FINAL REPORT TO THE LOCAL BOUNDARY COMMISSION

Regarding the proposal to incorporate the Xunaa Borough

AUGUST 5, 2024

LOCAL BOUNDARY COMMISSION
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This report is produced by the Local Boundary Commission staff, with assistance from the Alaska Department of Fish and Game, Alaska Department of Natural Resources, Alaska Department of Revenue, Department of Education and Early Development, and Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs staff.

This report is in accordance with *3 AAC 110.530*, which requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

The LBC staff complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at (907) 269-4559 or LBC@alaska.gov.

Introduction/Executive Summary

The City of Hoonah submitted a local action petition to incorporate a non-unified home rule borough. The petition would concurrently dissolve the City of Hoonah and form a town-site service area. The area proposed for incorporation would include approximately 10,403 square miles and would be Alaska's eighth largest borough, geographically, but the third smallest by population (pop. 980).

The petition was accepted for filing on Monday, November 27, 2023, and a 90-day public comment period commenced. Local Boundary Commission (LBC) staff prepared a preliminary report, released on May 28, 2024, which was followed by a 40-day public comment period. This is the final report on the findings based on the petition, public comments, respondent briefs, and the petitioner's reply brief, and from the six public comments received about the preliminary report. The LBC will review the petition and related documents, hold a public hearing on September 5, 2024, and issue a decision within 90 days. The LBC may adopt, deny, or amend the petition. If the LBC chooses to amend the petition, it may impose conditions on the incorporation. If approved by the LBC, a majority of the residents of the proposed borough would have to approve the incorporation prior to its formation. The Xunaa Borough would be Alaska's 20th borough. The previous borough approved for incorporation was the Petersburg Borough, which became effective on January 3, 2013.

LBC staff does not recommend adopting the petition in its current form. As identified in this report, there exist substantive concerns about assumed areawide powers and the addition of fewer than 100 residents to the existing population fails to meet the LBC's constitutional, statutory, and regulatory requirements for borough incorporation.

This petition only meets a minority of the LBC standards. Firstly, the petition proposes to essentially trade one local government for another. Further, the borough government would assume very little responsibility for services currently being delivered by the state, diminishing the benefit to the state from borough formation. The petition also proposed to incorporate a vast boundary containing a potentially lucrative tax base in Icy Strait that would essentially only benefit Hoonah to the exclusion of neighboring communities.

The petitioner cites previous LBC decisions as precedent for why the proposed Xunaa Borough should be approved; however, there are numerous and significant differences in these previous cases, none of which account for the fact that this petition does not meet the LBC's standards for borough incorporation.

LBC consideration of future petitions, as opposed to accepting the current petition, may benefit the region in many ways. The petitioner has gone to great lengths and expense to put this proposal forward. The petitioner even commissioned a consulting firm to convene meetings in the regional communities in 2018. A report on these community discussions indicated there were more questions from the community, but not that there was outright opposition from neighboring communities. Despite this opposition, by January 2019, Hoonah had appointed a borough formation commission that included representation from the city and Game Creek but not other neighboring communities. It is unclear why the city moved forward so quickly, and a letter from the Gustavus mayor to Hoonah's mayor in October 2019 expresses puzzlement over why the multi-community based approach was abandoned.

A more compelling petition would have included one or more of the neighboring municipalities of Gustavus, Tenakee Springs, and Pelican, as well as a plan to consolidate school districts and apportion borough assembly representation to ensure a more equitable distribution of resources throughout the region. There may be a growing desire and purpose for a regional form of government as new opportunities for economic development continue to emerge. Forming regional governments is also

consistent with and, in fact, the intention of Alaska's Constitution, supported by Alaska statutes and regulations.

The question of whether the proposed borough "will embrace an area and population with common interests to the maximum degree possible" is challenged by what is essentially a single community borough surrounded by three neighboring municipalities that share natural resources yet are not included in the proposed boundary. Many of the remote properties that are included in the proposed borough boundary are owned by residents of other parts of the state; therefore, the proposal does not extend local government to a significant population. Rather, it offers a refuge for those seeking to avoid annexation by the City and Borough of Juneau.

The coastal communities located along Icy Strait and Chatham Strait profess a strong reliance on subsistence and commercial maritime resources, as well as a desire to protect and preserve these resources. These communities often share marine and air-based transportation methods. If Hoonah is allowed to establish boundaries that include all of Icy Strait and a significant area of the Gulf of Alaska, it could capture revenue, in the form of excise taxes, that could otherwise be distributed to other communities in the region. This has happened before, most notably when the Bristol Bay Borough was formed.

While it may be true that Gustavus could potentially become part of the Haines Borough, the cities of Pelican and Tenakee Springs do not have the same option of joining an adjacent borough without the dissolution of their own municipality. It is incumbent upon the Local Boundary Commission to determine whether it would be in the best interests of the state to allow the incorporation of the proposed borough, given the limited options of the neighboring municipalities to join another borough.

LBC staff sees high value in an updated borough feasibility study that verifies the impacts to shared revenue programs, school funding, administrative responsibilities, and economic opportunities.

Though the residents would vote on the proposal, the petitioner's draft charter does not account for the inclusion of either cities or town-site service areas in addition to the current community of Hoonah. If such a petition were proposed to include one or more of these additional three communities, the charter would also need to be amended to ensure balanced representation on a borough assembly and the appropriate delivery of area-wide services.

Chapter 1. Background

When the framers of the Constitution of the State of Alaska developed the foundation for state government, they rejected the complex arrangements of local government found in other states, favoring a streamlined approach to local government focusing on efficiency and effectiveness. Alaska's Constitution recognizes two types of municipal government—cities and boroughs.

City and borough governments in Alaska are municipal corporations and political subdivisions of the State of Alaska. City governments in Alaska operate at the community level. By law, the corporate boundaries of new city governments are limited to the territory encompassing the present local community plus reasonably predictable growth, development, and public safety needs during the next ten years.[1] Similar limitations exist concerning territory that may be annexed to existing city governments. In contrast to the limits of city governments, an organized borough is a regional government. Borough governments are intended to encompass large natural regions. The Alaska Constitution requires that all of Alaska be divided into boroughs—organized or unorganized.[2]

Classes of City and Borough Governments

State law provides for three different classes of city and borough governments: home rule, first class, and second class. A community must have at least 400 permanent residents to form a first class or home rule city. There is no minimum or maximum population requirement for the incorporation of a second class city; however, at least 25 resident registered voters must sign a petition for incorporation of a second class city under the local option method.

The particular city classification and whether it is located within an organized borough (*i.e.*, its borough affiliation) are significant in terms of the powers and duties of that city government. For example, *AS 29.35.260(b)* requires home rule and first class cities in the unorganized borough to operate a system of municipal public schools. In contrast, a second class city in the unorganized borough is expressly prohibited from exercising education powers. No city government within an organized borough operates a school district because public education is a mandatory areawide function of organized boroughs.

AS 29.35.260(c) requires home rule and first class cities in the unorganized borough to exercise planning, platting, and land use regulation powers. Second class cities in the unorganized borough have the discretion to exercise those powers.

Four different classes of borough government are recognized in state law. Those are unified home rule boroughs (referred to as a unified municipality), non-unified home rule boroughs, first class boroughs, and second class boroughs. A home rule borough is a municipal government that has adopted a charter (the equivalent of a municipal constitution). A home rule borough has all legislative powers not prohibited

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[1] See, *3 AAC 110.040(b)*, *AS 29.05.011*, and *3 AAC 110.005-3 AAC 110.042*. The full text of the statutory and regulatory standards for incorporation are found in Appendix A.

[2] In 1961, the Alaska Legislature passed a law designating the entire area of Alaska outside organized boroughs as a single unorganized borough. At the time, there were no organized boroughs. Thus, initially, the unorganized borough encompassed the entire state. Today, the unorganized borough encompasses an estimated 371,572 square miles, or approximately 56 percent of the total area of Alaska, and approximately 11.3 percent of the state's population. A single, amorphous, unorganized borough is considered by many experts to lack conformity with the requirements of article X, section 3 of Alaska's Constitution, which requires that each borough embrace a maximum area and population with common interests. See Appendix B, entitled, "It's Time to Fully Implement the Local Government Provisions of Our Constitution."

by state or federal law or by the home rule charter.[3] First class and second class boroughs are general law boroughs. They are unchartered municipal governments that have legislative powers conferred by law.[4]

All City and Borough Governments in Alaska Possess Broad Discretionary Powers

Article X of Alaska's Constitution establishes the framework for local government in Alaska. Section 1 of article X states as follows concerning the purpose and construction of the constitutional provisions regarding local government:

> *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 governmental units.*

The Alaska Supreme Court has held that the provisions of article X, section 1 were "intended to make explicit the framers' intention to overrule a common law rule of interpretation which required a narrow reading of local government powers."[5]

As previously noted, general law city and borough governments in Alaska have legislative powers conferred by law (*AS 29.04.030*). The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature that grant powers to general law governments. Among the statutes are the following provisions:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

As a practical matter, under the present language of *AS 29*, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home rule municipality has access, bearing in mind the specific limitations in *AS 29.10.200* that apply to general law municipalities.

Characteristics of Existing City and Borough Governments in Alaska

There are currently 145 city governments and 19 organized borough governments in Alaska. More than three-quarters of all city governments in Alaska are second class cities.

Home rule boroughs (either unified or non-unified) comprise a majority of the organized boroughs. All of the remaining organized boroughs are second class boroughs with the exception of the Municipality of Skagway, which is a first class borough.

Borough governments have three mandatory areawide powers. First, they are required to establish, maintain, and operate a system of public schools on an areawide basis. Second, a borough must assess and collect property, sales, and use taxes that are levied in its boundaries. Third, all boroughs must provide planning, platting, and land use regulation.

Additionally, home rule and first class cities in the unorganized borough must operate a system of public schools. Second class cities in the unorganized borough are prohibited from operating a school district

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[3] *AS 29.04.010*
[4] *AS 29.04.020*
[5] Liberati v. Bristol Bay Borough, 584 P. 2d 1115, 1120 (Alaska, 1978)

and are included in Regional Education Attendance Areas which are funded entirely through state funding. Boroughs, home rule cities, and first class cities in the unorganized borough are required to fund their school district with a minimum equivalent amount of a 2.65 mill property tax, though these local governments are not required to levy an actual property tax. There is also a cap on maximum contributions municipalities may make toward funding their school districts, as determined by the state's Department of Education and Early Development.

Petition Submitted for Incorporation of the Xunaa Borough

The City of Hoonah (petitioner) submitted a petition to incorporate the Xunaa Borough, a non-unified home rule municipality, on June 30, 2023. The petition also proposes to dissolve the City of Hoonah and create a town-site service area. The proposed non-unified home rule borough is estimated to encompass a total area of approximately 10,403 square miles (approximately 4,246 square miles of land and approximately 6,157 square miles of water) and inhabited by an estimated 951 residents.[6] The petition states that the area proposed for incorporation includes the area currently comprising the City of Hoonah and the neighboring communities of Game Creek, Elfin Cove, and Funter Bay. 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, thus technically avoiding the creation of enclaves.

The petition, when initially submitted, did not include the signatures as required under *AS 29.05.060(7)(A)* and *(B)*. A miscommunication with former LBC staff led the petitioner to believe the signatures were not required. Rather than reject the otherwise complete petition, the petitioner was granted an extension to collect the signatures.[7]

On November 29, 2023, LBC staff completed its technical review of the form and content of the original petition and accepted the petition for filing on that date. The LBC chair set February 29, 2024, as the deadline for receipt of responsive briefs and comments concerning the original petition. The first publication of public notice appeared in the Sitka Sentinel on December 1, 2023.

