IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CITY OF PELICAN; COMMUNITY OF ELFIN COVE; CITY OF GUSTAVUS; and CITY OF TENAKEE SPRINGS, Appellants,	)	
vs.	)	
LOCAL BOUNDARY COMMISSION, Appellee,	)	
CITY OF HOONAH, Appellee-Intervenor.	)	Case No. 1JU-25-00604 CI

REPLY BRIEF OF APPELLANTS

APPEAL FROM THE LOCAL BOUNDARY COMMISSION

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I. INTRODUCTION

This case involves one of the most consequential decisions that can be made by an administrative body in Alaska: creation of regional government. It directly impacts the future for every resident of the Appellant communities, but also indirectly impacts governance across all of northern Southeast Alaska and the state as a whole. The significance of this decision is reflected in the strict and detailed standards set in the Alaska Constitution, statute, and regulations.

Here, the Local Boundary Commission ("LBC") was faced with a proposed borough unlike any ever before presented to it, commandeering virtually all the lands, waters, and resources of the vast Glacier Bay Region for the benefit of just one single city, while excluding three of four adjacent cities, collectively representing half the population, and foreclosing Appellants' opportunities for future prosperity and self-determination. Rather than applying the law and sending the petition back for changes, the Commission crumbled under its task. By a bare one vote majority the LBC approved the proposed borough, misapplying relevant law and regulations, ignoring expert advice from its own staff, glossing over detailed objections from the overwhelming majority of affected citizens, and even dismissing reasoned objections from its own fellow commissioners. Under the circumstances, what is most surprising is that any of the Commissioners supported the proposal.

In their Opening Brief, the four Appellant communities explained in detail how the LBC's numerous legal and procedural errors harm their interests. In response, the LBC and

Intervenor City of Hoonah ("Hoonah") provide no compelling arguments to support LBC's decision. Perhaps hoping to direct the court away from the details of its decision, LBC repeatedly invokes "deference" like a magical invisibility shield, behind which the court cannot review. For its part, Hoonah spends considerable ink on a pointless diversionary argument that the cities of Gustavus and Tenakee Springs have no right to participate in this appeal, then argues in essence that the LBC's decision need only be "good enough." Applicable law says otherwise.

The extensive proceedings leading to this case, as well as LBC's and Hoonah's responses, may work to obscure the fact that it is actually quite simple. Contrary to the LBC's framing, the question in this case is not whether the LBC made appropriate policy judgments,[1] but whether the Commission adhered to Constitutional and statutory standards and reasonably interpreted and applied regulations in approving the proposed borough. A thorough and careful application of the Alaska Constitution, statutes, and regulations shows that the LBC's decision to approve Hoonah's petition was arbitrary and capricious, unreasonable, and contrary to law. The court must set aside the LBC's decision.

II. HOONAH'S ASSERTION THAT GUSTAVUS AND TENAKEE SPRINGS CANNOT PARTICIPATE IN THIS APPEAL MUST BE REJECTED

Hoonah asserts that Gustavus and Tenakee Springs should be barred from this case because they lack standing and failed to exhaust their administrative remedies, asking this

[1] Brief of Appellee, Local Boundary Commission ("LBC Brief") at 1, Feb. 27, 2026.

court to ignore any arguments relating to these communities.[2] Hoonah's arguments in support of this proposition are untimely, baseless, legally incorrect, and pointless.[3]

Hoonah raises these arguments now for the first time. If this was a legitimate objection, Hoonah should have raised it either in its Reply Brief to the LBC on its decision on reconsideration, when the Appellants initiated this appeal on April 18, 2025, or when Hoonah submitted an Opposition to Appellants' Motion for a Stay on May 2, 2025. It did not. At the very least, these arguments are untimely. Hoonah has forfeited its right to assert these claims by not making them sooner and is wasting the parties' and court's resources with this distraction. Moreover, Hoonah does not seek any action by the court other than to ignore arguments relating to Gustavus and Tenakee Springs and does not specify which part of Appellants' brief it believes relate solely to those communities. Thus, these arguments appear to be raised only as an attempt to discredit the concerns raised by the cities of Gustavus and Tenakee Springs, just as it discredited the legitimate concerns raised by all Appellants about adverse effects to their communities by the proposed borough.

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2 City of Hoonah's Brief ("Hoonah Brief") at 7-18, Feb. 27, 2026.

3 Hoonah complains that Appellants arguments are "scattershot" making the appeal deficient, Hoonah Brief at 6, yet inexplicably spends considerable effort distracting the court with a standing argument that has no merit, and focusing on an open meeting act claim raised before the LBC on reconsideration but not in this appeal. *Id.* at 18-20. No response is needed to this argument, but it is worth noting that Hoonah incorrectly states the LBC "could have deliberated in private." Hoonah Brief at 20. To the contrary, private deliberation would not produce the record necessary for judicial review. AS 44.62.560; 3 AAC 110.570. Hoonah's error is in characterizing the LBC's decisional meeting as "adjudicatory" Hoonah Brief at 19. While the LBC is a quasi-judicial body, it does not resolve disputes or decide rights between parties.

