

**COMMENTS OF PETITIONER CITY OF HOONAH ON MAY 28, 2024
PRELIMINARY REPORT**

1. Introduction

The following are Petitioner’s comments on the May 28, 2024 *Preliminary Report to the Local Boundary Commission Regarding the proposal to incorporate the Xunaa Borough*.^{1/} Before discussing the specific and seemingly long-term impediments to borough formation that the *Report* proposes to erect for the Icy Strait region, a brief look at the matter from 30,000 feet seems in order.

**A. The Preliminary Report Would Undermine, Long Term, A
Fundamental Goal of Article X of the Alaska Constitution**

Our constitutional framers intended that Article X would bring organized local government to regions of the state when those regions were capable of assuming the responsibilities of self-government.^{2/} And the Icy Strait region

^{1/} Hereinafter “*Report*.”

^{2/} Whether a region would become organized, “depend[ed] on [the region’s] readiness and capability for government.” Morehouse and Fischer, *Borough Government in Alaska* (1971) at 39 (“*Borough Government in Alaska*”). The unorganized borough was intended to encompass only those “regions not ready or suited for corporate municipal status.” *Id.* at 40. In sum:

Although the convention perceived that parts of the state would not be ready for incorporation as organized boroughs, due to fiscal or administrative inability to support areawide functions, it was, nonetheless, deemed appropriate that people of unorganized boroughs assume as much responsibilities as they were capable of any given time.

Id. at 41. As the *Report* itself acknowledges, “[t]he 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

encompassed by the Xunaa Borough is obviously ready for organized regional government:

- The region has a core community, Hoonah, with a vibrant and growing economy that earned it Southeast Alaska’s Community of the Year award in 2022. Its fiscal health is so robust that the Report estimates that the Xunaa Borough would run as much as a \$660,711 annual surplus in the forecasted years. *Report* at 19. Indeed, the *Report* itself devotes much of its “Resources” section to cataloguing the economic health of the region, leading any fair reader to conclude that those resources are more than sufficient to support areawide government.^{3/} As the *Report* states: “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.” *Id.* at 34;

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.’” *Report* at 33.

^{3/} All except the section’s last paragraph, where the *Report* backslides, and claims that the Petition fails the “Resources” test because 24 residents of Elfin Cove are opposed to borough formation and unlikely to provide “employable skilled or unskilled persons to serve the proposed borough.” That issue is dealt with in *Section 3.B, post*.

- The City of Hoonah’s municipal government, the skilled core of which could be expected to steer borough government at the outset, has been markedly successful in both fueling and managing the city’s growing economy. For example, without incurring significant bonded indebtedness, the city has built a model community that includes a full suite of state-of-the-art public works;
^{4/}
- Beyond Hoonah, the entire region is founded on a healthy renewable economy of fishing and tourism; and
- The *Petition* honors the wishes of the outlying communities to be as free of government control as Alaska law allows.

That is the big picture. Despite all that, the Report claims that the region will be suitable for organized government “only’ if a minority of the region’s population residing in three excluded cities withdraws their intractable opposition to joining a borough that includes Hoonah. ^{5/} And as the record of this Petition makes clear, as a practical matter that means that a substantial portion of Southeast Alaska, and a uniquely capable one at that, will remain unorganized for the foreseeable future,

⁴ / See *Petition by the City of Hoonah for a Incorporation of the Xunaa Borough as a Home Rule Borough, and Dissolution of the City of Hoonah* (June 28, 2023), Exhibit E at 22 (“*Petition*”); Exhibit F at 7-8.

⁵ / According to the *Report*, compliance with applicable constitutional standards “should **only** be answered in the affirmative if the boundaries are expanded to include the three excluded municipalities.” *Id.* at 30; emphasis added.

dotted only with a smattering of small “cities” providing (except in Hoonah’s case) only limited local government.

Even a quick review of that record makes that point abundantly clear. For example: In its brief, Petitioner pointed out that Gustavus was being excluded because the two cities were “unlikely to forge anything approaching a working relationship.” *Exhibit E* at 25. In its comments, the Gustavus Visitors’ Bureau doubled down on that characterization, stressing that “[t]his is still true today of the City of Gustavus...” Or as one Gustavus resident put it: “Not in the too far distance Gustavus formed and became a city to combat the intentions [of] Hoonah, by preventing Hoonah to annex Gustavus. I implore our local government body to listen to her citizens and keep Hoonah at bay leaving us alone yet once again!” *Graves*. ^{6/}

^{6/} See also *Landry* (Gustavus) (“In many ways we do not share a commonality of social, cultural, or economic characteristics. Tenakee, Pelican and Elfin Cove are in a similar position. That is why an all-inclusive borough is an unnatural fit for our region at this time. But while Hoonah has a reasonable rationale for excluding us, it has no sound reason for trying to grab so much land that it screws us in the process.”); *Ferguson* (Pelican) (“There is no substantive current or historic relationship between the people and communities of the West Chichagof / Yakobi area and the City of Hoonah to serve as the basis for the boundaries of the proposed Borough.”); *McLaughlin* (Gustavus) (“The proposed borough would create enclaves of the surrounded cities, Gustavus, Pelican, and Tenakee. This would prevent Gustavus from uniting with these other cities to form a borough which would be more in line with their economic and social lifestyle.”); *Miles* (Pelican) (The proposed borough “provides no benefit and it will be punitive to the City of Pelican and its residents who want to remain autonomous as it and has been since its inception beginning in 1938.”); *Berg/Nigro* (Gustavus) (“Looking to the future, there is the possibility that the new Hoonah borough could later annex these cities by

Another Gustavus resident made it clear that residents simply saw no value in a regional government at all:

Three of the four city governments (Pelican, Gustavus, and Tenakee Springs) provide sufficient public services that meet local needs and see no benefit in a regional government. Only the City of Hoonah – with multiple attempts during the prior three decades – has moved forward to form a borough government, but without the support of neighboring communities. Hoonah has yet to propose a borough that unifies surrounding communities in the pursuit of a regional form of government. If the Glacier Bay Model Borough met the spirit and intent of borough formation with widespread regional support, it would have incorporated long ago – and especially as Hoonah has invested significant resources in professional planning services.

Grewe.

Nor is these cities' hostility to partnering with Hoonah is of recent origin. As the comments *ante* indicate, Gustavus' January 18, 2003 *Petition for Incorporation as a Second Class City Within the Unorganized Borough* was motivated in part as a defensive move against a possible compulsory union with Hoonah. And, indeed, Gustavus' petition came on the heels of a January, 2002 study, commissioned by the City of Hoonah, demonstrating the feasibility of a Glacier Bay Borough that included both locales. *Appendix C*. That study was intended to dovetail with "SB 48"—legislation that would have enhanced the State's authority to initiate borough incorporation. *Id* at 1.; *CSSB 48(FIN) am* [22nd Leg., 1st Sess.]. Indeed the study

legislative action. To prevent that, each city or a coalition of northern Icy Straits communities would need to form their own borough, much like Skagway did in order to prevent being annexed by Haines.")

called out Gustavus as a likely candidate for early and potentially involuntary inclusion in a borough:

...Gustavus is one of the communities frequently cited as an example of a prosperous area that does not currently make a local financial contribution for education. If SB 48 passes, it therefore would not be surprising if the unorganized area that includes Gustavus received early Legislative attention.

Id. Unwanted attention such as this could not help but to stiffen resolve against an all-inclusive Glacier Bay Borough.

While the *Report* suggests that some commenters hinted at possible support for some manner of borough,⁷ there is not the slightest indication that any of these communities would ever support joining a borough that included Hoonah. As the City of Gustavus put it in a July 14, 2022 letter advising the Petitioner that Gustavus refused to even discuss the matter: “We do not feel a borough that spanned the communities of Gustavus and Hoonah would serve the interests of either community well.” *Petition, Exhibit V.*

In a nutshell: a sober look at the future yields the inescapable conclusion that a “Xunaa Borough,” “Glacier Bay Borrough” or “Icy Strait Borough” will be dead on arrival if it necessitates the forced inclusion of Gustavus, Pelican and Tenakee Springs along with Hoonah. But as these comments will show, there is nothing in law that dictates such a Hobson’s Choice.

⁷ / “There even appear to be signs some of the communities may be open to borough government.” *Id.* at 35.

B. The Report Suffers From Two Systemic Failures

Apart from the merits, the *Report* suffers from two systemic failures.

i. Ignoring LBC Precedent

Prior Commission decisions are mentioned but once in the *Report*, and then only generically and dismissively. *Id.* at 34.^{8/} The LBC, the *Report* claims, can disregard precedent, since every case is different. *Id.* That leaves the *Report* free to invent things as though it were writing on a *tabula rasa*.

That, of course isn't the law. While adjudicatory results obviously differ based on unique facts, through those same adjudications the Commission develops agency policy. And agency policy—and in particular interpretations of statutory and constitutional provisions—become agency precedent. “The dominant law clearly is that an agency must either follow its own precedents or explain why it departs from them.” 2 K. Davis, *Administrative Law Treatise* 8:9 at 198 (2d ed. 1979), *quoted in Rose v. Com. Fisheries Entry Comm'n*, 647 P.2d 154, 163 (Alaska 1982) (Rabinowitz, J. dissenting). In Alaska, any departure from prior adjudicative precedent will be tested under the “reasonable basis” standard, which demands that the agency record demonstrate that the agency has come to grips with the prior policy and

^{8/} The report does also make passing acknowledgement of Petitioner's “point[ing] to” the LBC's Skagway Borough decision in its Brief. *Id.* at 17. That is the sum total of the Report's discussion of that decision.

articulated a lawful, reasoned basis for changing it. *United Utilities, Inc. v. Alaska Pub. Utilities Comm'n*, 935 P.2d 811, 814 (Alaska 1997). ^{9/}

As these comments show, the *Report* regularly ignores contrary Commission precedent. The *Report* is obliged, at a minimum, to “supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.” *Northwest Env't Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687–88 (9th Cir. 2007). The *Report*’s failure to do so makes it of little value to the Commission—much less to any ultimate reviewing court.

ii. *Piling Multiple Claims that All Arise From a Single Item--the Exclusion of Gustavus, Tenakee Springs and Pelican*

The *Report* announces at the very outset that “the petition only meets a minority of the LBC standards,” leaving the reader to believe, erroneously, that the *Petition* suffers a diverse array of defects. *Id.* at 2. The *Report* asserts that the *Petition* fails four of the five principal regulatory standards. ^{10/} Of those four, three

^{9/} Our Supreme Court has long held that agencies “have the discretion to set policy by adjudication instead of rulemaking.” *AVCG, LLC v. State*, 527 P. 3d 272, 285 (Alaska 2023); *Marathon Oil Co. v. State*, 254 P.3d 1078, 1086-87 (Alaska 2011). This is particularly true where the Commission’s decision does not add some new substantive requirement in addition to current law, but merely interprets constitutional and statutory provisions that it administers. *Chevron U.S.A. v. State*, 387 P.3d 25, 36-37 (Alaska 2016); *Alyeska Pipeline Serv. Co. v. State*, 145 P.3d 561, 573 (Alaska 2006). And that is precisely what the Commission did in each of the petitions discussed in *Section 2.B, post*.