On January 9, 2024, Local Boundary Commission (LBC) staff traveled to Hoonah and presented an informational meeting as required by *AS 29.05.080(a)* and *3 AAC 110.520*. LBC staff toured the community facilities, including the water treatment plant, landfill, school, city office, and Icy Strait Point tourism facilities. LBC staff also visited the nearby community of Game Creek. Approximately 30 members of the community attended the informational meeting and at least 15 people attended via Zoom. LBC staff also provided informational meetings via Zoom to the communities of Tenakee Springs on January 18, Elfin Cove on January 23, and Gustavus on January 25. LBC staff extended the offer to present the information to the City of Pelican, but not receive a request for a meeting.

On February 29, 2024, the public comment period closed. LBC staff received 142 written comments, including comments from the City and Borough of Juneau, the City of Tenakee Springs, and the City of

[6] The DCCED population estimate of 951 residents is based upon 2023 population estimates from the Department of Labor and Workforce Development's state demographer, and therefore differs from the petitioner's estimate of 980 residents.

[7] *AS 29.05.060*: "The petition must include the following information about the proposed municipality: (7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in (A) home rule and first class cities in the area of the proposed borough or unified municipality; and (B) the area of the proposed borough or unified municipality outside home rule and first class cities."

Gustavus. Additionally, the City of Pelican and a non-profit community association representing the unincorporated community of Elfin Cove each filed respondent briefs.

On March 12, 2024, the petitioner submitted its reply brief to the public comments and respondent briefs.

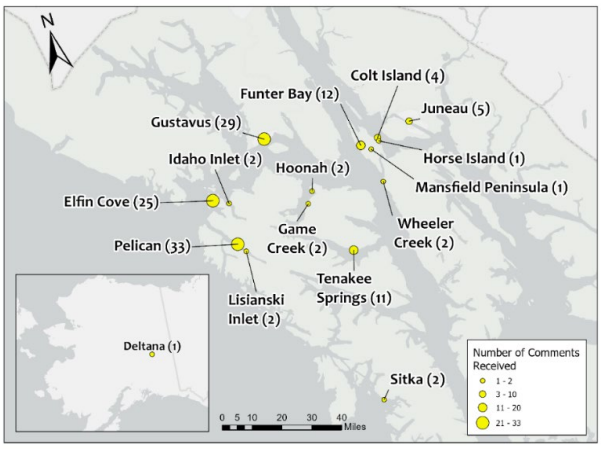
The Petitioner's Stated Reasons for the Borough Incorporation Proposal.

The petitioner's reasons for petitioning for incorporation is expressed on Page 3 of the petition:

- Voluntary incorporation is preferable to the potential alternatives of either having a different borough government imposed upon residents by the state or leaving this entire region, except the existing City of Hoonah, unorganized.
- The proposed borough boundaries would encompass all of the Huna Tlingit historic territory. The proposed borough's boundaries likewise encompass most of the Huna Tlingit's core historic and current subsistent hunting and fishing grounds. The ability of the Huna Tlingit to influence the future decisions regarding these lands is of critical importance to the Tribe.
- Borough incorporation will enfranchise residents of the included region, enabling them to vote on issues affecting not only their immediate environs but also borough-wide issues.
- Remote residents make significant use of Hoonah's infrastructure.
- The waters surrounding the proposed borough represent untapped wealth that through fair and uniform taxation can better the lives of everyone within the borough.
- The proposed borough's ability to select municipal entitlement lands will give residents of the borough greater ability to support and enhance economic development in the region, including development of transportation links.
- Incorporation will improve the community of Hoonah's ties with the surrounding area and its ability to plan the future use and development of the region.

Public Comments Regarding the Petition.

During the initial public comment period, the LBC received 142 written comments and two respondent briefs. Twenty-four comments came from residents of Elfin Cove, 33 comments came from residents of Pelican, 29 comments came from residents of Gustavus, 11 comments came from residents of Tenakee Springs, and 18 comments came from residents of Funter Bay, Horse Island, Colt Island, and the Mansfield Peninsula, located along the eastern border of the proposed boundary. LBC staff received three written comments from two individual residents of Hoonah, and a single comment from the community of Game Creek. LBC staff also received resolutions from the City and Borough of Juneau, the City of Angoon, the City of Tenakee Springs, and the City of Gustavus. The Community of Elfin Cove and the City of Pelican filed respondent briefs.



Location of public comments received

The comments can be summarized as follows: nearly all of the comments from the residents of Funter Bay, Horse Island, Colt Island, and the Mansfield Peninsula were in favor of borough incorporation because of Hoonah's stated intention to not implement a property tax. This area had been considered for annexation by the City and Borough of Juneau in 2019. LBC staff reviewed an annexation petition at that time, but it was never accepted for filing. The City and Borough of Juneau, in its resolution, opposed the inclusion of this area in the Xunaa Borough incorporation petition but did not object to the remainder of the area or proposal.

The remainder of the comments expressed strong opposition to the petition for various reasons. Many commenters in Gustavus and Pelican were concerned about the impact to various shared revenues, such as federal Payment In Lieu of Taxes (PILT), National Forest Receipts, and Shared Fisheries Business Taxes, upon which their local governments depend in part to fund operations and services. Several comments questioned or challenged how the petition met many of the regulatory standards for borough incorporation, such as transportation links and communities of interest. Some comments suggested amending the proposed boundary to make the area smaller or to allow for the formation of a different borough. Finally, several comments expressed disapproval of any form of regional government.

The petitioner systematically addressed many of the comments its reply brief. LBC staff evaluated the Xunaa Borough incorporation petition against the constitutional, statutory, and regulatory standards in place. Staff also addressed the comments, respondent briefs, and reply brief, as they related to the standards.

During the second public comment period, following the release of the preliminary report, LBC staff received six comments, including a brief from the petitioner, and comments from the cities of Pelican, Tenakee Springs, and Gustavus.

The comments LBC staff believe are the most insightful and informative are not those outright opposing any and all borough government, but rather the commenters who have said that this proposal does not work as a representative government for the Icy Strait region. Through the course of LBC staff's investigation and review of this petition, it was clear there have been numerous attempts to have conversations in the region about borough formation. What was not clear was exactly how the information was presented and how follow-up information was delivered. In 2017, Hoonah contracted with Navigate North, an Alaska-based consulting firm, to conduct community conversations in Pelican, Gustavus, Tenakee Springs, and Kake. In June 2018, a task force was formed to identify questions about

borough design, structure, services, and area. According to the consultant report, the task force was told "if one, two or even more communities ultimately choose to form a borough, those communities will design and customize it to their collective will. Those communities will get to design and drive their own borough structure."

The consultant went on to write, "Because no participating community (including Hoonah) has made a decision on whether a borough is in its best interests, some of the specific questions referenced are difficult to answer with certainty." This insight indicates that at least some of the participating communities were still open to discussing the possibility of a regional borough.

It is not clear to LBC staff whether the questions identified by Navigate North were addressed or at what point collaborative talks between Hoonah and the neighboring communities broke down. By January 2019, the City of Hoonah appointed a borough formation committee that only included participants from Hoonah and Game Creek. This committee began work drafting a petition that excluded Gustavus, Tenakee Springs and Pelican, and included detachments from the Haines and Sitka Boroughs.

In October 2019, Hoonah submitted its draft borough incorporation petition to the Local Boundary Commission, requesting an informal technical review. LBC staff's review found numerous deficiencies in the petition's transition plan, petitioner's brief, budget, and documentation of collaboration. Most notably, the petition provided no documented consultation with either of the municipalities proposed for detachment nor evidence of prior neighboring community meetings.

On October 15, Gustavus mayor Calvin Casipit wrote to Hoonah's mayor expressing surprise in hearing from local news reports that Hoonah had submitted a draft petition, and that he was, "particularly disappointed that the original multi community-based learning model that was initially undertaken by Navigate North Consultants seems to be abandoned. I believe such an approach could have built more community support and resulted in a more sustainable future for all of us."

Casipit included with his letter a resolution from the Gustavus City Council opposing "any attempt by the City of Hoonah to form borough boundaries that include the City of Gustavus and the adjoining areas, including Glacier Bay National Park."

When Hoonah next reached out to Gustavus in July 2022, Gustavus Mike Taylor communicated the City's position had not changed, referring to its 2019 resolution, and said "The community of Gustavus exhibits a skepticism toward local government, especially one with more comprehensive powers than our existing second-class City. The idea of adding a second layer of municipal government, particularly with an administrative and assembly center distant from Gustavus would not be supported here." Taylor continued, "We doubt a Xunaa Borough would have authority to tax commercial fish harvest that is not landed at a port within the Borough. Even if authorized, the fish tax collection would be problematic," and that a borough wide sales tax would be strongly resisted in Gustavus.

An updated borough feasibility study focused on potential tax revenues, as well as budgetary impacts of delivering education and planning and platting services to the entire region, including the communities of Gustavus, Tenakee Springs, Pelican, and Elfin Cove, would be helpful in understanding whether a true regional borough would be in the best interests of the neighboring communities and the State of Alaska. A more collaborative conversation could take place throughout the region as to what borough government can provide to all of the residents in the region and what its drawbacks may be. LBC staff recognizes the challenge in facilitating consistent conversations across communities as well as the challenge to form a coherent consensus when local leadership changes (for example, from 2018 to 2024, Gustavus has had

four different mayors). While Hoonah is to be commended for its initiative, these conversations should be facilitated by an independent third party.

Local Boundary Commission Constitutional Foundation

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").[8] The commission is responsible for establishing and modifying proposed municipal government boundaries. Those Alaskans who drafted the state's constitution believed that local governments should have the authority to determine which powers they would exercise. The Alaska Supreme Court found the drafters of Alaska's Constitution asserted their belief that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."[9] Placing decision-making authority with a state body allows arguments for and against boundary changes to be analyzed objectively, taking areawide or statewide needs into account.

Local Boundary Commission Statutory Authority

Pursuant to *AS 29.06.040(a)* "the Local Boundary Commission may consider any proposed municipal boundary change." *AS 29.06.040(a)* further reads:

> The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets the applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.

Local Boundary Commission Duties and Functions

The LBC acts on proposals for several different municipal boundary changes, including municipal incorporation, annexation, detachment, the merging of municipalities, consolidation of municipalities, reclassification, and dissolution of municipalities.

In addition, the LBC, under *AS 44.33.812* shall also make studies of local government boundary problems and adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. The regulations are subject to *AS 29.04-10*.

Nature of the Commission

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska Constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes.

Quasi-Legislative

[8] Article X, section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

[9] Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962)

In 1974, 1976, and 1993, the Alaska Supreme Court stated that Alaska's Constitution gives the LBC legislative authority to make fundamental public policy decisions. The court stated, "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 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."[10]

Under *AS 44.33.812(a)(2)*, the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution…"[11]

Quasi-Executive

Article X, section 12 of Alaska's Constitution placed the LBC in the state's executive branch. The commission's duty under *AS 44.33.812(a)(1)* to "make studies of local government boundary problems" is one example of the LBC's quasi-executive nature.

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

Limits on directly contacting the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communication with the LBC concerning municipal boundary proposals is conducted openly and publicly.

To regulate communications, the LBC adopted *3 AAC 110.500(b)* which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If an LBC decision is appealed to the court, the *ex parte* contact limitation is extended throughout the appeal, in the event that the court requires additional consideration by the LBC. All communications with the commission must be submitted through the LBC's staff.

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[10] Mobil Oil Corp. v Local Boundary Commission, 518 P. 2d 92, 98-99 (Alaska 1974). See also Moore v. State, 553 P. 2d 8, n. 20 at 36 (Alaska 1976); and Valleys Borough Support v. Local Boundary Commission, 863 P. 2d 232, 234 (Alaska 1993).