More importantly, Hoonah's arguments are misleading and contrary to settled law.[4] The Alaska Supreme Court has ruled that it "interpret[s] standing broadly, 'favoring increased accessibility to judicial forums.'"[5] The Court articulated the three-element test to decide whether a challenger to an agency decision has standing. "[A] challenger must (1)

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[4] *City of Kenai v. Alaska Public Utilities Comm'n,* 736 P.2d 760 (Alaska 1987), and *City of Valdez v. Reg. Comm'n of Alaska,* 548 P.3d 1067 (Alaska 2024), cited by Hoonah, do not support its position but instead support Gustavus' and Tenakee Springs' right to participate in this appeal. In *City of Kenai*, the Alaska Supreme Court found that filing a single written comment during the public notice period was sufficient to establish standing to appeal. *Kenai*, 736 P.2d at 763; *Valdez,* 548 P.3d at 1079 ("In *City of Kenai* we held that a challenger had standing to appeal an agency's decision after submitting a single written comment, even though the challenger declined to intervene as a formal party and did not participate in a subsequent public hearing"). The Court noted with favor a decision where standing was upheld after "appellants had submitted letters against proposed agency action which were received as part of [the] record." *Kenai,* 763 P.2d at 763 n.8. Gustavus and Tenakee Springs submitted letters arguing against the proposed borough during the LBC's public comment period, establishing their standing.

Hoonah cites *City of Valdez* to argue that Gustavus and Tenakee Springs did not exhaust their administrative remedies, but misstates the Court's decision in that case. *City of Valdez* addressed the appeal of two Regulatory Commission of Alaska decisions, Order 6 and Order 17. *Valdez* 548 P.3d at 1072. Hoonah incorrectly contends that the Court found Valdez "failed to exhaust its administrative remedies with respect to… Order 6." Hoonah Brief at 17. To the contrary, the Court held that Valdez had exhausted administrative remedies with respect to Order 6 and reversed the dismissal of that claim because Valdez "participated in the relevant proceedings before the RCA and made its position clear on the record." "These actions fulfilled the purposes of the exhaustion requirement including the creation of a factual record . . ." *Valdez*, 548 P.3d at 1082. The Court explained that "the obligation to exhaust is discharged so long as someone put the appellant's objection on the record." *Id*. at 1082 n.67 (internal quotations and brackets omitted). Here, Gustavus and Tenakee Springs submitted timely comments and submitted petitions for reconsideration of the LBC's decision. Their objections were squarely before the LBC. These actions "fulfilled the purposes of the exhaustion requirement" and the Court should find that Gustavus and Tenakee Springs exhausted their administrative remedies before the LBC. *Valdez*, 548 P.3d at 1082.

[5] *City of Valdez v. Reg. Comm'n of Alaska,* 548 P.3d. 1067, 1076 (Alaska 2024) (citation omitted).

be directly interested in the proceeding, (2) be factually aggrieved by the decision, and (3) have participated in the proceeding."[6] Gustavus and Tenakee Springs meet all three elements of this test. With respect to elements one and two, these communities are not included in the proposed borough, yet their surrounding land and waters are, leading to potential significant negative impacts. As for element three, both communities participated in LBC's proceedings, provided comments, testified at the public hearing, submitted separate requests for reconsideration of the LBC's decision and joined Pelican and Elfin Cove in this challenge.[7]

Significantly, Gustavus and Tenakee Springs do not raise distinct legal arguments that can be ignored by the court. All legal claims raised by these two communities are raised in common with Pelican. Even if the court were to dismiss Gustavus and Tenakee Springs from this case or simply ignore any separate arguments raised by these communities, it should not affect the court's consideration of the law in this case. This appeal would be substantially the same whether brought only by Pelican and Elfin Cove or including Gustavus and Tenakee Springs. In other words, the issues in this appeal can be argued by Pelican and Elfin Cove alone without affecting the outcome.[8] References to specific

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[6] *Id.* Gustavus and Tenakee Springs did not submit "responsive briefs" to Hoonah's petition. However, as the Alaska Supreme Court noted in *City of Valdez,* standing does not require that the aggrieved party participate by means of any particular procedure. *Id*. at 1077, n.21.

[7] In its recitation of the facts in this case, Hoonah admits that these communities participated before the LBC, so it is difficult to understand how it believes these communities lack standing.

[8] Elfin Cove is the only community with additional concerns to those raised by the other three appellants, due to the fact that it was included within the proposed borough.

communities in Appellants' opening brief are provided to illustrate to the court the harms to those communities that have been omitted from the proposed borough, demonstrate their interest and that they have been factually aggrieved. Therefore, Hoonah's argument is essentially pointless.

Moreover, because Gustavus and Tenakee Springs, like Pelican and Elfin Cove, submitted comments and public testimony, they exhausted their administrative remedies. There is no other action these communities could have taken, which is likely why Hoonah has identified none. The court should not accept Hoonah's legally incorrect argument to ignore the significant impacts to Appellant communities in reviewing the LBC's decision.[9]

III. LBC AND HOONAH FAIL TO SUCCESSFULLY REFUTE APPELLANTS' DEMONSTRATION THAT THE LBC'S DECISION IS ARBITRARY AND CAPRICIOUS, UNREASONABLE, AND CONTRARY TO LAW

The LBC and Hoonah argue that the court must defer to the LBC's decision to approve the proposed borough, framing their arguments to suggest that LBC's discretion is so broad and shielded by deference that there is essentially no role for this court in reviewing its decision's adherence to applicable legal standards. As a general rule, courts can defer to agencies in areas of technical expertise. But deference is not a bar to judicial review and not every agency decision involves technical expertise.[10] Under settled

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Those concerns are detailed in a separate section of Appellants' brief. *See* Appellants' Opening Brief at 56-60, Dec. 19, 2025.

