the Minority and turn aside this flawed proposal as the first step towards a balanced, fair, and independently mediated process that can bring the communities together, rather than driving them further apart.

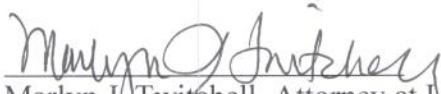
Instead of lamenting that no borough has been successfully formed in over ten years, the Commission should pause to consider why that has been the case and how to help communities overcome the challenges it identifies. Losing patience, taking sides, and forcing an unfavorable and legally unsustainable decision on the majority of the communities in the region will not advance the best interests of anyone, including the State of Alaska. Pelican and the other communities have not closed the door to a borough, but if

Hoonah's proposal as written is approved, the door will have been closed on them. We urge the Commission to withdraw the Majority Decision and give all the communities in the region a fair and equal chance to participate in neutrally mediated negotiations to amicably decide their future together.

Respectfully submitted this 15<sup>th</sup> Day of January, 2025,



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Steven E. Kallick, Attorney at Law,  
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## RESPONDENT'S REPRESENTATIVES

As required by 3 AAC 110.580, Respondent City of Pelican designates the following individuals as its representatives:

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**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

Transcript of Proceedings

2

1 TUESDAY, NOVEMBER 12, 2024

2 10:00 A.M.

3 [GMT20241112-191407\_Recording.m4a]

4 JED SMITH: (Indiscernible) a portion of  
5 that transcript -- thank you.

6 A portion of that transcript was declared  
7 inaudible. The portion was notably the  
8 introductory statement from the petitioner's  
9 representative, Attorney Jon Tillinghast.

10 On Friday Mr. Tillinghast submitted his  
11 statement in written form to LBC staff. That  
12 statement was distributed to the commissioners  
13 by email.

14 So at this time it might be appropriate to  
15 entertain a motion to accept that statement as  
16 part of the official public record.

17 Mr. Chair.

18 CHAIRPERSON WOOD: Thank you, Jed. That's  
19 well said.

20 Do we have a motion to accept that written  
21 opening statement as part of our record?

22 COMMISSIONER WALKER: Yeah, so moved.

23 COMMISSIONER HARRINGTON: Second.

24 CHAIRPERSON WOOD: Any objection to that  
25 motion?

1           Hearing none, that motion passes.

2           And also, for the record, we commissioners  
3 have had a chance to receive and read that  
4 opening statement, Mr. Tillinghast's opening  
5 comments. I think I have a copy of it right  
6 here. So thank you again in helping us deal  
7 with that issue.

8           So in a few minutes -- moments, maybe  
9 minutes -- I will invite a motion to get us  
10 discussing this matter. But before I do, for  
11 the sake of ourselves and for those that are  
12 listening, I thought I would go through  
13 3 AAC 110.570 briefly. This is what's called  
14 the Decisional Meeting Regulation of Local  
15 Boundary Commission. So if you have it before  
16 you, it's 3 AAC 110.570. And that explains what  
17 we're here about today.

18           So number one, we won't be taking any new  
19 evidence. We won't be hearing any argument. We  
20 won't be taking testimony. This is about the  
21 commissioners deliberating on the public record  
22 and discussing this petition before us.

23           It's also important to let you know that the  
24 commissioners may ask the department and the  
25 Department of Law for points of information and

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 will draw upon not only what's discussed here,  
2 but what's in the record; the evidence,  
3 testimony, comments, our final report, the  
4 briefing that's been submitted. The written  
5 decision really fleshes out and supplements and  
6 explains what we're doing today.

7 Lost connections. Sometimes in Zoom  
8 meetings, as we all know, there are lost  
9 connections. And this could happen to me, and I  
10 know Commissioner Harrington would be primed and  
11 ready to take over as vice chair until I can get  
12 back on.

13 Breaks. I'm well known for forgetting about  
14 breaks. So, gentlemen, if it gets to be about  
15 an hour and a half and another hour and a half,  
16 be sure and remind me. The code words is, Hey,  
17 let's take a break.

18 So I have just a little bit more.

19 This is again from the regulation itself,  
20 under subsection (c). "If the commission  
21 determines that a proposed change must be  
22 altered or a condition must be satisfied  
23 (indiscernible - audio interference) to meet the  
24 standards (indiscernible - audio interference)  
25 contained in the Constitution of the State of

1 Alaska" -- and then citations -- "or this  
2 chapter contained in the constitution of the  
3 state of Alaska and then citations or this  
4 chapter, and be in the best interests of the  
5 state, the commission may alter or attach a  
6 condition to the proposed change and accept the  
7 petition as altered or conditioned. A motion to  
8 alter, impose conditions upon, or approve a  
9 proposed change requires at least three  
10 affirmative votes by the commission members to  
11 constitute approval."

12 If the proposed change is a "municipal  
13 incorporation subject to" -- and statutes --  
14 "and if the commission determines that an  
15 amendment to the petition or the placement of a  
16 condition on incorporation may be warranted, the  
17 department shall provide public notice and an  
18 opportunity for public comment on the alteration  
19 or condition before the commission amends the  
20 petition or imposes a condition upon  
21 incorporation; if the department recommended the  
22 proposed change or condition and the public had  
23 an opportunity to comment on the proposed change  
24 or condition, at a commission meeting, an  
25 additional notice or comment period is not



1 required."

2 That really doesn't pertain to what happened  
3 today or happened in the past.

4 And then finally, "If the commission  
5 determines that a proposed change fails to meet  
6 the standards contained in the Constitution of  
7 the State of Alaska, or this chapter, or is not  
8 in the best interests of the state, the  
9 commission will reject the proposed change. If  
10 a motion to grant a proposed change receives  
11 fewer than three affirmative votes by commission  
12 members, the proposed change is rejected."

13 So without further ado, I've also been  
14 reminded by staff that under Robert's Rules, we  
15 need a positive motion to bring anything to the  
16 floor for discussion. And so, therefore, I am  
17 recommending that we put a motion on the floor  
18 for discussion purposes only and -- if seconded,  
19 which would approve the petition.

20 Do we have such a motion?

21 COMMISSIONER WALKER: Chairman wood?

22 CHAIRPERSON WOOD: Commissioner walker?

23 COMMISSIONER WALKER: I move to approve  
24 the City of Hoonah's Xunaa Borough incorporation  
25 petition as presented by the petitioners.

1 CHAIRPERSON WOOD: Thank you.

2 Is there a second?

3 CHAIRPERSON HARRINGTON: Second.

4 Thank you.

5 It's been moved and seconded.

6 And I am going to open the floor for  
7 discussion.

8 But before I do, I had some preliminary  
9 matters that I would like to kick off for  
10 discussion with.

11 So, why are we here? well, I was looking at  
12 our final report that's been submitted by staff.  
13 If you look on page 7, the petition stated  
14 reasons for the borough incorporation proposal.  
15 The petition's reasons for petitioning for  
16 incorporation is expressed on page 3 of the  
17 petition. And those are voluntary incorporation  
18 is preferable to the potential alternatives of  
19 either having a different borough government  
20 imposed upon residents by the state or leaving  
21 the -- this entire region, except the existing  
22 City of Hoonah, unorganized.

23 The proposed borough boundaries will  
24 encompass all of the Huna Tlingit historic  
25 territory. The proposed borough boundaries

1 likewise encompass most of the Tlingit's core  
2 historic and current subsistence hunting and  
3 fishing grounds. The ability of the Huna  
4 Tlingit to influence the future decisions  
5 regarding these lands is of critical importance  
6 to the tribe.

7       Borough incorporation will enfranchise  
8 residents of the included region enabling them  
9 to vote on issues affecting not only their  
10 immediate environments but also borough-wide  
11 issues.

12       Remote residents make significant use of  
13 Hoonah's infrastructure. The water surrounding  
14 the proposed borough represent untapped wealth  
15 that through fair and uniform taxation can  
16 better the lives of everyone within the borough.

17       The proposed borough's ability to select  
18 municipal entitlement lands will give residents  
19 of the proposed borough greater ability to  
20 support and enhance economic development in the  
21 region including development of transportation  
22 links.

23       And finally, incorporation will improve the  
24 community of Hoonah's ties with the surrounding  
25 area and its ability to plan a future use and

1 development of the region.

2 staff has kindly given us, gentlemen, a  
3 checklist of -- that will help us discuss the  
4 various standards for borough incorporation.

5 Excuse me. I am losing my voice but I don't  
6 know why. I don't have a cold.

7 And if you will pull that out, it begins  
8 with community of interest, and population, and  
9 resources, boundaries, best interests of the  
10 state.

11 I would propose, and I would ask, that we  
12 take those a little out of order. And by that,  
13 I mean may we begin with page 3, Boundaries? So  
14 unless anyone has any objections to taking those  
15 out of order -- and the reason I'm suggesting  
16 that is I think the crux (indiscernible) -- the  
17 crux of the decision and today's discussion,  
18 perhaps, will be just how the boundaries have  
19 been drawn, certainly has been a crux of many  
20 comments we have received, and we have a lot of  
21 them.

22 So I would like to do that. And let's go  
23 ahead and take that up. Boundaries, for those  
24 that are listening, is one of the standards  
25 that's been identified in the statute and

1 regulation having to do with borough  
2 incorporation.

3 But rather than to start by discussing  
4 what's on this page, I would like to harken back  
5 to our constitution, just for a bit, and the  
6 related statutes, and then finally the  
7 regulation.

8 At Article X, the constitutional framework  
9 said this: The purpose of this article is to  
10 provide for maximum local government with a  
11 minimum of local units and to prevent  
12 duplication indication of tax-levying  
13 jurisdictions.

14 Later in a regulation the LBC adopted this  
15 verbiage from -- and you can find it in 3 AAC  
16 110.981, subsection (1): In determining whether  
17 a proposed boundary change promotes maximum  
18 local self-government under Article X, Section 1  
19 of the Constitution, the commission will  
20 consider for borough incorporation, whether the  
21 proposal would extend local government on a  
22 regional scale to a significant area and  
23 population of the unorganized borough.

24 And later in the next section, 3 AAC  
25 110.982: Among the factors to be considered in

1 determining whether a proposed boundary change  
2 promotes a minimum number of local government  
3 units in accordance with Article X, Section 1 of  
4 the constitution, the commission will consider  
5 for borough incorporation, whether a new borough  
6 will be created from the unorganized borough and  
7 whether the proposed boundaries maximize an area  
8 and population with common interests.

9 And going on, in Section 3 of Article X in  
10 the constitution under "Boroughs" the framers  
11 wrote this: The entire state shall be divided  
12 into boroughs, organized or unorganized. They  
13 shall be established in a manner in accordance  
14 to standards provided by law. The standards  
15 shall include population, geography, economy  
16 transportation, and other factors.

17 Right now we're discussing boundaries.

18 Each borough shall embrace an area in  
19 population with common interests to the maximum  
20 degree possible.

21 Now, we have an incorporation statute,  
22 AS 29.05.031 that says this: An area that meets  
23 the following standards may incorporate as a  
24 home rule, first class, or second class borough,  
25 or as a unified municipality: If the population

1 of the area is interrelated and integrated as to  
 2 its social, cultural and economic activities,  
 3 and is large and stable enough to support  
 4 borough government.