[11] See U.S. Smelting, Refining & Min. Co. v. Local Boundary Commission, 489 P. 2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

LBC Membership

Membership of the Local Boundary Commission is prescribed by *AS 44.33.810*. One member shall be appointed from each of the four judicial districts, and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission.

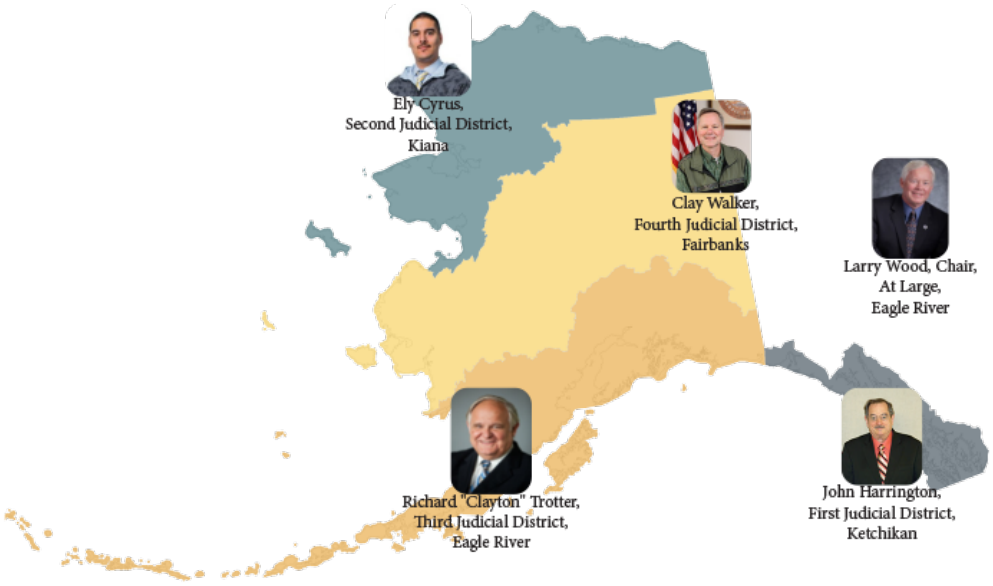
Larry Wood, an attorney and mediator from Eagle River, serves as the LBC chair. Governor Mike Dunleavy appointed Wood on February 4, 2020.

John Harrington, from Ketchikan, is the longest serving commissioner. He was first appointed to the LBC by Governor Sean Parnell on September 10, 2009.

Ely Cyrus, from Kiana, was appointed by Governor Mike Dunleavy on March 7, 2022.

Richard "Clayton" Trotter, of Eagle River, was appointed by Governor Mike Dunleavy on January 30, 2020.

Clay Walker, of Denali Park, was appointed by Governor Mike Dunleavy on August 9, 2023.



Local Government Agency

Alaska's Constitution called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as the constitutional local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce) pursuant to *AS 44.33.020(a)(4)*.[12] Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. In addition to its more general duty to aid local governments, DCRA provides staff, research, and assistance to the LBC.

LBC Staff Role

3 AAC 110.435 provides that Local Boundary Commission staff shall serve as an advisor to the Local Boundary Commission. During a proceeding, the advisory staff to the commission may provide technical

[12] *AS 44.33.020(a)(1)* provides that Commerce "shall (1) advise and assist local governments."

assistance, information, and forms to petitioners, respondents, and interested persons who have procedural questions regarding local government or boundary issues. Nothing in the regulation limits the role and ability of the commission's advisory staff to ensure that the commission is fully and accurately informed by providing to the commission new or additional information that supplements, questions, or refutes information provided by or a position taken by a petitioner, respondent, or other person.

Petition Procedures

Procedures to establish and alter municipal boundaries, including the incorporation of boroughs, are designed to ensure that every proposal receives a reasonable and timely determination. The LBC's procedures are also intended to ensure commission decisions are based on an analysis of the facts and the applicable legal standards. Procedures are as follows:

Preparing and filing a petition

The LBC staff offers technical assistance, information, and forms to prospective petitioners. LBC staff routinely advises submitting drafts so staff can identify any technical deficiencies in form and content. This allows the petitioner to correct the draft before it is circulated for voter signatures or before adoption by a municipal government. Once a formal petition is prepared, it is submitted to the LBC staff for technical review. If it contains all the required information, the LBC staff accepts it for filing.

Public notice and public review

Once a petition is accepted for filing, LBC staff arranges extensive public notice. There is ample opportunity for public comment during the process. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief replying to public comments and responsive briefs.

Analysis

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials. The petitioner and the LBC staff can conduct informational meetings. If the petition is for incorporation, the LBC staff must hold at least one public meeting within the boundaries proposed for incorporation. When the analysis is complete, the LBC staff issues a preliminary report including a recommendation to the LBC.

The preliminary report is circulated for public review and provided to the commission, the petitioner, and to the respondents. Comments are typically accepted for a minimum of four weeks. After reviewing the comments on its report, the LBC staff typically will issue its final report. The final report typically discusses comments received on the preliminary report and notes any changes to the LBC staff's recommendations to the commission. The final report must be issued at least three weeks prior to the LBC's public hearing.

Commission Review of Materials

LBC members review the petition, responsive briefs, written comments, reply briefs, and staff reports. The LBC is an autonomous commission. While the commission is not obligated to follow the staff's recommendations, it has historically considered the LBC staff's analyses and recommendations to be an important component of the record in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

The commission may tour the subject area before the hearing. Following required public notice, the LBC conducts at least one hearing in or near the affected area or territory. The commission must act on the petition within 90 days of its final public hearing. The LBC may act by:

- Approving the petition as presented
- Amending the petition (*e.g.*, expanding or contracting the proposed boundaries)
- Imposing conditions on approving the petition (*e.g.*, requiring voter approval of a proposition authorizing levying taxes to ensure financial viability)
- Denying the petition

Decision

Under *AS 29.06.040*, at the decisional meeting, "If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change."

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.[13]

While the law allows the commission 90 days following its last petition hearing to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within 30 days of its decision date, the LBC must adopt a written decision stating the basis for its decision. Decision copies are provided to the petitioner, respondents, and others who request them. At that point the decision becomes final, but any person may ask the LBC to reconsider its decision. Such requests must be filed within 18 days after the decision is mailed. The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all such requests are automatically denied. A Local Boundary Commission decision may be appealed under the Administrative Procedures Act, detailed in *AS 44.62*

Implementation

3 AAC 110.630(a) specifies conditions that must be met before an LBC final decision is effective. If the LBC approves a petition, and no appeal is taken, or the petition is affirmed on appeal, the proposal is typically subject to approval by voters or disapproval by the legislature, depending on whether it was filed as a local action petition or a legislative review petition, respectively. A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election was held, certification of the legally required voter approval of the LBC's final decision is needed from the director of elections or the appropriate municipal official. If all the requirements of *3 AAC 110.630(a)* have been met, the department shall issue a certificate describing the effective change.

[13] See Keane v. Local Boundary Commission, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formation, the court defers to the decision if the decision has a reasonable basis.

Chapter 2. Analysis

Introduction

A petition for borough incorporation is required to address how the proposal meets the constitutional, statutory, and regulatory standards for incorporation. First, incorporation must conform to standards listed in Alaska's Constitution. LBC staff look to article X, the local government section, and specifically to sections 1 and 3. Section 1 assigns the purpose and construction, and states:

> **Section 1. Purpose and Construction—**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.
>
> **Section 3. Boroughs—**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.

Incorporation must further meet standards specified in state statute, specifically in *AS 29.05.031*.

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

The Local Boundary Commission has adopted incorporation standards in the Alaska Administrative Code based on these constitutional and statutory requirements that provide requirements and evaluative criteria for incorporation eligibility.

LBC staff evaluated the petition as submitted. The petitioner is proposing to incorporate as a non-unified home rule borough, and has included the nearby communities of Elfin Cove, Game Creek, and Funter Bay within its boundaries. This report also includes some analyses regarding impacts to the neighboring incorporated cities of Pelican, Gustavus, and Tenakee Springs since it is from these communities the bulk of public comments were received. LBC staff have taken into account past LBC precedent, but have focused mainly on whether the petition addresses and meets the standards in the administrative code set forth by the LBC.

In its response to the preliminary report, the petitioner cites several previous LBC decisions as precedent for its proposal, though noting that adjudicatory results differ based on unique facts.

The petitioner cites a Ketchikan Gateway Borough (KGB) annexation decision from 2007 in which the Borough petitioned to annex all of the area set forth in the Model Borough Boundary with the exception

of 205 square miles surrounding the community of Hyder. The KGB at the time argued that Hyder should eventually be included in the borough, but argued for "incremental" expansion of boundaries, and that "the current cultural, social, economic and other ties between this area and the Borough does not justify inclusion at this time." LBC staff concurred with this argument in its preliminary report, noting in particular that a Hyder enclave would not initially impede the full development of essential borough services on an efficient and cost-effective level." But the case differs in a number of ways. First, the 2007 KGB annexation is a legislative review boundary change with a different set of regulatory standards, in which the petitioner must articulate justification that is similar but separate from borough incorporation. Second, KGB admits the Hyder enclave should "eventually" be included in the borough, anticipating that the formation of a Prince of Wales Borough would one day force the issue.

In response to the LBC staff's preliminary report, the City of Craig noted Ketchikan's annexation with the exclusion of Hyder was to "essentially grab all the land, but take no responsibility for the people."

"KGB's annexation of this area, without including Hyder, fails to serve all the relevant principles established by the Alaska Constitution. The Constitutional principles have not changed. The best interests of the state have not changed. The best interests of the state standard has not changed. The LBC's constitutional obligations to all the people and the communities in the state—including the people and communities in the unorganized borough—has not changed. Hyder remains the only community in the area that needs essential services. Hyder remains the only community in the area where the State is presently providing all the essential services that would be provided by a borough. And, KGB continues to exclude Hyder from the proposed annexed area. Based on the facts and the Constitution, the LBC's decision must remain the same, and deny the Petition."[14]

But perhaps the most significant difference between the KGB annexation and this case is the LBC found in KGB that the land use and ownership patterns, population density patterns, existing and reasonably anticipated transportation patterns and facilities, natural geographical features and environmental factors allowed for the annexation. The proposed Xunaa borough differs on this account for a number of reasons. First, the abundant fishing waters of Icy Straight contain a resource of common interest to the aforementioned communities. Conversations leading up to the submittal of the petition, at least implicitly, indicate Hoonah may pursue an excise tax on the fish of Icy Straight and the Gulf of Alaska waters within its proposed boundary. [15] The petitioner has described its intention to levy a one percent areawide sales tax, and residents of neighboring communities have questioned whether their charter fishing or tourism businesses will be impacted. Another difference between KGB and this petition is evident in the Alaska Marine Highway System transportation link between Hoonah and Gustavus, which provides direct service on at least a weekly basis. The proposed Xunaa boundary does encroach on geographical features that are of interest to the neighboring communities, including a Tenakee Springs hydroelectric dam, and nearby Glacier Bay National Park infrastructure on which Gustavus depends for some of its local economic activity.