[9] As discussed below and in Appellants' opening brief, consideration of impacts to all Appellant communities is essential to determining whether the LBC's decision met the Constitutional requirement that it be in the best interests of the state.

[10] *See Keane v. Local Boundary Comm'n,* 893 P.2d 1239, 1241 (Alaska 1995).

principles of administrative law, the court must thoroughly review the LBC's decision and determine if it is in accordance with law, reasonable, and not arbitrary and capricious. Appellants set forth the appropriate standard of review in their opening brief:[11] 1) independent judgment for questions relating to constitutional or statutory interpretation; 2) independent judgment for interpretation of regulations that do not involve agency expertise; 3) reasonable basis where interpretation of regulations implicates agency expertise or policies within the agency's statutory functions; 4) whether the agency's action is arbitrary, unreasonable, or abuse of discretion for issues involving an agency's application of its regulations to the facts. Importantly, the court must "ensure that the agency has given reasoned discretion to all the material facts and issues" and "taken a hard look at the salient problems."[12] In addition, an agency's decision must demonstrate the reasons for its decision, and if serious objections are raised the decision should respond to them.[13]

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[11] Appellants' Opening Brief at 14-17. The Alaska Supreme Court reiterated those standards in a recent LBC case. *City of Soldotna v. State,* 556 P.3d 1158, 1158-59 (Alaska 2024).

[12] *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544, 548-49 (Alaska 1983) *superseded by statute on other grounds*, Ch. 86, § 1, SLA 2009.

[13] The LBC is not required to approve "any minimally acceptable petition for incorporation." *City and Borough of Juneau v. State,* 361 P.3d 926, 934 (Alaska 2015) *(citing Petitioners for Incorporation of City and Borough of Yakutat v. LBC,* 900 P.2d 721 725, 727 (Alaska 1995). The LBC argues that this standard applies only to consideration of a petition and a different standard applies to the court's review of the LBC's decision. LBC Brief at 15, n.23. The LBC misunderstands these cases. *Mobile* involved a challenge to the LBC's approval of a Borough by private landowners. The Court applied the reasonable basis standard of review. *Mobile Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98 (Alaska 1974). The court's use of the term "minimally" appears to be descriptive but does not establish a higher level of deference as the LBC implies. In deciding whether the

The LBC states that it exercises delegated legislative authority, operating in a quasi-legislative function to make policy. It repeats this assertion throughout its brief seemingly to convince the court to uphold its decision to approve the proposed borough at issue here, regardless of whether the agency's decision is unreasonable, arbitrary and capricious, or contrary to law.[14] Appellants do not contest that the legislature has delegated authority to the LBC to make local boundary decisions. However, the quasi-legislative nature of the Commission generally describes *what* it does but has no relevance to *how* it makes decisions. In deciding on a specific petition as in this case, it acts in a quasi-judicial role, applying "pre-established standards to facts"[15] to which no heightened deference is warranted.[16]

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specific standards at issue in that case were met, the court applied the reasonableness standard. *Id.* at 99 ("reasonably satisfies") and 100 ("reasonably met" and "reasonable").

[14] *See* LBC Brief at 1, 15, n.21, 16, 17,

[15] *See* LBC's description of its functions, Exc. 160-161.

[16] The LBC claims it is afforded "considerable discretion" in applying standards and weighing evidence because it is quasi-legislative in nature. LBC Brief at 11. Discretion does not mean that the LBC can ignore the law and that there is no role for reviewing courts. Hoonah goes even further, essentially stating that the fact of the LBC's decision is evidence that is correct: "Even if the proceedings had not produced such a substantial record, this Court would still be able to understand and review the LBC's decision based on the very fact that the LBC approved the petition." Hoonah Brief at 22. Hoonah mistakenly cites *Soldotna* as support, but the issue in that case was whether the LBC needed to make express findings on factors underlying required standards. Appellants do not argue that the LBC must issue specific findings. Instead, their claims are based on the LBC's failure to meet required legal standards.

Under settled law, deference to agency action is not unlimited. Statutes and regulations provide the guidance, or sideboards, to agency decision making. Adherence to the standards established in those statutes and regulations is for the court to determine.

The LBC can only approve a borough if it meets required standards. In this case, the LBC failed to meet statutory and regulatory standards relating to the determination of boundaries and the best interests of the state. Those issues involve questions of statutory interpretation, which requires independent review by this court, and the interpretation of regulations, which requires this court to determine whether the agency's decision is reasonable and not arbitrary and capricious, and whether it has considered all of the relevant factors.

This court must carefully review LBC's decision to ensure that it is reasonable and consistent with applicable law. In deciding whether the LBC's decision is reasonable and not arbitrary and capricious or contrary to law, the court must review the relevant evidence, which is the LBC's written decision, report of its expert staff, comments and responses of affected communities and the public, and the statements of commissioners during the LBC's decisional meetings. Post hoc explanations offered now in this proceeding are of no relevance.