^{10/} The four are Population (3 AAC 110.050), *Report* at 15 *et seq.*; Resources (3 AAC 110.055), *id.* at 18 *et seq.*; Boundaries (3 AAC 110.060), *id.* at 21 *et seq.*; and Best Interest of the State (3 AAC 110.065), *id.* 31 *et seq.*

are grounded solely on the exclusion of Gustavus, Pelican and Tenakee Springs.^{11/} Thus, the Report simply mounds multiple claims of alleged failure upon a single circumstance.^{12/} The fact of the matter is that, if it were permissible to exclude these three cities, the *Report* otherwise rather convincingly demonstrates that the *Petition* meets all of the applicable standards for incorporation.

2. Staff's Assertion that the Alaska Constitution Requires the Inclusion of Gustavus, Pelican and Tenakee Springs in the Borough is Premised on a Disregard of Commission Precedent and Constitutional Convention History, and Would Impose an Absurd Catch-22 on Petitioners

A. Summary

The *Report* argues that Article X, §§1 and 3 of the Alaska Constitution impose an inflexible standard that demands that any proposed borough reach out and include every community within the region, or at least within the applicable Model Borough boundaries, that shares some common interests.^{13/}

^{11/} The three are Population, Boundaries and Best Interest of the State. For example, in its "Population" analysis, the Report first concedes that "the petitioner included specific and persuasive facts that favor borough incorporation with a population of fewer than 1,000 residents," but then argues that the petition nonetheless fails the Population standard of 3 AAC 110.050 solely because it "omits [the] communities of Pelican, Tenakee Springs, and Gustavus." *Id.* at 18.

^{12/} The sole reason cited for an alleged failure to satisfy the fourth standard (Resources) is that comments from Elfin Cove opposed borough formation, and the assertion that favorable Funtier Bay/Horse and Colt Island comments were motivated by a desire to avoid a Juneau property tax. *Id.* at 21. That contention is discussed in *Section 3.B, post*.

^{13/} According to staff: whether the Petition satisfies Article X, §3 of the Alaska Constitution "should **only** be answered in the affirmative if the boundaries are expanded to include the three excluded communities..."; *Report* at 30; emphasis added; *additionally*: "LBC staff therefore recommends to the LBC that it be determined this proposal does not meet ... the maximum local self-government

Without citing anything whatsoever, the *Report* adds that “this is clearly what the framers of Alaska’s constitution intended.” *Id.*

In fact:

- The Commission has at least twice expressly rejected precisely the argument made here, dismissing it as “... an ‘unduly narrow reading of article X, section 1,’”¹⁴/
- The history of Article X reflects the framers’ decision that the borough formation process be a flexible undertaking, and that the boundaries drawn be the result of a balance of a wide variety of factors—free of the kind of absolutism upon which the *Report* here insists. As the Commission observed in quoting from one study of the convention: “The minutes of the Constitution Convention reveal a lack of consensus on the size, shape, and number of boroughs.”¹⁵/
- The Report gives inordinate weight to the boundaries of the Model Glacier Bay Borough and the three excluded cities’ placement within it; and

standard (of §1), because the petition does not extend local government to a significant population”; *Id.* at 31.

¹⁴ / 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* (Dec. 5, 2007) at 11 (hereinafter “*Ketchikan 2007 Dec.*”).

¹⁵ / Statement of Decision, *In the Matter of the Proposed Incorporation of the Lake and Peninsula Borough* (Dec. 28, 1988) at 11 (hereinafter “*Lake Borough Dec.*”);

- Article X, §3 of the constitution requires, *inter alia*, that “each borough shall embrace an area and population with common interests ***to the maximum degree possible.***” Emphasis added. The *Petition*, the *Report* argues, violates that clause by omitting these three cities. Elsewhere, however, the *Report* submits that the Commission cannot cure the defect by adding back those cities because to do so would be impossible. *Preliminary Report* at 35. A more archetypical Catch-22 could hardly be imagined. That is:

- ✓ “You have failed to do the possible.”
- ✓ “However, you cannot cure that failure, because doing so is impossible.”

This section treats those matters in turn. As that discussion proceeds, this fact needs to be kept in mind: There have been multiple occasions in which the LBC has approved borough boundaries despite the exclusion of common interest communities within the same region (and mostly within the same Model Borough boundaries). As we shall see, these included:

- ✓ Ketchikan Gateway Borough (Hyder excluded);
- ✓ Haines Borough (Skagway and Klukwan excluded);
- ✓ Denali Borough (Nenana excluded); and
- ✓ Lake and Peninsula Borough (adjoining Bristol Bay Borough excluded).

Conversely, the *Report* cites no case, nor is Petitioner aware of any, in which borough incorporation or annexation was disallowed because the petition failed to

include a “common interest” community—other than a 1999 Ketchikan Gateway Borough ruling that was expressly overruled on this precise issue in 2007 (*Subsection B, post*). The LBC would thus be breaking new and unwarranted ground by following the *Report*’s recommendation.

B. Multiple Commission Precedents Have Rejected Staff’s Interpretation of Alaska Constitution, Art. X, §§ 1 and 3

(i) The Lake and Peninsula Borough Decision

In 1988, petitioners sought formation of the Lake and Peninsula Borough with boundaries that abutted the Bristol Bay Borough. Residents of both boroughs would share common interests, their economies being virtually indistinguishable and deeply interrelated. Opponents argued that subdividing this common universe into two boroughs violated Article X, §3 because the result would be a failure to join common interest Alaskans in the same region “to the maximum extent possible.”

The Commission “reject[ed] the argument that the Constitution precludes two areas from forming separate boroughs,” even though “the area within the Bristol Bay Borough and the proposed Lake and Peninsula Borough have a longstanding history of interrelationship.” ^{16/} The Commission began by noting that it was rather common for areas of common interest within a single region to be separated into different boroughs:

A number of other regions of the state contain populations which may have greater social, cultural and economic

^{16/} / *Lake Borough Dec.* at 11.

interrelationships with populations in other boroughs than with certain populations in their own boroughs. For example, the residents of Wasilla may have greater common interests with residents of Anchorage than with residents of Skwentna or even Talkeetna.

Id. at 11-12. The Commission then stressed that which is lost on the *Report* entirely—the fact that our framers went to considerable measure to avoid creating inflexible standards in borough creation:

Technical publications concerning the local government provisions of Alaska's Constitution typically cite the absence of specific standards for borough formation. As noted in the Metropolitan Experiment in Alaska, (Cease and Saroff, 1968, p.10):

The minutes of the Constitution Convention reveal a lack of consensus on the size, shape, and number of boroughs. As a consequence, the Constitution simply provides that "boroughs shall be established in a manner and according to standards provided by law." These standards are to include "population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible." This flexibility of language made options available at a later date as to the precise area, form, and composition of boroughs.

Id. Most importantly, the Commission stressed that the test was whether the new borough met the “common interest” standard “**standing alone**,” and not with reference to other “common interest” communities that may lie adjacent:

*To suggest now that the Lake and Peninsula region could not **stand alone as a separate borough** because the Constitution requires that "each borough shall embrace an area and population with common interests to the maximum degree possible" is tantamount to stating that*

the Bristol Bay Borough (the oldest in the state) has been in violation of the same provision of the Constitution since its incorporation 27 years ago.

Id.; emphasis added. And so, the Commission approved the borough, calling it “clearly permissible” (*id.* at 12), even though it unquestionably omitted a substantial common interest population. Conspicuously, the Commission found the exclusion especially warranted in light of “issues of ‘political and social policy’” (*id.*)—a recognition that, as discussed *post*, is likewise germane to the present *Petition*.

(ii) *The 2007 Ketchikan Decision*

The same issue—the omission of same-region, common-interest populations ---arose again in 1998 with respect to Ketchikan’s proposed annexation of large areas of the unorganized borough. The Ketchikan Gateway Borough sought to annex most of the unorganized borough within its Model Borough boundaries but excluded Meyers Chuck and Hyder.^{17/} The Commission denied the petition, on the same ground that the *Report* invokes here to recommend denying the current *Petition*. Said the Commission:

Here again, the Borough’s proposal is deficient in that it omits Hyder and Meyers Chuck. As was noted earlier, the annexation proposal seeks to add 99.6 percent of the area within the Borough’s model boundaries not already within its corporate boundaries, but excludes 87.7 percent of the residents of that same area.

...

¹⁷ / See *Statement of Decision in the Matter of the February 28, 1998 Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles* (April 16, 1999).

... Because the annexation petition excludes Hyder and Meyers Chuck, the Commission considers the proposal to fail in terms of promoting maximum local self-government..

Id. at 13. Had matters ended there, the *Report* would have an on-point precedent in its favor. However, eight years later the Commission forcefully disavowed that view of Article X in its review of Ketchikan’s renewed annexation effort. ^{18/}

According to the Commission, its 1999 interpretation was “not only ... an ‘unduly narrow reading of article X, section 1,’ [but one that]... strikes this Commission as groundless in view of the Constitutional Framers’ intent to provide ‘local government for regions as well as localities and encompass lands with no present municipal use.’” ^{19/}

In a criticism of the 1999 decision equally appropriate to the Report’s recommendation here, the Commission noted that:

The area proposed for annexation [in 1998] was 5,524 square miles, but it excluded two small enclaves of 21.4 square miles encompassing Meyers Chuck and Hyder. The effect of that annexation rejection was to leave over 5,500 square miles in the unorganized borough for the sake of 21.4 square miles.