5 The boundaries -- Number (2), the boundaries  
 6 of the proposed borough or unified municipality  
 7 conform generally to natural geography and  
 8 include all areas necessary for full development  
 9 of municipal services.

10 Boudaries and regulations (indiscernible -  
 11 audio interference) 3 AAC 110.060 (a), it states  
 12 in part: The boundaries of a proposed borough  
 13 must conform generally to natural geography,  
 14 must be on a regional scale suitable for borough  
 15 government, and must include all land and water  
 16 necessary to provide the full development of  
 17 essential municipal services on an efficient  
 18 coast-effective level.

19 I'd like to skip down to (d) of that  
 20 section. And we want to go back and cover these  
 21 others as well. But under (d): absent a  
 22 specific and persuasive showing to the contrary,  
 23 the commission will presume that an area  
 24 proposed for incorporation that is noncontiguous  
 25 or that contains enclaves does not include all

1 land and water necessary to allow for the full  
2 development essential municipal services on a  
3 efficient, cost-effective level.

4 So we get into the question of what is a  
5 region. And that's defined in 3 AAC 110.990  
6 under "region," subsection (28): Region means a  
7 relatively large area of geographical land and  
8 submerged lands that may include multiple  
9 communities, all or most of which share similar  
10 attributes with respect to population, natural  
11 geography, social, cultural, and economic  
12 activities communications, transportation, and  
13 other factors. It includes a regional  
14 educational attendance area, state house  
15 election district, an organized borough, and a  
16 model borough described in a publication adopted  
17 by reference in subsection (9).

18 I want to finally -- maybe not quite  
19 finally, but getting close to finally -- say  
20 this. If we review, and we have reviewed the  
21 petitioner's briefing, one of the essential  
22 arguments of the situation has to do with  
23 precedents set by this commission with regard to  
24 other requests for incorporation, specifically  
25 what might be called small boroughs or city



1           boroughs. So I found this interesting  
2           testimony, a letter, really, written by, oh, one  
3           of the real authorities on borough formation in  
4           our state Vic Fischer. Sadly, Mr. Fischer is  
5           now departed and no longer available to talk to  
6           personally, but he left an awful lot of  
7           literature. In fact, there is an amazing amount  
8           of information available.

9           I'm looking at a letter dated October 11,  
10          1991. It was sent to the Local Boundary  
11          Commission those many years ago in relation to  
12          the Yakutat petition. And it's about a -- one,  
13          two, three -- four-page letter. So in this  
14          letter Mr. Fischer takes up the question of  
15          regional versus small boroughs. In fact, that's  
16          the heading of what he writes to us: In  
17          drafting the constitution, local government  
18          committee members certainly had in mind that  
19          boroughs would be regional in character. They  
20          discuss the concept in terms of its applications  
21          to such areas as northwest Alaska, Bristol Bay,  
22          Anchorage, the Valdez area, Southeast and  
23          others. And it seemed to work well in the  
24          various disparate regions. However,  
25          implementation did not follow their ideas.

1           The first violation of the regional concept  
2 came with establishment of the very first  
3 borough. In creating the Bristol Bay Borough,  
4 the Local Boundary Commission took a tiny part  
5 of a real region and gave it borough status  
6 under the constitution. This gross error was  
7 not rectified when the Lake & Peninsula Borough  
8 was recently created. And for that matter, did  
9 the LBC then establish a truly interrelated and  
10 integrated Bristol Bay region as a single  
11 borough, as I am sure the convention delegates  
12 would have conceived.

13           So -- and he goes on a paragraph later and  
14 says this: In its recent establishment of  
15 Denali Borough, LBC again turned its back on the  
16 concept of regional boroughs. Though it may  
17 have met some arbitrary standards, this borough  
18 is what I would call an area and not a region.  
19 It is less of a region even than Nelson Island  
20 or the Ambler/Kobuk/Shungnak area. And I would  
21 hope you would not think of these as prospective  
22 regional boroughs.

23           So what is a region, he asked? without  
24 going into details and definitions, I would  
25 suggest the Kodiak, Northwest Arctic, North

1 Slope and Kenai Peninsula Boroughs are good  
2 examples of large regional boroughs.

3 Similarly, the prospective Prince William  
4 Sound Boroughs though medium size rather than a  
5 large region, is a logical regional borough by  
6 just about any definition and breaking it up  
7 would make no sense whatsoever.

8 The Yakutat area which obviously is not an  
9 integral part of Prince William Sound is a  
10 different case. While not a large region in the  
11 North Slope Borough sense, it does constitute an  
12 identifiable functional region, although a small  
13 one.

14 It goes on to talk about single city --  
15 well, he calls it the "single city issue." And  
16 now I will skip through a lot of this. You can  
17 find that as a part of the LBC's record on the  
18 Yakutat case. But he says: The criteria for  
19 borough incorporation should be whether the  
20 proposal makes sense in the broader scheme of  
21 things and not some arbitrary and artificial  
22 standards, be they rigid or presumptive.

23 And on the next page: The extent to which  
24 LBC action on Yakutat sets precedent depends  
25 strictly on the LBC. Despite prospective claims

1 to the contrary, each situation is different.  
 2 Cordova is not Yakutat, nor is Galena or  
 3 McCarthy. Each case must be judged on its own.  
 4 The Yakutat Borough need not set the stage for  
 5 any other single community borough unless the  
 6 LBC decides it's appropriate to a given area.

7 Boroughs are still evolving creatures.  
 8 Rigid criteria and a straitjacket are not called  
 9 for. The need for flexibility and flexible  
 10 standard is reflected in the constitutional  
 11 record, the final report, the PAS report, Tom  
 12 Morehouse's and my writings and other sources.  
 13 This gives the LBC much room for exercising  
 14 judgment, making its own sensible decisions and  
 15 structuring a logical borough system for Alaska.

16 Sorry to go on so long about that but I  
 17 thought his comments were enlightening and  
 18 helpful, and as the petitioner's been arguing,  
 19 reflects on what has happened in the past.

20 And then I think I am going to just read a  
 21 little bit from the final report and then open  
 22 it up for your thoughts, too.

23 The final report states -- and I don't have  
 24 the page number, I apologize: There are many  
 25 reasons why regional government in Glacier Bay

1 could be (indiscernible). There are many  
 2 reasons why regional governments in Glacier Bay  
 3 could be in the best interests of the state and  
 4 of the communities. There even appear to be  
 5 signs some of the Glacier Bay communities may be  
 6 open to borough government. The regions'  
 7 communities have commonalities that are suitable  
 8 for regional government whereby a borough  
 9 government would distribute representation  
 10 equally among the communities and interests in  
 11 the region. But we find, nonetheless, state  
 12 recommends the petition be denied but that  
 13 future consideration be paid to the commissioner  
 14 if a new proposal with greater community support  
 15 and inclusion is brought forward.

16 Now, because of objections of some of the  
 17 communities in the Glacier Bay region, the  
 18 petitioners said this: A functional borough  
 19 containing Hoonah, Gustavus, Pelican, and  
 20 Tenakee Springs is a pipe dream.

21 We had a comment from a Gustavus individual  
 22 who said that: Hoonah's pathway to successful  
 23 Xunaa Borough petition is to significantly  
 24 reduce boundaries, avoid creating enclaves,  
 25 fairly tax all residents and businesses, and

1 provide essential services on an areawide basis,  
 2 or wait until all communities are unified under  
 3 a common vision for a true regional form of  
 4 government that generates revenue and delivers  
 5 essential services across the region.

6 It's a little bit of background material,  
 7 gentlemen, I thought I would share with you as  
 8 we kick off our discussion. Hopefully it's as  
 9 helpful to you as it has been to me.

10 I wanted to talk a little about the model  
 11 borough boundaries. There's another study, over  
 12 200 pages of it, called the Unorganized Areas of  
 13 Alaska That Meet Borough Incorporation Standards  
 14 from February 20, 2003. But I think I will give  
 15 you a chance to talk, as I should have earlier.

16 And would anybody care to speak?

17 COMMISSIONER HARRINGTON: I guess the crux  
 18 of this whole petition comes down, in my mind,  
 19 to this issue. Particularly with -- everyone  
 20 agrees that a logical borough boundary would  
 21 include Gustavus, Pelican, and Tenakee Springs  
 22 in this whole regional government, but we can't  
 23 get there. I know they suggested that some  
 24 future time it may be able to take place, but  
 25 there are so many steps in getting a region of

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

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

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

1 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 willingness, as well.

2 I know from my mediator experience, it helps  
3 in facilitating a settlement if everyone's  
4 motivated. And one of the motivations that,  
5 really, I'm centered on is expressed by Hoonah,  
6 which is it is much better if we identify a  
7 borough that fits our good purposes than having  
8 it imposed like the 1963 model -- or Mandatory  
9 Borough Act. And that is right on point. If I  
10 were arguing this case I would say, simply:  
11 Look, you're much better served if you, as  
12 communities, work this out. Where is the  
13 borough seat going to be? Can you share that?  
14 How are you going to handle the question of  
15 taxes? Importantly, how are you going to handle  
16 the question of representation on your borough?  
17 How are you going to handle some of the  
18 transportation challenges? All of those issues.

19 This is a local action petition, meaning for  
20 those listening, it's kind of the voluntary  
21 approach. There is the legislative review  
22 petition process whereby this commission would  
23 make a decision and then submit it to the  
24 legislature, but that has not been chosen. I  
25 think because -- obviously, because Hoonah

1 feels like -- I've got part of their brief here  
2 that says it very explicitly about it being a  
3 pipe dream that they could get that thought  
4 passed in those communities.

5 But I'm beginning to wonder if, as you're  
6 pointing out, Clay, whether there couldn't be  
7 more effort put in that. In the final report  
8 our staff asked that question. And I asked a  
9 similar question of the folks that were asked by  
10 Hoonah to facilitate a study of borough  
11 formation, "what was your feeling about the  
12 opening -- openness to some?"

13 Now, I know that there was a range of  
14 comments. There were people that were  
15 absolutely opposed, but there were some people  
16 who said things like -- and I read from one of  
17 the those things like, "well, when we have  
18 accommodated all the various concerns, then  
19 maybe we will be ready." But I share Hoonah's  
20 frustration in that it might be an awful long  
21 time.

22 Now, we've had some boroughs form, but not  
23 very many, since the year 2000; Skagway in 2007,  
24 Wrangell in 2010, Petersburg in 2013.

25 Now, those would all be, I think it's fair

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

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

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

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

1           And the second problem is now we've created  
2 three separate areas involving cities who don't,  
3 by statute, have the capability of governing  
4 those areas surrounding them without petitioning  
5 for borough status themselves or somehow  
6 developing those areas and using the annexation  
7 regulations. It's just a frustrating situation.  
8 And, which I believe -- legitimately unlike some  
9 of these other cases that Mr. Tony (ph) has  
10 brought to our attention and that it isn't  
11 simply a matter of working around a single  
12 community. There are three communities, perhaps  
13 even more, if you consider the interests of  
14 Funter Bay, and Horse and Colt Islands, but that  
15 may be a separate part of our conversation.