Finally, the court owes no deference to the LBC's decision because the agency admitted the proposed borough did not meet applicable standards,[17] and it failed to explain

[17] LBC admitted (or was confused about how to comply with the law) when it approved the proposed borough in violation of the presumption against creating enclaves.

why it reached conclusions contrary to its expert agency staff and why it failed to even address many of the issues raised by staff.[18] The LBC's decision was unquestionably arbitrary and capricious, unreasonable and not in accordance with law.

A. THE PROPOSED BOROUGH BOUNDARIES ARE UNREASONABLE AND CONTRARY TO MANDATORY STANDARDS

1. The Boundaries Are Not Optimal

Under Alaska Supreme Court precedent, an essential factor in determining whether a proposed borough maximizes common interest asks whether its boundaries are optimal.[19]

Exc. 440. (Commissioner disagreeing with the need to comply with the presumption against enclaves).

[18] The LBC staff provides expert advice to the agency. While the commission does not have to agree with the staff, it must explain its departure from or failure to consider the issues raised by staff in order to ensure that it has considered all factors required for its decision. *See Southeast Alaska Conservation Council,* 665 P.2d at 548-49 ("Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary"). In its response, The LBC argues that deference should be given to its conclusion because it can rely on its own expertise. LBC Brief at 49. But the LBC fails to acknowledge that commissioners have no specific expertise with respect to local government formation. These individuals are political appointees of the governor, not local government experts. *See* Local Boundary Commission Annual Report to the Legislature at 6 (January 6, 2026), available on the world wide web at: www.commerce.alaska.gov/web/Portals/4/pub/LBC/Annual/1_6_2026%20LBC%20Annual%20Report%20Final.pdf, last accessed on April 9, 2026. The LBC states that commissioners "provide their own expertise and experience" to their decision making, relying on "their own views" with respect to compliance with applicable standards. *Id*. In this case, those "views" included adopting Hoonah's characterization of Appellants concerns and actions regarding borough formation notwithstanding staff caution to the contrary, belittling Appellant communities by calling them "crabs in a barrel," admitting they did not agree with a particular standard, and acknowledging that the underlying reason Pelican, Gustavus, and Tenakee Springs were excluded from the petition was concern that they would vote against the proposed borough charter because it does not provide for equitable representation for those communities.

[19] *Yakutat,* 900 P.2d at 725 (Alaska 1995). In that case, the Alaska Supreme Court held that "[a]n informed decision as to whether boundaries proposed in a petition for incorporation maximize the common interests of the area and population and thus meet the

The LBC acknowledged that it was required to determine whether a proposed borough's boundaries are the "optimum boundaries" for the region.[20] In its response, the LBC now devotes considerable effort to explaining that although the Commission discussed "ideal" boundaries for the proposed borough,[21] the LBC does not need to adopt ideal boundaries if the region is not cohesive enough.[22] As support, the LBC cites *Valleys Borough Support Committee v. Local Boundary Comm'n,*[23] a case decided two years prior to *Yakutat,* and which involved three competing proposals (one to annex an area to the Mat-Su Borough, and two proposals for new boroughs), entirely different facts that have no bearing on this case.

The LBC then creates a straw man argument, claiming that Gustavus, Pelican, and Tenakee Springs "advocate" that the proposed boundaries be reduced so that they can

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applicable statutory standards presupposes a thorough consideration of alternative boundaries and a decision as to what boundaries would be optimal." The Court concluded that the LBC must undertake an inquiry into the "most appropriate boundaries" in discharging its duties under AS 29.05.100. *Id*. *See also City and Borough of Juneau,* 361 P.3d at 928.

[20] Exc. 423 (referring to checklist at R. 3846-3849). The commissioners were confused about what the standards mean, but Commissioners Wood and Walker clearly stated that the proposed boundaries are not optimum boundaries. *See* Exc. 426-428.

[21] *See* Exc. 506-509, 532-534 (discussions that ideal boundaries include the three excluded communities, but LBC felt it had no mechanism to implement inclusion even though it can amend petitions).

[22] LBC Brief at 27-29. Hoonah raises a similar argument. Hoonah Brief at 33. In addition, the LBC's assertion that its denial of Dillingham's proposed annexation of an offshore area used by other communities is not relevant because it involved a city, to which different standards apply, ignores the fact that the LBC found that it would not be in the best interests of the state for one community to control revenue generating resources of another. Appellants' Opening Brief at 21.

[23] 863 P.2d 232 (Alaska 1993).

expand or form a separate borough, but then asserts that two boroughs in the region would be inconsistent with the LBC's vision of one borough in the region.[24] First, the communities have not advocated for a particular alternative borough, but presented to the LBC the ways in which the proposed borough is flawed, and offered potential solutions within the limited procedural structure of the LBC's decision making process. As the LBC admits, the Commission can only address the borough *as proposed*. Appellants therefore had only limited scope in which to raise concerns.

Significantly, the LBC now claims that the reason Gustavus, Pelican, and Tenakee Springs were excluded is that their inclusion would mean that the borough was not cohesive enough.[25] But that was not a basis for the LBC's decision. The word "cohesive" does not appear in its decision or on reconsideration.[26] Again, this is a post hoc rationalization, not the basis of the decision being reviewed.