^{18/} *Ketchikan 2007 Dec.* The renewed petition included Meyers Chuck. However, the Commission determined that Meyers Chuck was more suitably placed in the competing Wrangell Borough, which left the Commission facing the same issue it first confronted in 1999—*i.e.*, whether excluding Meyers Chuck violated Article X, §§1 and/or 3.

^{19/} *Ketchikan 2007 Dec.* at 11.

Id. at 11. Similarly here, the *Report* would leave 4240 square miles of land in the unorganized borough for the sake of 47 square miles. ^{20/}

(iii) *The Role of 3 AAC 110.981 in the Ketchikan Decision*

The 2007 *Ketchikan Decision* involved annexation, not borough incorporation. And, in the 2007 decision, the Commission cited then recently-revised 3 AAC 110.981 in support of its ruling. Under that regulation, the extension of local government to a “significant population” is a mandatory consideration for borough incorporation, but not for annexation. That, however, does not detract from the applicability of that decision to this *Petition*, as the Commission was quick to add that “the Commission finds no basis to distinguish between borough incorporation and annexation in terms of whether the applicable standards should be flexibly applied and whether the law should be read to uphold Commission decisions approving borough annexation as well as borough incorporation whenever the applicable requirements have been met.” *Id.* at 9-10. And, the Commission added, “borough incorporation and borough annexation of areas that meet applicable standards are equally encouraged by the law.” *Id.*

Moreover, 3 AAC 110.781(1) only requires the Commission to “consider” the inclusion of a “significant population.” “As a general rule, when a statute requires an agency to “consider” a factor, the agency must reach ‘an ‘express and considered

²⁰ / The Xunaa Borough would cover 4247 squares miles, which would include 6.6 square miles comprising the City of Hoonah. The square mileage of the excluded cities is: 32.8 (Gustavus); 13.8 (Tenakee Springs); 0.6 (Pelican).

conclusion’ about the bearing of [the factor], ***but need not give ‘any specific weight’ to th[e] factor.’***” *Central Vermont Ry., Inc. v. I.C.C.*, 711 F.2d 331, 336 (D.C. Cir. 1983); emphasis added.

In the LBC’s April 30, 2007 debate on adoption of §981’s revisions, Commissioners made it clear that the section’s requirement to consider whether the incorporated borough would include a “significant population” would:

- be intended only as a general guideline that would be flexibly (and differentially) applied to, for example, densely populated Railbelt areas on the one hand and sparsely populated rural areas on the other;
- not be applied to frustrate the LBC’s goal of encouraging borough formation in rural areas; and
- be concerned with “significance” not with respect to a number, but rather an examination of whether there would be sufficient population to support the borough. If someone wanted some number as a hint, the LBC’s 1000-resident rebuttable presumption (as well as the grounds for rebutting it) provided some guidance.

Commissioner Zimmerle initially raised the concern that the phrase “significant population” could impair borough formation in rural areas of the state:

[T]his section requires the Commission to consider whether the proposal would expand local government on a regional scale to a significant area and population of the unorganized borough. And I only bring it up because I’m wondering if we really do want to include the issue of population in this consideration since large portions of the unorganized borough are unpopulated. And I think that the

Commission's goal is to try to as many boroughs in the unorganized area as possible. And I guess my feeling is that if we require significant population in a lot of these areas that alone could defeat the proposal.

LBC, *Transcript of Public Meeting*, April 30, 2007 at 62; *see also* comments of Commissioner Chrystal (*id.* at 63-64) (“[W]hen I see the word significant area and significant population it might mean something entirely different to an individual from Anchorage or Fairbanks or Juneau or something like that.”) ^{21/}

Those concerns were allayed by the Commissioners’ understanding that: (i) the phrase was “just there for people to use as a guideline” (*id.* at 64) and would be applied with “maximum flexibility” that “doesn’t tie us down to something.” *Id.* Moreover, “significance” did not connote a number, but rather the ability of the borough to prosper and govern. As drafting staff explained: “significant [would be defined] in terms of what the needs would be for essential municipal services, so I think there is flexibility just in the term significant as it applies to each petition.” *Id.* The regulation, was in fact, related to the LBC’s rebuttable presumption that 1000 people were needed to support a borough (together with the criteria for rebutting that presumption), which serves the same goal of ensuring adequate borough support. ^{22/}

^{21/} And the concerns expressed by Chair Hargraves: “I think my biggest concern is the point to which significant population gets to be a hang-up because as all of us know there are huge unpopulated areas in most possible boroughs that might come about in the future. There's just large areas that don't have a population” *Id.* at 65.

^{22/} Bockhorst comments (*id.* at 65) (“I would, again, remind the Commission that you have a related provision in terms of the size of the population, there's a

The *Report* acknowledges that the Petitioners have presented an “evidence-based case” of “specific and persuasive fact that favor borough incorporation with a population of less than 1,000 residents.” *Id.* at 18. And thus the “significant population” factor set out in §981 has been satisfied as that factor was understood by the LBC Commissioners who adopted it.

(iv) *Summary*

Article X, §3 of our constitution lists a number of factors that must be considered in forming a borough, including “population, geography, economy, transportation and other factors.” And, as the *Lake Borough decision* teaches, “other factor[s]” includes “issues of ‘political and social policy.’”

All of those factors must be balanced, and none is given controlling weight. Specifically, there is no rule requiring that boroughs may form only if they capture all common population centers within their region. Such is the lesson of the 1988 *Lake Borough* and the 2007 *Ketchikan* decisions. And the *Lake Borough Dec.* rule—*i.e.*, that the test is whether the borough’s compliance with the “common interest” standard must assessed by examining the borough “standing alone”—remains LBC policy.²³ / Pitted against those decisions, the *Report*’s admonition that a Glacier

presumption that 1,000 people is sufficient to incorporate a borough so that gives you some measure of that term. It’s already been supported by the Commission. “)

²³ / Conspicuously, AS 29.05.031, which the *Report* explains “refines” the requirements of Article X, §3 (*id.* at 15), says nothing about the need to “maximize” the inclusion of common interest communities. It requires only that the residents who are included in the proposed borough be “interrelated and integrated as to

Bay borough can “only” be formed by including the three excluded cities (*id.* at 30) stands as quite the outlier.

Indeed, other than a dry ½-sentence acknowledgement that Petitioner cited the Skagway Borough decision in support of its Population argument, the *Report’s* only treatment of prior Commission decisions lies in its summary dismissal of the granting of Yakutat’s and Petersburg’s borough incorporation decisions as being the product of unique circumstances. *Id.* at 35. No mention is made regarding the consistency of the *Report’s* constitutional interpretation with **any** prior LBC decisions. ^{24/}

Looking instead at the Commission’s actual constitutional test: In finding that the City and Borough of Wrangell would achieve “maximum local self-government” (Art. X, §1), the LBC held that “[i]t would create a home-rule borough – a municipality with all legislative powers not prohibited by law or charter – the epitome of maximum local self government. It would also establish home-rule borough jurisdiction to an estimated 3,465 square miles and over 2,100 residents,

[their] social, cultural and economic activities”—a rule quite consistent with the “standing alone” policy of the *Lake Borough Decision*.

^{24/} Specifically, the *Report* makes no mention of either the *Lake Borough Decision* or the 2007 *Ketchikan* decision, even though the Commission policies articulated in both would be overturned by the *Report’s* suggested outcome. The *Report* does quote at some length from the Yakutat preliminary staff report regarding the problems with small boroughs, even though the Commission **rejected** staff’s criticism and approved the formation of that borough. *Id.*

534 of whom currently reside outside a local government unit.”^{25/} Similarly here, the Xunaa Borough would bring home rule government to 4247 square miles of land, and 980 permanent residents (plus over 100 property owners on northern Admiralty Island), 49 (plus over 100) of whom currently live outside any local government unit. When applied in conformity with LBC precedent, then, the *Petition* satisfies the goals of Article X, §§1 and 3.^{26/}

C. It Was Not the Framers’ Intent to Require the Inclusion of all Communities in the Region with some “Common Interest” to be Included in the Borough

Notwithstanding the *Report’s* gratuitous assertion that the framers “clearly” intended to mandate inclusion of all regional communities with some common interest (*id.* at 30), in fact just the opposite is true. As we have already seen, the LBC has noted that “[t]he minutes of the Constitution Convention reveal a lack of

^{25/} Statement of Decision, *In the Matter of the Petition for Incorporation of the City and Borough of Wrangell, a Unified Home Rule Borough* (Dec. 17, 2007) at 14.

^{26/} The *Report* does not make a separate claim that the *Petition* fails the “minimum number of local government units” goal of Article X, §1. At one point, it asserts that the *Petition* fails that test for the same reason that it fails the other provisions of Article X, §§1 and 3—to wit, by excluding Gustavus, Pelican and Tenakee Springs. *Id.* at 31. But on the very next page, it claims to be “neutral” on this issue. *Id.* at 32. Either way, there is no need for any separate response on that issue. Petitioner would note, however, that the Commission found that the Petersburg borough met the “minimum number” standard because, just as with the Xunaa Borough, the number of local government units would remain the same yet organized local government would be brought to additional Alaskans and lands. Local Boundary Commission Decision, *In the Matter of the April 6, 2011, Petition to incorporate a Petersburg borough of approximately 3,365 square miles of land and 982 square miles of water* (Aug. 22, 2012) at 11. And, the LBC upheld the exclusion of Meyers Chuck and Hyder from Ketchikan’s annexation on “minimum number” as well as “maximum common interest” grounds. *Ketchikan 2007 Dec.* at 13.

consensus on the size, shape, and number of boroughs.” *Lake Borough Dec.* at 11. Indeed, Article X, §3 requires that a borough’s boundaries must be based on “population, geography, economy, transportation and other factors.” As to “common interests,” §3 only states that the borough “shall embrace an area and population with common interests to the maximum extent possible.” Thus, within the boundaries set on the basis of all of the factors set out in the section, the resultant covered population must, to the extent possible, share a common interest. Nothing in that section expressly mandates inclusion of all “common interest” populations within some larger region.