The final staff report regarding the 2007 KGB annexation recommended approval, recognizing the enclave issue even though it contravened Constitutional, statutory and regulatory standards. The LBC ultimately approved this petition, albeit with the expressed concern with Hyder's status as an enclave. In approving the KGB annexation, the Commission directed the KGB to file a petition within five years to annex the Hyder area, something the Commission noted was particularly appropriate given the increased

[14] City of Craig comments on Ketchikan Annexation Petition Preliminary Report, September 4, 2007.
[15] "Update of Community Discussions Around Advantages & Disadvantages of Potential Borough Formation" Navigate North Consultants. October 2018.

federal revenues the Borough would receive as a result of the newly annexed area.[16] The decision noted that if such a petition is not filed, the Commission would be committed to directing DCCED to file such a petition in coordination with the Department of Education and Early Development and KGB staff. Seventeen years later, such a petition has yet to materialize, and the decision demonstrates the administrative and political difficulty with which the Commission can commit to future boundary changes and direct staff to implement them. LBC staff maintains the Commission made an improper ruling by excluding Hyder and creating an enclave, and cannot recommend approval of the Xunaa Borough petition, as it creates enclaves with the exclusions of Pelican, Tenakee Springs, and Gustavus. Each of these communities would be left lacking the geographical resource to form their own borough. Further, an incremental approach would be challenged by the proposed charter's at-large assembly representation, which could alienate the neighboring communities through inadvertent gerrymander. The petitioner's comparison to the 2007 KGB annexation differs in too many ways to be considered precedent.

3 AAC 110.045 Community of Interests

The first standard for evaluating a petition for incorporation as a borough include community of interests. The first subsection of the regulation states:

> (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 article X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, including:
>
> (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.

The entire area of the proposed Xunaa Borough is considered rural in nature and subsistence activities are evident throughout the region.[17] The City of Hoonah notes in its brief that the entirety of the proposed borough is classified as "rural" for the purpose of applying the rural subsistence preference of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). None of the communities in the proposed Xunaa Borough boundary are connected by a road system to a community considered urban in nature and none of the communities alone or combined have populations over 1,000 residents.

In determining the compatibility of economic lifestyles and industrial or commercial activities in the region, the department received several comments from the public regarding transportation and communication patterns in the region. A majority of the comments came from communities in the Glacier Bay region, but outside the proposed boundaries. Most of the Glacier Bay region communities, including Hoonah, rely on regional air carriers based in Juneau. Mail service to Elfin Cove continues on to Pelican, according to at least one comment.[18] LBC staff considers the region connected through transportation patterns, as air routes are not fixed and many of the communities are served, at least partially, by the Alaska Marine Highway System. There is no evidence of air transportation between the communities on northern Admiralty Island and Hoonah. Rather, those communities appear to rely on transportation by personal watercraft to and from Juneau.

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[16] Statement of Decision in the matter of the Petition by the Ketchikan Gateway Borough for Legislative-Review Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough. December 5, 2007. Page 25.

[17] See comments from Stansbury, Meyer, Nigro, and Barnes and Exhibit L of petition.

[18] See Perkins, January 31, 2024

Spoken language differences are not evident among the communities in the region, whether in the proposed boundary, or extended beyond to the excluded communities of Pelican, Gustavus, or Tenakee Springs. The petitioner's brief states, "although the Tlingit language is being aggressively preserved in the City of Hoonah, the English language is universal throughout the proposed borough."

The petition contains no assertion that there would be an expansion throughout the proposed borough of any type of organized volunteer services such as fire departments or other emergency services. Nor does the petitioner claim that it could feasibly organize any type of entity that would be capable of responding to all corners of the boundary as proposed.

The second subsection[19] of the Community of Interests regulation states:

> (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.

As mentioned in the last section, no regularly scheduled flights operate directly between Hoonah and any of the surrounding communities. Most air taxi services are based in Juneau. Elfin Cove does not have an airstrip and relies on float planes and personal watercraft for transportation of people, goods, and services. A nine-mile gravel road connects Hoonah with the community of Game Creek. The Alaska Marine Highway operates ferry service in the region with scheduled service approximately twice a month from Juneau to Pelican and either Juneau or Angoon to Tenakee Springs. There are approximately two round trips per week between Gustavus and Hoonah. Most communities in the region are connected with internet service, as well as some cellular phone service. During the department's informational meeting held in Hoonah and on Zoom on January 9, 2024, there were participants from all of the nearby communities. Both AT&T and GCI provide high speed data connectivity to much of Hoonah, as well as to Gustavus. Tenakee Springs and Pelican are served generally by talk and text capability, according to service maps from both companies, although, according to one report, cellular phone coverage is the number one barrier impacting business in Pelican.[20]

While Section 2.08 D of the proposed charter allows for assembly members to attend meetings in person or by teleconference, it is also written in a way that assumes the entire assembly would be elected from Hoonah. The second sentence, which reads, "Assembly members attending meetings by teleconference shall do so only after the assembly, by a majority vote, approves this manner of attendance due to extenuating circumstances including inability to travel due to weather." Since there are no direct flights from Elfin Cove or Funter Bay to Hoonah, any elected official from that community would potentially need to fly through Juneau or charter a flight directly, at a high cost to the Borough.

The third subsection of the community of interests regulation states:

> (d) In determining whether communication 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

[19] Subsection (b) was repealed on January 9, 2008

[20] Pelican By the Numbers, prepared by Rain Coast Data, October 2022.

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

As mentioned in the previous section, there is not presently scheduled air taxi or marine highway system service between the city of Hoonah and the communities of Elfin Cove or northern Admiralty Island. The City and Borough of Juneau submitted evidence that the residents of Northern Admiralty Island (Funter Bay, Horse Island, and Colt Island) more frequently travel to Juneau for supplies or services. Personal watercraft are used throughout the region for personal and commercial use.

LBC staff determined the petition mostly meets the community of interests standard though, because the population increase is so negligible, the point is rendered moot. Furthermore, the Funter Bay community is in closer proximity to Juneau, and has more direct contact with Juneau, and does not truly constitute a community by the definition in *3 AAC.990(5)*.

3 AAC 110.050 Population

Article X, section 3 of Alaska's Constitution calls for each borough to "embrace an area and population with common interests to the maximum degree possible." *AS 29.05.031* continues to refine the requirement calling for the population to be "interrelated and integrated as to its social, cultural and economic activities, and is large and stable enough to support borough government."

The standard for evaluating a borough incorporation petition in 3 AAC 110.050 considers the area's population. The first subsection of the regulation states:

> (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government 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
>
> (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 432. 23 for permanent fund dividends.

Table 1 Population statistics courtesy of Alaska Department of Labor and Workforce Development[21]

Community	2020	2021	2022	2023
Elfin Cove	24	32	38	38
Game Creek	23	19	18	18
Hoonah	931	904	917	885
Whitestone Logging Camp	2	2	2	2
Gustavus	655	660	658	655
Pelican	98	92	83	90
Tenakee Springs	116	123	126	123
Total	**1,849**	**1,832**	**1,842**	**1,811**

Over the last four years, the average population within the proposed boundary is 962. If the boundary were extended to include other Glacier Bay communities, including the cities of Gustavus, Tenakee Springs, and Pelican, it would contain approximately 1,834 residents. Hoonah experiences a seasonal population growth in the summer, primarily due to tourism and fishing jobs. In 2019, approximately 440 workers were non-Hoonah-Angoon Census Area residents.

According to the U.S. Census Bureau, 34 percent of Hoonah's population identify as American Indian or Alaska Native, 36 percent are white, two percent are Black, three percent are Asian, and the remaining 25 percent are of two or more races, including Alaska Native and Native Hawaiian or Pacific Islander. Fifteen percent of Hoonah's population is under the age of 19 and 40 percent of the population is over the age of 45. Seventeen percent of the population is between the ages of 25 and 34. Exhibit BB of the petition provides more detail on the population dynamics of the City of Hoonah.

The average daily membership (ADM) in the Hoonah School District for FY2024 was 107 students. The Chatham Regional Education Attendance Area reported no students in the area proposed for incorporation.

More than 60 percent of Gustavus's population is over the age of 45 and 92 percent of its population identify as white. Only three percent of the population identify as American Indian or Alaska Native.

[21] Funter Bay is not considered a Census Designated Place. The State Demographer's office estimates the population of Funter Bay to be eight residents.

Sixteen percent of Gustavus's population is under the age of 19. 54 students attend Gustavus School, the K-12 school operated in Gustavus by the Chatham Regional Education Attendance Area. Thus Gustavus has both an aging population and a viable community school.

In the community of Tenakee Springs, 86 percent of the population is over the age of 45, and 96 percent identify as white. Tenakee Springs School closed after the 2017 school year. The Chatham Regional Education Attendance Area facilitates some in-person education assistance for seven students through Chatham Correspondence.

In Pelican, 28 percent of the population identifies as American Indian or Alaska Native and 61 percent as white. Thirty-nine percent of the population is between the ages of 45 to 54. The Department of Education and Early Development reported an ADM of 12 students in the Pelican City School District during the 2023-2024 school year.

Overall, the three excluded communities demonstrate an aging population, though Pelican and Gustavus each have a reliable need for brick-and-mortar education facilities in the community.

The second subsection of the population regulation states:

> (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.

While the proposed boundary is geographically expansive, the population increase is negligible. Less than one percent of Hoonah's population would be added to the borough. The population of the petitioner's proposed Xunaa Borough is approximately 975, according to the most recent population estimates maintained by the Alaska Department of Labor and Workforce Development. On page 15 of the petitioner's brief, the city argues the regulation "arbitrarily presumes that a borough population of under 1,000 is incapable of supporting borough government" and points to the Skagway petition, which counted only 825 residents at the time that borough was proposed for incorporation. Additionally, the petitioner states, regarding the population standard in (b), "(t)he presumption…is punitive; it is not recognized in statute; and it ought to applied (*sic*) only if the LBC is confident that the petitioner will materially fail its test once the borough is formed an in full operation. That is not the case here."

According to U.S. Census data, the region as a whole has a relatively stable population, though each community in the region has a different story to tell. Gustavus and Hoonah have seen considerable growth since the 1990s while Elfin Cove, Pelican, and Game Creek have seen a significant decline in population. Tenakee Springs has also seen a fluctuation in population. The region as a whole has seen modest to steady growth in the last 30 years and appears to be relatively stable.

Table 2 Source: U.S. Census

Community	1990	2000	2010	2020
Elfin Cove	57	32	27	24
Game Creek	61	35	18	23
Gustavus	258	429	442	655
Hoonah	795	860	760	931
Pelican	222	163	88	98
Tenakee Springs	94	104	131	116
Whitestone Logging Camp	164	116	17	2

The petitioner makes an evidence-based case that, even if the population standard is applied strictly, the current population is "sufficient and stable enough to support the proposed borough." Hoonah cites demographic statistics suggesting all three of the communities within the proposed boundary are modestly growing. Further, the petitioner includes an affidavit from a Juneau-based socio-economic research consultant stating her belief the region has a population large and stable enough to support borough government, citing growth within the tourism sector, demographic trends, low unemployment, and school enrollment.[22]

While the petitioner included specific and persuasive facts that favor borough incorporation with a population of fewer than 1,000 residents, the language in section 3 of the local government article in Alaska's Constitution must be considered. The standard does not look for a minimum population. Rather, the framers of Alaska's Constitution envisioned regional governments encompassing multiple communities "to the maximum degree possible." Hoonah's petition extends its proposed boundaries to two outlying communities, Game Creek and Elfin Cove, and to northern Admiralty Island; however, it omits the communities of Pelican, Tenakee Springs, and Gustavus. The addition of these communities would maximize the inclusion of communities as directed in the Constitution. The City of Hoonah is already a thriving municipality and the petition lacks persuasive facts demonstrating the constitutional requirement has been met for a regional borough government.

3 AAC 110.055 Resources

The third standard for evaluating an incorporation petition considers the resources within the proposed borough. The section begins:

"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. The section is then bifurcated into two criteria. The first paragraph of the regulation contains criteria the commission "will consider" and the second paragraph includes "other relevant factors" the commission "may consider." First, the commission 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

[22] See Appendix CC of the petition.