2. The LBC Violated Its Regulations by Approving Enclaves

The LBC approved the proposed borough in violation of the regulatory presumption that creation of enclaves means that it does not meet legal standards.[27] The Commission did so knowingly, and contrary to the findings of its expert staff. To justify excluding Gustavus, Pelican, and Tenakee Springs, while allowing the proposed borough to take land surrounding these existing cities for its tax base, the LBC and Hoonah now insist that no

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24 LBC Brief at 32.

25 *Id.* at 33.

26 Exc. 542-575.

27 3 AAC 110.060(d).

enclaves are created because these communities are not completely encircled by the proposed borough. To support this position, they turn to irrelevant selected dictionary definitions and international examples, ignoring the common sense meaning of the word and concept as intended in the creation of regional government in Alaska. The definition they point to refers to sovereign nations – countries within the boundaries of another, not local communities within a region. Significantly, their examples focus only on the existence of a *boundary line*, not the *reason* the enclave exists, nor that it was created through a *mutual agreement*.[28] The definition the LBC and Hoonah point to acknowledges

[28] The LBC and Hoonah assert that Hoonah tried to work with communities in the region to form a borough and Gustavus, Pelican, and Tenakee Springs rejected those efforts. LBC Brief at 7, Hoonah Brief at 27-29, n.137. Their assertion is misleading and, importantly for purposes of this appeal, the LBC improperly accepted Hoonah's characterization of those discussions; it made no inquiry and therefore does not know the reason for these communities' objections. Taking one side without sufficient information on which to draw a conclusion is the definition of arbitrary action. In addition, the LBC and Hoonah misleadingly gloss over 2017 discussions about a potential borough and subsequent communications between Hoonah and these communities as if the fact of communication vs. the content of the proposed borough should be determinative. Again, the LBC had no information about the full content of those discussions, meaning it was arbitrary for it to accept Hoonah's characterization as true. *See* Exc. 158-159 (noting the lack of information regarding these communications and that a feasibility study would be helpful to answer the many questions regarding impacts and potential service delivery throughout the proposed borough). The LBC also continued to ignore the comments by LBC staff that it appeared there was a willingness to have further discussions. *See* Exc. 159. As Appellants stated in their opening brief, the Appellant communities' objection to the proposed borough was and is based on its structure which will disadvantage these communities' future self-determination. *See* Exc. 189; Appellants' Opening Brief at 30-31, n.114. It is also important to note that Elfin Cove, which was included within the proposed borough, raised similar concerns. As LBC staff noted, there is no reason to include that community in the proposed borough but exclude the others if the rationale for exclusion is community objection. Exc. 190. The LBC attempts to argue that the cities would not, in fact be disadvantaged upon joining the proposed borough because they would retain their status as cities, and the cities would "represent a substantial voting block for purposes of regional decision-making." LBC Brief at 47. LBC and Hoonah are well aware that

that these areas are created for inhabitants that are culturally or ethnically distinct.[29] Indeed, these examples illustrate that that the underlying rationale and mutual agreement for creation of the enclaves is critically important to the definition.

Hoonah cites as examples Vatican City within Italy, Lesotho within South Africa, and Klukwan within the Haines Borough, noting that each is encircled by another country or government.[30] Yet Hoonah ignores the fact that each is culturally or ethnically distinct from the surrounding country or community. More importantly, each enclave was created out of mutual agreement and recognition of the sovereignty of the enclaved community.[31]

Moreover, it makes no sense that the Alaska Constitutional framers would have intended to apply dictionary or international standards in determining whether intentionally

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Appellants' main concern is that the proposed borough government structure does not provide for fair representation for these communities, as borough governance is decided on an areawide basis. In addition, decision making would not be done by areawide votes, but by representatives elected on an areawide basis, which would likely mean most if not all borough government representatives would be elected from Hoonah, which has the single largest population.

29 LBC Brief at 25; Hoonah Brief at 36.

30 The LBC also expressly -- and erroneously -- relied on Vatican City and Switzerland as examples in making its decision that the proposed borough does not create enclaves. Exc. 1105-1106, AR 3737-3738.

31 Vatican City was established as an independent state from Rome by the Lateran Treaty of 1929. See Wikipedia https://en.wikipedia.org/wiki/Lateran_Treaty (accessed April 4, 2026). Lesotho became independent of South Africa in 1966 (after a long history of shifting British colonial and South African monarchical rule). *See* Wikipedia https://en.wikipedia.org/wiki/History_of_Lesotho (accessed April 4, 2026). The only other sovereign enclave in the world is San Marino in Italy, the oldest sovereign state. It has chosen to be autonomous from the rest of Italy for hundreds of years. *See* Wikipedia https://en.wikipedia.org/wiki/San_Marino (accessed April 4, 2026). The other example cited by Hoonah is Klukwan. That community chose to remain outside of the Haines Borough when it was formed because it is a sovereign tribal government.

excluding adjacent cities is appropriate in deciding formation of a borough. In the context of creating regional government, the purpose of this presumption is to prevent exactly the type of gerrymandering that the LBC authorized in this case. LBC's interpretation of the term enclave was therefore blatantly arbitrary and unreasonable.

It is important to reiterate that the LBC's expert staff explained the impact on Gustavus, Pelican, and Tenakee Springs by creating effective enclaves. Specifically, the staff noted that excluding them would hinder their future self-determination because they might be limited to joining a borough which may not share a contiguous boundary, be annexed later by the proposed borough at a disadvantage, or join the Sitka Borough and lose their city status.[32] In reaching its decision, the LBC simply failed to address these important factors,[33] rendering its decision by definition arbitrary and unreasonable.

