

IN THE STATE OF ALASKA

LOCAL BOUNDARY COMMISSION

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

DECISION OF THE LOCAL BOUNDARY COMMISSION¹

I. Introduction

Presently before the Local Boundary Commission (“LBC” or “Commission”) is the City of Hoonah’s (hereafter “Petitioner”) local action petition (“Petition”) for Incorporation of the Xunaa Borough (“Borough”) as a non-unified Home Rule Borough and for the Dissolution of the City of Hoonah. The Petition proposes to incorporate an area consisting of approximately 4,246 square miles of land and 6,157 square miles of water. The proposed Borough’s boundaries would include the City of Hoonah, the communities of Game Creek, Elfin Cove, Funter Bay, and Horse and Colt Islands.² The area adjoins the City and Borough of Yakutat and the Haines Borough to the north, the

¹ The Local Boundary Commission’s Decision was rendered by a 3-2 majority in favor of granting the Petition. Commissioners Harrington, Cyrus and Trotter formed the majority. Commissioners Wood and Walker dissented.

² A map depicting the area proposed for incorporation is attached as Appendix “A”.

City and Borough of Sitka to the south, and the City and Borough of Juneau to the east, thus enclosing virtually the entire northern portion of Southeast Alaska within an organized borough, with the exception of the cities of Gustavus, Pelican and Tenakee Springs which were are excluded from inclusion in the Borough. The proposed Borough boundaries do not completely surround Gustavus, Pelican and Tenakee Springs but their exclusion from the Borough leaves them without inclusion in any borough in Southeast Alaska. Although these areas would not be surrounded by the Borough, with the approval of the Petition, they are each completely surrounded by boroughs.³

Among other provisions, the Petition envisioned all City of Hoonah powers becoming areawide borough powers but because of remote area residents' preferences for independent living, only administration, taxation, planning, zoning, and education would be offered areawide. All other powers, i.e., police, fire, emergency services solid waste collection and disposal, etc., would only be provided in the Hoonah Townsite upon Petition approval.⁴ The Petition proposes no real property taxes, and it will maintain the 6.5% sales tax and a 6.5% alcohol and tobacco excise tax in the Hoonah Townsite and impose a seasonal 1% areawide sales tax. The approval of the Petition would also by operation of law dissolve the City of Hoonah. Finally, the Petition is a local action petition, so it is subject to approval of the voters in the affected area.

³ For example, Pelican and Tenakee Springs would be surrounded by Xunaa Borough to the north, east and west and by the City and Borough of Sitka to the south. Gustavus would be surrounded by Xunaa Borough and City and Borough of Juneau. See Exhibit C to Petition, Borough Map.

⁴ See Petition at Section 14.

II. Procedural History

Petitioner submitted its Petition to the staff for the LBC on June 30, 2023 for technical review. After completing its technical review, LBC staff returned the Petition to Petitioner for additional information and thereafter the LBC accepted the Petition for filing on November 27, 2023. Notice of the petition was published in the Juneau Empire on December 3, 10 and 17, 2023 and in the Sitka Sentinel on December 1, 8, and 15, 2023. On December 20, 2023, a public service announcement was sent to KINY Radio and KTOO Radio in Juneau, and KCAW Radio in Sitka, with a request to broadcast for 14 days. The Notice advised interested parties that copies of the Petition could be seen at Hoonah City Hall and Hoonah Indian Association. Additionally, the notice provided that the Petition could also be viewed on the City of Hoonah and LBC's websites. Pertinent public notice and service of the Petition included the following:

A. Public Notice and Information

- **Deposit of petition**

On December 15, 2023, Petitioner's representative Dennis H. Gray Jr. placed a copy of the prospective petition at the Hoonah City Hall, the Hoonah Indian Association, and on the City of Hoonah's website. The petition materials were subsequently regularly updated to include public notices, public comments, briefs, and other materials and copies of the laws establishing standards and procedures.

- **Posting of notice**

The Notice was posted at the following locations within and surrounding the area proposed for incorporation: United States post office in Hoonah, Hoonah City Hall,

Hoonah Youth Center, Hoonah Indian Association, Hoonah Trading Company, United States post office in Elfin Cove, and the City of Hoonah website.

- **Service of petition**

On December 15, 2023, a complete copy of the petition was served on the City of Angoon, the City of Gustavus, the City of Pelican, the City of Tenakee Springs, the City and Borough of Juneau, the City and Borough of Sitka, the Haines Borough, and the City and Borough of Yakutat. Five copies of the petition were submitted to the Local Boundary Commission.

- **Informational Public Meetings**

The LBC's petition process also includes informational public meetings.⁵ LBC staff held a publicly noticed meeting in Hoonah on January 9, 2024. The meeting was made available to all members of the public by Zoom. Additionally, LBC staff held public meetings via remote teleconference for the city of Tenakee Springs on January 18, 2024, community of Elfin Cove on January 23, 2024, the City of Gustavus on January 25, 2024, and for Alaska State Rep. Rebecca Himschoot on February 7, 2024.

B. Public Comment and Briefing

In addition to the public outreach and notice, LBC regulations require a period for the public, interested parties and the Petitioner to engage in public comment, reply and outlining legal issues. The highlights of this process included:

⁵ 3 AAC 110.520.

- **Initial comments and responsive briefs**

On November 30, 2024, the LBC began accepting public comments for the Xunaa Borough Incorporation petition. The notice of filing of the petition invited written public comment for 90 days concerning the Petition. All public comments were due by 5 p.m. on February 29, 2024. LBC staff received a total of 141 public comments. The commenters included:

| Name | Location | Petition Position |
|----------------------------------|-----------------|----------------------|
| 1. Tony Magart | Elfin Cove | Opposed |
| 2. Kelly Crump | Elfin Cove | Opposed |
| 3. Keith Ware | Elfin Cove | Opposed |
| 4. Justin Marchbanks | Gustavus | Opposed |
| 5. City of Tenakee Springs | Tenakee Springs | Opposed |
| 6. Colleen/ Bruce Stansbury | Gustavus | Opposed |
| 7. Shirley Perkins | Elfin Cove | Opposed |
| 8. Kim/Bill Spooner | Funter Bay | Support |
| 9. Thomas/Marjorie Osborn | Funter Bay | Support |
| 10. Joel Martin | Funter Bay | Support |
| 11. Randall Gary | Funter Bay | Support |
| 12. Gart Meyer | Sitka | Opposed |
| 13. Steve/Deborah Hemenway | Gustavus | Opposed |
| 14. Norm Carson | Pelican | Opposed |
| 15. City & Bor. Of Juneau | Juneau | Opposed |
| 16. Hugh/Diane Benton | Elfin Cove | Opposed |
| 17. Cheyne Blough | Hoonah | Opposed |
| 18. Debra Page | Elfin Cove | Opposed |
| 19. Gordon Harrison | Funter Bay | Support |
| 20. Jim/Nadine Trucano | Funter Bay | Support ⁶ |
| 21. Mike Race | Juneau | Opposed |
| 22. Tony Magart (2) ⁷ | Elfin Cove | Opposed |
| 23. Pat Race | Elfin Cove | Opposed |
| 24. Josh Graves | Gustavus | Opposed |

⁶ The Trucano's sent in two letters and would prefer to have Funter Bay left out of the Borough but prefer Xunaa Borough over any other Borough if one is formed.