The convention minutes bear this out. As Local Government Committee Chair John Rosswog explained:

*I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible **because you could not say definitely that you were taking it all in**, but as much as you possibly could.*

Alaska Legislative Affairs Agency, *Alaska Constitutional Convention Proceedings* at 2638; emphasis added. As fellow Local Affairs Committee member James Doogan stressed, other factors would drive the size of the borough:

*I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors **as much as would be compatible with the borough**, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.*

Id.; emphasis added. Or, as Committee member Victor Rivers put it, if there were any overriding boundary considering, it would be practicability of governing:

*You have a common interest in certain types of economic activities, and insofar as possible, it would be the determination to try to make an entity or an area that had common interests **but would not be so big as to be unwieldy** but would not be so small as to be too expensive. It is a matter of the exercise of judgment which has been left to the local level...*

Id. at 2621; emphasis added. At bottom, drawing borough boundaries “should be left very flexible,” in order, in part, to avoid “unwieldiness for governing.” *Id.* at 2641 (Rosswog).

As noted in *Subsection B, ante*, the LBC has held that “political and social policy” are properly within the ambit of Article X, §3’s “other factors” that must influence borough boundaries. As Local Government Committee member Vic Fischer noted in his study on the Alaska Constitution, borough boundaries were to be drawn “based on economic, geographic, social, and political factors...” ²⁷/

And, political considerations have repeatedly played a role in LBC decisions upholding borough boundaries that excluded adjoining areas within the same region that shared common interests. For example, LBC approved the exclusion of the Greater Nenana area from the Denali Borough in part because:

...there appears to be significant potential that the inclusion of the Greater Nenana area in the Denali Borough might result in the defeat of the incorporation proposition by the voters. Therefore, it was

²⁷ / Fischer, *Alaska’s Constitutional Convention* (UA Press 1975) at 119; see also *Borough Government in Alaska, supra* at 38 (boroughs “should cover large geographic areas with common economic, social and political interests.”).

determined to be in the best interests of the State of Alaska and the residents of the Denali region for the Greater Nenana area to be excluded from the proposed Denali Borough.

Valleys Borough Support Comm'n v. Local Boundary Comm'n, 863 P.2d 232, 233

(Alaska 1993). Similarly, in excusing the Haines Borough's exclusion of Klukwan and Skagway from that borough, the LBC stated:

It is virtually certain that if Klukwan and Skagway had been included in the borough proposal, the collective electorate would have rejected that fourth borough proposal encompassing Haines.

LBC, *Statement of Decision, Upon Remand in the Matter of the Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough* (Jan. 11, 2007) at 15-16.

And were that not enough, the Alaska Supreme Court has stressed that social and political considerations were two of the factors that must all be balanced in fixing borough boundaries. In *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98–99 (Alaska 1974) (emphasis added), the court stated:

[a] determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy. The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as "large enough", "stable enough", "conform generally", "all areas necessary and proper", "necessary or desirable", "adequate level" and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate.

Certainly, political considerations append here. *First*, the combined populations of Gustavus, Pelican and Tenakee Springs come within 100 or so of Hoonah's population, raising the very real risk that including these communities would result in the failure of the borough ratification election.

Second, a government comprising both Hoonah and, in particular, Gustavus would be, in the Local Government Committee's words, "unwieldy." As we have seen in *Subsection 1(A), ante*, the residents of Gustavus, Pelican and Tenakee Springs are intensely (and, by all appearances, permanently) opposed to any union with Hoonah. And it is silly to think that our framers intended to hinge the possibility of borough formation on the imposition of such a shotgun wedding.

D. The Report Gives Inordinate Weight to the Three Cities' Inclusion Within the Boundaries of the Glacier Bay Model Borough

In concluding that the *Petition* fails the LBC's Boundary standard, the *Report* gives prominent weight to the fact that the three excluded cities were all within the borders of the Model Glacier Bay Borough. *Report* at 27 *et seq.* Once again, the *Report* ignores applicable Commission precedent. In holding that the exclusion of Meyers Chuck and Hyder from the Ketchikan Borough was permissible even though both were within Ketchikan's Model Borough boundaries, the Commission clarified that the Model Borough boundaries were of no operative significance:

Moreover, this Commission believes that elevating the importance of Model Borough Boundaries over the intent of the Constitution not only misconstrues the intent behind their adoption but is also clearly erroneous. In its recent proceeding considering the formation of the Skagway borough, and again during its proceeding to revise its

regulations, the Commission clarified that the purpose of the Model Borough Boundaries is for use only as a reference tool. They are not intended to totally constrain the formation of boroughs or annexation thereto.

Ketchikan 2007 Dec. at 11-12; emphasis added.

E. In Both Demanding and Precluding Inclusion of Gustavus, Pelican and Tenakee Springs, the Report Creates an Archetypical Catch-22

According to the *Report*, whether formation of the Xunaa Borough is constitutionally permissible “should only be answered in the affirmative if the boundaries are expanded to include the three excluded municipalities...” *Id.* at 30. And that, as the *Report* stresses on multiple occasions, is because their exclusion fails Article X, §3’s goal of including a “population with common interests to the maximum extent **possible**” (emphasis added). *Id.*

And so, if inclusion is “possible,” why should the Commission not simply order their inclusion under 3 AAC 110.570(c)? The answer, the *Report* tells us, is that this is not possible because of those cities’ opposition. ²⁸/

The result is Catch-22: The Xunaa Borough cannot be incorporated because it omits the “possible.” But the LBC cannot cure the omission because doing so is **not** possible. The result is a stalemate that will freeze Icy Strait in an unorganized state for a long, long time.

²⁸ / *Id.* at 35. The *Report* claims that inclusion would not be “appropriate” because of that opposition. If there is some legally significant distinction between “not possible” and “not appropriate,” the *Report* does not explain it.

3. Comments on the Report's Ancillary Claims

As discussed in *Subsection 1.C., ante*, all but one of the *Report's* alleged petition deficiencies are grounded exclusively on the exclusion of Gustavus, Pelican and Tenakee Springs. Salted through those discussions are a handful of observations that, while of no ultimate significance in the *Report's* conclusions, do warrant comment.

A. Population (3 AAC 110.050).

The *Report* concedes that “the petitioner included specific and persuasive facts that favor borough incorporation with a population of fewer than 1,000 residents,” thus overcoming the 1,000-resident presumption of 3 AAC 100.050(b). *Report* at 18. However, despite that positive finding, the *Report* claims that the *Petition* nonetheless fails the Population standard of 3 AAC 110.050, and this solely because it “omits [the] communities of Pelican, Tenakee Springs, and Gustavus.” *Id.* Strip that omission of the overriding importance the *Report* attaches to it, and there is no dispute that the *Petition* has met the Population standard.

The *Report* states that “[l]ess than one percent of Hoonah’s population would be added to the borough.” *Id.* at 17. To begin with, even if no credit is given for Funter Bay or Horse and Colt island homeowners, the correct percentage is 6.5%. ^{29/}

^{29/} This is using the *Report's* own numbers. *Id.* at 16. Under those numbers: the populations of the outlying areas are as follows: Elfin Cove (38), Game Creek (18) and Whitestone Logging Camp (2), totaling 58. Hoonah’s population is alleged to be 885. 58 is 6.5% of 885.

More importantly, attaching any significance to the magnitude of any incremental population gain is irrelevant, given that “[t]he borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban ***and sparsely populated areas of Alaska,***” ^{30/} and boroughs were intended to include lands “with no present municipal use.” *Id.* at 101.

Moreover, small incremental gains have to this point not bothered the Commission. Compared to the Xunaa Borough’s 6.5% increase (plus Funter Bay, Horse Island and Colt Island):

- ✓ incorporation of the Skagway Borough involved no incremental increase at all;
^{31/}
- ✓ aside from an itinerant logging camp, the incremental increase resulting from the Yakutat Borough was 1.8%; ^{32/}
- ✓ the Petersburg Borough incorporation caused roughly a 10% increase above the City of Petersburg’s population; ^{33/} and

^{30/} *Mobil Oil Corp. v. Local Boundary Comm’n*, 518 P.2d at 98–99; emphasis added.

^{31/} *Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough* (Jan. 18, 2001) at 6.

^{32/} *See* Statement of Decision, *In the Matter of the Petition to Dissolve the City of Yakutat and Incorporate the City and Borough of Yakutat* (April 15, 1992) at 5.

^{33/} *Petition to the Local Boundary Commission for Incorporation of Petersburg Borough, A Home Rule Borough and Dissolution of the Home Rule City of Petersburg* (Oct. 6, 2010) at 4 (“*Petersburg Pet.*”).

- ✓ only 16 people resided in the 4701 square miles approved for annexation by the Ketchikan Gateway Borough. ³⁴/

B. Resources (3 AAC 110.055)

Here we find another single issue criticism, this time the fault being that the borough is unlikely to be able to rely on any of the 24 residents of Elfin Cove or the part time residents of Funter Bay to “sustain” the borough or “provide employable skilled or unskilled persons to serve the proposed borough.” *Id.* at 21.

At the outset, it is facially absurd to hinge the viability of the borough on the mood of a bit under 3% of the borough’s resident population. Moreover, and as with the *Report*’s Population section, the two pages preceding that fatal finding would lead any fair reader to conclude that the proposed borough has more than sufficient fiscal and human resources to sustain borough government.

The *Report* itself projects that the borough will realize budget surpluses ranging between \$383,987 and \$660,711 in its early years of operation. *Id.* at 19. The City of Hoonah won the 2002 Southeast Conference *Community of the Year* award based, according to the Southeast Conference, on “prosperity unprecedented” and its “sustained economic planning over the past two decades, coupled with a

³⁴ / *Preliminary Report to the Local Boundary Commission Regarding the Petition for Annexation of Approximately 4,701 Square Miles to the Ketchikan Gateway Borough*, (June 30, 2007) at 18.

more than two decade private-tribal-public partnership that should act as a model for all Alaska.” *Petition, Exhibit E* at 21.

The City’s 26 full time, 5 part-time and 4 seasonal employees, all of whom will become borough employees, have been singularly successful in providing the City with state-of-the-art public works with little burden on municipal finances. The City’s accomplishments are set out in full in *Petition, Exhibit F* (pp. 7 *et seq.*).