Finally, the LBC now attempts to defend its decision by stating that the presumption against enclaves is to protect against voids within a borough that would restrict delivery of local services, claiming that only for a fully encircled enclave the surrounding borough is the most efficient regional government to provide services.[34] Significantly, this line of

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[32] Exc. 186.

[33] The LBC claims that the three enclaved communities' future ability to expand is irrelevant to whether they are enclaves and dismisses their significant concerns stating that Gustavus, Pelican, and Tenakee Springs can simply join another borough at some point. LBC Brief at 26, n.65. This demonstrates a cavalier attitude about the future of three cities within the perimeter of the proposed borough and a disregard for their well-being and the best interests of the state. The proposed borough creates a permanent disadvantage for these communities due to the class of their municipal government and rules governing annexation or adoption into another borough.

[34] LBC Brief at 26 (citing a 2003 report to the legislature that includes an explanation of regulations).

reasoning fails to acknowledge that in the case of full encirclement, efficient delivery of services would be secondary to the problem that the enclaved communities would be prohibited from joining any other borough because it would violate the regulatory prohibition against noncontiguous areas being part of a borough.[35] In other words, delivery of services is not a compelling argument.[36]

B. THE PROPOSED BOROUGH IS NOT IN THE BEST INTERESTS OF THE STATE

As Appellants established in their opening brief, the LBC is under a statutory obligation to reject a proposed borough that is not in the best interests of the State.[37] The proposed borough does not meet the standards to determine that it is in the best interest of the state. The LBC attempts to distract the court from this failure by citing inapplicable caselaw and conflating a statewide perspective to decision making with the required

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35 3 AAC 110.060(d).

36 Importantly, the LBC conveniently forgets that the proposed borough is only providing the minimal required services borough-wide: platting, zoning and land use regulation – services that can be provided electronically. There are no other services that will be provided by Hoonah in the proposed borough areas outside of the existing City of Hoonah. The LBC's litigation-generated justification for the Commission's decision is illogical and thus arbitrary and unreasonable. Hoonah argues that even if Gustavus, Pelican, and Tenakee Springs were enclaves, the presumption of enclaves can be overcome by a specific and persuasive showing that the Xunaa Borough does not include all the land and water necessary to allow for the full development of essential municipal services on an efficient cost-effective level. Hoonah Brief at 35, 37. But Hoonah will provide no more than the minimum municipal services outside the Hoonah townsite, and only at the direction of the LBC. Hoonah does not need all the land and water around the Appellant communities in order to provide the computer services of planning, platting, and land use regulation. The amount of land and water requested by Hoonah is disproportionate to the services being provided, and to the detriment of the enclaved communities.

37 AS 29.05.100(a).

standards to determine the best interests of the state. The court should reject the reject the proposed borough.

1. A General Statewide Perspective to Decision-Making is Not Relevant to Meeting Mandatory Requirements for Determining the Best Interests of the State

The LBC appears to conflate its judicially recognized authority to bring a statewide perspective to its decisions with its duty to meet the legal standards for determining that the proposed borough is in the best interests of the state.[38] In support of this argument, the LBC cites *City and Borough of Juneau v. State*[39] *(*which relies on *Yakutat*). The court should reject this straw man argument. Appellants are not arguing in favor of a competing proposal because none exists. Therefore LBC's decision on the proposed borough is not supported by these cases.

Yakutat was a challenge to the LBC's decision to remove an area from the proposed Yakutat borough because LBC determined it would more appropriately be part of a future borough in Prince William Sound.[40] *Juneau* involved a dispute between Juneau and Petersburg about certain contested areas that were included in both Peterburg's borough proposal and Juneau's annexation proposal.[41] In *Juneau*, the Alaska Supreme Court ruled

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[38] LBC brief at 16 ("Commission's role is 'represent statewide interests'"), 18 ("Commission elevated state's best interest"), 20 ("statewide perspective"), 21 ("statewide perspective").

[39] 361 P.3d 926 (2015).

[40] *Yakutat v. State*, 900 P.2d 721 (Alaska 1995).

[41] The City and Borough of Juneau ("CBJ") submitted its petition to annex certain lands six months after Petersburg had submitted a petition to form a borough and argued

that the LBC did not have to analyze two competing proposals head to head, but had to determine whether the boundaries in the borough proposal met the required standards.[42] Specifically, the LBC was required to focus its analysis on the proposed borough, not another proposal.[43]

The LBC admits that Appellants did not submit a competing petition, but claims its objections are tantamount to a competing proposal that it is not required to analyze head to head with the proposed borough.[44] It is absurd to argue that legitimate objections are somehow equivalent to a formal proposal and the LBC's failure to consider those objections is somehow a policy decision beyond review by this court.[45] The LBC is required by law to evaluate the proposed borough and only approve the borough if it meets

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that the LBC must consider both petitions in evaluating the standards. *Juneau,* 361 P.3d at 928, 933, 935.

42 *Id.* at 932. The Alaska Court explained that the LBC was required to determine the "most appropriate boundaries" for the Petersburg Borough, which required a "thorough consideration of alternative boundaries." *Id.* at 934-935.

43 *Id.* at 933.