⁷ Mr. Magart provided an e-mail in opposition as well as a written letter in opposition.

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| 25. Kenneth Spencer | Funter Bay | Support |
| 26. Pat/Janet Kennedy | Funter Bay | Support |
| 27. Steve/Karla Allwine | Funter Bay | Support |
| 28. Karen Berg/Michael Nigro | Gustavus | Opposed |
| 29. Linnea Lospensochatel ⁸ | Tenakee Springs | Opposed |
| 30. Mike Tibbles | Colt Island | Support |
| 31. Bob MacKinnon | | Support |
| 32. Norm Carson | Pelican | Opposed |
| 33. Dan/Sue Horwath | Tenakee Springs | Opposed |
| 34. Beret Barnes | Tenakee Springs | Opposed |
| 35. Jim Wild | Elfin Cove | Opposed |
| 36. Norm Carson ⁹ | Pelican | Opposed |
| 37. Denice McPherson | Funter Bay | Support |
| 38. City of Gustavus | Gustavus | Opposed |
| 39. Thomas/Marjorie Osborn | Funter Bay | Support ¹⁰ |
| 40. Mike/Karen Taylor | Gustavus | Opposed |
| 41. Keith Ware | Elfin Cove | Opposed |
| 42. Nancy Berland | Haines/Tenakee | Opposed |
| 43. Gustavus Visitors Assoc. | Gustavus | Opposed |
| 44. Robynn Jones Glassmann | Gustavus | Opposed |
| 45. Gordon Chew | Tenakee Springs | Opposed |
| 46. Michelle/David Olney | Gustavus | Opposed |
| 47. Sally McLaughlin | Gustavus | Opposed |
| 48. James/Ann Mackovjak | Gustavus | Opposed |
| 49. Kelly McLaughlin | Gustavus | Opposed |
| 50. Michael/Astrid Bethers ¹¹ | Tenakee Springs | Opposed |
| 51. Miriam Mig Miles | Pelican | Opposed |
| 52. Debra/James Johnson | Gustavus | Opposed |
| 53. Kelly/Mary Crump ¹² | Elfin Cove | Opposed |
| 54. Alan Steininger | Pelican | Opposed |
| 55. Frank/Ella May Waldron | Pelican | Opposed |
| 56. Karl Ashenbrenner | Tenakee Springs | Opposed |
| 57. Thomas McLaughlin | Gustavus | Opposed |

⁸ Mayor of Tenakee Springs

⁹ This is the second e-mail from Norm Carson expressing his objection to the petition.

¹⁰ Mrs. Osborn provided this as a supplement to her prior comment and indicates her preference for Funter Bay not to be included but if it will be included in a borough then they prefer Xunaa Borough.

¹¹ The Bethers submitted two e-mails in opposition.

¹² This letter from the Crumps was in addition to their previous e-mail submission. See No. 2 above.

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| 58. Tim/Dawn Lombard | Colt Island | Support |
| 59. Jen Landry | Gustavus | Opposed |
| 60. Greg Lockwood | Juneau | Opposed |
| 61. Mary Jo Lord-Wild | Elfin Cove | Opposed |
| 62. Melanie Heacox | Gustavus | Opposed |
| 63. Mark Elliott | Elfin Cove | Opposed |
| 64. Jim Benton & Family | Elfin Cove | Opposed |
| 65. Celeste Weller | Pelican | Opposed |
| 66. Jane Sheahan | Gustavus | Opposed |
| 67. Anna Stewart | Pelican | Opposed |
| 68. Lane Ply/Karen Nemecek | Elfin Cove | Support ¹³ |
| 69. Joanie Waller | Gustavus | Opposed |
| 70. Horse/Colt Island Owners | Horse/Colt Island | Support ¹⁴ |
| 71. Jeffrey/Karen Wilson | Tenakee Springs | Opposed |
| 72. Cheyne Blough | Hoonah | Opposed ¹⁵ |
| 73. Nathan Barker | Pelican | Opposed |
| 74. Jessica Shouse | Pelican | Opposed |
| 75. Gunner Combs | Pelican | Opposed |
| 76. Karen Crandall | Tenakee Springs | Opposed |
| 77. Tracy Rivera | Tenakee Springs | Opposed |
| 78. Steven Christiansen | | Opposed |
| 79. Raven Hanson | Pelican | Opposed |
| 80. Walt Weller | Pelican | Opposed |
| 81. Steve/Joan Gilbertson | Admiralty Island | Support |
| 82. Denis/Susan Meier | Elfin Cove | Opposed |
| 83. Nicole Grewe | Gustavus | Opposed |
| 84. Deborah Mannion | Wheeler Creek | Opposed |
| 85. Kathy Streveler | Gustavus Opposed | Opposed |
| 86. Zachary Miller | Elfin Cove | Opposed ¹⁶ |
| 87. Ajax/Keri Eggleston | Pelican | Opposed |
| 88. Jacques Norvell | Elfin Cove | Opposed |
| 89. James Slater | Pelican | Opposed |
| 90. Jack Slater | Pelican | Opposed |
| 91. Alice Montgomery | Gull Cove | Opposed |
| 92. Marty Lange | Juneau | Opposed |
| 93. Seth Stewart | Pelican | Opposed |

¹³ Submitted three comments in support.

¹⁴ The letter from the Horse and Colt Island Property owners was submitted on behalf of 40 separate property owners/co-owners.

¹⁵ This was Cheyne Blough's second letter in opposition to the Petition. See#17 above.

¹⁶ Mr. Miller submitted two comments in opposition.