Examples include:

- a new wastewater treatment and disposal plant, still under warranty and with a capacity far in excess of current needs, constructed at a cost of \$12.4 million and 100% funded by grants from the U.S. Department of Agriculture Rural Development program and the State of Alaska;
- the largest, and the only full-service, boat harbor within borough boundaries. The 241-slip boat harbor offers both moorage and comprehensive boat repair and storage facilities. These include a tidal boat grid and a haul-out facility aided by a 35-ton hydraulic trailer and a 220-ton travel lift, which is the largest harbor travel lift in northern Southeast Alaska. The haul out and lift facilities are regularly used by large Elfin Cove commercial boats, and on one typical June day in 2022, of the 225 occupied slips, 138 were being used by local residents, while 88 were occupied by nonresidents; and

- the City has been to provide universal weekly solid waste collection throughout the city. The City's solid waste disposal facility is permitted by ADEC and has consistently received high marks from the agency for its compliance with state regulations.

With capital facilities more extensive, and more modern, than those of much larger communities, one might expect substantial bonded indebtedness. In fact, the Xunaa Borough would begin operations with around \$700,000 in bond liability assumed from the City of Hoonah (entirely for school renovations), with final payoff due in September, 2031.

Plainly, the City's (and subsequently the borough's) staff is dedicated and up to the job. And, the City anticipates the need to hire only one additional official with borough formation—a planner responsible for extending the current comprehensive plan to the entire borough. The cost of that hire is accounted for in the *Report's* budget surplus projections.^{35/} And, because the borough will be assuming only three areawide functions at the time of formation, there is no reason to believe that any current City employee will be overtaxed once their responsibilities expand.

Besides a cadre of exceptional incoming employees, the City has had no problem recruiting volunteers. There are currently 15 volunteer and 12 volunteer EMT providers. Their responsibilities extend (and under the borough will continue to extend) to cover 120 miles of U.S. Forest Service roads beyond the city limits. To

³⁵ / See *Petition, Exhibit D*.

that list of volunteers add the 6-member Harbor Board, 7-member Liquor Board, and 7-member Planning and Zoning Commission.

All of which is to say that whether not any quantum of Elfin Cove's 24 residents may be disinclined (at least at the outset) to apply for a borough job, or volunteer, is of inexplicable relevance to the issue of whether the borough will have the resources to do the job.

Seemingly, the *Report* seems to be arguing that the LBC's rules demand unanimity among proposed borough residents, such that the dissenting voices in Elfin Cove sink the proposal. Staff in reviewing the Petersburg borough petition dealt with that exact issue far more realistically. There, the proposed borough would include residents who did not live on Mitkof Island (where the city of Petersburg is located); whose "lifestyle and philosophy ... is radically different from that of the city"; and who were as strenuously opposed to inclusion in the borough as are some Elfin Cove residents here.^{36/} Responding to this "off-islander" dissent in the context of the "common interest" requirements, that report observed that:

...the standard does not require that all in a proposed borough live the same lifestyle or have the same philosophy. In a state as diverse as Alaska, that would be a difficult bar to attain. It does not require that the borough be homogeneous. What it does say is that, the proposed borough "embrace an area and population with common interests to the maximum degree possible" (emphasis added). It is not possible for everyone to possess the same interest. Otherwise boroughs would need to be

^{36/} *Preliminary Report to the Local Boundary Commission Regarding the Local Action Petition to Incorporate a Home Rule Borough of Petersburg and Dissolve the Home Rule City of Petersburg* (Feb., 2012) at 11-13.

drawn with surgical precision, for fear of including any group with a different interest.

Id. at 12. The same larger point was made by the Alaska Supreme Court in *Mobil Oil*—that the borough formation standards do not require the absolute, but focus rather on inexact accommodations:

The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as ‘large enough’, ‘stable enough’, ‘conform generally’, ‘all areas necessary and proper’, ‘necessary or desirable’, ‘adequate level’ and the like.

Mobil Oil Corp. v. Loc. Boundary Comm’n, 518 P.2d at 98–99. The pertinent regulation here (3 AAC 110.055(2)(B)) mentions only a “a **reasonably** predictable level of commitment and interest,” and even that flexible standard is discretionary, not mandatory (the LBC “may consider.”).

Here, a community of 931 people, multiple Funter Bay homeowners, and **68** residents and property owners on Horse and Colt islands, ^{37/} supported the *Petition*. Two dozen Elfin Cove residents did not. That certainly sounds like a “reasonably predictable level of commitment.” ^{38/} And this is doubly so in light of the fact that the Elfin Cove comments seem principally motivated by a troublemaking fallacy. As

^{37/} *Simpson Comments*. The *Report* incorrectly states that it received “17 comments from residents of Funter Bay, Horse Island, and Colt Island” in support of the petition. *Id.* at 21. In fact, the *Simpson* comments were sent on behalf of 68 Horse and Colt Island property owners and residents.

^{38/} It is worth noting that it is predictability that must be “reasonable,” not the “level.” The *Report* offers no insight as to why a level of support of over 1000 (versus 24 dissenters) is not reasonably predictable.

explained in Petitioner's *Reply Brief*, the primary theme of the Elfin Cove comments was the somehow-stoked fear that inclusion in the borough would require dissolution of a private non-profit corporation that performs certain charitable functions in the community. *Reply Brief* at 17-28. The assertion is balderdash—inclusion in a nonunified borough does not affect the corporate status or capabilities of any nonprofit corporation. Had the Elfin Cove commenters been made aware that this fear-spreading claim was simply not true (and the *Report* could well have provided a public service in this regard), it is at least plausible that Elfin Cove's opposition might be tempered.

But either way, the fact here is that the Xunaa Borough will have at its disposal fiscal, administrative and capital resources substantially in excess of those available to other Southeast boroughs. Yakutat, Skagway and Wrangell come immediately to mind. And the opposition of two dozen residents does not alter that fact. On the Resources issue, the *Report's* tail is wagging the dog. ³⁹/

³⁹ / On another unrelated issue lumped into the Resources section, the *Report* expresses concern that the platting section in *Petition's* draft charter (*Exhibit I*, §7.03) may lead to confusion at best, or lack of areawide platting coverage at worst. *Id.* at 19. Petitioner disagrees, given that §7.03 envisions that platting may involve area-specific variations to the same extent as the Petersburg charter that was approved by the Commission. *Petersburg Pet.* at 3-5. However, if the Commission decides that the charter must expressly assume borough-wide platting functions immediately upon ratification, Petitioner would suggest that the Commission consider requiring, under 3 AAC 110.570(c), the amendment of Section 7.03 set out in *Appendix A* hereto. The *Appendix* provides that the borough will immediately begin platting areawide, while outside the Hoonah Townsite Service Area, the borough would apply the Department of Natural Resources' subdivision standards,

C. Boundaries (3 AAC 110.060)

The *Report's* conclusion here is predicated solely on the exclusion of Gustavus, Pelican and Tenakee Springs—an issue already discussed in *Section 2, ante*. This subsection focuses on two ancillary issues that orbit around that one-issue conclusion:

(i) *National Forest Receipts*

The *Report* alleges that borough incorporation would reduce federal Secure Rural Schools Program funding (also referred to as “National Forest Receipts” or “NFR”) for surrounding communities. *Id.* at 23-24. In so doing, the *Report* overstates the significance of borough incorporation on the distribution of those funds. The *Report's* conclusion hinges on its belief that all of the Icy Strait communities compete for funding from a relatively small pie—*i.e.*, those funds allocated to the Hoonah-Angoon Census Area. *Id.* In fact, the pie is considerably larger, subsuming the entire Tongass National Forest. AS 41.15.180 (allocating funds to a given community in or near a national forest by comparison to others in or near that same national forest). Thus, while the Xunaa Borough will be taking a slice of the pie that is not being subtracted today, its effect will be minimized by the substantial remaining pie available for distribution to municipalities and REAA's

rather than what are currently the City of Hoonah's standards. The latter suggestion is made to honor Petitioner's commitment that, to the maximum extent legally permissible, it would avoid imposition of new regulatory burdens on those residing outside the Hoonah city limits.

within the forest. *Id.* at §§180(c)-(d). And, municipalities will continue to have their shares allocated based on student enrollment and road miles within the community which, of course, will not change as a result of borough incorporation. *Id.*

More importantly, the *Report* once again overlooks governing Commission precedent. In fact, “the Commission has repeatedly indicated that such circumstances are not relevant in terms of the applicable standards and are no basis to deny the proposal.”^{40/} In the *2007 Ketchikan Decision*, the Commission was faced with the claim of surrounding communities that Ketchikan’s annexation of some 4,701 square miles of the Tongass National Forest would reduce the NFR of surroundings communities. The Commission held that NFR was a changeable government program, the future contours of which could not be predicted and therefore should have no impact on the permanent decision to create or expand a municipality.^{41/} Said the Commission:

...the Commission endorses the prior Commission decision rejecting the relevance of ephemeral financial considerations such as NFRs when considering the standards for borough formation or extension. As asserted by the 1999 Commission, these programs may, over time, operate in a significantly different manner or even no longer exist. “In contrast,” the Commission stated, “the formation of a borough or the extension of a borough over a large area is a much more permanent action.”

^{40/} / *Ketchikan 2007 Dec.* at 26.

^{41/} / Indeed, since the 1990s, the 1908 statute on which the NFR program is based has been regularly and substantively changed. See <https://www.commerce.alaska.gov/web/Portals/4/pub/NFR%20Summary%20with%20Statutes%20and%20Regulations%20May2015.pdf>

Id. Thus, the *Report's* NFR discussion is interesting but legally irrelevant.

(ii) *Boxing in the Excluded Communities*

The *Report* concedes that “[t]he Xunaa borough boundary abuts each of these municipalities, though does not completely surround any them, **and avoids ‘enclaves.’**” *Id.* at 5; emphasis added. It nonetheless argues that the borough’s boundaries will limit the excluded communities’ future options. *Id.* at 30.

First, the *Report* claims that the Xunaa Borough would frustrate these communities’ ability to join in a separate borough. *Id.* This despite the *Report's* earlier comment that “[c]omments suggesting Pelican and/or Gustavus form their own borough are not useful, as these communities would not meet the borough incorporation standards on their own...” *Id.* at 22.⁴² / Moreover, the hypothetical borough in question would be a sickle-shaped borough that sliced through every intervening natural feature, ignoring them all.⁴³ / And it would make hash of the Model Borough project for northern Southeast Alaska.⁴⁴ /

⁴² / It should be noted that, in the *2007 Ketchikan Decision*, the LBC decided that a borough’s proposed boundaries should not be altered in deference to the possibility of a future nearby borough when there is “doubt that such a borough would be proposed in the foreseeable future.” *Id.* at pp. 7-8, n. 6.