16           But at any rate -- and then, John, getting  
17 back to your point, well, we can do this by  
18 step-by basis, and restrict the boundaries to  
19 what has been requested by these commenters, and  
20 frustrate the purposes of the petition to begin  
21 with, and then direct that in the future these  
22 annexations take place. But I worry that the  
23 impetus and the interests and the commitment in  
24 enforcing that condition won't be there, John.  
25 Could you speak to that a little bit? Because

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           borough.

2           When reviewing the boundaries proposed in a  
3           petition for borough incorporation the  
4           commission may consider model borough boundaries  
5           for the area within its proposed borough.

6           Maybe I can stop there. I think everyone  
7           has realized by now that the model borough  
8           boundaries, revised in June of '97, did identify  
9           and -- the Glacier Bay region as a model  
10          borough, and established boundaries accordingly  
11          in that report. And that would include Hoonah,  
12          Pelican, Gustavus for the region extending from  
13          Cape Fairweather to Chatham Strait. These model  
14          boundaries encompass Glacier Bay, the  
15          communities of Elfin Cove, Pelican, Hoonah  
16          Gustavus, and Tenakee Springs. In 1990 the  
17          region had a population of 1,858.

18          So the next point here is: Regional  
19          boundaries including one or more regional  
20          educational attendance areas, federal census  
21          area boundaries, boundaries established for  
22          regional native corporation, and boundaries of  
23          national forests.

24          I note that the Chatham REAA includes, I  
25          think, something over 50 percent of this

1 particular Glacier Bay region area.

2 "whether the proposed borough will embrace  
3 an area and population with common interests to  
4 the maximum degree possible."

5 On that score, I have a concern that -- some  
6 of the comments really kind of narrowed the  
7 definition of "common interests." I mean, I  
8 think as the final report says that, you know,  
9 naturally speaking, we can observe that there  
10 are a number of common interests for all these  
11 communities, not only where they live  
12 geographically, but their lifestyles in  
13 particular. Sure, there's some differences  
14 between folks that might live in towns and those  
15 that might live -- we would call it here the  
16 Bush -- but they're all one and part of the same  
17 general area with the common interests in  
18 lifestyles.

19 Now, there was some criticism I heard and  
20 read about with respect to tax being taken by,  
21 let's say, Gustavus versus Hoonah in the type of  
22 tourism that they would prefer and they would  
23 encourage. But I tell you that also exhibits a  
24 common interest in showing off your area, and  
25 taking the initiative to introduce other folks

1 to that. Is a revenue involved? Sure there is.

2 But on the other hand, I think we're all  
 3 proud not only of the cultural influence of this  
 4 area, be it the historic presence of the Hoonah  
 5 people, but all those who have come since then,  
 6 like myself. I didn't come to that area but I  
 7 came to Anchorage in 1950, so I kind of joined  
 8 this family of folks, all of us have, that call  
 9 ourselves Alaskan.

10 So I would urge that this definition of  
 11 common interests not be narrowed --  
 12 (indiscernible - simultaneous speech) that we  
 13 ignore the fact that model borough boundaries  
 14 study has already identified these communities  
 15 as having common interests.

16 There's another report -- I mean there's so  
 17 many studies and so many reports. I alluded to  
 18 this one earlier, gentlemen, and I would like to  
 19 read part of it because I think it demonstrates  
 20 some of the frustration being felt by the Hoonah  
 21 folks.

22 This is the 2003 Unorganized Areas of Alaska  
 23 that Meet Borough Incorporation Standards. One  
 24 of those communities is -- guess what? -- this  
 25 region. And on page 28: It has been widely

1 recognized by experts in Alaska local  
2 government, that the local option or voluntary  
3 approach to forming boroughs implemented in 1961  
4 has been successful only in those few instances  
5 where local self interest outweighed the  
6 significant disincentives to borough  
7 incorporation.

8 Indeed, less than 4 percent of Alaskans live  
9 in boroughs that were formed voluntarily through  
10 local action. In contrast, nearly 83 percent of  
11 Alaskans live in boroughs that were formed in a  
12 manner of a few months under the 1963 Mandatory  
13 Borough Act. The remaining 13 percent of  
14 Alaskans live in the unorganized borough.  
15 Stated differently, more than 96 percent of  
16 Alaskans live in areas that have not voluntarily  
17 initiated borough incorporation.

18 Constitutional convention delegates  
19 expressed a preference for voluntary  
20 incorporation of boroughs. However, they also  
21 felt that the state should require areas to take  
22 on the burden of their own regional government  
23 where they can support it.

24 And that's the crux of the studies I'm  
25 alluding to. There are others that maybe we

1 won't have time to go in to, but on page 211 of  
 2 this report states: Based on the foregoing, the  
 3 Local Boundary Commission concludes that each of  
 4 the eight areas under review embrace an area and  
 5 population that have common interests in a  
 6 regional context, as called for by Article X,  
 7 Section 3 of Alaska's Constitution. Moreover,  
 8 each of these areas have a population that is  
 9 interrelated and integrated socially,  
 10 culturally, and economically as set out in  
 11 statute.

12 That was written in 2003. As I mentioned  
 13 earlier, I think we've had three incorporations  
 14 of boroughs but they're small ones. So I don't  
 15 think the percentage as I mentioned, if this was  
 16 updated, would be that significant in today's  
 17 world. But, again, the frustration is trying to  
 18 encourage folks, despite the disincentives to  
 19 borough formation, to take the bull by the horns  
 20 and begin to think about and really work toward  
 21 working in a communal sense with their  
 22 neighbors.

23 I realize that there may be some bones of  
 24 contention between these communities that I  
 25 don't understand, having lived most of my life

1           either in Fairbanks or Anchorage or Eagle River,  
2           but nonetheless, can be accommodated. One of  
3           those in particular we've been reading about is  
4           the PILT, payment in lieu of taxes, and fish tax  
5           and are (indiscernible) receipts --

6           JED SMITH: Mr. Chair?

7           CHAIRPERSON WOOD: Yes. Go ahead.

8           JED SMITH: Mr. Chair, if I could just  
9           interrupt for a minute. Commissioner Cyrus has  
10          joined us now. Thank you.

11          CHAIRPERSON WOOD: Oh, okay.

12          Hi, Ely. We're discussing our motion that's  
13          on the floor. Did you just rejoin when you  
14          got -- as of right now?

15          COMMISSIONER CYRUS: Yeah, I did. If you  
16          wouldn't remind restating the motion.

17          CHAIRPERSON WOOD: Yeah. It's a simple one.  
18          The motion we're discussing, for purposes of  
19          discussion only, is a motion that would grant  
20          the petition as presented. And we're doing  
21          that, Ely, because we're required by Robert's  
22          Rule to have a positive action to bring  
23          something to the floor. But a motion like that  
24          would require three affirmative votes.

25          You may have missed where I was also reading



1 from statute whereby the commission has other  
2 prerogatives, attaching amendments, attaching  
3 conditions, restricting the boundaries, denying  
4 the petition. But the one on the floor -- the  
5 motion on the floor, as simply put, is to grant  
6 the petition as submitted. And so far we've  
7 been discussing concerns that we have with  
8 leaving out three communities, and we're talking  
9 about boundaries in particular. So the issue  
10 is -- and seems to be the crux of the  
11 situation -- do we feel comfortable in going  
12 forward with boundaries that, at least in my  
13 perspective, create enclaves of Tenakee Springs,  
14 Gustavus, and Pelican, all with interests in the  
15 region.

16 Contrary-wise, we also talked about, well,  
17 what about restricting the boundaries; narrowly  
18 defining where Hoonah's jurisdiction would begin  
19 and ends as a borough. And the problem with  
20 that approach is now we've just, in essence,  
21 made those enclaves larger and put those cities  
22 in the position of, well, they would have no  
23 jurisdiction over those areas, from a  
24 governmental point of view, until they had the  
25 basis to annex them. And that may have not

1           happen for the foreseeable future.

2           So it also puts Hoonah in a bad position of  
3 one of the reasons they filed the petition, one  
4 of the key reasons is to be involved with  
5 decisions affecting the region. And the  
6 revenues, frankly, that could be otherwise  
7 derived and shared -- I forgot to mention this  
8 earlier, and now I'm really mixing things up  
9 because I forgot where I was when you came in,  
10 but it seems like some accommodations could be  
11 made so that these communities could share,  
12 frankly, in the revenues to be derived by a  
13 borough in terms of helping their own education,  
14 and in particular public education. That is,  
15 obviously, a desire of Hoonah. It should be a  
16 desire, I think, of Gustavus. Pelican has its  
17 own school district. Tenakee Springs is part of  
18 the Chatham REAA of course. But anyway,  
19 that's -- that's where we're at, Ely.

20           And so what we're doing now, if you could  
21 take out your checklist of -- current standards  
22 involved in considering borough incorporation.  
23 we took boundaries out of order, Ely, so if you  
24 turn to page 3, we're kind of working our way  
25 through that. And ultimately staff would like

1 us to say either "yes" or "no" so that we have a  
2 clear record with respect to our discussions  
3 today. But I think I had just commented on the  
4 fact that the model borough boundaries did  
5 include these other communities, the Chatham  
6 REAA includes them, too.

7 And then -- yeah, I think we were talking  
8 about common interests. Whether the proposed  
9 borough will embrace an area population with  
10 common interests to the maximum degree possible.  
11 In a report -- I don't have the page number --  
12 but the report that's been presented by us  
13 states that -- and I tend to agree with this --  
14 these areas do have common interests; common  
15 interests in fisheries and the types of  
16 businesses they pursue.

17 There is kind of a different approach, I  
18 believe, insofar as cruise ships are concerned.  
19 I might add that I was most impressed when we  
20 were in Hoonah with watching how neatly and  
21 efficiently and effectively that community has  
22 not only began to show and demonstrate and  
23 showcase its cultural and historic presence in  
24 this area of our state, but it provides an  
25 opportunity for a lot of middle-income Americans

1 to see Alaska.

2 Now, I realize there are smaller ships that  
 3 would have maybe lesser people, make less impact  
 4 that visit Gustavus or visit Glacier Bay  
 5 National Monument, but nonetheless that's a  
 6 common interest, in my way of thinking. The  
 7 common interests in fisheries and tourism and  
 8 natural resources, those all come into play.  
 9 And narrowing them so remarkably close so that  
 10 you argue that: No. No. No, there's these  
 11 slight differences.

12 We -- my family and I live in the  
 13 Municipality of Anchorage. One of my sons  
 14 teaches at East High School. And don't quote me  
 15 on this, but I believe the school district has  
 16 one of the most diverse populations in the  
 17 country, some 80 different cultures represented  
 18 by families that send children to the school  
 19 district. But it's just a way of demonstrating  
 20 that, yeah, there are different cultures  
 21 involved, but primarily this is true; we are  
 22 Alaskans and we have an interest in promoting  
 23 the health, safety and welfare of our community.  
 24 So I'll get off my soapbox and just -- give me a  
 25 moment here, but I wanted to just finish reading

1 these questions that staff has prepared for us.

2 whether the proposed -- proposal promotes a  
3 minimum number of local government units as  
4 determined under 3 AAC 110.982, and whether the  
5 proposed -- proposed borough boundaries are the  
6 optimum boundaries for that region in accordance  
7 with the Alaska Constitution.

8 So I am going to stop right there. That  
9 seems like a really good question. Does anybody  
10 want to weigh in on that? Do -- the proposed  
11 boundaries, are they the optimum boundaries for  
12 the region?