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| 94. Shelby Godla | | Opposed |
| 95. Larry Landry | Gustavus | Opposed |
| 96. Gaylen Needham | Pelican | Opposed |
| 97. Ryland Bell | Cross Sound | Opposed |
| 98. Ernie Eggleston | Pelican | Opposed |
| 99. Josh Frame | | Opposed |
| 100. Karen Polley/Mike Murphy | Pelican | Opposed |
| 101. Brad Ketcheson | Horse Island | Support |
| 102. Allemn Stewart | Pelican | Opposed |
| 103. Carter Hughes | Pelican | Opposed |
| 104. Brry Bryant | Pelican | Opposed |
| 105. Roger/Patte Harding | Pelican | Opposed |
| 106. Naomi Sundberg | Gustavus | Opposed |
| 107. Tom Traibush | Gustavus | Opposed |
| 108. Delbert Carnes | Funter Bay | Support |
| 109. Philip Spencer | Pelican | Opposed |
| 110. Srah Stewart | Pelican | Opposed |
| 111. Greg/Donmica Jerue | Pelican | Opposed |
| 112. Kent Adams | Elfin Cove | Opposed |
| 113. Nathaniel Ferguson | Pelican | Opposed |
| 114. Betty Bean | Pelican | Opposed |
| 115. Robert Clark | Game Creek | Opposed |
| 116. Quintin Hafendorfer | Pelican | Opposed |
| 117. Kathy Leary | Gustavus | Opposed |
| 118. Whitney Rapp | Gustavus | Opposed |
| 119. Janet Luce | | Opposed |
| 120. John/Anna MacKinnon | Idaho Inlet | Opposed |
| 121. Pamela Bishop | | Opposed |
| 122. Caroline Raiford | | Opposed |
| 123. Forest Braden | Gustavus | Opposed |
| 124. Pamela Goode | | Opposed |
| 125. Felycia Sugarman | | Opposed |
| 126. Lucas/Brenda Clark | Game Creek | Opposed |
| 127. Jim/Melanie Lesh | Gustavus | Opposed |
| 128. Jeremy/Breanna Anderson | Elfin Cove | Opposed |
| 129. City of Angoon | Angoon | Opposed |
| 130. Paul Johnson | Gull Cove | Opposed |
| 131. Amy Nye | Elfin Cove | Opposed |
| 132. Jasmine Mattson-Wolff | Pelican | Opposed |

In addition to these comments, Elfin Cove and The City of Pelican filed responsive briefs.¹⁷ As with the residents that submitted comments from these areas, these responsive briefs also outlined the areas' opposition to the Petition. The Petitioner filed a Reply Brief on March 12, 2024 with the Commission wherein it addressed the issues raised in many of the comments and responsive briefs.

C. Preliminary and Final Report

LBC staff was charged with reviewing the Petition, written comments and briefs and preparing a preliminary report to the Commission outlining staff's position on whether the Petition met the applicable constitutional, statutory, and regulatory standards for Borough formation and incorporation. The LBC staff concluded in its Preliminary Report on May 28, 2024 that the Petition failed to meet those standards and recommended denial of the Petition. LBC Staff provided a copy of the Preliminary Report to the Petitioner, Elfin Cove and City of Pelican¹⁸ representatives and posted a copy of the Preliminary Report on the Commission's website and accepted public comments on the Preliminary Report from May 28, 2024 through July 8, 2024. The Commission received 5 comments on the report and a response from the Petitioner. These commenters generally concurred with the Staff's recommendation. The responses were submitted by the following:

1. Norm Carson
2. City of Gustavus
3. Linnea Lospensochatel, Mayor of Tenakee Springs
4. City of Pelican
5. Tony Maggart, Elfin Cove resident

¹⁷ The City of Pelican also filed an addendum to their responsive brief.

¹⁸ Elfin Cove and City of Pelican are sometimes referred to individually as "Respondent: and collectively as "Respondents".

Needless to say, the Petitioner took exception to the Staff's findings and recommendations.

After reviewing the comments and the Petitioner's reply to the Preliminary Report, the LBC Staff issued its Final Report on August 5, 2024. Staff once again recommended denial of the Petition. The Final Report was distributed to the Commission, Petitioner, respondents and posted on the Commission's website.

D. Commission's Public Hearing on the Petition

On September 5, 2024, four members of the Local Boundary Commission traveled to Hoonah and toured the community, before convening a public hearing regarding the Petition. One member of the commission attended the public hearing by teleconference. The public hearing was duly noticed under 3 AAC 110.550. A written transcript of the hearing was produced and distributed to the Commission, Petitioner, and to the Respondents. Petitioner's counsel presented an opening statement as did Mayor Phillips of the City of Pelican and Scott Oliver as a representative of Elfin Cove.

Petitioner supported its Petition with the testimony of several witness:

Dennis Gray, City Administrator
Meilani Schijvens, Owner of Rain Coast Data
Johann Dybdahl, Director Special Projects, Icy Strait Point
Andy Gray, City of Hoonah Harbormaster
Heidi Halverson, GV Jones & Associates
Carlos Frias, Dir. Public Safety, City of Hoonah
Frank Wright, Commercial Fisherman, and Pres. Hoonah Indian Association
Jeromy Grant, Environmental Coordinator Hoonah Indian Association
Erica Simpson, Representative of Property Owners on Horse and Colt Island
David Benton, Pres. Alaska Lighthouse Association
Bob Christensen

Dr. Stephen Langdon, Professor of Anthropology
Dennis Gray, Sr.
John Moller, Navigate North Consultants
Mary Beth Moss, Cultural Anthropologist, Glacier Bay National Park
Georgianna Zimmerle

The Respondents did not offer any direct testimony from any witnesses. However, several community members did provide public comment at the hearing including:

Scott Spickler – Horse Island
Steve Allwine – Colt Island
Larry Landry – Gustavus
Mike Taylor – Gustavus Council Member and Official spokesperson
Steve Olmstead – Horse Island
Heather Mahle – Horse Island
James Sheehan – Counsel to City of Hoonah

E. Decisional Meeting

On November 12, 2024, the Commission held a duly noticed decisional meeting regarding the Xunaa Borough Incorporation petition. At the conclusion of the decisional meeting, the commission voted 3-2 in favor of approving the Petition. The commission also voted 5-0 to put into the public record that the ideal boundaries would include the communities of Gustavus, Pelican and Tenakee Springs, and that those communities should eventually be included in the borough. Per LBC regulations, this written decision is rendered in support of the adoption of the Petition.¹⁹

¹⁹ 3 AAC 110.570(f)

III. Law and Analysis

A. Legal Standards

The Commission is guided by standards set forth in the Alaska Constitution, state statutes, Commission regulations and state supreme court decisions interpreting those provisions. If a petition meets these applicable legal standards, the Commission may approve the petition.²⁰ Here, we find that the Petition does meet the requirements set forth in these laws and as a result we approve the Petition.

The Alaska Constitution provides the framework for these standards. It provides:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.²¹

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.²²

²⁰ a) After providing public notice of each proposed amendment or condition and an opportunity for public comment, the Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise, it shall reject the petition. AS 29.05.100(a).

²¹ AK Const. Article X, Sec. 1.

²² AK Const. Article X, Sec. 3.

The legislature then provided the standard for borough incorporation as required by AK Const. Article X, Sec. 3. The statute provides:

- (a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:
 - (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
 - (2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;
 - (3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;
 - (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.²³

The constitutional and statutory provisions are further buttressed by applicable Commission regulations as set forth further herein.

