

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CITY OF PELICAN, COMMUNITY OF
ELFIN COVE, CITY OF GUSTAVUS,
CITY OF TENAKEE SPRINGS,
Appellants,

v.

LOCAL BOUNDARY COMMISSION,
Appellee.

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

APR 18 2025

By WD Clerk

Case No. 4JU-25-00604U

STATEMENT OF POINTS ON APPEAL

Appellants City of Pelican, Community of Elfin Cove, City of Gustavus, and City of Tenakee Springs (“Appellants”) specify the following points on appeal from the final March 20, 2025 decision of the Local Boundary Commission (“LBC”) approving a petition by the City of Hoonah to create the proposed Xunaa Borough.¹ Appellants assert that the LBC abused its discretion by failing to meet applicable Alaska Constitutional, statutory, and regulatory standards and guidelines; by failing to adequately consider all material facts and relevant issues; by rendering its decision based on inappropriate

¹ The final decision of the LBC, rendered on March 20, 2025 and being appealed here, is entitled “LOCAL BOUNDARY COMMISSION DECISION ON THE MOTIONS FOR RECONSIDERATION OF THE COMMISSIONER’S DECEMBER 20, 2024 APPROVING THE PETITION OF THE CITY OF HOONAH FOR INCORPORATION OF THE XUNAA BOROUGH AND THE DISSOLUTION OF THE CITY OF HOONAH.” (Provided as Exhibit 1). This decision incorporates all the evaluative and interim decisions and proceedings related to this matter, commencing on November 30, 2023.

considerations and erroneous conclusions; and by committing extensive procedural violations prejudicial to the Appellants and the general public. The following Points on Appeal identify the specific issues for which the Appellants seek reversal of the LBC decision:

1. The LBC erred in failing to address or appropriately apply numerous controlling principles of law, as required by the Alaska Constitution, the Alaska Administrative Procedures Act (AS 44.62), and established case law.
2. The LBC erred in granting the petition despite it violating the goals of the Alaska Constitution, Article X Section 3 and violating the language of the Alaska Constitution which states that the boroughs “shall be established in a manner and according to specific standards provided by law.”
3. The LBC erred in granting the petition in violation of Alaska law, specifically Alaska Statute AS 29.05.100(a), which requires that the LBC reject a petition when it fails to meet applicable standards under the Alaska Constitution, Alaska statutes, and the Commission’s regulations, and specifically provides that incorporation of a borough can only be approved when “it meets applicable standards under the state constitution and commission regulations, meets the standard of incorporation under AS 29.05.011 and AS 29.05.031, and is in the best interests of the state.”
4. The LBC erred in finding, under AS 29.05.100(a), that Hoonah’s petition was in the “best interests of the state” because Hoonah’s petition failed to meet several of

the relevant requirements of this test, even though AS 29.05.100 requires that a petition be rejected if it fails any of those requirements.

5. The LBC erred in finding, under Alaska Const., art. X, sec. 1, AS 29.05.031, and 3 AAC 110.045, that Hoonah's petition extended local government to a significant portion of the population of the Glacier Bay region, despite the proposed borough adding less than 50 residents from the unorganized borough, and leaving over 850 residents (essentially equal to the population of the City of Hoonah) of the Glacier Bay region out of the proposed borough.
6. The LBC erred in finding, under Alaska Const., art. X, sec. 1, AS 29.05.031, and 3 AAC 110.060, that Hoonah's petition promoted the minimum number of local government units, even though three of the region's four municipalities were left out.
7. The LBC erred in finding under Alaska Const., art. X, sec. 1, AS 29.05.031, and 3 AAC 110.060, that Hoonah's petition promoted the minimum number of local government units, when the petition replaces one government (the City of Hoonah) with another (the proposed borough) and does not reduce the number of governmental units or school districts in the region.
8. The LBC erred in finding, under Alaska Const., art. X, sec. 1, AS 29.05.031, and 3 AAC 110.060, that Hoonah's petition does not create disfavored enclaves by excluding three of the Appellant communities from the new Xunaa Borough, even though they are isolated from the new borough and from each other, are relegated

to a tiny percentage of the region, and are without any practical alternative to form or join a borough in the future.

9. The LBC erred in finding, under Alaska Const., art. X, sec 3, AS 29.05.031, and 3 AAC 110.045, that Hoonah's petition included the maximum possible area and population with common interests, because erroneously and without a reasonable basis in fact or law it determined that inclusion of three of the Appellant communities was impossible.
10. The LBC erred in finding, under Alaska Const. art. X, AS 29.05.031, and 3 AAC 110.060, that Hoonah's petition fairly and adequately apportions the Glacier Bay region's natural resources and revenue sources so as to provide the full and efficient development of essential municipal services, because the Xunaa Borough claims the vast majority of that wealth for itself, not sharing with Appellant communities, and precluding them from reaching their economic potential or providing necessary services.
11. The LBC erred in granting the petition despite it not meeting the Alaska statutory standards for a new borough boundary (AS 29.05.031(a)(2)) or the regulations that apply to a new borough (3 AAC 110.060) when the LBC failed to consider the lack of transportation facilities throughout the proposed borough, and where the LBC did not discuss the reasonably anticipated industrial, commercial, and resource development within the proposed borough.
12. The LBC erred in granting Hoonah's petition in violation of the Appellant's due

process and equal protection rights under the federal and state constitutions as well as the Alaska Constitution, art X, sec. 3, which required the LBC to fully consider the applicable statutes and regulations and deny incorporation when the petition failed to meet the requirements.

13. The LBC erred in basing its decision on a perceived, but fictitious, overriding legal mandate and state interest in forcing formation of new boroughs, even when all legal and regulatory standards have not been met and the interests of Appellant communities are clearly harmed.