(J) personal income of residents within the proposed borough

The petitioner stated it intends to exercise only mandatory areawide borough powers (education; planning, platting, and land use; and collection of taxes) outside of the Hoonah townsite service area. There are no schools in Funter Bay, Elfin Cove or Game Creek. Hoonah has also stated it intends to impose few restrictions in terms of land use or building codes. Much of the land proposed for incorporation is part of the Glacier Bay National Park, which is largely under the purview of the National Park Service.

If approved, the proposed borough will receive $600,000 in transition grants from the state over a three-year period. The grants would be $300,000 in the first year, $200,000 in the second year, and $100,000 in the third year. This funding would be in addition to an increase in annual Community Assistance Payments (CAP). *AS 29.60.855* grants a borough government a base amount of approximately $300,000 in CAP. Cities are eligible for approximately one fourth that amount. In 2024, the City of Hoonah received $86,848.90. According to the budget submitted with the petition, the proposed borough erroneously anticipates receiving $215,000 in CAP, $85,000 less than the statutorily ascribed amount. The borough would run a surplus of approximately $383,987 in the first year, $660,711 in the second year, and $459,273 in the third year.

A borough is required by law to provide planning, platting, and land use authority on an areawide basis; however, not all boroughs have fulfilled this responsibility and incorporation does not guarantee that a newly formed borough will unburden the state of this work. As a recent example, the Local Boundary Commission approved the incorporation of the Petersburg Borough in 2013. Soon after incorporation, the mayor signed a resolution designating the Department of Natural Resources (DNR) to act as the platting authority until the borough adopted platting regulations applicable outside of the service area. After 11 years, the Petersburg Borough has yet to complete its regulations and DNR continues to act as the authority. The arrangement has not been without problems, creating confusion and uncertainty as to whether the platting and planning authority of DNR or of the borough has precedence.

The current petition proposes a similar arrangement to that of the Petersburg Borough. Section 7.03 of the submitted draft charter proposes, "[t]he assembly shall exercise platting authority over the Hoonah Townsite Service Area created by Section 12.03 of this Charter and such areas as it may specify by ordinance." The petitioner cited Petersburg as an example of sufficiently detailed planning and platting powers ultimately approved by the LBC 12 years ago; however, LBC staff have the benefit of hindsight and also the input from officials with the Department of Natural Resources planning section. LBC staff is concerned that this language in the proposed charter is inadequate in ensuring delivery of areawide platting service.

The LBC should recognize there is an inherent best interest of the state to consider, as well as a borough incorporation petitioner's inherent responsibility. Hoonah is promising to avoid "regulatory burdens" to residents outside of its old townsite service area by simply adopting the Department of Natural Resources subdivision standards set out in 11 AAC 53.600-740, but one planner with DNR expressed concern, citing uncertainty around whether a borough could adopt AS 40.15 (state subdivision standards) since they appear to be in conflict with AS 29.40.070, which directs a borough assembly to adopt platting requirements that include control of form, size, and other aspects of subdivisions; dimensions and design of lots; and street width, arrangement, and rights of way, including for public access.

The petitioner has not described how it will reconcile planning and platting requirements or how it will implement them. The petitioner seems solely interested in preserving requirements within the Hoonah townsite, while either ignoring the rest of the proposed borough, or simply not acknowledging

responsibility. Further, it should be noted that the petitioner claims one of the benefits of incorporating such a large area is to extend local government to it. The LBC should consider whether this proposal does extend local government or whether it simply ignores or abdicates the prospective municipal government's responsibility to improve upon the status quo of the existing conditions within the unorganized borough. The petitioner is proposing "to the maximum extent legally permissible…avoid imposition of new regulatory burdens on those residing outside the Hoonah city limits." The LBC must determine whether this is an adequate explanation and truly in the best interest of the state.

Though the City of Hoonah does not levy a property tax and the petition states the proposed borough would not implement a property tax, the Full Value Determination is still required because it provides critical data in determining a municipality's required minimum local contribution which the Department of Education and Early Development uses to determine overall school funding.

Hoonah has stated that it expects the Full Value Determination of the Borough to increase, requiring an overall minimum local contribution to increase by approximately $40,000. The petitioner has applied the statewide average per-capita Full Value of $144,551 to Elfin Cove. LBC staff research concludes a more appropriate figure would use an average of other communities in the Southeast region with similar populations and economies. It should be further noted that a footnote on page six of the petition claims that the homes in Funter Bay are "just shacks;" however, division staff found evidence on Airbnb of at least one $200 per night vacation rental in Funter Bay. Additionally, the enthusiastic response from the property owners on Northern Admiralty Island appears to be largely attributed to a desire to avoid being annexed by the City and Borough of Juneau and subject to that borough's property tax.[23]

Table 3 courtesy of the Office of the State Assessor, 2023

Municipality	***AS 29.45* Local Taxable Full Value**	**Population**	**Per-Capita Full Value**	**Sales Tax Base Per Capita**	**Per Capita Tax Revenue**
Hoonah	$103,061,455	917	$112,390	$51,838	$3,599.74
Pelican	$17,461,613	83	$210,381	$65,033	$3,911.74
Gustavus	N/A	657	N/A	$26,652	$987.98
Tenakee Springs	N/A	126	N/A	$7,979	$172.42
Kake	$32,569,966	530	$61,453	$8,874	$475.86
Craig	$183,746,468	992	$185,228	$38,000	$2,851.19
Klawock	$70,522,740	694	$101,618	$25,777	$1,715.66
City and Borough of Sitka	$1,561,613,284	8,350	$187,020	$41,739	$3,370.34
City and Borough of Wrangell	$325,315,436	2,084	$156,101	$26,078	$2,864.97
Petersburg Borough	$624,244,273	3,357	$189,953	$20,678	$2,393.86

The economy of the area proposed for incorporation has evolved considerably during the previous 40 years. Once dominated by the timber industry, the area has shifted away from extractive development and toward sustainable tourism. The unincorporated community of Elfin Cove hosts several lodges, charter hunting, and charter fishing businesses. The active non-profit community association in Elfin Cove has successfully acquired a number of legislative grants for community facility improvements and upgrades

[23] See comment from Erica Simpson, submitted February 27, 2024.

including boardwalk repair, the reconstruction of a power plant, upgrades to a fuel dock, and seaplane float improvements.

Hoonah has seen dramatic growth in tourism, mainly due to the investment and development of Icy Strait Point, a cruise ship docking facility with capacity for three large passenger ocean liners, a remodeled cannery that includes shopping and dining facilities, and a large forest canopy zipline tour attraction and gondola transport. The city, in its reply brief, defends the development from critics who label it, pejoratively, "industrial" tourism.[24] . LBC staff observed passenger cruise ship facilities developed at the Icy Strait Point destination, and they seemed entirely appropriately scaled within the context of the community; that is to say, the facilities were grand in scale, well-appointed and tasteful, but did not seem particularly outsized, "industrial" or out of proportion for the setting. The petitioner argues successfully that the Icy Strait Point development continues to be a tremendous asset to the community and a true economic driver, providing local jobs and tax revenue for the community. Hoonah has also successfully utilized state Passenger Vessel Tax revenue for projects that not only offset the industry's impact on the community, but also enhancements that benefit Hoonah residents.

The region around Hoonah and Icy Strait Point, including the communities of Gustavus, Pelican, and Tenakee Springs, all benefit from commercial, sport, subsistence, and recreational fishing opportunities. The region's economy also has an emerging mariculture sector and value-added timber market, shifting focus from the clear-cutting methods employed during the 1980s to a more sustainable model with attention on ocean health and cultural value. Tourism, both the large commercial passenger cruise ships as well as small scale cruise ships and charter fishing vessel operations, will continue to be an important component of the entire region's economy and provide contributions to the communities of Elfin Cove, Pelican, and Gustavus as well as to Hoonah. LBC staff concludes the entire region's economy is linked through its ties to Icy Strait, Glacier Bay National Park, and the Tongass National Forest.

Additionally, *3 AAC 110.055(2)* states the commission may also 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.

LBC staff received 24 comments from residents or business owners from Elfin Cove. Additionally, LBC staff received a respondent brief from Elfin Cove. Not a single comment received supported borough government as proposed in the incorporation petition, and all recognized the community would be contributing tax revenue without receiving any services (Miller, Magart, etc.).[25]

Conversely, LBC staff received 17 comments from residents of Funter Bay, Horse Island, and Colt Island (including one letter purportedly representing 69 property owners on Horse and Cold Islands) in support of the borough incorporation petition. These residents were previously included in an annexation attempt by the City and Borough of Juneau (CBJ) and would have been subjected to CBJ's property tax rate had that petition been successful. Virtually all comments from this area were in favor of the Xunaa Borough petition because of the petition's pledge to not levy a property tax, and many asserted they do not "need or want" any services.[26]

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[24] See Exhibit LL-1 of Hoonah's Reply Brief.

[25] See comments from Miller and Magart.

[26] See comments from Spencer and Harrison,

LBC staff do not believe the petition demonstrates a reasonably predictable level of commitment and interest of the population in sustaining borough government, specifically from Elfin Cove and Game Creek. The petitioner claims the communities of Pelican, Gustavus, and Tenakee Springs were excluded because there was no interest from those communities, yet did not apply similar logic by excluding Elfin Cove and Game Creek. Residents of Funter Bay, Elfin Cove, or the property owners on northern Admiralty Island seem unlikely candidates to provide employable skilled or unskilled persons to serve the proposed borough, since the borough does not appear to be able to serve these communities. LBC staff have determined this petition does not meet the third standard.

3 AAC 110.060 Boundaries

Proposed Xunaa Borough Boundary

The fourth standard for evaluating a borough incorporation petition considers the proposed boundaries. The first subsection states:

(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;
(7) existing and reasonably anticipated industrial, commercial and resource development within the proposed borough.

The petitioner places much emphasis on the fact that the area proposed for incorporation encompasses the traditional lands and subsistence gathering areas of the Huna people. The petition and the accompanying exhibits argue that the entirety of the area should be preserved and placed under the administrative responsibility of the Huna people, and "the proposed borough includes all the territory, with one troubling exception: In 1974, the LBC allowed the Haines Borough to annex the Huna Tribe's historical portion of the Chilkat Peninsula, including the east bank of Excursion Inlet." Notably, the City of Angoon took a similar tone in its resolution opposing the including of the northern portion of Admiralty Island in the petitioner's proposed boundary, claiming the area has been continuously inhabited by Tlingit Indians of Angoon for approximately 10,000 years. But as one commenter succinctly noted, borough formation is not about recognizing indigenous historic territory. Rather, borough incorporation is a modern governance construct intended to unify communities of common interest and deliver services on an areawide basis.[27]

The exclusion of Gustavus, Pelican, and Tenakee Springs appears to be a direct response to opposition to borough incorporation from those communities; however, as several commenters noted, the petitioner did include Elfin Cove, despite widespread opposition from that community.

The petitioner asserts "the waters surrounding the proposed borough represent untapped wealth that, through fair and uniform taxation, can better the lives of everyone within the borough."[28] This argument

[27] See comment from Nicole Grewe, February 29, 2024, page 8.

[28] Section 6, Petitioner's reasons for the Petition.

only bolsters the need to consider the neighboring communities that also rely on the region's resources. LBC staff noted comments from Gustavus, which appear to shift from, "[W]e honestly believe you will be more successful without us,"[29] to the city's adoption of resolution CY24-05, disputing the qualifications of the petition submitted by the City of Hoonah, which opposes the petition in its current form.