Within the confines of the constitutional, statutory, and regulatory requirements for borough formation lies various Alaska Supreme Court decisions determining how the Commission should review and decide these petitions. Early in the process, the court noted the breadth of the Commission's power and stated:

The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative

²³ AS 29.05.031(a).

authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.²⁴

The Mobile court went on to interpret AK Const. Article X, Sec. 1 to require the court to “[f]avor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.²⁵ (Emphasis ours). We stress this holding as there is some disagreement between the members of the Commission on whether certain standards were met, including the boundary standard due to the Petitions exclusion of Gustavus, Pelican and Tenakee Springs. We determined that Petitioner’s Petition met all the necessary standards for borough incorporation even though the Petition may not have maximized the opportunity for a larger area for incorporation.

We are cognizant of the numerous impediments to borough formation created by this constitutional scheme. Leaving the formation of boroughs up to regional areas pits the potentially contrasting views and geographic regions against one another and operates to stymie borough formation. This is evident as there has not been a borough formed in Alaska since Petersburg in 2013.²⁶ There are currently only 19 organized boroughs in Alaska. As a result, a vast area of Alaska is still contained in one Unorganized Borough. Other impediments include:

²⁴ Mobile Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 99(Alaska 1974).
²⁵ Id.

²⁶

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentandPastPetitions.aspx>

- Competing cities in areas prime for borough formation;
- Leaving all areas in Alaska in one unorganized borough as opposed to several unorganized boroughs that embody an area and population with common interests to the maximum degree possible as required by the Alaska Constitution;
- The creation of REAAs that has developed an institutional resistance to change;
- The local contribution required for education only exists in home rule and first class cities and boroughs;
- The division of revenues shared among municipalities, i.e., Secure Rural Schools and Payment in Lieu of Taxes to name a few;

The current Petition is a prime example of these competing interests. Throughout the Petition process the Commission has heard from varying competing interests of their opposition to this Petition. Gustavus, Pelican and Tenakee Springs have all voiced their opposition yet when confronted with the Petition's proposed boundary they seek a reduction in the size of the proposed borough yet offer no inclination of their intent to form a borough. Rather, the record is clear that they want to keep the status quo thus thwarting the framer's intent to minimize the number of local governments.

The LBC is not well equipped to fix this issue either from a financial or employment force standpoint. Rather, it is left to decide these infrequent borough formation petitions as they arise with little to no power to complete the work the framers identified decades ago. Legislative direction is necessary to fix this issue but for the time being, the Commission is required to fulfill its mandate to decide these petitions as they arise.

A. Findings and Conclusions

1. Application of Standards to Record

The record before the Commission is significant. It contains the Petition, public comment, briefs in support and in opposition, testimony, and additional public comment. We likewise have the benefit of staff analysis in the form of the preliminary and final reports. It is with this plethora of material that we reviewed and found adequate support for approving the Petition based upon the application of this information to the applicable standards. We also note that the entire Commission found the Petition met these standards except for two members disagreeing on two issues, boundaries, and best interests of the state. Each standard and our analysis are set forth below.

a. 3 AAC 110.045 - Relationship of Interests

The first standard the Commission reviews is the Relationship of Interests. This standard is identified in AS 29.05.031(a)(1) and the factors the Commission is to consider are spelled out in 3 AAC 110.045. The standard provides:

(a) On a regional scale suitable for borough government, the social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated in accordance with AS 29.05.031(a)(1) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including the

- (1) compatibility of urban and rural areas within the proposed borough;
- (2) compatibility of economic lifestyles and industrial or commercial activities;
- (3) existence throughout the proposed borough of customary and simple transportation and communication patterns;
- (4) extent and accommodation of spoken language differences throughout the proposed borough; and

(5) existence throughout the proposed borough of organized volunteer services such as fire departments or other emergency services.

(b) Repealed 1/9/2008.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government in accordance with AS 29.05.031(a)(4) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) electronic media for use by the public.

(d) In determining whether communications and exchange patterns are sufficient, the commission may consider whether

(1) all communities within a proposed borough are connected to the proposed borough seat by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, other customary means of travel including boats and snow machines, or sufficient electronic media communications; and

(2) communications and exchange patterns will adequately facilitate interrelationships and integration of the people in the proposed borough.²⁷

The Commission considers the region rural in nature and the communities included within its proposed boundaries all have compatible lifestyles and value subsistence resources and culture. As proposed, the petitioner proposes to incorporate within the borough the communities of Game Creek, Elfin Cove, and Funter Bay, as well as numerous outlying recreational, subsistence and residential cabins, including Colt and Horse Islands. The majority of land and waters within the Borough boundary is of ancestral usage, where descendants of the Borough have lived, hunted, gathered, and existed for thousands of years. There is ample evidence in the record to support this

²⁷

3 AAC 110.045.

finding. In particular, the testimony of Petitioner’s witnesses Dennis Gray, City of Hoonah Administrator²⁸, Dennis Gray, Sr.²⁹, MaryBeth Moss³⁰ and others.

The areas within the proposed Borough are clearly compatible. They share similarities with respect to commercial activities and economic lifestyles. They share similar transportation methods, primarily by boat as the water operates as the road/highway throughout the region. Like many other boroughs that are rural in character, airplane and watercraft are primary modes of transportation. The Alaska Marine Highway system connects Hoonah to Juneau and Gustavus, and Hoonah’s harbor facilities accommodate personal watercraft used by many residents both inside and outside the proposed borough boundary. Hoonah has built an infrastructure of capital investment and tourism, and as such, possesses the technological capacity for strong communication in the region.

The Commission finds the petition meets this standard.

b. 3 AAC 110.550 - Population

The second standard concerns the stability and size of the Boroughs population. Here the Commission looks at various factors to ensure the Borough has an adequate population to support the Borough’s government. The standard requires the Commission to consider:

- (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government in accordance with AS

²⁸ N.T. September 5, 2024, P. 38-48.

²⁹ N.T. September 5, 2024, P. 119-132.

³⁰ N.T. September 5, 2024, P. 144-150.

29.05.031(a)(1) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including

- (1) census enumerations;
 - (2) durations of residency;
 - (3) historical population patterns;
 - (4) seasonal population changes;
 - (5) age distributions;
 - (6) contemporary and historical public school enrollment data; and
 - (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.
- (b) In determining whether the population of a proposed borough is sufficiently large and stable to support the proposed borough government, the commission will presume that a minimum of 1,000 permanent residents is required unless specific and persuasive facts are presented showing that a lesser number is adequate.³¹

The Commission finds the Borough's population sufficiently large enough to support borough government. The record has established that the City of Hoonah's government has operated quite well over the years while at the same time maintaining exceptional services. Likewise, it has kept up with technological changes and operates efficiently. Its ability to capitalize on the tourism industry and cruise ship industry is particularly commendable. This level of functioning will transition well to the Borough.