44 LBC Brief at 21.

45 The LBC's position that Appellants' claims in opposition to the proposed borough are in effect a formal proposal is also inconsistent with the statements raised by LBC Commissioners during their decision meetings faulting these communities for *not* submitting a competing proposal.

the applicable standards and regulations and is in the best interests of the State,[46] regardless of any competing proposal.[47]

2. The LBC and Hoonah have Not Countered Appellants' Argument that the LBC's Decision Does Not Meet the Best Interests of the State

In their opening brief, Appellants demonstrated that the LBC failed to meet the standards for determining if a borough proposal is in the best interests of the state.[48] Under the Alaska Constitution, the purpose of boroughs is to promote maximum local self-government and a minimum number of local government units.[49] This is reflected in LBC regulations that define those terms. A proposed borough meets the "maximum local self-government" standard only if it extends local government "*on a regional scale*

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[46] AS 29.05.100(a). ("If the commission determines that the incorporation . . . , meets applicable standards . . and is in the best interests of the state, it **may** accept the petition. **Otherwise, it shall reject the petition.")** (emphasis added). Notably, the standard for the LBC acceptance of a petition was changed in 1994 (after the 1992 Yakutat borough decision) from "shall" to "may." The statute now clearly gives the LBC discretion to accept the petition — even if it meets the standards — but in this case the commission acted as though it had no discretion and was under an obligation to accept the petition even though it fails to meet standards.

[47] The LBC states that it was "[n]ot required to let Appellants' local political interests outweigh the state's interest." LBC Brief at 19. That is a mischaracterization. Appellants' argument has nothing to do with political interests, but is a challenge to the LBC's approval of the petition, despite its failure to meet standards required by the Constitution, statute, and regulations. Hoonah is the only community whose political interests were served with a proposed borough that takes resources and the future self-determination from Appellant communities. These local political interests cannot outweigh the best interests of the State or the Appellant communities.

[48] Appellants' Opening Brief at 36-49.

[49] Alaska Constitution Article X, Section 1.

to a significant area and population of the unorganized borough."[50] To defend its decision, the LBC contends that extending local government to just 49 people meets the "significant population" requirement because much of the *unincorporated* area of the proposed borough is uninhabited, and it need not consider Gustavus, Pelican, and Tenakee Springs because those are incorporated municipalities.[51] But the LBC's argument invents a special need to focus on *unincorporated* areas, a term or concept that does not exist in the Constitution nor regulation. The regulation is clear: it refers to extending local government to a significant population and area of the *unorganized borough* which includes the three communities enclaved by the proposal. When measured by that standard, excluding nearly half of the population in the unorganized borough in this region cannot reasonably be construed to meet the standard and should be rejected.[52]

Finally, in its argument generated for this court, LBC attempts to re-write 3 AAC 110.981(1), reading out of the regulation the phrase "on a regional scale." This is an unreasonable interpretation by the LBC. To meet the second part of the Constitutional "best interests" standard, the proposed borough must promote a minimum number of

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50 3 AAC 110.981(1) (emphasis added).

51 LBC Brief at 40-41.

52 In addition, this argument should be rejected because it was not the basis for the LBC Commissioners' decision. In its decisional meeting, the majority of Commissioners stated that "significant population" includes Hoonah despite less than 50 people being included that were not part of the existing City of Hoonah. Exc. 1073-1074. (Commissioner Harrington stating that "[t]his does not mean additional population. This means population, which includes the population of Hoonah." Commissioners Cyrus and Trotter agreed.)

local government units, maximizing an area and population with common interests.[53] In its brief, the LBC argues the proposed borough will in fact result in a net decrease in the number of government units simply because it replaces one unit, Hoonah, with another, the proposed borough (despite not adding any significant population or extending services beyond Hoonah townsite). This argument makes no sense. As Commission Chair Wood noted, the proposed borough would not promote efficiency, reduce state services (other than platting, which was included only upon LBC action to mandate it) or combine school districts.[54] These kinds of government units and functions are exactly what the Constitutional framers intended be minimized. [55] The proposal does not reduce the number of local government units.

The LBC now claims that the two separate regulatory standards are to be read as whole and creation of any borough which establishes a regional government is sufficient to meet this standard.[56] By such a definition, any conceivable proposal, even more extreme than this one, would automatically qualify. This is an unreasonable tautology which must be rejected.

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53 3 AAC 110.982.

54 Exc. 1088.

55 See *Keane v. Local Boundary Comm'm*, 893 P.2d 1239, 1244 n.7 (quoting Victor Fischer explaining that the standard is aimed at avoiding special districts for health, schools, or utilities and noting that the Constitutional provision expresses a "policy of minimizing the *number* of local government units.")

56 LBC Brief at 42-43.

3. The Proposed Borough Does Not Relieve the State of Providing Local Services

The LBC did not fully address whether the proposed borough will relieve the state of the responsibility of providing local services.[57] It simply assumed that services can be provided on an areawide basis.[58] But it also acknowledged that police, fire, emergency services and solid waste collection and disposal would only be provided in the existing Hoonah Townsite, not any of the other areas within the proposed borough.[59] This means that any community outside the existing City of Hoonah will have to provide services on their own (and Elfin Cove will be subject to a sales tax but receive no services).[60]

Before this court, the LBC now claims that basic services the Commission

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[57] Appellants' Opening Brief at 41-43.