Comments suggesting Pelican and/or Gustavus form their own borough[30] are not useful, as these communities would not meet the borough incorporation standards on their own and would be further hindered if the Xunaa Borough were approved, as the two communities would then be non-contiguous. The City of Gustavus, while opposing the City of Hoonah's proposal, notes the "establishment of a new borough is in the best interests of the State only if the proposed borough is a true regional government that bridges multiple communities in the region with shared interests, that will serve the needs of the people living in the region now and for the foreseeable future, and that is formed and desired by the people in the region."[31]

A number of comments received during the initial petition filing period noted that many of the communities have commonalities within the region, with Elfin Cove's reply brief stating, "Elfin Cove has more in common with the communities of Pelican and Gustavus."[32]

Both the City of Gustavus and the City of Pelican expressed concerns that, if approved, the Xunaa Borough boundary would have a negative impact on their federal Payment in Lieu of Taxes (PILT) and National Forest Receipts shared revenues. Based on the statutes that govern distribution calculations, LBC staff concur that the impacts would reduce shared revenues through National Forest Receipts.

Table 4 Shared revenue programs FY2023

Community	PILT	Shared Fisheries Business Tax*	National Forest Receipts
Hoonah	$178,909.00	$753.00	$265,792.00
Gustavus	$130,512.00	$727.00	$48,255.00
Tenakee Springs	$24,198.00	$671.00	$6,314.00
Pelican	$18,248.00	$4,438.00	$35,585.00

*** does not include payments collected inside municipal boundary and administered by the Department of Revenue**

The Secure Rural Schools Program, also known as the distribution of National Forest Receipts, is a program established by the National Forest Service (NFS) to distribute funds to rural counties whose tax base is limited by untaxable Forest Service lands. There are two methods for distributing these funds: 25 percent payments based upon the gross receipts generated on NFS lands during the current fiscal year, or the Secure Rural School payments based upon the average of the three highest payments made to the state during the "eligibility period" of 1987 – 2000. The State of Alaska has chosen the latter method of payment. Under the Secure Rural Schools payment allocation, there are three titles of funding: Title I, Title II, and Title III. The program requires that at least 15 percent, but no more than 20 percent, of each borough's payment be spent on either Title II or Title III "special projects" with the balance to be spent on

[29] Letter from Gustavus Mayor Mike Taylor, July 14, 2022.

[30] See comments from Harding and Marchbanks.

[31] See City of Gustavus, Alaska Resolution CY24-05.

[32] See comments from Barry, Lombard, Streveler, and Elfin Cove Reply Brief.

the traditional schools and roads categories (Title I). Title II projects are on federal lands, require the use of a 15-member Resource Advisory Committee (RAC) for project review and recommendation, and are administered directly by the Forest Service. Title III projects include a limited list of activities that a borough can undertake and approve itself. Boroughs that receive a total payment less than $100,000 can elect to spend 100 percent of their payment on Title I schools and roads.

Payments are calculated based upon the acres of federal and NFS lands within an eligible county-equivalent and an income adjustment based on the per-capita personal income for each county-equivalent. The exact calculation for determining the Hoonah-Angoon Census Area's current payments are not made public, nor is it shared with the Local Boundary Commission. According to NFS the calculation is conducted in the following manner: determine the payments from the "eligibility period," determine both the ratio of each county-equivalent's payments from the overall payment to the state and the ratio of Forest Service acres within each county-equivalent to establish the base share, then calculate an income adjustment ratio for each county-equivalent based upon per-capita personal income, and finalize the amount of each county-equivalent's adjusted share of the overall payment through using the above-mentioned ratios.

Each year, depending upon congressional appropriations, the NFS determines full payment base amounts, and distributes the Title I percentage to the State of Alaska for further distribution. Payments for organized boroughs are directly paid to boroughs and can be used at each borough's discretion for schools and/or roads. Payments for the unorganized borough, which are divided among federal Census Areas for purposes of distribution, must be allocated by the state. The state allocates a calculated proportion to each home rule, first class, and second class city within each Census Area based upon student attendance numbers and local and state maintained road miles.

Currently, there are approximately 1.98 million acres of NFS land in the Hoonah-Angoon Census Area. The newly proposed Xunaa Borough would remove approximately 630,688 acres of NFS land from the Census Area. Deriving that the calculation is based upon both acreage and personal per-capita income, it is likely if the proposed boundary is approved, the removal of approximately 630.7 thousand acres from the Hoonah-Angoon Census Area would result in a reduction in payments to the Hoonah-Angoon Census Area and the remaining communities within it. The statute governing the program (*AS 41.15.180*) also supports this noting, "an organized borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries."

LBC staff anticipate minimal impact on communities through the PILT entitlement, which is calculated based on a municipality's population rather than its boundaries.[33]

Fisheries

LBC staff contacted the Alaska Department of Fish and Game, consulted with the Community and Regional Affairs Aid and Accountability section, and also contacted the Department of Revenue's Tax Division in drafting this section of analysis. The proposed Xunaa boundary map follows Fisheries Management Area (FMA) 17 and also overlaps with small sections of FMA 16 and 18, but not to an extent that would result in an FMA reassignment. Historically, FMAs and the revenue sharing associated with them have been a multi-agency effort. If any change in revenue sharing or the FMAs were to arise as a result of borough incorporation, it would require the engagement of several agencies and involve a

[33] *3 AAC 152.010*

lengthy review. The Xunaa boundary, if approved, is not expected to cause significant or impactful change relating to FMAs or the associated revenue sharing.

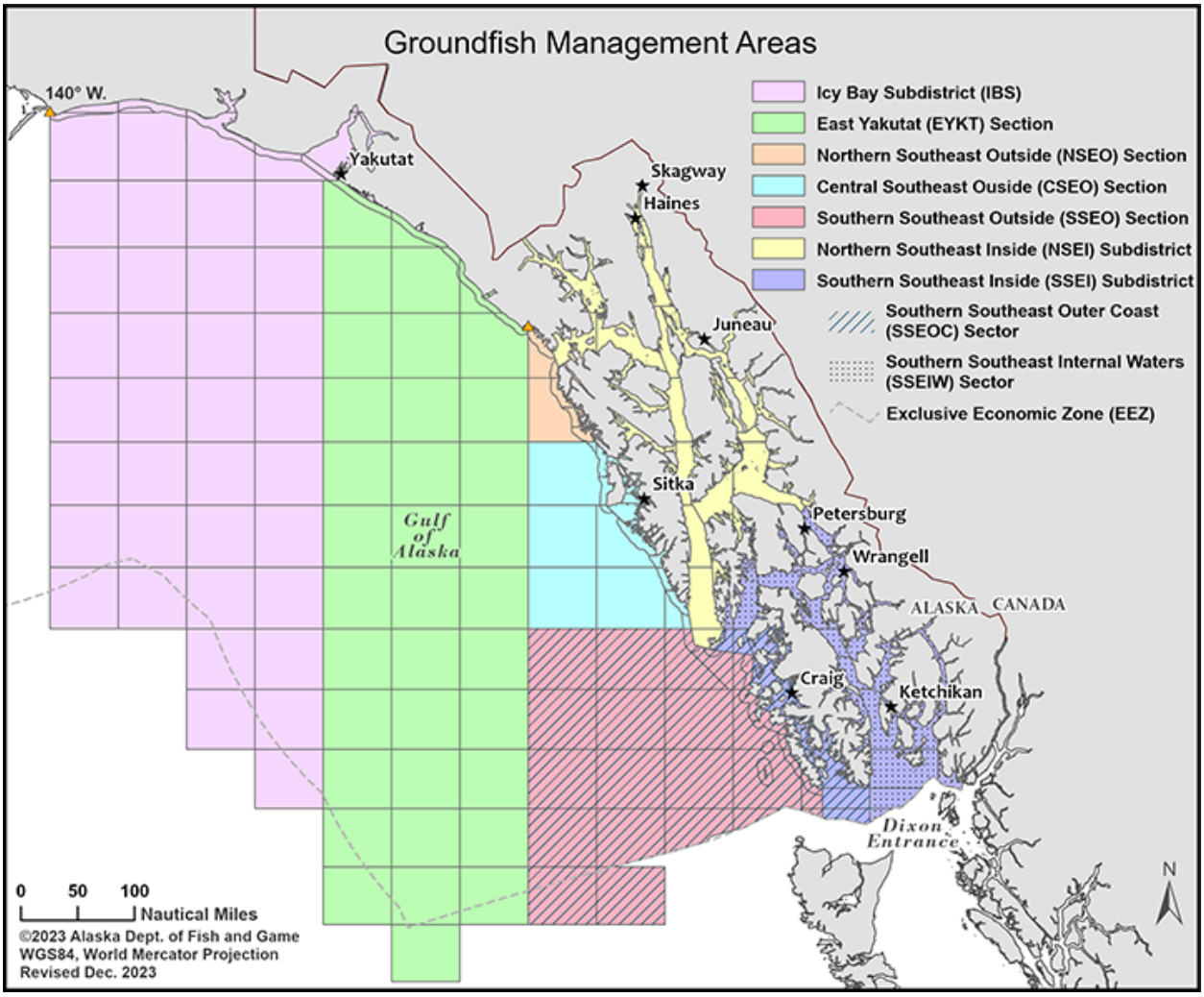
Salmon

According to the Alaska Department of Fish and Game, the proposed borough boundaries contain some of the most productive waters in the Juneau management area for the salmon purse seine fishery, which typically start in late June and run through early September. District 14 salmon purse seine fisheries predominantly occur within two nautical miles of the northern Chichagof Island shoreline from Port Frederick east to Point Augusta, with limited openings and harvests also occurring in Port Althorp, Idaho Inlet, Excursion Inlet, and the mainland shoreline from Excursion Inlet to Point Courverden. The recent 10-year average annual harvest by species in the District 14 purse seine fishery is 30 Chinook, 10,000 sockeye, 8,300 coho, 1.3 million pink, and 75,000 chum salmon. An annual average of 48 unique permit holders fished in District 14 during the same 10-year period.

Purse seine fisheries in the northern portion of District 12 aligning with the proposed Xunaa Borough area occur predominantly within two nautical miles of the Chichagof Island shoreline from Point Augusta south to Tenakee Inlet, within two nautical miles of the Admiralty Island shoreline from Funter Bay south to Parker Point, and inside Tenakee Inlet. The recent 10-year average annual harvest by species in the northern portion of District 12 purse seine fishery is: 50 Chinook, 24,000 sockeye, 13,200 coho, 2.3 million pink, and 99,000 chum salmon. During this period, an annual average of 65 unique permit holders fished in northern District 12. There is very little purse seine caught salmon processed within the proposed borough boundary. Since the Excursion Inlet cannery closed in 2018, there are very few salmon processed nearby with harvests being taken all over the Southeast Alaska region to be processed.

The Icy Strait and Northern Chatham Strait areas have commercial troll fisheries operating nearly all year. From October through mid-March, trollers fishing these areas target Chinook salmon, with most of the harvest landed in local ports of Icy Strait or flown to Juneau for processing. Beginning in mid-June, spring troll fisheries that target hatchery origin chum salmon open in the Icy Strait/Northern Chatham corridor, with a high proportion of those catches landed in Hoonah. From July 1 to September 20 each summer, trollers target late hatchery chum salmon, as well as Chinook and coho salmon, that originate from Alaska, British Columbia, and the contiguous United States. The majority of troll salmon harvest in the vicinity of Hoonah occurs during the summer fishery, as fish are most abundant at this time and the number of active troll permits fished is at the annual peak. Roughly 27 percent of this average harvest is landed in Hoonah, with the largest portion transported to Juneau for processing and smaller percentages sent to processors in either Pelican or Sitka.