The Commission has, on at least two previous occasions, approved boroughs with fewer than 1,000 residents. In both cases, those communities had significantly fewer residents. The area proposed for incorporation contains just under 1,000 full time residents, and during the tourism season, the population exceeds the threshold. Given the sophisticated nature of the economic development in and around Hoonah, the Commission finds the population of the proposed borough is sufficiently large and stable

³¹ 3 AAC 110.050.

enough to support borough government and the level of competency to provide services has been aptly demonstrated. This standard has been met.

c. 3 AAC 110.055 - Resources

Next the Commission considers the resources available to the Borough to provide the necessary municipal services efficiently. The relevant factors are:

- In accordance with AS 29.05.031(a)(3), the economy of a proposed borough must include the human and financial resources necessary to provide the development of essential municipal services on an efficient, cost-effective level, In this regard, the commission
- (1) will consider
 - (A) the reasonably anticipated functions of the proposed borough;
 - (B) the reasonably anticipated expenses of the proposed borough;
 - (C) the ability of the proposed borough to generate and collect revenue at the local level;
 - (D) the reasonably anticipated income of the proposed borough;
 - (E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed borough through the period extending one full fiscal year beyond the reasonably anticipated date
 - (i) for receipt of the final organization grant under AS 29.05.190;
 - (ii) for completion of the transition set out in AS 29.05.130 - 29.05.140 and 3 AAC 110.900; and
 - (iii) on which the proposed borough will make its first full local contribution required under AS 14.17.410(b)(2);
 - (F) the economic base of the area within the proposed borough;
 - (G) valuations of taxable property within the proposed borough;
 - (H) land use within the proposed borough;
 - (I) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and
 - (J) personal income of residents within the proposed borough; and
 - (2) may consider other relevant factors, including
 - (A) the need for and availability of employable skilled and unskilled persons to serve the proposed borough government; and
 - (B) a reasonably predictable level of commitment and interest of the population in sustaining a borough government.³²

³²

3 AAC 110.055.

As noted above, the City of Hoonah does an admirable job of providing municipal services in an efficient and cost effective manner. The Borough is premised on a similar model, i.e., reliance on a sales tax to fund municipal services rather than property taxes.³³ The commission recognizes Hoonah has done an excellent job of developing its tourism economy and building the infrastructure to support it. Unlike many other areas that rely on extractive, non-renewable resources for revenue, tourism offers an opportunity for sustainable income. The city of Hoonah has a demonstrated record of reliable government services and financial solvency.

In terms of extending services to areas outside of the Hoonah townsite, the petitioner does not intend to do so, despite collecting a seasonal sales tax from the communities outside the Hoonah Townsite. For example, Elfin Cove, a tiny community in the winter, serves as a hub for up to 45 charter fishing operators in the late spring through early fall. This community's school closed several years ago, and the community has no full time residents of school age, and therefore does not require a school to be maintained by the Borough. Although a seasonal Borough sales tax of 1% will be imposed on this community, the Borough will not offer any services to it beyond those services required by a borough's mandatory powers required in AS 29.35.16- - 180.

³³ Dennis Gray, City of Hoonah Administrator, provided the following testimony concerning financing municipal services: "We think that if you have a property tax, you don't own property, and so we're trying to avoid that context. And so, we think that there's enough of a reason to preserve our way of life. We want to have a sales tax and (indiscernible) to run government. We don't need to have a property tax. And that's our biggest thing that we want to try to preserve." N.T. September 5, 2024, P. 45

The commission acknowledges the petitioner's commitment to planning, zoning and land use regulation within the townsite area.³⁴ Yet the commission is skeptical of the petitioner's stated intention of minimal involvement outside the townsite service area and its potential reliance on the state Department of Natural Resources for platting resources. Petitioner's reply to the LBC Staff's preliminary Report provided:

However, if the Commission decides that the charter must expressly assume borough-wide platting functions immediately upon ratification, Petitioner would suggest that the Commission consider requiring, under 3 AAC 110.570(c), the amendment of Section 7.03 set out in *Appendix A* hereto. The *Appendix* provides that the borough will immediately began platting areawide, while outside the Hoonah Townsite Service Area, the borough would apply the Department of Natural Resources' subdivision standards, rather than what are currently the City of Hoonah's standards. The latter suggestion is made to honor Petitioner's commitment that, to the maximum extent legally permissible, it would avoid imposition of new regulatory burdens on those residing outside the Hoonah city limits.³⁵

While the philosophy of minimal interference in the lifestyles of those living in the more rural parts of the borough is understandable and consistent with the public comments received, platting is nevertheless one of the few mandatory powers of a borough and responsibility should therefore be wholly accepted from the start. The Commission leaves to the Borough to determine what platting standards to adopt. The

³⁴ The Petition originally proposed no platting services would be performed outside of the Hoonah Townsite area. After LBC staff issued its preliminary report, Petitioner provided an addendum and stated it would be amendable to an amendment to its Charter to include Platting authority areawide. See Appendix A to City of Hoonah's Comments to LBC Staff's Preliminary Report.

³⁵ See Hoonah Reply to LBC Staff Preliminary Report, FN 39, P. 34-35.

Commission believes the petitioner has the human and financial resources to deliver these services on an efficient and cost-effective level, and therefore meets the standard.

However, the Petition's approval is conditioned upon the Borough performing all mandatory powers on an areawide basis. The draft Borough Charter currently provides that platting, zoning and land use regulation authority will only be provided in the Hoonah Townsite Area and these services will only be provided to other locations by future ordinance adopted by the Borough.³⁶ As a condition for approval of this Petition, the Petitioner shall provide for Planning, Platting, Zoning and land use regulations on an areawide basis. Furthermore, the Commission understands that the Borough will be entitled to a transition grant in the amount of \$600,000.00 from the state to transition to the borough form of government. These funds, along with other funds available to Petitioner, are more than adequate to assist Petitioner to adopting the necessary ordinances to provide platting, planning, zoning, and land use regulations borough wide. Likewise, the Petition envisions complete implementation of the transition plan³⁷ over a 24 month period with all changes needed to the Borough's Comprehensive Plan and land use ordinances.³⁸ The Commission's approval of this Petition is conditioned on the approval of all ordinances necessary for Platting, Planning, Zoning, and land use regulations being completed twenty four months after the Petition's approval to

³⁶ See Xunaa Proposed Charter, Sections 7.02, 7.03 and 7.04.

³⁷ See Petition, Exhibit F, Transition Plan.

³⁸ Id. at Section 3, P. 3.

incorporate by the Borough's voters.³⁹ These ordinances shall comply in all respects to applicable state law.

d. 3 AAC 110.060 Boundaries

Perhaps the biggest disagreement concerning the Petition among Commission members centered around the Borough's proposed boundaries. However, the split was not on all factors related to the boundary standard. The standard requires the Commission to review the following criteria:

(a) In accordance with AS 29.05.031(a)(2) and art. X, sec. 3, Constitution of the State of Alaska, the boundaries of a proposed borough must conform generally to natural geography, must be on a regional scale suitable for borough government, and must include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) repealed 1/9/2008;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors;
- (6) repealed 1/9/2008; and
- (7) existing and reasonably anticipated industrial, commercial, and resource development within the proposed borough.