13 COMMISSIONER TROTTER: Before we begin that  
14 discussion, would it be possible to take a break  
15 since we've been going at this about an hour and  
16 20 minutes?

17 CHAIRPERSON WOOD: Oh, my goodness. Of  
18 course. I am so sorry. Thank you for reminding  
19 me, Clayton.

20 So it is now --

21 COMMISSIONER WALKER: Just doing what you  
22 told me to.

23 CHAIRPERSON WOOD: Yeah. Okay. Let's come  
24 back on the record at 11:30, shall we?

25 COMMISSIONER WALKER: Sounds great to me.

1 CHAIRPERSON WOOD: Thank you. Thank you for  
2 reminding me. We will be back on the record at  
3 11:30.

4 (Off record.)

5 CHAIRPERSON WOOD: Are we all back? Can we  
6 verify the commissioners are back on?

7 COMMISSIONER TROTTER: Yes.

8 COMMISSIONER WALKER: Board agrees it's  
9 snowing here in Denali.

10 CHAIRPERSON WOOD: Snowing. Okay.

11 John's here.

12 Ely? Is Ely here?

13 COMMISSIONER TROTTER: I was looking  
14 sideways at two screens. Was looking at one, I  
15 wasn't looking at you straight on.

16 CHAIRPERSON WOOD: All this technology.

17 COMMISSIONER TROTTER: Yeah, I know. So  
18 much easier to get together, just talk.

19 JED SMITH: Commissioner Cyrus has just  
20 rejoined us.

21 CHAIRPERSON WOOD: Okay. We're back on the  
22 record. And we were discussing boundaries.

23 Clayton, thank you for the reminder. It is  
24 now after 11:30. We'll take another break, just  
25 let me know when. I'll try and not go over too

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 staff has cited the practical impossibility of  
 2 joinder as the reason why this commission should  
 3 not add these cities to the borough, itself.

4 COMMISSIONER HARRINGTON: If I may?

5 CHAIRPERSON WOOD: That's where he talks  
 6 about that in depth. But then he concludes in  
 7 his statement: As so we begin our testimony,  
 8 please don't forget the Article X, Section 3  
 9 only demands the "possible." And every  
 10 president -- precedential -- I'm not saying it  
 11 right -- occasion in statehood has stressed that  
 12 "possible" does not include the unwieldy or the  
 13 politically impractical.

14 John said something earlier about don't let  
 15 the perfect be the enemy of good. I forgot how  
 16 that went but, yeah, I tend to agree. I do  
 17 agree that the optimum here is to add these  
 18 others as communities. Do we give up on the  
 19 notion that this is impossible by use of a local  
 20 action method? Perhaps so, I don't know.

21 Again, I repeat that there were some  
 22 indications, I think not only from Gustavus  
 23 folks but also a gentleman that spoke on behalf  
 24 of Elfin Cove -- it was either Elfin Cove or  
 25 Tenakee Springs, suggesting that there would be

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

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

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

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

1           Staff, in its report, pointed out that one  
 2 of the difficulties is now you isolate Pelican  
 3 and Tenakee Springs. Presumably they could be  
 4 taken into annex by Sitka, but then Sitka's  
 5 unified. What happens to their status as  
 6 cities? Then Gustavus could go north to Haines  
 7 Borough, but again that's problematic, all of  
 8 those, because now we've frustrated what Hoonah  
 9 has desired from the beginning here. So there  
 10 again, I guess I'm talking in circles.

11           Any other comments on boundaries that we've  
 12 neglected?

13           John?

14           COMMISSIONER HARRINGTON: John Harrington.  
 15 "The perfect is the enemy of the good," is what  
 16 I said. If we wanted to tack on those  
 17 communities, I believe we will have to go back  
 18 through a hearing process and postpone this  
 19 whole process. As far as establishing those  
 20 enclaves, we've done it twice before in -- with  
 21 Klukwan inside the Haines Borough and with Hyder  
 22 inside the Ketchikan Gateway Borough, both of  
 23 them. We've done that.

24           We -- if you look at the regulation in its  
 25 totality, I think outside of the ideal

1 boundaries, Hoonah passes, or it meets the  
 2 statutory requirements that are listed here.  
 3 The problem is those communities and the logic  
 4 of having them inside there. I -- I'd hate to  
 5 say "no" to Hoonah, because I think this is the  
 6 first step we have in this area to get a  
 7 regional organized government. But I understand  
 8 your concerns, and I wish there was some way we  
 9 could get around that and have an avenue toward  
 10 including those communities into the Xunaa  
 11 Borough, or if they want to change the name at  
 12 that point into something else. But I  
 13 understand the limitations, but I believe  
 14 essentially, except for the model boundaries,  
 15 proposal meets the requirements under  
 16 "boundaries."

17 CHAIRPERSON WOOD: Thank you, John.

18 For those that might be interested there's a  
 19 stinging dissent in the Skagway case, as  
 20 Mr. Tillinghast points out (indiscernible) do  
 21 they necessarily control the way the world  
 22 turns. However, I thought that was a very  
 23 cogent objection of the commission's decision to  
 24 isolate Klukwan and not make it part of the  
 25 Skagway Borough. And going back a step, there

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 have concerns that the boundaries section of the  
2 standards has not been met.

3 So there's a box marked "yes" and one "no"  
4 under this discussion. Shall I mark it "no"?  
5 Or are there other opposite feelings amongst us  
6 five?

7 COMMISSIONER TROTTER: Can you restate the  
8 question?

9 CHAIRPERSON WOOD: well, it's simply we are  
10 the borough's incorporation standards, Clayton.  
11 We are under "boundaries." If you look at your  
12 checklist, it has a box, "yes" or "no." Does it  
13 satisfy the boundaries standard under  
14 3 AAC 110.60? So now we've talked about all  
15 those various elements, and I'm just coming to  
16 the end of that discussion and wondering which  
17 box do I check? And I think that I check "no,"  
18 but I was asking is there anyone who would  
19 disagree?

20 COMMISSIONER TROTTER: I don't have a copy  
21 of that in front of me --

22 CHAIRPERSON WOOD: Hearing none, I think  
23 we --

24 COMMISSIONER WALKER: -- the statue in front  
25 of me. So I am asking would you just restate

1 the question? Can you do that?

2 CHAIRPERSON WOOD: Okay. Yeah. I will.

3 This is 3 AAC 110.60. It's the -- part of  
4 the standards for borough formation, one of  
5 those elements is "boundaries." And here's what  
6 it says: The boundaries of a proposed borough  
7 must conform generally to natural geography,  
8 must be on a regional scale suitable for borough  
9 government, and must include all land and water  
10 necessary to provide the full development and  
11 essential municipal services on an efficient --  
12 excuse me -- cost-effective level.

13 So then we went through the various pieces  
14 and parts of that to consider whether the  
15 boundary, which has been proposed doesn't  
16 include these three communities, and does  
17 that -- does that negate or eliminate the  
18 possibility of satisfying this particular  
19 standard? And then there's several more  
20 standards that we haven't talked about yet. So  
21 before we move on I just wanted to know whether  
22 I -- I checked this box, "no," but I was just  
23 asking does anybody disagree amongst us five  
24 commissioners?

25 COMMISSIONER TROTTER: I believe I would



1 have to disagree, because there have been a  
2 number of borough incorporations that have had a  
3 lot of land around them with independent cities,  
4 and there have been other -- other actions of  
5 this commission which have allowed just what's  
6 been done here; left out other cities, you know.  
7 So it seems to me that the circumstances are,  
8 you know, we've had the same circumstances  
9 before and approved it, so I can't agree with  
10 that.

11 CHAIRPERSON WOOD: Is there any possibility  
12 you can pull up this checklist? Because there's  
13 more than just -- what you're speaking to -- I  
14 understand your feeling on it, we've, according  
15 to John, had enclaves approved before and  
16 mentioned Skagway and the Ketchikan case, et  
17 cetera. But that's just one -- that's just one  
18 consideration under this broad question.

19 The other one -- others are like this,  
20 whether -- (indiscernible) excuse me. Okay.  
21 Let me read these.

22 COMMISSIONER TROTTER: I tell you what, you  
23 go ahead, and I will -- my documentation is in a  
24 notebook, and I need to go look at it. Or if  
25 you could direct me to an email from the staff

1 that has that in it, I have those available  
2 also. I am looking right now.

3 CHAIRPERSON WOOD: Jed, I know you're  
4 listening, could you resend that to Clayton?

5 And maybe you could print that out on your  
6 end, Clayton.

7 COMMISSIONER TROTTER: The State of Alaska,  
8 in its wisdom, has cut funds to the universities  
9 to some degree and my printer doesn't work, and  
10 getting it fixed is, shall we say, a significant  
11 undertaking. Okay. So if you -- just email it  
12 to me.

13 JED SMITH: Commissioner Trotter, the  
14 checklist has been emailed to you.

15 CHAIRPERSON WOOD: Okay. It's in your  
16 inbox. Clayton, when you (indiscernible) should  
17 I grant you a recess to review that?

18 COMMISSIONER TROTTER: I think I got it now.  
19 Let me look at it and see.

20 CHAIRPERSON WOOD: Okay.  
21 If you open it up to page 3.

22 COMMISSIONER TROTTER: I've got it.

23 CHAIRPERSON WOOD: Open it up to  
24 "boundaries" on page 3.

25 COMMISSIONER TROTTER: Okay. I got it.

1           CHAIRPERSON WOOD: Okay. I read you the  
2           blackened or the bold part of that, but that's  
3           just the key language -- the other is key, too,  
4           but if you go down into that list you're going  
5           to see references to the model borough  
6           boundaries; we talked about that.

7           COMMISSIONER TROTTER: I see that.

8           CHAIRPERSON WOOD: We talked about the --  
9           yeah? We talked about these three communities  
10          being in the model borough boundary. We talked  
11          about REAA, in this case is Chatham --  
12          (indiscernible).

13          COMMISSIONER TROTTER: Yep.

14          CHAIRPERSON WOOD: And the next one is  
15          whether the proposed borough will embrace an  
16          area and population with common interests to the  
17          maximum degree possible.

18          Next is whether the proposed borough  
19          promotes maximum self government, whether the  
20          proposal promotes minimum number of government  
21          units, and whether the proposed borough  
22          boundaries are the optimum boundaries for that  
23          region.

24          The last one is the mention of enclaves, and  
25          that's just one of those. So, I mean, I think

1 if you're going to say you have concerns about  
2 boundaries, you might at least want to look at  
3 these others, too.

4 And it is true, as John has pointed out, we  
5 have other situations where enclaves have been  
6 permitted, but as I -- I guess I would take the  
7 view that those cases are different in the sense  
8 of the facts. Here I think you're isolating not  
9 just one community or two, it's basically three.  
10 And it has also to do with the fact -- and it  
11 would be a fact, my opinion -- that whatever  
12 resources in that (indiscernible) or region  
13 would only be enjoyed by Hoonah, by the --  
14 actually the main part of the Xunaa Borough  
15 would be that City of Hoonah, with smaller  
16 communities attached like Elfin Cove and Game  
17 Creek. So take a look at that and let us know.