The recent five-year average annual troll salmon harvests from the waters referenced above are as follows: Chinook salmon: 14,700; sockeye salmon: 900; coho salmon: 245,000; pink salmon: 26,000; and chum salmon: 10,700.



Groundfish

Groundfish fisheries are carried out year-round in the Icy Strait and Northern Chatham Strait areas of Southeast Alaska and primarily include the directed Pacific cod fishery and the Chatham Strait state-managed sablefish fishery. The Icy Strait and Northern Chatham Strait areas support significant harvests of groundfish species, with many groundfish landings occurring in Hoonah and nearby small-scale seasonal processors in Icy Strait. These waters also support important personal use and subsistence groundfish fisheries.

The commercial-directed Pacific cod fishery in Southeast is open access and open year-round until management areas have reached guideline harvest limits; however, participation is generally low (fewer than six permits per year during the past five years) and is almost exclusively operated in the Northern Southeast Inside (NSEI) Subdistrict during the fall and winter months. The recent five-year average (2019–2023) annual harvest was approximately 72,000 round lbs. in the Icy Strait and Northern Chatham Strait area. This represents about 30 percent of Pacific cod caught in state inside waters. The majority of this harvest is landed in Juneau, given the winter season timing of the fishery.

The commercial Chatham Strait state-managed sablefish fishery is limited entry with 73 permits and is prosecuted in the NSEI Subdistrict, open from August 15 to November 15 by regulation. In the Icy Strait and Northern Chatham Strait area, the recent five-year average (2019–2023) annual harvest was 159,000 round lbs. This represents about 10 percent of the sablefish caught in the NSEI fishery annually. The majority of what was harvested from 2019–2023 in this area was landed in Juneau (43 percent) with a smaller percentage landed in Sitka (31 percent), Hoonah (21 percent), Petersburg (3 percent), and floating catcher processor (2 percent).

Shellfish

Crab fisheries that are conducted within the Icy Straits and Northern Chatham Straits Area include golden king crab, Tanner crab, Dungeness crab, red king crab, and blue king crab. Golden king crab and Tanner crab fisheries open concurrently in February, with the Tanner crab season lasting up to a few weeks and the golden king crab fishery lasting up to a few months. Most of these crabs are processed in Juneau, Sitka, or Petersburg. The Dungeness summer season opens June 15 to August 15 and the fall Dungeness season opens October 1 to November 30. Dungeness crabs are processed throughout the region as well as sold locally through catcher seller permits. The red and blue king crab fishery opens November 1 to January 24 (yet usually closes sooner by emergency order). Red king crab and blue king crab openings have been sporadic in the past two decades with the last fishery happening in the 2017/2018 season. The recent 5-year averages from the waters referenced (in pounds): golden king crab: 19,423; Tanner crab: 354,726; Dungeness crab: 501,517; red and blue king crab from the most recent season (2017/18): 14,520.

The second subsection allows the commission to 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;
> (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 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
> (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.

Glacier Bay Region

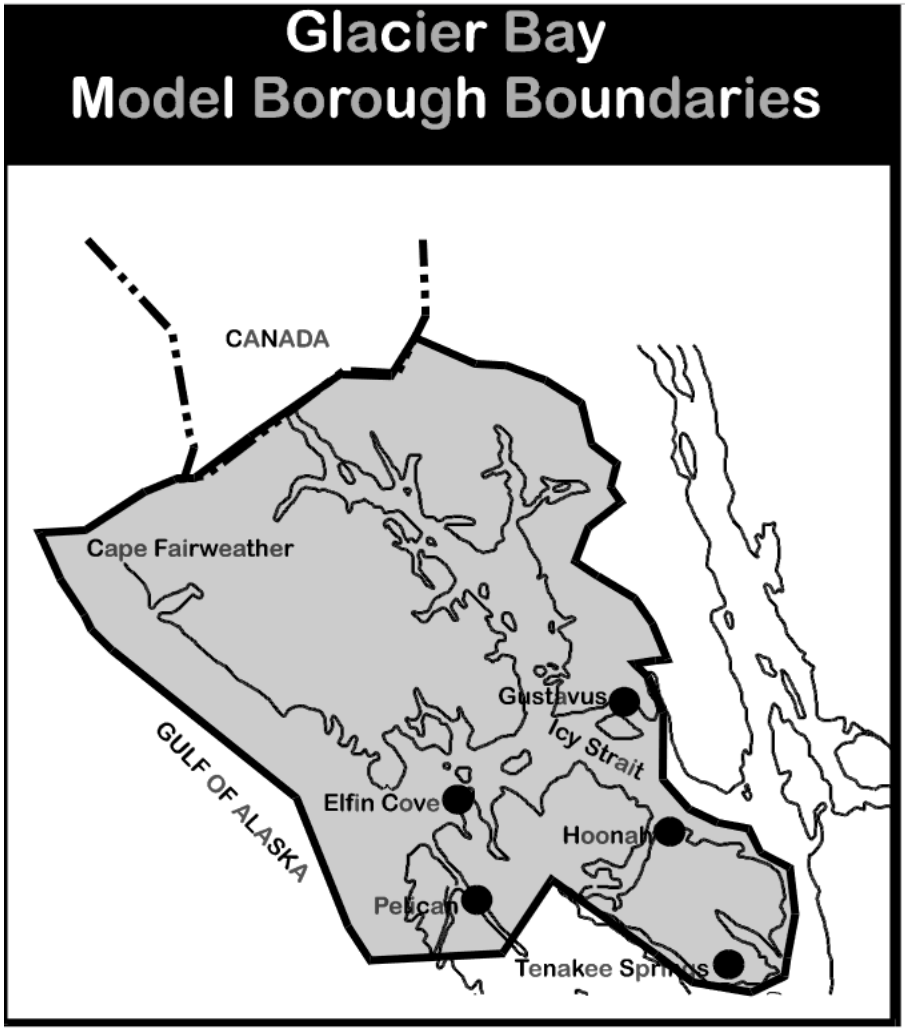
Model borough boundaries are rooted in the Alaska State Constitution. Article X, section 3 requires that all of Alaska be divided into boroughs, organized or unorganized. The division of Alaska into boroughs must be in accordance with standards including population, geography, economy, transportation, and other factors. The constitution requires that each organized and unorganized borough embrace an area and population with common interests. In addition, article X, section 1 of the constitution favors a minimum number of boroughs. The standards for borough incorporation also provide that the commission may consider model borough boundaries for the area within the proposed borough.[34]

The Model Borough Boundary Study began in 1989 after a flurry of annexation petitions from established boroughs. It became apparent that three groups had a significant stake in any borough boundary decision:

[34] *3 AAC 110.060(b)(1)*

the residents within the proposed boundary, the people of the adjacent areas, and the state as a whole. Lawsuits or long-standing boundary disputes tend to erupt each time a borough incorporation or annexation proposal is advanced. The Local Boundary Commission concluded that, rather than examining borough boundaries only when petitions are lodged, it would invite public testimony from throughout the entire state and adopt model borough boundaries throughout the unorganized borough. In 1992, the Local Boundary Commission conducted hearings on model boundaries for this region, including Hoonah, Pelican, and Gustavus. On May 8, 1992, the commission defined model borough boundaries for the region extending from Cape Fairweather to Chatham Strait. These model boundaries encompass Glacier Bay and the communities of Elfin Cove, Pelican, Hoonah, Gustavus, and Tenakee Springs. In 1990, the region had a population of 1,858. In 2024, the approximate population of the Glacier Bay Model Borough is 1,811.

A 2003 report by the Local Boundary Commission studying unorganized areas of Alaska that meet borough incorporation standards found that the Glacier Bay Model Borough boundary met all incorporation standards, particularly regarding population size and stability, regional commonalities, broad public interest, and economic capacity. The Glacier Bay Model Borough Boundary notably does not include any portion of Admiralty Island, including Funter Bay, Horse Island, or Colt Island. Those areas are included in Juneau's model borough boundaries. The City of Angoon adopted Resolution 24-03 requesting Admiralty Island be removed from the petitioner's proposed boundary.



Within the Glacier Bay Model Borough boundary there are two city school districts and a portion of one Regional Education Attendance Area. The City of Hoonah operates a school district with a reported Average Daily Membership (ADM) of 112 students in FY 2024 (Alaska Public Schools Database, 2024). The City of Pelican operates the smallest school district in the state, with an ADM of 12 students. The Chatham REAA reported a total of 151 students residing both within and outside the model borough boundaries. Of these 151 students, 61 reside within the model borough, with Gustavus School enrolling 54 students and Chatham Correspondence serving seven students in Tenakee Springs. Chatham REAA officials said there are no other students enrolled in its REAA that reside within Hoonah's proposed boundary.

School	ADM	School Spending Per Pupil[35]
Hoonah	112	$36,568
Pelican	12	$61,092
Gustavus	54	$45,032
Tenakee Springs	7	$37,036

[35] Alaska Department of Education & Early Development, Alaska Public Schools Database. April 16, 2024.

School District	Administration cost[36]	Local Contribution[37]
Chatham REAA	$286,038	$0
Hoonah	$159,511	$700,000
Pelican	$29,807	$42,546

Alaska requires all boroughs, home rule cities in the unorganized borough, and first class cities in the unorganized borough to contribute the equivalent of a minimum 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district. A local government may not contribute more than 45 percent of the district's basic need for the preceding fiscal year.

Community	Full Value Determination	Required minimum local contribution (AS 14.17.410(b)(2)	Maximum contribution (45% of district basic need)	FY2024 contribution
Hoonah	$103,061,455	$273,113	$1,160,957	$700,000
Pelican	$17,461,613	$46,273	$191,066	$42,546

Under the Glacier Bay model borough boundary, there would be an opportunity to consolidate two school districts and a portion of a third, presumably resulting in administrative savings for the district and the state. A consolidation would also fulfill the constitutional mandate of a minimum number of governmental units.

Hoonah's transition plan does not anticipate any increase in capital or personnel requirements for the school district as a result of borough incorporation since there is no apparent demand for education outside of the current city school district, according to the distance learning director with the Chatham Regional Education Attendance Area. It is beyond the scope of this report to construct a budget for an expanded borough school district that includes any of the communities above.

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

The coastal communities located along Icy Strait and Chatham Strait profess a strong reliance on subsistence and commercial maritime resources, as well as a desire to protect and preserve these resources. These communities often share marine and air-based transportation methods as well. While it

[36] Alaska Department of Education & Early Development, General Fund School Operating Expenditures, FY2024 Budgets. October 17, 2023.

[37] Alaska Department of Education & Early Development, General Fund School Operating Revenue, FY2024, October 17, 2023.

may be true that Gustavus could conceivably become part of the Haines Borough, the cities of Pelican and Tenakee Springs do not have the same option of joining an adjacent borough without the dissolution of their own municipality. It is incumbent upon the Local Boundary Commission to determine whether it would be in the best interests of the state to allow the incorporation of the proposed borough, given the limited options of the neighboring municipalities to join another borough.

The third subsection[38] states:

> (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.

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

A decision in favor of the petitioner is further complicated when considering the only foreseeable option for the communities of Pelican and Tenakee Springs, aside from joining a prospective Xunaa Borough, would be to join with the City and Borough of Sitka, a unified municipality, the impact of which would be to dissolve each of the two smaller municipalities. Dissolution would reduce the residents' ability toward self-determination on issues of local importance, such as Tenakee Springs' restrictions on motor vehicles within its city limits.[39]

The fourth, fifth, and sixth subsections that consider boundaries state:

> (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.

Nothing in Hoonah's petition proposes to detach any portion of an existing borough or include only a portion of an existing city, so LBC staff did not consider these standards.