(b) When reviewing the boundaries proposed in a petition for borough incorporation, the commission may consider

- (1) model borough boundaries for the area within the proposed borough;
- (2) regional boundaries, including
 - (A) boundaries of one or more regional educational attendance areas existing in that proposed borough area;
 - (B) federal census area boundaries;
 - (C) boundaries established for regional Native corporations under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act); and
 - (D) boundaries of national forests;

³⁹ Xunaa Borough's Proposed Charter will need to be amended to reflect these conditions prior to submission to a vote.

- (3) whether the proposed borough will embrace an area and population with common interests to the maximum degree possible;
 - (4) whether the proposed borough promotes maximum local self-government, as determined under 3 AAC 110.981;
 - (5) whether the proposed borough promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and
 - (6) whether the proposed borough boundaries are the optimum boundaries for that region in accordance with art. X, sec. 3, Constitution of the State of Alaska.
- (c) Repealed 1/9/2008.
- (d) Absent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.
- (e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping boundaries from the existing organized borough. The commission will consider that petition for incorporation as also being a detachment petition.
- (f) The boundaries of a borough may not include only a portion of the territory of an existing city government.
- (g) Requirements relating to limitation of community, as set out in 3 AAC 110.040(b), do not apply to boroughs.⁴⁰

The commission members agreed the boundaries do conform to natural geography of the region and that the Borough's size is suitable for borough government, and it includes all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective basis. They also found that other relevant factors were satisfied including transportation, commercial and economic activities, ethnicity, and culture.

⁴⁰ 3 AAC 110.060.

The real crux of the disagreement amongst the Commissioners revolved around the following issues:

- whether the proposed borough boundaries are the optimum boundaries for that region and whether the proposed borough boundaries promotes the minimum number of local government units in accordance with Art. X, sec. 3, Constitution of the State of Alaska; and
- whether the proposed borough will embrace an area and population with common interests to the maximum degree possible.

These issues really come down to the fact that the Petition excluded Gustavus, Pelican and Tenakee Springs and the fact that the Model Borough Boundaries included these areas in the proposed Borough. Stated another way, can the Petition survive without these three locations. We believe it does.

The exclusion of the communities of Gustavus, Pelican and Tenakee Springs have created a difficult conundrum for the commission. Boroughs were always intended to serve as regional governments, though the creation of Alaska's first borough, the Bristol Bay Borough, undermined this intention, and allowed a small sliver of the region's population to capture a large amount of tax revenue at the exclusion of neighboring communities that were clearly contributing to the economy. The Mandatory Boroughs Act attempted to preempt this problem from happening again with the establishment of six larger boroughs covering Alaska's major metropolitan areas, yet still leaving large swaths of the state unorganized. Since that time, 12 boroughs have incorporated, and the Xunaa borough will be the 13th to do so under its own volition.

While the public comments, staff report, and some Commission members⁴¹ raised concerns regarding boundaries, the Commission’s decision here is not without precedent. Petitioner spends a great deal of time on this issue in its brief and comments to staff’s preliminary report.⁴² They correctly point out that Commission precedent supports approval of the Petition. They point out that the commission has deviated from the Model Borough Boundary Study and allowed single community boroughs with the approval of Skagway (2007) and Wrangell (2010). Prior to the Model Borough Boundary Study, the commission also approved the Yakutat Borough in 1990, which consists of a single community and includes a large area in its borough boundary. The commission has also, on two previous occasions, approved boundary changes that established enclaves in the Haines borough (Klukwan) and the Ketchikan Gateway Borough (Hyder). We also note that the LBC Staff Report did not find that the Xunaa Borough boundaries would create any enclaves since the newly formed borough would not completely surround Gustavus, Pelican and Tenakee Springs.⁴³ We find that no enclaves are created by the Borough boundaries, although as previously noted, these municipalities will be surrounded by boroughs. The LBC recommends that these municipalities seriously consider future consolidation of these areas into one of the existing boroughs.

⁴¹ Commissioners Wood and Walker have dissented from this decision and voted to deny the Petition.

⁴² Petitioner’s Comments to Staff’s Preliminary Report, July 8, 2024, P. 8 – 15.

⁴³ See LBC Staff Preliminary Report, P. 5 (“The cities of Gustavus, Pelican, and Tenakee Springs are excluded from the proposed borough. The Xunaa borough boundary abuts each of these municipalities, though does not completely surround any of them, and avoids enclaves”) (Internal quotes omitted).

Gustavus, Pelican and Tenakee Springs object to the Petition and they seek to prohibit the formation of the Borough but offer no alternative to forming a regionalized government. Rather, their position is to simply leave them alone or to demand the Commission reduce the size of the Borough boundaries so there is area left for them to someday form another government. The record is replete with facts that support approval of the petition. The commission finds the petitioner made good faith efforts to include the communities of Pelican, Gustavus, and Tenakee Springs within the Borough boundaries. They hired a consultant to perform reach out to these communities to involve them in the dialogue.⁴⁴ These communities made it clear, both prior to the filing of the petition and during the petition’s public comment process, they were not interested in Petitioner’s proposal, and were in opposition to the petition as presented. Commissioner Trotter likened this regional in-fighting to “crabs in a barrel” in which one crab tries to climb out to prosperity and is dragged back down by the others in the barrel. We find that regardless of the effort put forth by the Petitioner, none of these neighboring municipalities would have agreed to participate in this proposed Borough.⁴⁵

⁴⁴ N.T. September 5, 2024, Testimony of John Moller, P. 133-143. Mr. Moller described their firms contract objective as “. . . that all be fully informed on the advantages and the disadvantages of borough formation. And two, that full participation in these discussions by communities and individuals. Our job, as we understood it at the time, was not to take sides or -- or against boroughs, but instead to facilitate discussions and provide information”. Id. at P. 133.

⁴⁵ Petitioner’s Comments to Staff’s Preliminary Report, July 8, 2024, P. 4–6. The Comments set forth a history of the dispute between some of these communities as it related to borough formation.

Whether the proposed Borough will embrace an area and population with common interests to the maximum degree possible can also be answered in the affirmative. This requirement is to the “maximum degree possible” not to the maximum degree. In making these findings, the Commission is required to review the standards and apply them in a reasonable fashion. They are not to be strictly interpreted. Rather, the Commission must have some leeway with regard to whether a petition meets the standards, and the Commission must base its decision on appropriate evidence in the record. As we previously indicated, the Mobile court interpreted AK Const. Article X, Sec. 1 to require the court to “[f]avor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.⁴⁶ Petitioner has met these standards for boundaries.