18 COMMISSIONER TROTTER: I'm looking at it  
19 right now.

20 CHAIRPERSON WOOD: Okay.

21 COMMISSIONER TROTTER: I mean, looking at  
22 3 AAC 110.060 -- is that the one you wanted me  
23 to look at?

24 CHAIRPERSON WOOD: Yes, sir.

25 COMMISSIONER WALKER: I would say the

1 boundaries do conform to natural geography; they  
 2 are regional in scale, by land, and certainly  
 3 would have enough land and water necessary to  
 4 provide full development of essential municipal  
 5 services.

6 I mean, and they would have considerable  
 7 land and resources and they have done an  
 8 excellent job with what they have now. So I  
 9 would -- (indiscernible - simultaneous speech.)

10 CHAIRPERSON WOOD: Okay. You know, it's  
 11 your firm position, that's your position. But  
 12 do take a look in the middle of that discussion,  
 13 because when reviewing the boundaries proposed  
 14 in a petition for borough incorporation, "the  
 15 commission may consider" -- so the  
 16 considerations are listed there in bullets, the  
 17 last -- and only the last of which has to do  
 18 with enclaves. So do you -- have you considered  
 19 whether this is the optimum boundary, or how do  
 20 you feel about the fact that the model borough  
 21 boundaries have identified in the Glacier Bay  
 22 model borough that these three communities would  
 23 be included?

24 COMMISSIONER TROTTER: well, if we  
 25 presume -- I'll read the bottom one there, I

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

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

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

1 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           stable to support the proposed borough  
 2           government, the commission will presume that a  
 3           minimum of 1,000 permanent residents is required  
 4           unless specific and persuasive facts are  
 5           presented showing that a lesser number is  
 6           adequate.

7           If you go back to the final report, go to  
 8           page 22, and just after it lists the population  
 9           of Elfin Cove, Game Creek, Gustavus, Hoonah,  
 10          Pelican, and Tenakee Springs, Whitestone Logging  
 11          Camp. And the data from the U.S. census staff  
 12          said this: The petitioner makes an  
 13          evidence-based case that, even if the population  
 14          standard is applied strictly, the current  
 15          population is sufficient and stable enough to  
 16          support the proposed borough.

17          Hoonah cites demographic statistics  
 18          suggesting all three of the communities within  
 19          the proposed boundary are modestly growing.  
 20          Further, the petitioner includes an affidavit  
 21          from a Juneau-based socioeconomic research  
 22          consultant stating her belief the region has a  
 23          population large and stable enough to support  
 24          borough government citing growth within the  
 25          tour -- excuse me -- tourism sector, demographic

1 trends, low unemployment, and school enrollment.

2 while the petitioner included specific and  
3 persuasive facts that favor borough  
4 incorporation with a population of fewer than  
5 1,000 residents, the language in section 3 of  
6 the local government article -- excuse me -- in  
7 Alaska's Constitution must be considered. The  
8 standard does not look for a minimum population.  
9 Rather, the framers of Alaska's Constitution  
10 envision regional governments encompassing  
11 multiple communities to the maximum degree  
12 possible. Hoonah's petition extends its  
13 proposed boundaries to two outlying communities,  
14 Game Creek and Elfin Cove, and to northern  
15 Admiralty Island; however, it omits the  
16 communities of Pelican, Tenakee Springs,  
17 Gustavus. The addition of these communities  
18 would maximize the inclusion of communities as  
19 directed in the Constitution. The City of  
20 Hoonah is already a thriving municipality and  
21 the petition lacks persuading facts  
22 demonstrating the constitutional requirement has  
23 been met for a regional borough government.

24 I will go back to the beginning of that  
25 discussion on page 19. Here's the language from

1 the Constitution, Article X, section 3, calls  
2 for each borough to, quote, embrace an area in  
3 population with common interests to the maximum  
4 degree possible. And then if you look at the  
5 checklist, that's all paraphrased there.

6 Discussion?

7 CHAIRPERSON WOOD: John? Please.

8 COMMISSIONER HARRINGTON: Let me start by  
9 saying population is very close to 1,000, it's  
10 just under it. It exceeds that 1,000 during the  
11 seasonal time. So it clearly has very close to  
12 what the minimum population is required. The  
13 confidence and ability has been shown pretty  
14 extensively in the development of that cruise  
15 ship dock, the relationship with the native  
16 corporation, the cooperation with the cruise  
17 industry; they're a very competent set of  
18 people. I think they have the population, the  
19 technology, the skills needed for borough  
20 government. And in my mind, they pass the  
21 population requirement.

22 CHAIRPERSON WOOD: Clay? You were next.

23 COMMISSIONER WALKER: Yeah, thanks. I agree  
24 with that assessment, but at the same time it's  
25 also back to one of those "yes" and maybe "no"

1           because, yes, I -- I do see, you know, relaxing  
2           that 1,000 requirement a little bit here, given  
3           the extensive development there and the influx  
4           of seasonal workers, and the amount of economic  
5           activity that happens there, is reflective of  
6           you know, a population greater than 1,000  
7           people, that's no doubt. And yeah, the ability  
8           to sustain a local government as the first class  
9           City of Hoonah has in a thriving manner,  
10          demonstrated that, you know, they could  
11          translate that to a borough, I don't have any  
12          concerns there either.

13                 But, you know, back to encompassing multiple  
14          communities to the maximum degree possible,  
15          that's where the rub is. And so that's why, you  
16          know, I will say "yes" on this one because I  
17          think -- I think it's fair to relax the thousand  
18          here, requirement, and say that, you know, the  
19          population as proposed is sufficiently large and  
20          stable to support the borough government, but do  
21          have concerns that if proposed boundaries, you  
22          know, don't include multiple communities to the  
23          maximum degree possible.

24                 CHAIRPERSON WOOD: Clayton, did you have  
25          anything to add?

1 Thank you, Clay.

2 COMMISSIONER TROTTER: Not really. I agree  
3 with John, and the assessment also of Clay. And  
4 I just want to add that I was very impressed  
5 with the -- shall we say the cooperation among  
6 community members there and the very, very  
7 impressive development that they have engaged  
8 in, even down to their dump facilities. I mean,  
9 I was really impressed with the way they were  
10 handling things.

11 I have worked with some major corporations  
12 in my day and I wish -- I won't mention any  
13 names, but I wish they had been as efficient as  
14 those guys are. That's all there is to it.  
15 Very, very efficient and very, obviously, hard  
16 working as a community. Now I don't know how  
17 you count the numbers of that because you have,  
18 you know, seasonal population, but, yeah, I was  
19 very impressed with what they've done. That's  
20 all there is to it.

21 So, I'd say "yes" on that one.

22 CHAIRPERSON WOOD: Ely?

23 COMMISSIONER CYRUS: No. I agree, they meet  
24 the population minimums. And I don't see why it  
25 wouldn't be a self-sustaining borough, even

1           though the population amount is smaller. I do  
2           agree that it should be considered the other  
3           communities be included in the boundaries,  
4           however.

5           CHAIRPERSON WOOD: I agree with that.  
6           There's a quote from Mr. Vic Fischer -- I can't  
7           find it right now -- but my recollection is  
8           something along the lines -- and I don't quite  
9           understand why he said this, but construing the  
10          population verbiage from the constitution he  
11          said "it only has to do with population, not  
12          area." So I don't get that, because he clearly  
13          said area and population. But I'm going to  
14          go -- (indiscernible). This will be unanimous.  
15          I was very impressed; I share those comments.

16          For those of you that have been listening  
17          and haven't been to Hoonah at all, or maybe in  
18          recent years, it's well worth the time. Hats  
19          off again to all of the leaders there and the  
20          work they've been doing over the years, very  
21          impressive. I know that those other communities  
22          have also been doing some very impressive  
23          things, including Elfin Cove. And, of course,  
24          Pelican. I am not so familiar with Tenakee  
25          Springs. And Gustavus, growing community. Hats

1 off.

2 Let's move to "resources." This is on the  
3 checklist again on page 2.

4 And we will find that discussion in our  
5 final report on page 22. Staff writes: The  
6 third standard for evaluating an incorporation  
7 petition considers the resources within the  
8 proposed borough. The section begins, and then  
9 he writes -- Jed writes: In accordance with AS  
10 29.05.031(a)(3), the economy of a proposed  
11 borough must include the human and financial  
12 resources necessary to provide the development  
13 of essential municipal services on an efficient,  
14 cost-effective level.

15 And rather than read that, I think I will go  
16 to the checklist. Let's go to the conclusion  
17 first.

18 Okay. That conclusion is on 25 and the  
19 beginning of 26. Now, staff goes through and  
20 summarizes some of these comments. You know, I  
21 think I will read this, this is quite well  
22 written, I think: Hoonah has seen dramatic  
23 growth in tourism, mainly due to the investment  
24 and development of Icy Strait Point, a cruise  
25 ship docking facility with capacity for three



1 large passenger ocean liners, a remodeled  
2 cannery that includes shopping and dining  
3 facilities, and a large forest canopy zipline  
4 tourist attraction and gondola transport.  
5 (indiscernible) city in its reply brief  
6 (indiscernible) -- excuse me -- defends the  
7 development from critics who label it  
8 pejoratively, (indiscernible) quote, industrial  
9 (indiscernible). LBC staff observed passenger  
10 ship facilities developed at the Icy Strait  
11 Point destination and they seemed entirely  
12 appropriately scaled within the context of the  
13 community. That is to say the facilities were  
14 grand in scale, well appointed and tasteful, but  
15 did not seem particularly outsized, industrial  
16 or out of proportion for the setting.

17 The petitioner argues successfully that the  
18 Icy Strait Point development continues to be a  
19 tremendous asset to the community and a true  
20 economic driver providing local jobs and tax  
21 revenue for the community.

22 Hoonah has also successfully utilized state  
23 passenger tax revenue for projects that not only  
24 offset the industry's impact on the community,  
25 but also enhances the elements that benefit

1 Hoonah residents.

2 The region around Hoonah and Icy Strait  
3 Point, including the communities of Gustavus,  
4 Pelican, and Tenakee Springs, all benefit from  
5 commercial and sport subsistence and  
6 recreational fishing opportunities.

7 Going on. Tourism, both the large -- excuse  
8 me -- tourism, both the large commercial  
9 passenger cruise ships as well as small-scale  
10 cruise ships and charter fishing vessel  
11 operations will continue to be an important  
12 component of the entire region's economy, and  
13 provide contributions to the communities of  
14 Elfin Cove, Pelican and Gustavus, as well as  
15 Hoonah.

16 LBC staff concludes that the entire region's  
17 economy is linked through its ties to Icy  
18 Strait, Glacier Bay National Park, and Tongass  
19 National Forest. Additionally, the regulation  
20 states that the commission may also consider  
21 other relevant factors including the need for  
22 and availability of employable skilled and  
23 unskilled persons to serve the proposed  
24 government -- borough government, and a  
25 reasonable and predictable level of commitment

1 and interest of the population in sustaining a  
 2 borough government.

3 LBC staff received 24 comments from  
 4 residents or business owners from Elfin Cove.  
 5 Additionally, LBC staff received a respondent  
 6 brief from Elfin Cove. Not a single comment  
 7 received support -- excuse me. Not a single  
 8 comment received supported borough government as  
 9 proposed in the incorporation petition. And all  
 10 recognized the community would be contributing  
 11 tax revenue without receiving any service.