⁴³ / *Cf.* 3 AAC 110.060(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...”).

⁴⁴ / For a document that gives inordinate attention to the relatively minor deviation from the Glacier Bay Model Borough in the current Petition (*see Section 2.D, ante*), the *Report* seems unusually keen to protect the viability of a hypothetical option that would obliterate that model altogether.

Second, the *Report* notes that, if Pelican and/or Tenakee Springs were to join the City and Borough of Sitka, their city governments would need to dissolve, since Sitka is a unified borough. *Id.* at 33. That is true. However, if either city ever desires to be included in a regional government, its only two options will be to join either Sitka or a new Xunaa Borough. It will not be allowed to form a peanut-sized borough of its own. What the *Report* demonstrates is that, whenever that ultimate choice is made, these cities will be better off having the option of joining a nonunified borough like Xunaa—one whose charter is committed to leaving outlying communities alone. That aside, the Xunaa Borough would afford both cities the future option of joining either borough (or not), which is why the Petition does not create enclaves, and why incorporation of the Xunaa Borough resultantly does no harm.

D. Best Interest of the State (3 AAC 110.065)

Once again, the *Report's* conclusion here rests exclusively on the issue discussed in *Section 2, ante*—the exclusion of Gustavus, Pelican and Tenakee Springs. *Id.* at 31 *et seq.* The one implication raised therein that warrants note here is the hint that Petitioner insufficiently explored common ground with these communities.

In that regard, the *Report* overlooks the aggressive outreach that the City of Hoonah undertook in 2017-18 to involve all of the region's communities in discussions over a proposed borough. *Petition, Exhibit F* at §9.0. Well-attended public meetings were held in all three cities (Gustavus, Pelican and Tenakee Springs), and

each of those communities' city councils appointed members to a Task Force to research and debate borough formation issues—members that included the mayors of Gustavus and Pelican. *Id.*

Nor was the 2017-18 effort the first instance of regional outreach. In 2007-8, the City of Hoonah organized an inter-community Borough Formation Committee that included multiple representatives from Gustavus, Elfin Cove and Pelican. *Appendix B.* The Committee's work involved detailed discussions on the terms of a proposed borough charter. *Id.*

Moreover, the record of this *Petition* demonstrates that Petitioner really did all it could to attempt to bring the dissenting cities to the table:

- On Jun 23, 2022, Petitioner sent a letter to the City of Gustavus stating that “[w]e would be delighted to attend an upcoming city council meeting to discuss borough formation...” *Petition, Exhibit U.* In reply, Gustavus advised that:

No council members saw the need to reconsider the City's policy as stated in our resolution CY19-19, opposing the formation of a borough that included Gustavus and Glacier Bay National Park. Therefore, we must once again respectfully decline your offer. We do not feel a borough that spanned the communities of Gustavus and Hoonah would serve the interests of either community well.

Id., Exhibit V. It was thus Gustavus that firmly shut the door to any discussion of finding common ground;

- Following a similar invitation to the Pelican City Council, Petitioner attended a City Council meeting telephonically on July 13, 2022. *Id.*, *Exhibit E* at 26; *Exhibit F* at 14. The meeting involved a lengthy exchange of ideas and concerns by council members and Pelican residents over Pelican’s possible inclusion in the borough. *Id.* Following that meeting, Petitioner and the City exchanged multiple emails on borough inclusion issues—most notably school financing. *Id.* Thus, while the *Report* laments the lack of public hearings in these communities (*id.* at 31), that is essentially what happened in Pelican; and
- Petitioner sent two letters to the Tenakee Springs City Council asking to open some manner of dialogue. *Petition*, *Exhibit F* at 20. Tenakee Springs never responded, in any manner.

E. Refusal to Consider Huna Tlingit Historic Territory

In its brief, Petitioner argued that borough incorporation was important to enable Huna Tlingits to influence decisions that affected their historic territory. *Petition*, *Exhibit E* at 3 *et seq.* The *Report* dismisses all that, asserting that “borough formation is not about recognizing indigenous historic territory.” *Id.* at 22.

It has never been Petitioner’s contention that the reach of Huna Tlingit’s historic territory should be dispositive. However, the *Report* does seem to take the other extreme—*i.e.*, that historic Native territory is not even a legitimate consideration.

As we have seen, the “other factors” to be considered in reviewing borough petitions are “issues of political and social policy.” At least *taking into account* indigenous historical territory plainly fits within that rule. That, at least, is what multiple LBC decisions have done—a legacy that, once again, the *Report* ignores.

Those prior decisions include the following:

- ✓ In finding that the proposed North Slope Borough encompassed a universe of common interest and social integration, both staff and the Commission made extensive use of sources that included testimony of Native elders; publications like the *Field Committee* reports, *Alaska---Natives and the Land*, *The Nunamiut Eskimos: Hunters of Caribou*, *Eskimos of North Alaska*; and other Native anthropological sources; ^{45/}
- ✓ The Northwest Arctic Borough provides perhaps the most striking example of the Commission focusing on traditional Native territory in setting borough boundaries. That borough’s boundaries precisely matched those of NANA Regional Corporation, with the LBC noting that ANCSA’s regional corporate boundaries were drawn so as to bring together “as far as practicable...Natives having a common heritage and sharing common

^{45/} Local Affairs Agency, *Proposal for Incorporation of First Class Borough, Report to the Local Boundary Commission on the proposal for incorporation of a first class borough* (Dec. 2, 1971) (unpaginated); Local Boundary Commission, State of Alaska, *Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough* at 2 (May 10, 1972).

interests.”^{46/} By relying on NANA’s borders, the LBC was able to assure that the borough would bring together a region marked by “cultural similarities...[and] a village-based subsistence lifestyle,” and would mirror “historic trade and subsistence patterns”;^{47/}

- ✓ In reviewing the proposed Aleutians East borough, the Commission held that NCSA Regional Corporation and historical Native cultural boundaries, while not “sacrosanct,” “should be considered as evidence relating to the population, geography, economy and other factors which form the standards for incorporation of boroughs.”^{48/}
- ✓ The Commission expressly relied on the bedrock study *Alaska Natives and the Land* in fixing the boundaries of the Yakutat Borough;^{49/} and

^{46/} / Statement of Decision, *In the Matter of the Petition for Incorporation of the Northwest Arctic Borough, Consisting of 36,00 square miles* (March 14, 1986) at 1 (“*NWA Dec.*”); see also 43 U.S.C. §1606(a) (ANCSA regional corporations are to be comprised of populations “having a common heritage and sharing common interests.”); AS 44.33.844(2) (DCCED shall consider ANCSA regional corporate boundaries in setting boundaries of borough feasibility studies).

^{47/} / *Id.*, unpaginated.

^{48/} / LBC, *Statement of Decision in the Matter of the Petition for Incorporation of the Aleutians East Borough* (“*Aleutians Dec.*”) (July 24, 1987) at 4. Currently, culturally-drawn ANCSA regional corporate boundaries are a permissible consideration in reviewing proposed borough boundaries. 3 AAC 110.060(b)(2)(C).

^{49/} / LBC, *In the Matter of the Petition to Dissolve the City of Yakutat and Incorporate the City and Borough of Yakutat*, April 15, 1992 at 4

✓ The LBC relied on the statements of the legendary Chief Shakes in finding that the proposed City and Borough of Wrangell was socially integrated and possessed of a common interest. ^{50/}

Moreover, in its 2007-8 changes to its regulations, the LBC originally adopted an amendment to 3 AAC 110.060 that would have expressly added tribal lands and traditional subsistence areas to the regulatory list of analogous boundaries. LBC, *Transcript of Public Hearing*, April 24, 2007 at 81. ^{51/} However, at the Department of Law's suggestion, "tribal lands" was dropped because "[i]t's not a boundary ... or a term that's used in Alaska law." LBC, *Transcript of Public Hearing*, April 30, 2007 at 39. ^{52/} As to traditional "subsistence areas," the Department of Law felt that the term was insufficiently defined, and "we would have to do a lot of refinement." *Id.* Most importantly: the Department of Law stressed that the deletion of these two boundaries was immaterial since the remaining express list of boundaries in §060(b) are:

*...discretionary, [are matters that the LBC] may consider, [and the list] isn't exhaustive. **There are lots of other boundaries that***

^{50/} LBC, *In the Matter of the Petition for Incorporation of the City and Borough of Wrangell, a Unified Home Rule Borough. Statement of Decision* (Dec. 17, 2007) at 20.

^{51/} See also LBC, *Transcript of Public Hearing*, April 30, 2007 at 38 (Commissioner Zimmerle: "[There was a motion for the] addition of the new boundaries clause such as tribal lands and state preserves, et cetera. This was a motion that I made that was adopted on the 24th, April 24th.")

^{52/} That concern would have no currency today, since the State of Alaska subsequently officially recognized Alaska tribes in Ch. 42, SLA 2022. In that law, the State finally acknowledged that "[i]ndigenous people have inhabited land in the state, multiple millenia, since time immemorial..," and that it was state policy to "recogniz[e]...tribes' role in the state's past, present and future."

could be considered. These are just examples. So rather than expand this particular paragraph of this section with all of these new definitions that we would have to come up with, I'd suggest that we change it to be rather not elaborate,...

Id. at 39-40; emphasis added. Thus, the LBC clearly understood that historical tribal territory and traditional subsistence areas were legitimate considerations in assessing boundaries even though not expressly called out in §060.

In a way, the *Report's* dismissal of the Huna Tlingit's historic territory is gratuitous, since the only "Boundary" fault that the *Report* finds with the *Petition* is that it encompasses too little, rather than too much, acreage. But the Commission may ultimately view matters differently, and, in that event, Petitioner would have expected that the State of Alaska would at least give fair consideration to giving the Huna Tlingit some voice in decisions that directly impact their ancestral home.

Or so we would have thought.