Finally, the Commission must address the proposed boundary that extends 90 miles into the water. The Commission is not empowered to extend a borough boundary past that which is permitted by law. The proposed Borough’s boundary extends out in the water by 90 miles. This request is well beyond that permitted under the Law. The law permits municipal boundaries to extend to a maximum of three miles out in the water.⁴⁷ Due to this limitation the proposed boundary must be amended to reflect this limitation.

Under § 4 of the Submerged Lands Act, 43 U.S.C. § 1312, a coastal State’s boundary is measured from its legal coastline. The coastline is defined as “the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the

⁴⁶ Id.

⁴⁷ Submerged Lands Act, 43 U.S.C. § 1301 et seq.

line marking the seaward limit of inland waters.”⁴⁸ A State’s seaward boundary generally is set as a line three geographical miles distant from its coastline.⁴⁹ Waters landward of the coastline therefore are internal waters of the State, while waters up to three miles seaward of the coastline are also within a State’s boundary as part of the 3–mile ring referred to as the marginal sea. Under the Submerged Lands Act the States have title to and ownership of the lands beneath navigable waters within their boundaries.⁵⁰ The state has likewise adopted a similar definition when describing the “waters of Alaska”.⁵¹ Accordingly, the Commission has limited the Borough boundary and that boundary is identified in the boundary description and map attached hereto as Appendix A.

e. 3 AAC 110.065 - Best Interests of the State

The final area of disagreement among Commission members was whether the approval of the Petition is in the best interests of the state. This standard requires the Commission to consider:

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

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
- (3) will relieve the state government of the responsibility of providing local services; and

⁴⁸ 43 U.S. C. § 1301(c).

⁴⁹ 43 U.S. C. § 1312.

⁵⁰ 43 U.S.C. § 1311(a).

⁵¹ 5 AAC 39.975(13).

(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.⁵²

It is lamentable that the communities in the region cannot form a coherent consensus on regional government formation. The inclusion of all four municipalities in a Xunaa borough would absolutely be in the best interests of the state because it would consolidate education services and create opportunities for regional planning and economic development. However, the LBC was not asked to join these communities to this borough nor has the Commission imposed that condition upon its incorporation. That said, the LBC has an interest in seeing more of the unorganized borough become incorporated and to promote maximum local self-government, and boroughs are the mechanism for that to occur, and Hoonah has demonstrated it is willing to take on some of this responsibility.

The standards require the Commission to consider whether the Petition would extend local government on a regional scale to a significant area and population of the unorganized borough.⁵³ We find that the Petition does extend local government on a regional scale to a significant area. Whether it extends local government to significant population of the unorganized borough is a closer call. Certainly, had the municipalities of Gustavus, Pelican and Tenakee Springs been included this would not be a debatable point. But even absent these communities, the Petition does add areas and populations

⁵² 3 AAC 110.065.

⁵³ 3 AAC 110.981(1).

that do not currently have any form of formal organized government, i.e., Elfin Cove, Colt and Horse Islands. “Significant” is a relative term given that vast portions of the unorganized borough are uninhabited. In the present case, we believe the addition of these areas is sufficient to meet these criteria.

Similarly, the Petition also meets the threshold of providing the minimum number of local government units. Here because the Borough was formed, services can be provided on an areawide basis and there is no need to establish service areas or to create other cities within the Borough to provide those services. A home rule borough can provide services on an areawide or non-areawide basis without resort to a service area.⁵⁴ The City of Hoonah is dissolving due to the Borough’s formation. The new Borough was created from the unorganized borough. It also established boundaries that maximize area and population with common interests.⁵⁵

Finally, given the City of Hoonah’s track record of government operations we are confident that there is little likelihood of risk to the state or that the state will have to step in as a successor to the Borough. The Commission toured the city, and all Commission members present were impressed with the operations. The Petition satisfies the requirements for the best interests of the state analysis.

f. 3 AAC 110.900 - Transition Plan

There are three mandatory areawide powers of a borough: the operation of a system of public schools, the assessment and collection of taxes, and the provision of

⁵⁴ Keane v. LBC, 893 P.2d 1239 (Alaska 1995).

⁵⁵ 3 AAC 110.982.

planning, platting, and land use regulation. The petitioner is already doing much of this work in the city of Hoonah. And because the population outside of what will soon to be the Hoonah Townsite Service Area is sparse, and because the petitioner is not proposing to provide additional services outside of what is currently the City of Hoonah, the commission believes the petitioner will have little trouble extending these powers to the borough and the standard is met.

g. Dissolution of City of Hoonah

The petition also proposes to dissolve the City of Hoonah. The City of Hoonah's entire territory will be included within the proposed Borough's boundaries and all its powers will now become areawide borough powers. As a result, the city is dissolved by operation of law per AS 29.06.450(c).

III. Conclusion

The Petitioner has met all the necessary standards for borough incorporation and the Petition is approved by the Commission. We reiterate our prior points that there exist a number of disincentives to borough formation, both at the local level and at the state level. The Commission recognizes the public policy barriers that exist to disincentivize borough formation. In this respect, the commission believes that while the Xunaa Borough Petition may not be ideal for all, it does represent a desire to move toward organizing part of the state that was previously unorganized. "Something is better than nothing," as Commissioner Harrington noted, and that "the perfect should not be the enemy of the good." On one thing, however, the commission is unified. The commission feels strongly that if, in the future, any or all three neighboring communities wish to

become part of the Xunaa borough, that they should be allowed to do so, and that the addition of the communities of Hoonah, Gustavus, Pelican and Tenakee Springs would certainly meet all standards for inclusion into the Borough.

DATED: December 20, 2024

s/ John Harrington
Commissioner

s/ Ely Cyrus
Commissioner

s/ Clayton Trotter
Commissioner

APPENDIX A

Commencing at a point of the Borough of Yakutat (Certificate of Organization dated April 2, 1997), having an approximate NAD83 Latitude of 58°48'30"N and a Longitude of 137°56'45"W, near or based on the location of USC&GS Monument FERN B 1940 being the POINT OF BEGINNING;

Thence northeasterly along the southerly boundary of the Borough of Yakutat to the Peak of Mount Fairweather defined as being the IBC Boundary Point 164 located on the United States - Canada International Boundary;

Thence northeasterly along the International Boundary to the westerly most point of the Haines Borough (Certificate of Organization, Deed Book 5, pages 58-62, Haines Recording District), also being the peak of Mount Harris defined as being the IBC Monument 156 located on the United States - Canada International Boundary;

Thence southeasterly along the existing Glacier Bay National Monument boundary of the Haines Borough to the intersection of the Haines Borough with the north line of protracted Section 5, T37S, R60E, Copper River Meridian;

Thence southwesterly to the northwesterly corner of the City of Gustavus (Certificate of Organization, Document Number 2012-004262-0, Juneau Recording District), also being the northwest corner of the southeast quarter of Protracted Section 29, T39S, R58E, Copper River Meridian in Bartlett Cove;

Thence southwesterly following the bounds of the City of Gustavus to the northeast corner of Protracted Section 31, T39S, R58E, Copper River Meridian in Bartlett Cove;

Thence west following the bounds of the City of Gustavus to the northwest corner of the northeast quarter of Protracted Section 31, T39S, R58E, Copper River Meridian in Bartlett Cove;

Thence south following the bounds of the City of Gustavus to the southwest corner of the southeast quarter of Protracted Section 31, T39S, R58E, Copper River Meridian in Bartlett Cove;

Thence east following the bounds of the City of Gustavus to the northwest corner of Section 3, T40S, R58E, Copper River Meridian;

Thence south following the bounds of the City of Gustavus to the northeast corner of Section 9, T40S R58E, Copper River Meridian;

Thence west following the bounds of the City of Gustavus to the northwest corner of Section 9, T40S, R58E, Copper River Meridian;

Thence south following the bounds of the City of Gustavus along the western lines of Sections 9, 16 and 21, T40S, R58E, Copper River Meridian to a point on the Mean High Water line of Icy Strait;

Thence south following the bounds of the City of Gustavus, 1.2 miles to a point in Icy Strait at the southwest corner of the City of Gustavus;

Thence east following the bounds of the City of Gustavus across Icy Strait to the westernmost tip of Pleasant Island in Section 31, T40S, R59E, Copper River Meridian near USC&GS Survey Monument Ant 1923;

Thence easterly following the bounds of the City of Gustavus along the Mean High Water line of Pleasant Island to the intersection with East line of Protracted Section 36, Township 40S, R59E, Copper River Meridian;

Thence North following the bounds of the City of Gustavus to the Mean High Water line of the North shore of Icy Passage;

Thence southeasterly, along the northerly Mean High Water line of Icy Passage to the intersection with westerly Mean High Water line of Excursion Inlet;

Thence northeasterly along the westerly Mean High Water line of Excursion inlet to the intersection with the north line of Protracted Section 14, Township 40S, R60E, Copper River Meridian;

Thence east along the North line of Protracted Section 14, Township 40S, R60E, Copper River Meridian to the intersection with the westerly line of the Haines Borough boundary;

Thence southerly along the boundary of the Haines Borough and generally following the centerline of Excursion Inlet to a point that is due north of the Porpoise Island Light given as NAD27 Latitude 58°22.1'N and Longitude 135°27.2'W;

Thence south along the boundary of the Haines Borough to an angle point on said boundary near the southeast tip of the southernmost Porpoise Islands given as NAD27 Latitude of 58°19.1'N and Longitude 135°27.2'W;

Thence southeasterly along the southerly boundary of the Haines Borough to an angle point on said boundary near the southeast tip of The Sisters Islands at NAD 27 Latitude 58°10'N and Longitude 135°15'W;

Thence southeasterly along the southerly boundary of the Haines Borough to an angle point in said boundary at Hanus Reef NAD27 Latitude 58°07.9'N Longitude 134°59.8'W;

Thence northerly along the easterly boundary of the Haines Borough to the intersection of the Haines and Juneau Boroughs, said point being west of Lincoln Island and having a NAD27 Latitude of 58°30'N and a Longitude of 135°04'15"W;

Thence southeasterly along the westerly line of the Juneau Borough to an angle point in said boundary, said point being generally northeast of Colt Island described as the intersection of two bearings between four USC&GS monuments and having a NAD83 Latitude of 58°16'34.2"N and a Longitude of 134°41'44.2"W;

Thence southwesterly along the westerly line of the Juneau Borough to USC&GS Monument Grouse;

Thence southwesterly along the westerly line of the Juneau Borough to an angle point in said boundary near the Mean High Water line of Hawk Inlet;

Thence southerly and westerly along the westerly line of the Juneau Borough and generally along the west Mean High Water line of Hawk Inlet to an angle point in said boundary, said point being near Hawk Point;

Thence southeasterly across the mouth of Hawk Inlet and along the westerly boundary of the Juneau Borough to the intersection of the westerly Mean High Water line of Admiralty Island;

Thence southerly along the westerly Mean High Water line of Admiralty Island to the south line of Section 15, T47S, R66E, Copper River Meridian near Fishery Point;

Thence westerly across Chatham Strait to an angle point on the boundary of the Borough of Sitka (Certificate of Organization, Deed Book 89, page 418-420, Sitka Recording District), defined as being the intersection of the general Borough of Sitka boundary where it is intersected by a north-south line defined as being the west lines of Protracted Sections 14 and 23, T47S, R65E Copper River Meridian;

Thence westerly along the North boundary of the Borough of Sitka to the intersection with the west line of Protracted Section 28, T47S, R64E, Copper River Meridian;

Thence north along the west line of Protracted Section 28, T47S, R64E, Copper River Meridian, to the southeast corner of the City of Tenakee Springs (Certificate of

Organization, Deed Book 16, Pages 163-164, Sitka Recording District), being the southeast corner of Protracted Section 20, T47S, R64E, Copper River Meridian;

Thence north following the bounds of the City of Tenakee Springs to the northeast corner of said bounds being the northeast corner of Protracted Section 17 T47S, R64E, Copper River Meridian;

Thence west along the northern Boundary of Tenakee Springs to the northwest corner of Protracted Section 17, T47S, R63E, Copper River Meridian;

Thence north along the boundary of the City of Tenakee Springs to northeast corner of Protracted Section 7, T47S, R63E, Copper River Meridian;

Thence west along the northern boundary of the City of Tenakee Springs to the northwest corner of Protracted Section 12, T47S, R62E, Copper River Meridian;

Thence south along the west boundary of the City of Tenakee Springs to the southwest corner of Protracted Sections 13, T47S, R62E, Copper River Meridian;

Thence south to the intersection with the northern border of the Borough of Sitka Boundary;

Thence northwesterly along the northerly boundary of the Borough of Sitka to the northernmost tip of the Borough of Sitka corner #7, said point being described as the mean high water line at the extreme northwesterly end of Tenakee Inlet;

Thence northwesterly across Chichagof Island to the intersection of the eastern Mean High Water line of Lisianski Inlet and the south line of Protracted Section 30, T44S, R56E Copper River Meridian;

Thence southeasterly to the intersection of the west line of Protracted Section 33, T46S, R57E, Copper River Meridian and the North boundary of the Sitka Borough;

Thence westerly along the North boundary of the Sitka Borough to the northwest corner of the Sitka Borough corner #9 described as Star Rock off Lisianski Strait;

Thence northwesterly along the Marginal Sea (Alaska Submerged Lands Act Three Nautical Mile Line) to the intersection of the south boundary of the Yakutat Borough;

Thence east along the south boundary of the Yakutat Borough to the POINT OF BEGINNING.