12 I am going to skip to the end of this. It  
 13 says: Staff does not believe the petition  
 14 demonstrates the reasonably predictable level of  
 15 commitment and interests of the population in  
 16 sustaining borough government, specifically from  
 17 Elfin Cove and Game Creek. The petitioner  
 18 claims the communities of Pelican, Gustavus, and  
 19 Tenakee Springs were excluded because there was  
 20 no interest from these communities and did not  
 21 apply similar logic by excluding Elfin Cove and  
 22 Game Creek.

23 Residents of Funter Bay, Elfin Cove, or the  
 24 property owners on Northern Admiralty Island  
 25 seem unlikely candidates to provide employable,

1 skilled or unskilled persons to serve the  
 2 proposed borough since the borough does not  
 3 appear to be able to serve these communities.  
 4 LBC staff has determined this petition does not  
 5 meet the third standard.

6 If you go to "resources" on page 2, it  
 7 replicates much of what's been said here: The  
 8 economy of a proposed borough must include the  
 9 human and financial resources necessary to  
 10 provide the development of essential services on  
 11 an efficient, cost-effective level. The  
 12 commission won't consider relevant factors  
 13 including reasonably anticipated functions of  
 14 the proposed borough, reasonably anticipated  
 15 expenses and the ability of the proposed borough  
 16 to generate and collect revenue at the local  
 17 level, reasonably anticipated income of the  
 18 proposed borough, reasonability and plausibility  
 19 of the anticipated operating (indiscernible)  
 20 budgets of the proposed borough, including  
 21 receipt of the financial -- excuse me -- final  
 22 organizational grant, completion of the  
 23 transition, and on which the proposed borough  
 24 will make its first full local contribution, and  
 25 also the full economic base of the area within

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 proposing to handle zoning -- planning and  
2 zoning, and move away from relying on the  
3 state -- I mean, the state standard.

4 Jed, point of information. I'm looking  
5 through the petitioner's submittal here. Am I  
6 remembering correctly -- wasn't, Jed, there a --  
7 Mr. Tillinghast suggesting that they'd be  
8 willing to amend their petition to, instead of  
9 basically relying upon state standards, to  
10 develop their own?

11 JED SMITH: Mr. Chair, I don't have that  
12 information directly in front of me.

13 CHAIRPERSON WOOD: Let me keep looking. But  
14 I think -- I know there's been a conversation  
15 about -- was it Petersburg Borough, in  
16 particular? Was that the right borough that had  
17 continued to rely on the state to provide that  
18 service rather than to develop its own auspices?

19 (Indiscernible - simultaneous speech.)

20 JED SMITH: That is correct. DNR is still  
21 providing some of that planning and platting to  
22 the Borough of Petersburg.

23 CHAIRPERSON WOOD: I think my recollection  
24 is correct. We can check on that later. It  
25 seems to me that even if that were a concern of

1 the commission that my guess is Hoonah would be  
2 okay, Clay, with developing its own planning and  
3 zoning standards, independent from DNR.

4 Yeah, I also have been one that's been  
5 impressed with Hoonah's development of their  
6 resources. One of the concerns expressed in the  
7 comments is that, "well, you can't hang your hat  
8 on cruise industry; that may come and go. And  
9 if it goes, if it takes a nosedive, then where  
10 will the money come from to support the borough?  
11 And won't that become a burden for the entire  
12 boundary of the borough?"

13 But it seems to me that Alaska tourism has  
14 been going wild for years. And from what I  
15 could tell the day we visited, it's still that  
16 way; a lot of happy faces. Two cruise ships  
17 were in port. Hoonah told us about some of the  
18 successful things they've been doing,  
19 including -- this might be interesting to those  
20 of you that don't know, the actual Icy Point  
21 Strait is out of town, so it's not like maybe  
22 Ketchikan or Juneau where all these folks from  
23 the cruise ships are right there downtown,  
24 causing, you know, I mean friendly impacts that  
25 we can all, kind of, get along with, but some



1 tourists actually do walk downtown, and all  
2 that. But I did notice that they seemed to have  
3 a good handle on just how to engage in an  
4 entrepreneurial way, the best design, best  
5 operation for that particular resource that they  
6 do have.

7 Now, can we fairly -- can we decide, well --  
8 you know, can we decide today and be concerned  
9 about resources premised on the thinking that  
10 maybe the cruise ship industry will suddenly  
11 turn off? I don't think so. I think more and  
12 more Alaskans are being able to show off their  
13 state because more and more people are coming  
14 here; voting with their feet, coming here on  
15 vacation. It's a safer place than lots of  
16 destinations around the world. So I'd tend to  
17 think that -- let's see, answering this one  
18 would be -- "the economy of a proposed borough  
19 must include the human and financial resources  
20 necessary to provide the development of  
21 essential municipal services on an efficient,  
22 cost-effective basis." well, I think they've  
23 demonstrated that in terms of what they've been  
24 doing within their city.

25 Now, over time will they be able to provide

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           apparently, according to the law -- a community  
 2           that feels like over time they're not getting  
 3           services, could actually implement this  
 4           particular language that I just read to say  
 5           that, look, it's impossible -- in fact, I think  
 6           that language appears in some of the briefing,  
 7           is that, look, it's not going to be possible or  
 8           practical for the new borough to provide these  
 9           services.

10           And then the -- this other one -- this other  
 11           part of the regulation goes on, "the benefit of  
 12           borough government without significant  
 13           additional tax contributions," getting back to  
 14           your point, John, about service districts is  
 15           that, well, that's more than what our local  
 16           community can afford. So it's complicated in  
 17           that sense in trying to encourage folks to form  
 18           boroughs when the issue is going to be -- one of  
 19           the issues is going to be "how are we benefited,  
 20           specifically?"

21           But back to this -- this economy, the  
 22           resources question, how say you, John?

23           COMMISSIONER HARRINGTON: You're asking me  
 24           how I would go for that? I believe they have  
 25           the resources available and ready, yes.

1 COMMISSIONER TROTTER I agree with John.

2 CHAIRPERSON WOOD: Okay. So, Clay?

3 COMMISSIONER WALKER: Yes. With some  
4 reservations but, yes, they have the human and  
5 financial resources.

6 THE CHAIRPERSON: And, Ely?

7 COMMISSIONER CYRUS: I also agree, yes, they  
8 do. You know, for example, I saw the Red Dog  
9 Mine quoted in the final report. The expiration  
10 on that mine is actually about six years from  
11 now, so the borough here will be losing a  
12 significant portion of its revenue base. And I  
13 dare say the proposed borough out of Hoonah  
14 would have a higher revenue base -- potential  
15 revenue base than our borough does up here in  
16 the Northwest Arctic.

17 There really is no expiration on tourism.  
18 And I think, you know, that expanding it to  
19 regional services capability for them could  
20 provide additional avenues for tourists in  
21 Alaska. You know, the higher amount of funding  
22 they would get through revenue sharing could  
23 assist in, you know, maintenance or creation of  
24 new tourist bases or facilities there, and  
25 anything that -- and it wouldn't just benefit

1 that borough, but benefit the state by  
 2 increasing, you know, opportunities for tourism  
 3 coming into the state.

4 Like I said, I don't believe there really is  
 5 an expiration on tourism like there is at the  
 6 Red Dog Mine in our region. So I do believe  
 7 that there is, you know, a way for them to be  
 8 self-sustaining in that regard.

9 CHAIRPERSON WOOD: Very interesting point.  
 10 Thank you, Ely.

11 So for me, yeah, I guess I'm harkening back  
 12 to our report that's been presented, "reasonably  
 13 predictable level of commitment and interests of  
 14 the population in sustaining a borough  
 15 government." well, we certainly know that  
 16 there's concerns expressed by Elfin Cove and  
 17 presumably by Game Creek.

18 COMMISSIONER CYRUS: For the Chair, I just  
 19 had a question.

20 CHAIRPERSON WOOD: Go ahead.

21 COMMISSIONER CYRUS: I was just curious,  
 22 what's the -- so the DNR providing, you know,  
 23 planning services in other boroughs, is that  
 24 something that is optional by the state, or is  
 25 that something that the state does if the

1           borough does not? I mean, is there an  
2           obligation from there for the state to provide  
3           those services from DNR -- or through DNR?

4           CHAIRPERSON WOOD: Actually, to the  
5           contrary, Ely. And I'm sure Jed or Gene will  
6           correct me if I misstate this, but a mandatory  
7           power of an incorporated borough is to provide  
8           for education, taxation, and planning. And the  
9           concern has been expressed that -- and I think  
10          Jed confirmed that -- what I had said earlier is  
11          that Petersburg in particular, even after  
12          incorporating, has been relying upon DNR.

13          Jed, is it just the standards or are they  
14          actually relying on the state to continue with a  
15          function that they should have assumed as an  
16          essential service?

17          JED SMITH: Thank you, Mr. Chair. I did  
18          find petitioner's response. It's located in  
19          comments in response to the preliminary report.  
20          But what they allude to is that the Petersburg  
21          petition -- and, you know I'm not intimately  
22          familiar with that petition, per se, but  
23          Petersburg proposed something very similar to  
24          what Hoonah is proposing, in terms of exercising  
25          planning and platting and land use already



1 within in this, kind of, designated outside  
2 area, sort of leaving the larger area outside of  
3 that -- of (indiscernible) maybe not necessarily  
4 explicitly exercising that power on an areawide  
5 basis, I'll just say.

6 And so Hoonah, in a footnote in their reply  
7 brief to the preliminary report, stated they --  
8 I will just read it. They say that: Petitioner  
9 envisions that platting may involve  
10 area-specific variations to the same extent as  
11 the Petersburg charter that was approved by the  
12 commission. However, if the commission decides  
13 that the charter must expressly assume  
14 borough-wide platting functions immediately upon  
15 ratification, the petitioner would suggest that  
16 the commission consider requiring through  
17 3 AAC 110.570(c) the amendment of section 7.03  
18 set out in their appendix -- which they also  
19 submitted. The appendix provides that the  
20 borough will immediately begin platting areawide  
21 while outside of the Hoonah townsite service  
22 area, the borough would apply the Department of  
23 Natural Resources subdivision standards -- the  
24 footnote goes on to say: Rather than what are  
25 currently the City of Hoonah's standards. The

1           latter suggestion is made to honor the  
2           petitioner's commitment that, to the maximum  
3           extent legally permissible, it would avoid  
4           imposition of the regulatory burdens on those  
5           residing outside the Hoonah city limits.

6           COMMISSIONER CYRUS: I'm sorry. The  
7           question I had wasn't -- I understand that the  
8           borough -- the initial petition showed that that  
9           was their idea, but I read later that they had  
10          different comments on that.

11          My question was specifically to the state.  
12          Does the state have the obligation to provide  
13          those services if the borough does not?

14          JED SMITH: I mean, I think that would be  
15          a -- probably a legal question that I'm not  
16          necessarily prepared to answer. Again, as the  
17          Chair started, there are three mandatory  
18          areawide powers that a borough must exercise:  
19          Education; the collection of taxation, and  
20          platting, planning, and land use.

21          So platting, planning, and land use is a  
22          mandatory areawide power that a borough must  
23          exercise. What happens when a borough does not  
24          exercise that, I cannot say.