F. The Claim of Taxation Without Services

Although not germane to any recommendation, the *Report* repeatedly calls out the complaint that, outside the Hoonah Townsite Service Area, the borough will be providing only the three statutorily-mandated areawide functions while, at the same time, imposing a one-percent seasonal sales tax. *Id.* at 20, 34. ^{53/}

⁵³ / To begin with, the criticism is not really true. Outside the Townsite, the borough, under an existing contract with the U.S. Forest Service, will continue to provide routine police patrol, as well as EMT and fire department services, along 120 miles of out-of-town road. *Petition, Exhibit F* at 6 *seq.* The city-owned boat harbor, which is used extensively by non-Hoonah residents (most notably Elfin

A look at the history of borough formation shows that, for region-sized boroughs that include substantial formerly-unorganized territory, such is the norm. In *Mobil Oil*, 518 P.2d 92, oil companies objected to the proposed North Slope Borough's intended imposition of an areawide property tax on their planned and quite expensive investments—all without the provision of any corresponding services. In upholding borough formation, the Alaska Supreme Court held that boroughs were intended to include lands “with no present municipal use.” *Id.* at 101. This because, as 3 AAC 110.060(a) requires, the borough's boundaries must: (i) conform generally to natural geography; (ii) be on a regional scale suitable for borough government; and (i) include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level.

For its part, the Northwest Arctic Borough's initial areawide services were confined to the statutory three, while an areawide property tax was predicted to dramatically increase borough revenues—principally by adding some \$250,000,000 to the borough's property valuation through development of the Red Dog Mine, which was located in an otherwise unincorporated area of the borough. *NWA Dec.*, unpaginated.

In the same vein: The proposed Aleutians East Borough proposed to adopt a 2% areawide sales and use tax or, if that tax failed at the polls, an areawide 5.7 mill

Cove), will continue to be open to all borough residents, as, of course, will be public services like the library. Third party services, such as the SEARHC Clinic, will likewise be available to anyone in the borough.

property tax. *Aleutians East Dec.* a 10. For its part, the Lake and Peninsula Borough proposed to levy a 1% areawide sales and use tax. *Lake Borough Dec.* at 3. As with the Xunaa Borough, both of those boroughs proposed to initially exercise only the mandatory three areawide powers in previously unorganized areas within the boroughs—taxation, education and planning/zoning. *Aleutians East Dec.* at 9; *Lake Borough Dec.* at 2. The LBC approved both petitions.

Closer to home: In 1974, the LBC approved the Haines Borough’s annexation of much of the Chilkat Peninsula, which at the time was uninhabited—save for activities around the Excursion Inlet fish processing plant. Staff had advised the Commission that the borough would be providing no services to this area—the only “service” being the imposition of areawide taxes, including a property tax. DCRA, *In the Matter of Annexation of Adjacent Territory to the Haines Borough* (Feb. 28, 1974) at 11. In approving the Haines Borough’s annexation of much of that peninsula, the LBC noted that the principal benefits of annexation will be taxation of the Excursion Inlet fish processing facilities and sharing in Tongass National Forest logging revenues. *In the Matter of the Petition for Annexation of Territory to the Haines Borough*, (May 15, 1974) at 2-3.

There is a reason for all of this. As Morehouse and Fischer noted, boroughs are viewed “as a means of spreading the local tax base over areas larger than the old independent school district, thereby requiring the residents of outlying areas, previously served by the state, to contribute financial support to local school

programs and eventually to other borough service programs as well.” *Borough Government in Alaska* at 140.

Nor is it of any consequence that, at this moment, there are apparently no school-age children living outside the Hoonah Townsite and the insular community of Game Creek. As we have seen with regard to National Forest Receipts, permanent structural decisions like borough incorporation should not turn on ephemeral current conditions. A family with school-age children could arrive in Elfin, by any number of pathways, at any moment.

Finally, if the LBC believes that additional services should be made mandatory on an areawide basis, the appropriate forum is the Alaska Legislature, which currently seems satisfied with the three basics. Certainly, in an individual case, a particular broadly-needed service might be so critical as to become an “essential borough service.” *Cf.* 3 AAC 110.990(8). But there appears to be no comment in this record in which an outlying resident complains that the proposed borough will not be providing an essential service of which the entire area has need.

Petitioner, then, has structured a proposed borough according to the historical norm.

4, Conclusion

Gustavus’ explicit refusal to talk, and Tenakee Springs’ silence, merely underscores the point made in *Section 1(A), ante*—that a functional borough containing Hoonah, Gustavus, Pelican and Tenakee Springs is a pipe dream. Sure, a

kumbaya borough along Icy Strait would be wonderful. But if these comments demonstrated one thing, it is that our constitutional framers, *and every LBC decision to this point*, stressed that perfection is neither achievable nor demanded.

Gustavus, Pelican and Tenakee Springs were omitted from the borough because, as the *Report* itself actually concedes, their inclusion would not be “appropriate.” *Id.* at 35. Their exclusion was a bow to the inevitable. Recognizing that, the *Petition* otherwise meets every applicable standard, and should be approved.

Dated this 8th day of July, 2024.

SIMPSON, TILLINGHAST & SHEEHAN

/s/ Jon K Tillinghast
Jon K. Tillinghast

Appendix A

Possible Revised Section 7.03 of Draft Xunaa Borough Charter

Section 7.03 Platting Regulation and Subdivision Regulation

There shall be a platting authority constituted as provided for by ordinance. The borough shall be the platting authority areawide. Within the Hoonah Townsite Service Area created by Section 12.03 of this Charter, the platting authority shall apply the subdivision standards of Title 17 of the City of Hoonah Municipal Code, as may be amended by the borough assembly. Outside the Hoonah Townsite Service Area, the platting authority shall apply the subdivision standards of the Alaska Department of Natural Resources as set out in 11 AAC 53.600—740, except as may be modified for a community or area under the process set out in Section 7.04 of this Charter.

Borough Formation Committee Meeting

MINUTES

Wednesday, January 9, 2007

6:00 p.m.

Those Present:

Hoonah Committee Member Mary Erickson, Committee Member Alan Fisher Sr., Committee Member Eugene Avey, Committee Member Charles Kingsland, Committee Member Frank Wright Jr., Mayor Dennis Gray Jr., Marlene Duvall, Judy Hankla, Jeff Hankla, Mike Jackson, Paul Camolli, John Erickson, Jerry Byers, Dan Zobrist, Greg Streveler, Ponch Marchbanks

Call-ins Present:

Elfin Cove: Gordy Wroebl, Patti Lewis, Travis Lewis, Mike Nelson
Gustavus: Ken Klawunder, Wayne Howell
Pelican: Patti Phillips

Materials before the Committee and public present for review and discussion.

- Lake and Peninsula Borough Charter

Call to Order at 6:00p.m. by Mayor Gray

Agenda:

1. Article VII. Planning.
Section 7.01. Planning Commission

Discussion regarding balanced representation from communities within the borough language for this section led to the suggested reading of the section to be as follows:

There shall be a planning commission consisting of seven members, including at least one member from each community, appointed by the mayor and confirmed by the assembly. The powers and duties of the planning commission and the terms, qualifications, and compensation of its members shall be 'provided by ordinance'.

Section 7.02. Comprehensive Plan
Keep as is.

The question of defining community boundaries relating to service areas was discussed. Elfin Cove expressed the desire for a large enough service area to meet its needs. Elfin Cove needs to define the service area. Patti Lewis indicated Elfin Cove needs to have a say in defining the boundaries. Ms. Lewis stated Elfin Cove has registered voters from Gull Cove, Inian Islands, and Port Althorp. Because of this, they would like to include these areas in the boundaries; not just around the Elfin Cove boardwalk. Mr. Klawunder stated the people in the areas around Elfin Cove (listed above) will need to belong to

some community and felt a boundary to include them in Elfin Cove would be appropriate. The question remained whether or not these same communities should be included in a service area for the benefit of Elfin Cove. Patti Phillips emphasized the charter will set the broad policies of the borough and as long as the charter allows for service areas to be set up, it can then be fine tuned with the development of the borough code.

Elfin Cove wants a guarantee *in* the charter that their service area will encompass the area they want, and does not want to leave it up to the borough assembly.

****Review of December 17th Meeting****

Article I. To be decided at a later date, as we do not have participating communities finalized.

Article II. The assembly composition will be one vote per community. Composition and language defining this article cannot be finalized until it is known which communities will join the borough.

Article IV. This is a boiler-plate article and will be word-for-word according to Lake and Peninsula.

Article VIII. There was much discussion regarding this Education Article in the last meeting. School Board composition was discussed regarding whether it should be population-based apportionment or one vote per school site. Committee Member Avey offered to bring more information about apportionment and local site advisory boards and related policies. There was agreement among those present in the Dec. 17th meeting that each school site should have a local advisory board and one representative from that board should serve as a borough school board member.

****End Review of Dec. 17th Meeting****

Article VIII. Education

Gene Avey will look further into apportionment and the possible legal requirements and compliance associated with determining school board composition.

Those present were generally in agreement that the Committee needs to define the following in order to fine tune this Article:

What is a district? What is a community? How many communities will there be?

Section 8.02. School Board

In charter will need to add:

F. Each site maintaining a school shall have a Local Advisory Board.

A discussion regarding whether or not spouses of school employees should be allowed to serve on the board was entertained. It was largely agreed upon that every community involved in the borough will be extremely small, and the potential for conflict in this area will exist. It should be allowed, but the spousal member should not exercise a vote of action for items such as salary schedules and contracts; where the employee and spouse stand to benefit.

Patti Phillips from Pelican stated the major concern for her community with the possibility of joining the borough is the idea of losing their school district. Adequate representation is also crucial as to whether or not this community will be a part of the

representation is also crucial as to whether or not this community will be a part of the borough. There is a concern about losing the level of funding Pelican currently gets if they join the borough.

Mr. Avey contacted the Alaska School Board Association regarding the questions from the Dec. 17th meeting relating to apportionment and local advisory board policies. He distributed information from the 8000 series of the Policy Handbook that lays out comprehensive functions of an advisory board, and what their role is to the board, and to the superintendent. Mr. Avey indicated having a local board would provide local influence on the borough board. The local board would not be allowed to make policies. According to the EED, the school information provided in the feasibility study is all that would be needed to figure out the apportionment for the borough schools. Elizabeth Sweeney with Department of Education in Finance, indicated they supported what was in the Sheinburg report regarding education. She indicated they would not be able to provide any additional funding during the formation of the borough. Mr. Avey will pursue more information regarding education apportionment for the next meeting.

Mr. Avey pointed out on page 63, and 79 of the draft, and final respectively, in the Sheinburg report it states that the school district will be able to maintain the current levels of funding and would not see a diminished level of funding in coming years.

Mr. Zobrist called the Division of Elections for information on the basis for setting up sections and the number of representatives for each section. He was told this is accomplished under the rules of apportionment.