[58] Exc. 573. There was a similar conclusion in the second written decision; Exc. 1108.

[59] Exc. 543. The LBC quibbles with Appellants' statement about the relative critical nature of platting zoning and land use regulation, (LBC Brief at 41) compared to police, fire, search and rescue by inaccurately claiming that Appellants characterized education and taxation power as non-critical services. LBC Brief at 44. Appellants make no mention of education and taxation. Moreover, the LBC again misstates facts. For example, the proposed borough has no plan to incorporate school-aged children and will not reduce the number of school districts in the region.

[60] The Appellants also will need to continue to provide their own services, despite the large areas of land and water surrounding their communities becoming part of the Xunaa Borough. As pointed out in the Appellants' opening brief, the creation of the proposed borough would have a negative impact on the Appellants' receipt of federal funds. Appellants' Opening Brief at 44-47. The LBC expects the Appellants to continue to provide their own services despite these communities having less federal funding to do so. On appeal, the LBC states that it "considered" this impact to the Appellants. LBC Brief at 46. Considering but ignoring the negative impacts to the Appellants in the creation of the proposed borough cannot reasonably be interpreted to fit within the statutory requirements that the proposed borough must be in the best interests of the state. The LBC cannot ignore negative impacts to other cities and residents of the State.

acknowledged would be provided only within the Hoonah townsite are in fact provided everywhere by the state, regardless of borough status.[61] However, one of the fundamental justifications for borough formation is that it will relieve the state of being the primary provider of these services. The proposed borough does not relieve the State of providing these services, therefore failing to meet the most basic of borough formation objectives.

IV. THE LBC'S DECISION DOES NOT MEET OTHER LEGAL STANDARDS

Appellants raised additional concerns regarding the LBC's failure to meet or at the least fully consider several other factors required for borough formation. These arguments demonstrate the extent to which the LBC strayed from its responsibility and at times seemed confused by the standards it is required to follow. They also demonstrate the future challenges this proposed borough would create. Chief among these concerns is the economic impact on Gustavus, Pelican, and Tenakee Springs of the loss of fish tax and PILT payments, and the confusion that will likely arise in the Glacier Bay region regarding Gustavus' existing mutual aid agreements, to say nothing of the confusion of the proposed borough imposing seasonal (tourist-related) sales taxes in waters and lands surrounding these communities. How will the borough and the communities know when, for example, a sport fisherman outside of Pelican is within or without borough boundaries and therefore subject to borough tax rather than city tax? It was arbitrary and unreasonable for the LBC

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61 LBC Brief at 44-45.

to approve a borough with arbitrary boundaries, creating enclaves that will lead to inefficiency, hardship and confusion.

V. AN LBC DECISION THAT KNOWINGLY AND INTENTIONALLY HARMS MULTIPLE COMMUNITIES WITHIN A BOROUGH REGION, TO THE BENEFIT OF ONE SINGLE COMMUNITY, IS BY DEFINITION AN ABUSE OF DISCRETION

The LBC's decision ignored its expert staff advice, was clearly confused about standards it must adhere to, and demonstrated a cavalier attitude toward Gustavus, Pelican, and Tenakee Springs for voicing objections to the negative impacts the proposed borough would cause to their communities. Worse, some of the Commissioners explicitly stated they felt it was justifiable to pick winners and losers among the region's communities, in direct contravention of their duty to act impartially.

The LBC suggests that the one-sided and biased comments made by the Commissioners show that the decision was "difficult" and deliberated with an open mind.[62] What the record actually shows is that the LBC attempted to massage the law to fit their pre-conceived notion that the proposed borough was "good" for the City of Hoonah, despite being detrimental to all the other communities in the region, and that Hoonah had earned the unfair advantages as a reward for their embrace of the tourist economy and other economic development.

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62 LBC Brief at 23, n.57.

CONCLUSION

In granting to the LBC broad discretion to serve the best interests of the state, the framers of the Constitution intended to create an impartial, dispassionate body to bring communities together and protect against factionalism and harmful squabbling over resources. The LBC's unprecedented actions here accomplished the exact opposite and are the textbook definition of an abuse of their discretion. Inappropriately siding with Hoonah against the interests of the other communities of the Glacier Bay region, LBC approved a borough that awarded virtually all the regions' valuable lands, waters and resources to and for the benefit of Hoonah townsite, including just half the population of the region, and isolating the other communities in functional enclaves. Should the court allow LBC's decision to go forward, Appellants' social and economic interests will be forever diminished, and they will reap little or no benefit from participation in any borough in the future. It is unfathomable how the LBC could have considered this result to be in the best interests of the Appellant communities, the Glacier Bay region, or the state as a whole. The court must find the LBC's decision to be arbitrary and unreasonable and reject the borough as proposed. If and only if it does so, all the communities in the region will have an opportunity to start anew and collaborate on a borough proposal that is truly in the best interests of the state.

DATED this 20th day of April 2026.

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CERTIFICATE OF SERVICE & TYPEFACE

I hereby certify that on April 20, 2026, a copy of the foregoing document, prepared in font Times New Roman 13, was served electronically through the TrueFiling system on Maria C. Smilde, Eugene F. Hickey, Paul H. Grant, Steven E. Kallick, Marlyn J. Twitchell, Megan J. Costello, James Sheehan, and Andrew Juneau.

/s/ Leith Parson