25          CHAIRPERSON WOOD: And, Ely, I think that's

1 a very good question. I don't know if Gene  
2 Hickey wants to weigh in on it, but ultimately  
3 it would be an issue that would have to be dealt  
4 with, I believe, between the state and the  
5 borough. The borough's got an obligation,  
6 mandatory requirement. If they're not doing it,  
7 the enforcement end of that would have to be, I  
8 would think, the state or maybe it just doesn't  
9 get done at all.

10 Mr. Gene Hickey, would you like to weigh in  
11 on that?

12 GENE HICKEY: Thank you, Chair.

13 Yeah, I think that it's a mandatory power as  
14 Jed explained, and it should be exercised by the  
15 borough. How DNR would actually handle that,  
16 I'm not positive on. If an organized borough  
17 actually failed to exercise that mandatory  
18 power, I think the Chair is correct that that  
19 would be an issue between the state and DNR.  
20 I'm happy to look into that through DNR's -- my  
21 contact at Law for DNR but, at this point, it  
22 seems to me that it's a mandatory power that the  
23 borough would have to exercise. Whether it be  
24 as they initially suggested or as they've  
25 suggested in amending the petition on that

1 particular issue.

2 CHAIRPERSON WOOD: Ely, does that speak well  
3 to your question?

4 COMMISSIONER CYRUS: Yeah, sort of. Thank  
5 you.

6 CHAIRPERSON WOOD: We can certainly take it  
7 up again, if you'd like. It's an interesting  
8 and important issue, certainly.

9 And thank you for your comments about  
10 tourism and what's happening over at Red Dog.  
11 That's very interesting.

12 So, about done with resources, here.

13 What I was kind of -- because this language  
14 that we referred to is discretionary for our  
15 consideration, "a reasonably predictable level  
16 of commitment and interest to the population in  
17 sustaining a borough" -- I am going to have to  
18 say that, you know, I get it. I think Elfin  
19 Cove has thoroughly demonstrated that they are  
20 not interested. In fact, have asked, predicated  
21 on the notion, to be excluded based on how these  
22 other three communities were excluded, but I  
23 think there's plenty of motivated folks within  
24 Hoonah extensively and have committed themselves  
25 to providing the type of leadership and

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           CHAIRPERSON WOOD: Okay. Thank you.

2           I forgot -- as I want to do -- to cover a  
3 couple of things I would like your indulgence to  
4 cover. One of those I should have brought up  
5 under boundaries, but I got to thinking about  
6 this Yakutat boundary on waters. Because it  
7 correlated with what was being requested in this  
8 particular -- I think the offshore boundary was  
9 some 90 miles.

10           So staff got to looking into that for us.  
11 For those of you interested -- and it's an  
12 interesting question because of my curiosity, as  
13 well. If the state's jurisdictional boundaries  
14 is three miles under the Federal Submerged Lands  
15 Act, how could a borough possibly claim land or  
16 water beyond that? well, it doesn't. Even  
17 Yakutat, the -- the final municipal certificate  
18 issued to the city and borough of Yakutat states  
19 with respect to the boundaries of the City and  
20 Borough of Yakutat, they extend it to the Gulf  
21 of Alaska notwithstanding the foregoing  
22 description. The corporate jurisdictional  
23 limits of the City and Borough of Yakutat extend  
24 only to the limits of the State of Alaska's  
25 jurisdiction under AS 44.03.10. So I forgot to

1 mention that.

2 The other thing I forgot to bring up during  
3 the discussion on population has to do with  
4 something that I felt was well expressed in  
5 Mr. Tillinghast's opening comments on the  
6 September 5 hearing regarding this petition. I  
7 don't have a good page number here because I'm  
8 sure all our pages are printed out differently,  
9 gentlemen, but here's what he wrote, "Third we  
10 will delineate the extent of the Huna Tlingit's  
11 historical territory throughout the borough and  
12 mostly" -- excuse me -- "and most importantly  
13 their ancestral homeland of Glacier Bay. And  
14 let's be clear here, Hoonah has never contended  
15 that the reach of the Huna Tlingit's historical  
16 territory is dispositive. But the state's [sic]  
17 final report takes the opposite extreme, that  
18 their historical territory is irrelevant, is not  
19 something that this commission should even weigh  
20 in the balance. It is not one of those issues  
21 of political and social policy that our Supreme  
22 Court and Mobil Oil said are intrinsic to any  
23 borough formation decision.

24 "In our view that act of intentional  
25 blindness is unlawful, and it is certainly



1           unprecedented."

2           And he mentions a number of prior cases and  
3 concludes with, "this commission gave weight and  
4 sometimes controlling weight to the historical  
5 reach of the affected tribe's territory.  
6 Particularly given Alaska's 2022 statutory  
7 recognition of Alaska's tribes and their  
8 occupation here since time immemorial, it would  
9 be disappointing to see this commission take  
10 such a regrettable step backwards."

11           I just wanted to assure everyone that I  
12 don't think that was at all the focus or intent  
13 of the final report, nor the intention of our  
14 staff. And we do want to celebrate the history  
15 of Alaska's Native peoples and recognize it as  
16 part of the importance of their interest in the  
17 Glacier Bay region. So thank you for letting me  
18 go back and make a couple of comments I  
19 neglected to make earlier.

20           Anybody got any additions to those?

21           Okay. Let's take up -- that is one of the  
22 final, and perhaps the most, important standard,  
23 I don't know if they've all been weighed this  
24 way, but it's discussed beginning on page 17 --  
25 excuse me -- page 37 of the final report. And

1 if you look on your checklist it's page 4, top  
2 of page 4. And I will read from the actual  
3 checklist that we've got. "In determining  
4 whether a corporation of a borough is in the  
5 best interests of the state, the commission may  
6 consider relevant factors, including whether  
7 incorporation promotes maximum local  
8 self-government as determined under  
9 3 AAC 110.981; promotes a minimum number of  
10 local units as determined under 3 AAC 110.982;  
11 will relieve the state government of the  
12 responsibility of providing local services; and  
13 then is reasonably likely to expose the state  
14 government to unusual and substantial risks as  
15 the prospective successor to the borough in the  
16 event of the borough's dissolution."

17 So page 37 of the report -- final report --  
18 so in addition to repeating what I have already  
19 read, the regulation having to do with best  
20 interests of the state embellishes on this or  
21 provides further detail. That's found at  
22 3 AAC 110.981. "In determining whether a  
23 proposed boundary change promotes maximum local  
24 self-government under Article X, section 1  
25 Constitution of the State of Alaska, the

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 petition filing. what is clear from the  
2 petitioner and the response from the neighboring  
3 communities is that the region has not developed  
4 a coherent consensus on borough government.  
5 There are hints and suggestions in some of the  
6 public comments that residents both inside and  
7 outside the proposed boundary may be amenable to  
8 the idea, just not the one presented. There are  
9 no specifics on how to remedy the current  
10 proposal in such a way that could satisfy and  
11 balance decision-making throughout the entire  
12 region."

13 "LBC staff therefore recommends to the LBC  
14 that it be determined that this proposal does  
15 not meet the best interests of the state  
16 standard nor does it meet the maximum local  
17 self-government standard because the petition  
18 does not extend local government to a  
19 significant population."

20 The report goes in and cites that  
21 regulation.

22 "The surrounding, excluded communities share  
23 with the City of Hoonah's geographic proximity  
24 reliance of the area's natural resources and  
25 environment, transportation links, and

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           -- folks that would really like to see the  
2 constitution's mandate be followed, they kind of  
3 left the scene (indiscernible), Vic Fischer,  
4 there really hasn't been a full-blown discussion  
5 of what the constitution requires. And you  
6 nailed it on the head.

7           Folks aren't familiar with it yet, there's a  
8 law review article published for Alaska but Duke  
9 University, it came out either earlier this year  
10 or late last year, that says exactly what you  
11 just said, John, is that the legislature needs  
12 to act to make sure that the constitution is  
13 followed. If the constitution needs to be  
14 changed, then that's under the consideration  
15 only the legislature can take up. I suppose you  
16 can think about an initiative process, but  
17 that's a different conversation.

18           So I guess I would join in expressing my  
19 concern as a relative newcomer compared to your  
20 tenure, John, to the commission with this  
21 sadness that this particular issue or  
22 incorporation, the framers thought that surely,  
23 by this time, there would be boroughs that would  
24 be incorporated, organized or unorganized. As I  
25 read this morning, a great majority of us live

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 with it.

2 The motion on the floor has to do with  
3 granting the petition as presented to the  
4 commission. We've been talking about the  
5 standards that are impacted by incorporation,  
6 and now on best interests. And I -- I -- you  
7 know, I mean, I've been thinking about, okay, so  
8 if the petition is not granted, mention was made  
9 in the final report of revising and updating the  
10 feasibility study. But I kind of feel that  
11 there's been, I think three feasibility studies,  
12 other studies, including the model borough  
13 boundary study. This has been studied pretty  
14 heavily. But what I would prefer to see is a  
15 mechanism that says, hey, let's get together,  
16 something needs to be done. And to get people  
17 all motivated toward borough government when  
18 borough government formation has been  
19 controversial in our state since 1959. Again, I  
20 read part of the history. The only real -- the  
21 greater number of us live in boroughs that were  
22 not formed voluntarily and that's what we've  
23 been talking about all day long.

24 So converting --

25 COMMISSIONER TROTTER: Excuse me, could I --

1 I hate to interrupt, but could we take a short  
2 break? It's after 2:00.

3 CHAIRPERSON WOOD: Yeah, sure. That's fine.  
4 How about we meet again at 2:25?

5 COMMISSIONER TROTTER: It will only take  
6 five minutes, as far as I'm concerned.

7 CHAIRPERSON WOOD: Off the record.

8 COMMISSIONER TROTTER: 2:25 is great. I  
9 will be right back.

10 CHAIRPERSON WOOD: Too late. 2:25.

11 COMMISSIONER TROTTER: 2:25. Got it.

12 (Off record.)

13 CHAIRPERSON WOOD: Grace has started the  
14 recording. We are back on the record, which I  
15 note for the record it's about 2:26 PM. We have  
16 been at it from 10 AM this morning. So,  
17 gentlemen, thank you for your patience, and I  
18 appreciated the conversation.

19 For those who are listening, thanks for  
20 hanging in there, too.

21 I think we had discussed the best interests  
22 of the state standard pretty thoroughly.

23 Anybody got any closing thoughts? I've got  
24 marked on my sheet here that Clayton was -- he  
25 feels like the best interests of the state had

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           noting that it intends only to provide  
2           non-areawide services within the former townsite  
3           service area. The petitioner acknowledges there  
4           is no need to provided education because there  
5           are no school-aged children in the community of  
6           Elfin Cove, and the Chatham REAA has said it  
7           does not have any correspondence students within  
8           the proposed boundary.

9           "Hoonah's transition plan also notes a  
10          seven-member borough assembly, including the  
11          mayor, would be elected at large, as would a  
12          five-member school board.

13          The petitioner has not stated its intention  
14          to either hire a full-time assessor or to  
15          contract with an assessor to develop a  
16          borough-wide full value determination." which  
17          they would have to do.