Section 8.03 Budget

Add to last sentence:

The board shall hold public hearings on the budget before approval and obtain the views of the local advisory boards before submission to the assembly for final action.

Section 8.04 Joint Conference

Keep as is.

Article IX. Finance

Section 9.01 Fiscal Year

Keep as is.

Section 9.02 Submission of Budget Capital Improvements Program and Message

There was discussion regarding timing of submission for Capital Improvements Plan in regards to congressional session calendar. No changes to the language were made.

Section 9.03

Keep as is.

Section 9.04

Keep as is.

Section 9.05-9.17

Keep as is.

Article X. Borrowing

Keep as is.

Article XI. Taxation

Section 11.01 Tax Procedures

Remove 1. Property Assessment. and item 2. Property Tax First Lien.

Will read:

1. **NO PROPERTY TAX.**

2. **Sales and Use Tax.** Any sales or use tax or change in rate thereof shall be, by ordinance, ratified by a majority of the qualified voters voting on the question.

Section 11.02 Private Interests Taxable

DELETE SECTION.

Section 11.03

DELETE SECTION.

Article XII. Service Areas

Patti Lewis will consult with the residents of Elfin Cove to determine boundaries of a service area adequate for their needs.

Section 12.01 Purpose

Keep as is.

Section 12.02 Establishment

Keep as is.

Section 12.03 Criteria

Keep as is.

Article XIII. Local Improvement Districts

Section 13.01 Purpose

Delete last sentence which begins: All or any part of the costs of the improvement:..

Section 13.02 Local Improvement District Procedures

Keep as is.

Section 13.03 – 13.07 DELETE SECTIONS

Section 13.08 Receipts

Keep as is, and make it Section 13.03.

Keep as is, and make it Section 13.03.

Article XIV. Charter Amendment

Section 14.01 Proposal

- A. 2. DELETE "by initiative petition" at the end.
- B. By initiative petition will become 3.

Section 14.02 Election

Keep as is.

Section 14.03 Effective Date

Keep as is.

Article XV. General Provisions

Section 15.01 - 15.07

Keep as is.

Section 15.08 Notice of Lien

DELETE.

Section 15.09 Dedication of Borough Property

Change to 15.08, keep language as is.

Section 15.10 Seperability

Change to 15.09, keep language as is.

Section 15.11 Return of Funds to Communities

Change to 15.10, keep language as is.

There was much discussion questioning the need for the borough to collect all taxes and return them to borough communities. Patti Phillips stated she would like language in the charter stating local taxes shall be collected by local governments and not by the borough for later return.

It was proposed to add the following language to address this concern in Article XI Section 11.01.

C. Taxes generated by each individual municipality, based on their individual taxing authority, shall be collected by each community, and shall not be required to be remitted to the borough.

Title 29 AS 29.35.170D (page 27 of Sheinburg Report) states the borough shall collect and remit taxes, both borough and cities. This Alaska Statute may require the borough to perform this function on behalf of the communities. Mayor Gray will look further into this statute.

Section 15.12 Community Participation

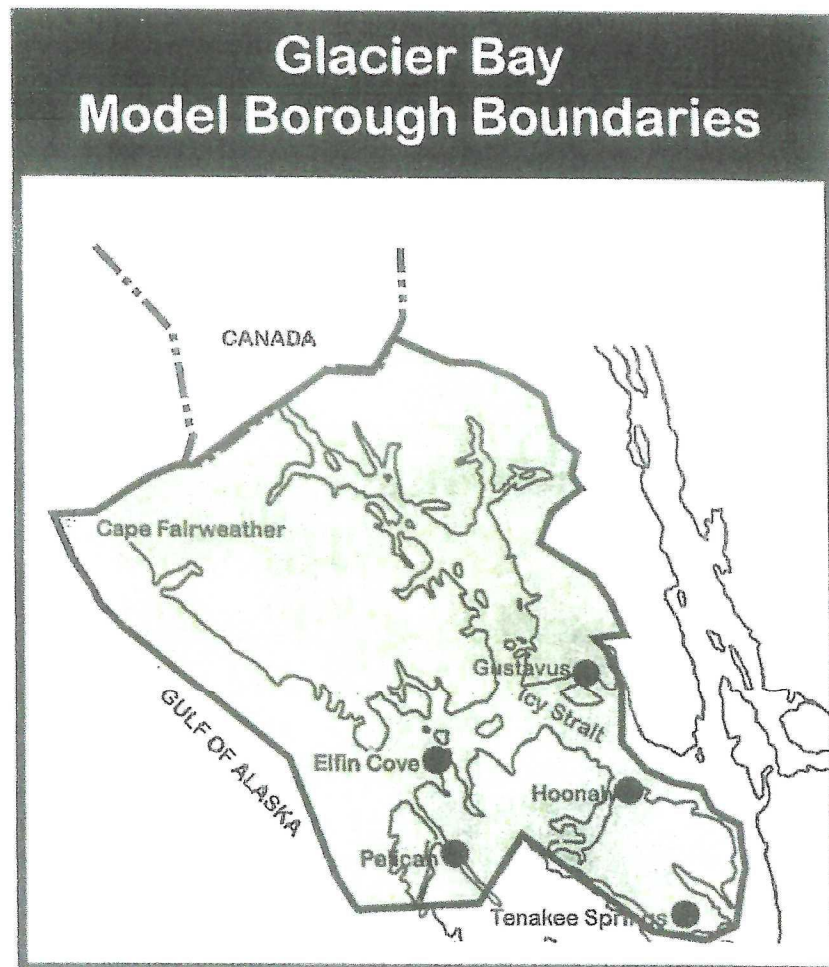
Change to 15.11, keep language as is.

Article XVI. Transitional Provisions
Not discussed.

Next meeting is scheduled for Wednesday, February 6, 2008 at 5 p.m. Call in number will be the same.

Forming Glacier Bay Borough & Report on Senate Bill 48

prepared for the
City of Hoonah



prepared by
Sheinberg Associates
Juneau, Alaska

January 2002

Table of Contents

Topic	page
 EXECUTIVE SUMMARY	
Senate Bill 48	1
Borough Formation	1
Glacier Bay Borough Boundary and Assumptions	1
Effect on Local Governments	3
Finances	3
Electing the Borough Assembly	7
Planning	7
Conclusion	7
 Senate Bill 48	
1.0 Purpose and Status of SB 48	9
2.0 Implications for Northern Southeast Alaska	10
 Glacier Bay Borough	
1.0 Assumptions	10
2.0 Interviews	11
3.0 Glacier Bay Borough Boundary	12
A. Introduction	12
B. Glacier Bay Model Borough Boundary	13
C. Including Excursion Inlet	14
4.0 Type of Borough	14
5.0 Effect of Forming Glacier Bay Borough on Local Government	15
6.0 Borough Revenues and Expenses (and Impact to Hoonah and Other Communities)	16
A. State and Federal Revenue	16
B. Local Tax Revenues	20
C. Expenditures	24
D. Summary	25
7.0 Education	26
A. Summary	26
B. Snapshot of the School Districts – Hoonah, Pelican, Chatham	26
C. Education Funding	29
D. Costs Savings	33
E. Location of Borough School District Administration	33
8.0 Land Entitlement	33
9.0 Planning	35

10.0 Apportionment	40
A. Borough Assembly	40
B. Borough School Board	42
11.0 Conclusion	42

Figures and Tables

Figure 1 – Glacier Bay Borough Boundary	13
Table 1 – Types of Borough Governments in Alaska.....	15
Table 2 - Local Taxes and Revenues Generated in 2000.....	20
Table 3 - Estimate of Annual Revenue a 6% Borough Bed Tax Generates	22
Table 4 - Rough Estimate of Annual Revenue a 6% Borough Sales Tax Generates.....	22
Table 5 - Glacier Bay Borough Revenues (status quo and after borough formation)	23
Table 6 - Glacier Bay Borough Budget	25
Table 7 - Overview: Hoonah, Pelican, Chatham REAA Schools.....	28
Table 8 - FY 2000 Funding Scenario – Creating Glacier Bay School District.....	32
Table 9 – Calculation of Glacier Bay Borough Land Entitlement.....	34

Appendices

Appendix A - Senate Bill 48.....	44
----------------------------------	----

EXECUTIVE SUMMARY

The City of Hoonah asked Sheinberg Associates to investigate what forming a borough in Northern Southeast Alaska would mean for Hoonah and the region, and to report on Senate Bill 48, dealing with borough formation, which is moving its way through the Alaska State Legislature.

Senate Bill 48

Senate Bill (SB) 48 was introduced by Senator Gary Wilken of Fairbanks in January 2001. It passed the Senate in April 2001. As the 2002 legislative session opens, it is before the House Community and Regional Affairs committee, co-chaired by Representative Carl Morgan of Aniak. Senator Wilken and Representative Morgan will meet in January 2002 to discuss possible changes to the bill that would allow it to move forward in the House Community and Regional Affairs committee.

If it becomes law, SB 48 will allow three things related to borough formation and the Legislature's ability to levy taxes on the unorganized borough to support education: 1) Create another borough option (3rd class); 2) Allow the Alaska State Legislature to divide the large unorganized borough up into smaller, discrete unorganized boroughs (presumably to facilitate the legislature's ability to levy taxes to support education on some or all of the smaller unorganized boroughs); and 3) Establish a process so that the Legislature and Local Boundary Commission can form boroughs in regions of the Alaska without requiring a vote of residents.

This bill is relevant to Hoonah and Icy Straits communities because the area is in the unorganized borough, and because Gustavus is one of the communities frequently cited as an example of a prosperous area that does not currently make a local financial contribution for education. If SB 48 passes, it therefore would not be surprising if the unorganized area that includes Gustavus received early Legislative attention.

Borough Formation

Glacier Bay Borough Boundary and Assumptions

The State's "Model Borough Boundary" for Northern Southeast Alaska is used to analyze borough formation for the region (see map next page). It is called the Glacier Bay Borough and stretches from Mount Fairweather to Chatham Strait and includes Glacier Bay National Park, the cities of Hoonah, Pelican and Tenakee Springs; and the communities of Gustavus, Elfin Cove, Whitestone logging camp and Mt. Bethers/Game Creek.

Six assumptions are made as this study considers under what circumstances Glacier Bay Borough might form. These assumptions, based on concerns of the region's residents, would guide Glacier Bay Borough's principles and policies: