

**IN THE STATE OF ALASKA**

**LOCAL BOUNDARY COMMISSION**

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

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**LOCAL BOUNDARY COMMISSION DECISION ON MOTIONS FOR RECONSIDERATION<sup>1</sup> OF THE COMMISSIONER’S DECEMBER 20, 2024 APPROVING THE PETITION OF THE CITY OF HOONAH FOR THE INCORPORATION OF THE XUNAA BOROUGH AND THE DISSOLUTION OF THE CITY OF HOONAH**

**I. PROCEDURAL HISTORY.**

**A. Initial LBC Decision on Petition and Requests for Reconsideration.**

On December 20, 2024, the Local Boundary Commission (“LBC” or “Commission”) adopted a majority decision (“Decision”) approving the City of Hoonah’s Petition to Incorporate the Xunaa Borough and to Dissolve the City of Hoonah (“Petition”). The LBC approved the Petition by a 3-2 majority vote.<sup>2</sup> The LBC

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<sup>1</sup> Motions for Reconsideration were filed by the Gustavus Visitor’s Association (“GVA”), City of Tenakee Springs (“Tenakee”), City of Gustavus and Elfin Cove (collectively “Gustavus”), and the City of Pelican (“Pelican”) (GVA, Tenakee, Gustavus and Pelican are collectively referred to as “Movants”).

<sup>2</sup> The majority decision was joined by Commissioners Harrington, Cyrus, and Trotter. Commissioners Wood and Walker issued a dissenting opinion on December 18, 2024.

commissioners were unanimous in finding that most standards for borough incorporation had been met except two, i.e., boundaries and best interests of the state. GVA, Tenakee, Gustavus and Pelican filed timely motions for reconsideration alleging the LBC erred on a number of grounds in reaching its Decision. The LBC agreed to hear the requests for reconsideration solely on two grounds: whether the LBC erred when it found the Petition met the standard for boundaries and whether the petition met the standards for best interests of the state.<sup>3</sup> The LBC permitted the City of Hoonah (“Hoonah”) to file a reply. Hoonah filed a timely reply in opposition to the reconsideration requests.

The LBC held a decisional meeting on February 18, 2025 to review, discuss and decide the requests for reconsideration. The LBC, by a 3-2 vote, denied the requests for reconsideration. This written decision is filed in support of that decision.

#### **B. Executive Session During LBC’s Initial Decisional Meeting.**

At the time of the LBC’s Decision on the Petition, there was some confusion concerning the discussion on whether the evidence supported a finding of complying with the boundaries<sup>4</sup> and best interests of the state<sup>5</sup> standards. At various times in the decisional meeting, the Chair indicated what he thought to be the position of various commissioners on these issues. In this regard the chair had stated that there were three commissioners who were inclined to believe that the boundaries and best interests of the state standards were not met. The commissioners in this group, according to the

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<sup>3</sup> See LBC Order dated January 21, 2025.

<sup>4</sup> 3 AAC 110.660

<sup>5</sup> 3 AAC 110.065

Commission Chair Wood, included himself and Commissioners Harrington and Walker. However, when it came time for a formal vote on the Petition, Commissioner Harrington voted in favor of approving the Petition, thus indicating that the boundaries and best interests of the state standards had been met.

At the suggestion of counsel for the Commission, the Commission moved to go into executive for legal advice on the proceedings. The Commission approved the motion to go into executive session by unanimous vote. The Commission returned from the executive session and counsel explained the reason for the executive session, i.e., the confusion surrounding the boundaries and best interests of the state standards and the vote of Commissioner Harrington in favor of approving the Petition. Commissioner Harrington stated on the record that he found that Hoonah had met the standards for boundaries and best interests of the state and his vote was in favor of approving the Petition. With the issue resolved, the Commission approved the Petition by a 3-2 vote.

Gustavus, Tenakee and Pelican<sup>6</sup> have each asserted that the LBC's executive session to clear up the confusion on whether the Petitioner met the standards violated the Open Meetings Act ("OMA").<sup>7</sup> This alleged OMA violation was considered by the LBC in agreeing to reconsider its finding that the boundaries and best interests of the state standards had been met. In doing so however, the LBC does not believe it violated the OMA. Rather the LBC's was acting in an adjudicatory role at its decisional meeting on

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<sup>6</sup> GVA's Motion for Reconsideration did not raise this issue.

<sup>7</sup> AS 44.62.310 et seq.

December 20, 2024 and therefore, the OMA was inapplicable.<sup>8</sup> The decisional meeting was held to decide the merits of the Petition and as such it was a quasi-judicial proceeding in which the LBC was making an adjudication. When meeting solely in regard to its quasi-judicial function to make an adjudication, the OMA does not apply.<sup>9</sup> Here since the OMA does not apply no violation could have occurred.<sup>10</sup>

Given the closeness of the vote on the Decision and the Commission wanting to keep its process as transparent as possible, it nonetheless decided to reconsider its Decision on boundaries and best interests of the state since the Commission was unanimous on finding that all other standards had been met and it wanted to avoid even the appearance of an OMA violation.

## **II. ANALYSIS AND DISCUSSION.**

In its Decision, the LBC majority determined that all standards were met but two commissioners found that the boundaries and best interests of the state were not met even though the petition met all other standards. When it came to the boundaries and best interests of the state standards, the crux of the issue was the fact that Gustavus, Tenakee Springs and Pelican were not included in the boundaries of the new borough. In its

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<sup>8</sup> AS 44.62.310(d)(1). This section of the OMA provides that the OMA “does not apply to a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding”.

<sup>9</sup> See Alaska Open Meetings Law, Tan, Gordon (October 2002, 3<sup>rd</sup> Edition). “Examples of quasi-judicial bodies include the Local Boundary Commission.” Mr. Tan was expressing the view that when the LBC meets in its adjudicatory role then the OMA is not applicable.

<sup>10</sup> Even though the OMA is inapplicable to the LBC in its adjudicatory role, it has always moved to go into executive session during its decisional meetings to discuss issues with counsel and seek legal advice.

Decision, the majority determined that even absent the inclusion of these communities, the Petition met the Boundary and Best Interests standards. The dissent, on the other hand, felt that the only way the Petition could satisfy the boundaries and best interests of the state standards was to include these communities within the new borough.

In their Requests for Reconsideration, the movants identified the areas where they believed the Petition failed to meet the boundaries and best interests of the state standards. Gustavus identified 7 areas it felt the boundaries standard was not met.<sup>11</sup> These areas included 1) the proposed borough did not include sufficient evidence that all land and water necessary to provide the full development of essential borough services on an efficient, cost effective basis; 2) it failed to promote minimum number of local government units; 3) the proposed borough created 3 enclaves; 4) the Decision failed to explain how the boundaries standard was met; 5) the Decision failed to explain its reversal of the LBC's staff recommendation; 6) the hearing transcript reflects that 3 commissioners found the boundaries standard was not met; and 7) the proposed boundary for the new borough did not create a true regional government.<sup>12</sup> Pelican and Tenakee raise similar issues.<sup>13</sup>

### **A. Boundaries Standard**

The LBC's boundaries standard provides:

(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

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<sup>11</sup> Gustavus Request for Reconsideration, P. 16-26.

<sup>12</sup> Id.

<sup>13</sup> Pelican Request for Reconsideration, P.5 – 12; Tenakee Request for Reconsideration, P. 5-7.

generally to natural geography, must be on a regional scale suitable for borough government, and must include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

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

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

- (1) model borough boundaries for the area within the proposed borough;
- (2) regional boundaries, including
  - (A) boundaries of one or more regional educational attendance areas existing in that proposed borough area;
  - (B) federal census area boundaries;
  - (C) boundaries established for regional Native corporations under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act); and
  - (D) boundaries of national forests;
- (3) whether the proposed borough will embrace an area and population with common interests to the maximum degree possible;
- (4) whether the proposed borough promotes maximum local self-government, as determined under 3 AAC 110.981;
- (5) whether the proposed borough promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and
- (6) whether the proposed borough boundaries are the optimum boundaries for that region in accordance with art. X, sec. 3, Constitution of the State of Alaska.

(c) Repealed 1/9/2008.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping boundaries

from the existing organized borough. The commission will consider that petition for incorporation as also being a detachment petition.

(f) The boundaries of a borough may not include only a portion of the territory of an existing city government.

(g) Requirements relating to limitation of community, as set out in 3 AAC 110.040(b), do not apply to boroughs.<sup>14</sup>

At its decisional meeting on reconsideration the Commission went through a list of the requirements in this standard and discussed each one. The evidentiary record certainly demonstrated the proposed borough conforms to natural geography and is on a regional scale. The evidence also supported a conclusion that the Petition includes all land and water necessary to provide the full development of essential municipal services on an efficient and cost effective basis. The LBC concluded factors weighing in favor of finding the Petition included all land and water necessary for full development of essential municipal services on an efficient, cost-effective level were land use and ownership, ethnicity and culture, transportation patterns and facilities and natural geographic features. There is ample evidence in the record that these factors support borough formation.