18          I don't think we need comment on that unless  
19          somebody feels like we should.

20          Statement of nondiscrimination, which is the  
21          next item. I'm looking at page 38 of the  
22          report, "The petitioner includes the following  
23          statement of nondiscrimination in section 17 of  
24          the petition: Borough incorporation and the  
25          concomitant dissolution of the City of Hoonah

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 for the City of Hoonah rather than incorporating  
2 as borough government. LBC staff recommends  
3 that adopting a home rule charter is the  
4 appropriate course under the Alaska State  
5 Constitution.

6 So this is sort of the opposite of what I  
7 said about if the petition is granted. Well, if  
8 the petition is not granted, this is a  
9 recommendation that staff has made that, I  
10 guess, we can either agree with or not, but it  
11 would presume that the majority of the  
12 commission determines that the petition would  
13 not be acceptable, would not be granted.

14 And we talked to some degree about this  
15 question earlier, which, again, is for borough  
16 incorporation whether the proposal would extend  
17 local government on a regional scale to a  
18 significant area and population of the  
19 unorganized borough.

20 So unless someone wants to weigh in on that  
21 again, I think we discussed it pretty well  
22 earlier.

23 Likewise, on 3 AAC 110.982, bottom of the  
24 page 38, determination of minimum number of  
25 local government units. The report says: The

1 petition on this standard is neutral, and an  
2 affirmative LBC action technically does not  
3 reduce the minimum number of local government  
4 units. By dissolving the City of Hoonah and  
5 creating a borough government one local  
6 government unit is replaced by another. This  
7 standard would more appropriately be satisfied  
8 by consolidating with one or more of the  
9 region's school districts, paren, Pelican City  
10 School district and/or the Chatham REAA, close  
11 paren.

12 Now, the rest of all these things on our  
13 checklist, I think we've addressed, or don't --  
14 need not be redressed for the purposes of this  
15 proceeding.

16 And for the folks that are listening, if  
17 you're wondering why we're going through the  
18 checklist, that's a very good question. Number  
19 one, it keeps us on course; I think we've done a  
20 good job of that. And, number two, it indicates  
21 where the commissioners are in terms of our  
22 decision-making. Because after we get finished  
23 today, the staff or commissioner, if a  
24 commissioner volunteers, we will begin the  
25 process of preparing a written decision draft.

1           And this will provide some guidance for that  
2           person, or persons, who are drafting so they  
3           know where the commissioners were coming from.  
4           That doesn't mean that the written decision  
5           necessarily is going to exclude, as I said  
6           earlier today, all of the other information and  
7           testimony, the records, the report, the  
8           briefing. It just means that this questionnaire  
9           helps fill in the blanks in terms of the author  
10          of those written decisions, and later the  
11          commission's editing that written decision  
12          whether we've underscored all the major  
13          considerations of our decision.

14                 So, gentlemen, I am getting real close to  
15          calling the question, but before I do, I'm going  
16          to go back through this questionnaire and kind  
17          of reiterate where we landed, or I think we  
18          landed.

19                 So if you can, look at your questionnaire,  
20          the first item on page 1 is "community of  
21          interests." And on this I've got John, Clayton,  
22          and Ely voting yes. Clay walker, and Larry, no.  
23          Not really voting, we just indicated our views  
24          on that one.

25                 "Population" was unanimous; everyone was a

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 from our final report, just briefly. I know the  
2 day's getting long and we are all getting tired.

3 This is actually from the last paragraph of  
4 the report: There are many reasons why regional  
5 government in Glacier Bay could be in the best  
6 interests of the state and of the communities.  
7 There even appear to be signs some of the  
8 communities may be open to borough government.  
9 The region's communities have commonalities that  
10 are suitable for regional government, whereby a  
11 borough government would distribute  
12 representation equally among the communities and  
13 interests in the region. An at-large assembly  
14 as proposed in the charter would not necessarily  
15 achieve that goal and could be a barrier to  
16 proper regional representation for the smaller  
17 communities. Staff recommends that the petition  
18 be denied but that future consideration be paid  
19 to the petitioner if a new proposal with greater  
20 community support and inclusion be brought  
21 forward.

22 That's the final report.

23 Are there other comments before we address  
24 the question? Again, the motion on the floor is  
25 to -- would be to grant the petition. So any

1 closing remarks? We've had a really good  
2 conversation and covered a lot of ground. Any  
3 final thoughts before we vote?

4 COMMISSIONER WALKER: Chairman, I'll go and  
5 thank the commission and staff, and everybody on  
6 this Zoom who has been on this Zoom for a long  
7 time today, for all their attention to this  
8 important petition and proposal. And I so  
9 respect Hoonah, the community, in so many ways  
10 and appreciate their leadership on this issue,  
11 and so appreciate their hospitality, as well.

12 But, you know, I, as -- sworn as a  
13 commissioner, will be voting in terms of what I  
14 do think is in the best interests of the state  
15 and in the long term on this question and the  
16 way it's currently proposed. Thank you.

17 CHAIRPERSON WOOD: Here. Here. Thank you,  
18 Clay.

19 Other comments before we vote?

20 Okay. I want to call the question on the  
21 motion. Does everybody understand the motion?  
22 So voting "yes" would mean, obviously, the  
23 motion -- I'm sorry, the petition would be  
24 granted as presented to the LBC. A vote "no"  
25 would be just the opposite of that, it would be



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?

1 COMMISSIONER WALKER: Yes.

2 CHAIRPERSON WOOD: And Chair wood?

3 CHAIRPERSON WOOD: Yes.

4 JED SMITH: That motion carries, five-zero.

5 CHAIRPERSON WOOD: wanted to also, for those  
6 that are listening, and for us here on the  
7 commission, to remind everybody that we are  
8 dealing with the decisional meeting regulation  
9 at 3 AA C 110.570, and that describes what  
10 Mr. Smith has already told us about the  
11 decisional written statement.

12 Also, lots of folks aren't familiar with the  
13 fact that it is a fact we have bylaws. And the  
14 bylaws at Article VII discusses draft decisions  
15 and how that's handled. Mr. Smith has already  
16 gone over that process. Minority opinions are  
17 discussed in section 2 of the bylaws. There's  
18 reconsideration requests that are discussed in  
19 the -- the main regulation that I mentioned.  
20 Any further comments on this item before we move  
21 on?

22 Okay. Hearing none, let's go to  
23 announcements.

24 Mr. Smith? I think you announced earlier  
25 that we've got an annual report coming up.

1           JED SMITH: Mr. Chair, I don't really have  
2 any information at this time. Typically the  
3 commission does convene in early January to  
4 adopt its annual report to the legislature.  
5 Obviously, my hand's busy with this draft  
6 written decision first. But as I said, that  
7 should be released by December the 12th, at  
8 which point we can begin circulating the draft  
9 of the annual report to the legislature. And  
10 information on a future meeting date will be  
11 forthcoming.

12           CHAIRPERSON WOOD: Thank you, Jed. So no  
13 further announcements.

14           I forgot to mention earlier that our hearing  
15 to adopt the written decision will be a public  
16 one. So look for that if you would like to  
17 continue following this.

18           Closing comments? Commissioners? Any  
19 closing comments before we adjourn?

20           COMMISSIONER HARRINGTON: Yes, sir.

21           CHAIRPERSON WOOD: John.

22           COMMISSIONER HARRINGTON: Two, actually.  
23 Thoughts for moving forward with the report to  
24 the legislature, I hope we can include something  
25 having to do with reducing obstacles and

1 getting, finally, the mandate of constitutional  
 2 action of dividing the state into boroughs,  
 3 organized and unorganized.

4 Secondly, my wife and I have had continuous  
 5 conversation, and I will be submitting my  
 6 resignation shortly to the governor and  
 7 indicating I am willing to serve until such time  
 8 he appoints a replacement, but that I will be  
 9 leaving this body, after 15 years or so.

10 CHAIRPERSON WOOD: well, I think we all  
 11 feared that, John. Thank you for your service.  
 12 But you're right, I mean, change is inevitable.  
 13 We want to, when the time comes, honor you for  
 14 your dedicated service and, I don't know, maybe  
 15 a brain meld or whatever they used to call that  
 16 on -- what is it? -- Star Trek? Yeah, Star  
 17 Trek. We sure appreciate you, John. And I also  
 18 join in your comments earlier.

19 I want to thank everyone involved today. It  
 20 has been a long day, and it's been a very  
 21 important and useful conversation. And I  
 22 appreciate the fact -- and it was a fact -- that  
 23 everybody calmly stated their point of view and  
 24 went from there. So, any other comments before  
 25 we close out?

1           COMMISSIONER TROTTER: I would just have to  
2 say I'm going to miss John at these meetings,  
3 number one. And number two, Larry, you did an  
4 excellent job managing the meeting, as usual. I  
5 did not know of your mediation practice. And  
6 now it makes a whole lot more sense why you do  
7 such a good job with meetings. You're at heart  
8 a mediator.

9           CHAIRPERSON WOOD: well, thank you, Clayton.  
10 Appreciate the comments. And back at you;  
11 appreciate your comments, too, and your  
12 knowledge.

13           Clay, would you like to say something, or  
14 Ely?

15           COMMISSIONER CYRUS: Apologies for running  
16 late this morning; I had the plane up this  
17 morning and was a little delayed getting back to  
18 Kiana. And sorry for jumping off the call this  
19 afternoon. We had a power outage and it also  
20 knocked out our cell phones, so I wasn't able to  
21 call back in after I got disconnected. And  
22 thank you for the service of 15 years on the LBC  
23 board. Hopefully they will be a little slow in  
24 accepting your resignation so we still have you  
25 for a few more meetings, but thanks again. And

1 thanks to the Chair for running a good meeting.

2 CHAIRPERSON WOOD: Thank you, Ely. No  
3 apology needed. Those are very legitimate  
4 issues. Thanks for hanging in there and  
5 providing your, as always, excellent  
6 observations and questions.

7 Clay?

8 COMMISSIONER WALKER: Yeah. Thanks,  
9 Chairman Wood, for doing a great job  
10 mediating/running this meeting, and to the whole  
11 commission for their thoughtful consideration of  
12 the petition, and to Commissioner Harrington for  
13 your long service to the state, to the Local  
14 Boundary Commission. And I echo Ely's thoughts  
15 that we'd like to keep you as long as we can,  
16 and then do want to give you the proper, you  
17 know, send-off, because you've been such a  
18 valuable member to this commission. Thank you.

19 CHAIRPERSON WOOD: Thank you, Clay. Very  
20 well said also.

21 And, again, I reiterate my appreciation to  
22 all those folks that hung on with us here today,  
23 appreciate your presence and your quiet  
24 participation.

25 I will now entertain a motion to adjourn.



Transcript of Proceedings

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1 COMMISSIONER HARRINGTON: Move to adjourn.

2 CHAIRPERSON WOOD: Second?

3 COMMISSIONER TROTTER: Second.

4 CHAIRPERSON WOOD: Any objection to the  
5 motion to adjourn?

6 Hearing none, we stand adjourned.

7 Everyone, have a good evening, and thank  
8 you.

9 COMMISSIONER CYRUS: Thanks, everyone.

10 COMMISSIONER TROTTER: Happy Thanksgiving  
11 and Merry Christmas.

12 (Meeting adjourned.)

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C E R T I F I C A T E

SUPERIOR COURT )  
 ) ss.  
STATE OF ALASKA )

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

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



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

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