[38] Subsection (c) was repealed on 1/9/2008

[39] https://tenakeespringsak.com/wp-content/uploads/2023/10/title_13_vehicles_and_traffic.pdf

3 AAC 110.065 Best Interests of the State

The fifth standard in considering a borough incorporation petition is whether the incorporation is in the best interest of the State of Alaska. The standard states:

> In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission may consider relevant factors, including whether incorporation
>
> (1) promotes maximum local self-government, as determined under 3 AAC 110.981;
> (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
> (3) will relieve the state government of the responsibility of providing local services; and
> (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.

3 AAC 110.981 (Determination of maximum local self-government) states: "In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider (1) for borough incorporation, whether the proposal would extend local government on a regional scale to a significant area and population of the unorganized borough; and …(14) whether the petition proposes incorporation of a home rule municipality."

The petitioner proposes to extend local government to "a significant area and population of the unorganized borough." While the proposal includes a significant geographic area, a significant population that could benefit from borough incorporation has been deliberately excluded. The reasons for the exclusion are somewhat unsatisfactorily explained in the petitioner's brief (Exhibit E) starting on page 25. Hoonah's communications with the three neighboring municipalities are documented with minimal context of the dialogue with the communities. Unlike a municipal annexation petition, there is no regulatory requirement to hold a public hearing prior to an incorporation petition filing. What is clear from the petitioner and the response from the neighboring communities is that the region has not developed a coherent consensus on borough government. There are hints and suggestions in some of the public comments that residents both inside and outside of the proposed boundary may be amenable to the idea, just not the one presented. There are no specifics on how to remedy the current proposal in such a way that could satisfy and balance decision-making throughout the entire region.

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

3 AAC 110.982 (Minimum number of local government units) states: "Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider (1) for borough incorporation, whether a new borough will be created from the unorganized borough and whether the proposed boundaries maximize an area and population with common interests."

The surrounding, excluded communities share with the City of Hoonah geographic proximity, reliance of the area's natural resources and environment, transportation links, and dependence on the Alaska Marine Highway System. Since the petition does not "maximize an area and population with common interests," LBC staff concludes that the petition does not meet the standard for a minimum number of local government units.

3 AAC 110.900 Transition

The petitioner satisfies the requirement of providing a transition plan, noting that it intends only to provide non-areawide services within the former townsite service area. The petitioner acknowledges there is no need to provide education because there are no school aged children in the community of Elfin Cove and the Chatham REAA has said it does not have any correspondence students within the proposed boundary.

Hoonah's transition plan also notes a seven-member borough assembly (including the mayor) would be elected at-large, as would a five-member school board.

The petitioner has not stated its intention to either hire a full-time assessor or to contract with an assessor to develop a borough-wide Full Value Determination.

3 AAC 110.910 Statement of Nondiscrimination

The petitioner includes the following statement of non-discrimination in section 17 of the petition:

"Borough incorporation and the concomitant dissolution of the City of Hoonah will not discriminate against either Alaska Natives or any minority."

LBC staff recognize the statement meets the standard, but also recognize the concerns from residents of Elfin Cove and Game Creek, who expressed skepticism a representative from their community would be elected to an at-large borough assembly.

3 AAC 110.970 Determination of essential municipal services

> (b) The commission may determine essential municipal services for a borough to include (5) other services that the commission considers reasonably necessary to meet the borough governmental need of the residents of the area**.**

The petitioner is proposing to provide non-areawide services to the Hoonah townsite only. Residents of Game Creek and Elfin Cove raised questions about the lack of services borough government would provide to their communities.

3 AAC 110.981 Determination of Maximum Local Self-Government

> (1) For borough incorporation, whether the proposal would extend local government on a regional scale to a significant area and population of the unorganized borough.

The petition proposes to expand local government in area, but not significantly in population. The current population for the City of Hoonah is 885. The population of the proposed borough would increase by fewer than 75 residents yet extend its governance over 10,000 square miles beyond the current city limits.

Hoonah can achieve maximum local self-governance by adopting a home rule charter for the City of Hoonah rather than incorporating as a borough government. LBC staff recommends that adopting a home rule charter is the appropriate course under the Alaska State Constitution.

3 AAC 110.982 Determination of Minimum Number of Local Government Units

The petition on this standard is neutral, and an affirmative LBC action technically does not reduce the minimum number of local government units. By dissolving the City of Hoonah and creating a borough government, one local government unit is replaced by another. This standard would more appropriately be satisfied by consolidating with one or more of the region's school districts (Pelican City School District and/or the Chatham REAA).

Chapter 3. Conclusion

The Local Boundary Commission is faced with the decision of whether the petitioner's proposed boundary is appropriate. If the Commission believes the boundary is relevant, it may affirm the petition. If the Commission does not believe the proposed borough and its boundary is appropriate, it may deny the petition, modify the petition's boundaries, or alter other components of the petition.

The petitioner states that voluntary incorporation is preferable to the potential alternative of either having a different borough government imposed upon residents by the state or to leaving the entire region unorganized. The framers of Alaska's Constitution conceptualized the entire state as divided into both organized and unorganized boroughs. Victor Rivers, a delegate to the Alaska Constitutional Convention and member of the Committee on Local Government, said during the convention, "we allow for the boroughs remaining unorganized until they are able to take on their local government functions." There is no intent or effort from the LBC to impose borough government formation on the unorganized borough.

Boroughs are intended to be regional forms of government that unify communities of common interest and deliver services on an areawide basis. The petitioner states the boundaries have been drawn to enclose "a geographically distinct and interrelated region dependent on fishing and tourism from the abundant waters within and surrounding the borough, and in which all of the residents of the borough have a common interest." The petitioner further stated that "the waters surrounding the proposed borough represent untapped wealth that, through fair and uniform taxation, can better the lives of everyone within the borough," and has included five years of commercial fishing data, including total catch and commercial value.

To approve the boundary as proposed while excluding the neighboring communities of Gustavus, Pelican, and Tenakee Springs, which are surrounded by the very waters and lands the petitioner claims are abundant and rich in resources, would deny them a seat at any regional government decision-making regarding those resources, not to mention a portion of any collective benefits. The proposed Xunaa Borough charter is drafted in such a way as not to incentivize inclusion of additional communities should they decide to opt into the borough in the future. A borough that fragments the region would create inequality among the communities within and outside the proposed borough boundary. Such a division would not be in the best interests of the state.

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

The petitioner states that the boundaries have been purposefully structured to honor the wishes of the proposed borough's remote residents in Funter Bay, Elfin Cove, and Game Creek due to their isolation and desire for "only limited services (and the corresponding freedom from local taxation such as a property tax)." The petitioner also excluded the cities of Pelican, Gustavus, and Tenakee Springs because those communities requested to be excluded.

The public comments from Funter Bay, Horse Island, and Colt Island support the petitioner's assertion that these localities wish to remain free of property or other taxes. There appear to be no businesses in that region of the proposed borough aside from vacation rentals and the area's property owners have clearly stated they prefer Hoonah's proposal over the possibility of being annexed by the City and Borough of Juneau; however, numerous comments from Elfin Cove, as well as a respondent brief from an Elfin Cove resident, call into question what the community would receive for the one percent seasonal sales tax its businesses would remit. Hoonah is proposing to not provide any services to residents outside of the Hoonah Townsite Area beyond those mandatory areawide powers required in *AS 29*. Additionally, the Chatham Regional Education Attendance Area reported no students inside the proposed borough boundary. There would be no additional cost and there would be no additional requirement to provide this service other than what the City of Hoonah is already doing.

The petitioner stated that Hoonah is a prosperous community with more than adequate resources to support the new borough. LBC staff wholeheartedly agrees that the community has successfully capitalized on tourism to improve services in its community. Hoonah has received well-deserved recognition and commendation for its ability to operate and maintain its infrastructure and for the economic growth and prosperity resulting from its transition from clear cut timber harvesting into tourism development. Commercial fishing also continues to thrive in the region. The assertion that Hoonah is the regional hub for the Chatham and Icy Straits region may be in question, as Gustavus receives regular, twice-per-week ferry service on a year-round basis, jet service from Alaska Airlines during the summer, and, for decades, has serviced Bartlett Cove, which has been the federal outpost leading into Glacier Bay National Park.[40]

The petitioner states the ability to select municipal entitlement lands will give residents a greater ability to support and enhance economic development in the region; however, a survey of land in the region indicates fewer than 500 acres of state selected land from which a newly incorporated borough would be able to choose. There simply does not exist within the proposed boundary the inventory of available state lands to convey.

The Department of Natural Resources has not fully analyzed lands that could be transferred under the Municipal Land Entitlement program. Under current land status, it is doubtful the inventory exists to convey the ten percent of land entitled by statute. The majority of land in the proposed boundaries are either under federal jurisdiction through the National Park Service or the US Forest Service or are owned by Sealaska Corporation, the regional Alaska Native Corporation.

The petitioner cites previous LBC decisions approving the Yakutat and Petersburg boroughs to support its incorporation efforts. While past examples can inform LBC decision making, each borough offers unique distinctions, characteristics, and circumstances that can and should be considered.

More than 30 years ago, when evaluating the Yakutat Borough, LBC staff wrote that, if small boroughs are approved for incorporation, the state, as it grows, is likely to face many of the problems that the

[40] https://www.nps.gov/places/bartlett-cove.htm

constitution drafters sought to avoid: multiple small governments, each reluctant to cede any power to solve regional problems extending beyond its boundaries; multiple small school districts; and increased administrative expense as each small area would have its own "regional government" and school administration with no economies of scale. Multiple small boroughs would decrease flexibility in creating government boundaries appropriate to address future problems. Virtually all authorities on local governments agree that it is much more difficult to combine two or more political subdivisions that are too small than to subdivide a large one that later turns out to be unwieldy. The creation of small-population boroughs with expansive boundaries would furthermore skew the allocation of National Forest receipts and the 10% land entitlements of 'new' municipalities. These observations from the Yakutat petition are no less relevant in this case.

Even prior to that, a July 9, 1962 letter from Alaska's secretary of state Hugh Wade, written to Governor William Egan regarding the proposed Bristol Bay Borough, in which Wade expressed his opposition to the proposed borough because "it takes the principal tax resources in the area and makes that tax resource available only to a limited number of people—less than 600 I believe—to the exclusion of all other people in the Bay area." Wade notes that the state, still in its infancy, was eager to approve a borough, but that if approved, "when the other areas in Bristol Bay start looking for some sort of a tax base to establish local government, they are going to find that this relatively small area has taken all of the rich tax resources for the benefit of a relatively few people."

The Local Boundary Commission has developed borough incorporation standards that are in harmony with state statutes and with the intent and vision of the framers of Alaska's Constitution.

The City of Hoonah is to be commended for taking a bold step in initiating a borough proposal; however, the omission of the three neighboring municipalities, recognizing their request to be excluded, is at odds with the constitutional and statutory standards for regional borough incorporation. Further, there does not appear to be a coherent explanation for why a process that began as collaborative collapsed into what is essentially a single community petition. The exclusion of the neighboring communities would not be in the best interest of the state, nor would approving the petition as presented.

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

There are many reasons why regional government in Glacier Bay could be in the best interests of the state and of the communities. There even appear to be signs some of the communities may be open to borough government. The region's communities have commonalities that are suitable for regional government, whereby a borough government would distribute representation equally among the communities and interests in the region. An at-large assembly as proposed in the charter would not necessarily achieve that goal and could be a barrier to proper regional representation for the smaller communities. Staff recommends the petition be denied but that future consideration be paid to the petitioner if a new proposal with greater community support and inclusion is brought forward.