An area where the LBC Commissioners disagreed on boundaries arose under 3 AAC 110.060(d), i.e., whether the proposed borough boundaries created enclaves. Here the majority found that enclaves were not created in Gustavus, Tenakee and Pelican. As Commissioners Trotter suggested Vatican City is a true enclave because it is surrounded by Italy on all sides. However, he reasoned that the new borough did not surround any of these three areas. Rather, these areas would be surrounded by either the new borough or

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<sup>14</sup> 3 AAC 110.060.

other boroughs that were previously formed. Likewise, Petitioner’s opposition to the Reconsideration requests also highlighted the fact that Switzerland is entirely surrounded by other nations, but it is not considered an enclave.<sup>15</sup>

Enclave has been defined as “a distinct territorial, cultural, or social unit enclosed within or as if within foreign territory.”<sup>16</sup> Black’s Law Dictionary defines an enclave as an isolated part of a country’s territory entirely surrounded by the territory of one foreign country, so that any communication with the main part of the country must pass through the territory of the foreign country.<sup>17</sup> Under either definition, the proposed borough does not create enclaves in Gustavus, Pelican or Tenakee since the proposed borough does not entirely surround any of these locations.

Tenakee acknowledges this fact in its Reconsideration Request. It cites to Commissioner Wood’s description of enclaves when he stated “[s]o I think it’s fair to say those are enclave if – maybe not in the physical sense but certainly in the governmental sense”.<sup>18</sup> There is no dispute in the record that the proposed borough boundary do not completely encapsulate these three areas. Even Commissioner Wood conceded this point. Although his point of a “governmental” enclave is well taken, the LBC’s regulations do not speak in those terms. Rather, the Commission must give the plain meaning to the word enclave. Statutes and regulations are interpreted according to reason, practicality,

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<sup>15</sup> Hoonah Opposition, P. 14.

<sup>16</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/enclave>.

<sup>17</sup> Black’s Law Dictionary (12<sup>th</sup> ed. 2024).

<sup>18</sup> Tenakee Reconsideration Request, P. 5.



and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.<sup>19</sup> “Statutory interpretation begins with the plain meaning of the text, but it does not stop there. Instead, we subscribe to a sliding scale approach to statutory interpretation, under which [t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”<sup>20</sup> We find that to create an enclave, the new borough must completely surround these areas. We believe this is consistent with prior LBC decisions and that it is a reasonable interpretation of the regulation. Likewise, we also note that none of the parties have shown a contrary interpretation is required given the history surrounding this regulation.

We find that even if enclaves were created, the presumptions in 3 AAC 110.060(d) are still overcome given the evidence in the record that the proposed borough has all the necessary water and land needed to allow for the development of essential municipal services on an efficient and cost effective basis.

The record was also clarified that three Commissioners found the boundaries standard had been met. We acknowledge there was confusion on the issue but Commissioner Harrington clearly and unequivocally rectified this issue and stated that all standards had been satisfied.

Based on the requirements for boundaries contained in the standards and the finding that no enclaves were created, we find that the evidence supports a finding that the Petition met the Boundary Standard.

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<sup>19</sup> Matter of Estate of Abad, 540 P.3d 244, 247 (Alaska 2023).

<sup>20</sup> Id. (internal quotes omitted).

## **B. Best Interests of the State**

The LBC also reviewed all components of the best interests of the state standard at its decisional meeting on the Requests for Reconsideration. They reviewed the standard and evidence and once again concluded that this standard had been satisfied. The standard provides:

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.<sup>21</sup>

The proposed borough would bring a formal organized government to a substantial part of the unorganized borough. The evidence established that essential government services would also be added to these areas including, planning, platting, zoning and land use. The new borough would also relieve the state from having to provide for these essential governmental services. The Petition also does not create new governments in addition to those already in existence since the City of Hoonah will be dissolved. As result, although the net effect is one government, that one government will cover a much larger land

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<sup>21</sup> 3 AAC 110.065.

swath than the prior government. It will include not just Hoonah but a large portion of the unorganized borough in the state. The best interests of the state standard was satisfied and as a result, the Petition was properly approved.

The Commission once again has determined that all applicable standards have been met and as a result, the Commission's Decision is upheld and Movant's Requests for Reconsideration are denied.

DATED: March 20, 2025

LOCAL BOUNDARY COMMISSION

s/John Harrington, First Judicial District

s/Clayton Trotter, Third Judicial District

s/Ely Cyrus, Second Judicial District