14. The LBC demonstrated bias in favor of Hoonah over Appellants because it perceived that Appellants' stated concerns about Hoonah's petition were evidence of hostile and implacable opposition to the formation of boroughs generally, and the proposed Xunaa Borough specifically.

15. The LBC erred by applying an inappropriate criterion--the traditional use area of Hoonah Tlingit Tribe--to justify the expansive boundaries of the proposed borough, as this is not a relevant criterion under the Alaska Constitution, Alaska statutes, or regulations regarding the incorporation of a borough. Alaskan municipalities are not in any respect equivalent to federally-recognized Alaska Native Tribes. Alaska Native status and associated Tribal rights cannot be claimed by a municipal non-Tribal government, nor is it within the legal purview of the LBC to determine such rights and status.

16. The LBC erred in failing to adequately address numerous relevant factors and

issues, as required by the Alaska Constitution, the Alaska Administrative Procedures Act and settled administrative case law, as detailed in Points 16 through 36 below.

17. The LBC erred by not adequately addressing and explaining how the Hoonah petition would meet the requirements of AS 29.05.031 when it would only add approximately 49 residents of the unorganized borough in the Glacier Bay region to the borough, leaving more than 850 others excluded.
18. The LBC erred by not adequately addressing and explaining how the Hoonah petition would meet the requirements of AS 29.05.031 (bringing together communities of common interest and compatibility) by including only some of the communities in the Glacier Bay region and not others, appearing to exclude those needing municipal services, (such as support for their school districts), and include those that did not.
19. The LBC erred by not adequately examining or explaining how the Xunaa Borough boundaries in incorporating over 10,000 square miles of land and water did not request more than needed to provide the necessary services required for the development and efficient governance of the proposed borough as required under AS 29.05.031 to meet the boundary standard, despite the proposed borough only extending municipal services to the City of Hoonah townsite and not extending services to the entirety of the proposed borough.
20. The LBC erred by not adequately addressing and explaining the impact on

Appellant Elfin Cove of the new Xunaa Borough, even though it will be taxed by the proposed borough but not provided with municipal services.

21. The LBC erred by not adequately addressing the impact on Appellant Elfin Cove with the administrative burden to collect sales tax for the Xunaa Borough despite the proposed borough not taking over any of the services currently provided by the Appellants Elfin Cove to their residents.
22. The LBC erred by not adequately addressing the impact of including Appellant Elfin Cove in the new Xunaa Borough, where it will not have adequate or fair representation as the proposed borough assembly has only area-wide seats, and as the community of Elfin Cove has less than 35 residents and as a practical matter will be taxed without representation.
23. The LBC erred by not adequately addressing and explaining the impact of including Appellant Elfin Cove in the new Xunaa Borough despite the proposed borough boundaries precluding a possible future formation of a separate borough with the other Appellants of which they share more common interests.
24. The LBC erred by not addressing the concerns of Appellant City of Gustavus about being excluded from Glacier Bay by the new Xunaa Borough boundary, despite Gustavus' long-standing, extensive economic and service interrelationship with Glacier Bay National Park, its infrastructure and facilities.
25. The LBC erred by not adequately explaining how the Xunaa Borough could be considered regional in scale, when it did not incorporate all the similarly situated

communities in the Glacier Bay region, excluding and isolating three of the four municipalities without distinguishing their characteristics from the rest of the region.

26. The LBC erred by not adequately explaining why the Xunaa Borough would be allowed to limit most municipal and economic benefits to the current City of Hoonah townsite, not sharing those with other included settlements, as well as Appellants situated either inside or outside the Xunaa Borough boundary.
27. The LBC erred by not adequately examining or explaining how the Xunaa Borough boundaries, excluding three of four Appellants, could be considered to include all the land and water necessary to provide the necessary services required for the development and efficient governance of the entire Glacier Bay region.
28. The LBC erred by not adequately examining or explaining how the Xunaa Borough boundaries, excluding and permanently isolating three of the four municipalities in the Glacier Bay region, would “promote the minimum number of local government units” as required by the Alaska Constitution and implementing statutes and regulations.
29. The LBC erred by not adequately examining or explaining how relegating three of four Appellants into tiny enclaves, excluded from the Xunaa Borough boundaries, could be considered beneficial either to those communities or to governance of the Glacier Bay region as a whole in the best interests of the state.
30. The LBC erred by not adequately examining or explaining its pivotal factual

finding that Appellants Gustavus, Pelican, and Tenakee Springs were implacably opposed to the entire concept of borough formation and could not be enticed by terms fairer to their interests, even in the face of clear, explicit evidence to the contrary generated by the LBC's own administrative process.

31. The LBC erred by not adequately examining or explaining its wholesale rejection of the LBC's final staff report, including many conclusions and recommendations directly contrary to the Commission's decision.

32. The LBC erred by not adequately examining or explaining how the Hoonah petition's failure to provide incentives to the affected communities, such as political representation, spending tax revenue where raised, or the provision of vital services, may have impacted their engagement and input into the review process, when it was patently obvious that Appellants were never offered a reasonably fair proposal to consider.

33. The LBC erred in not adequately examining or explaining why it did not exercise its authority and discretion to reject the petition and allow Hoonah to propose a new petition for a regional borough with improved benefits and conditions for Appellants, including political representation, spending tax revenue where raised, or the provision of vital services.

34. The LBC erred in not adequately examining or explaining how emergency responses, firefighting, search and rescue, and other public safety services now being provided by Appellants throughout much of the region would be continued,

since it is clear that the proposed Xunaa Borough has no intention of providing them outside the current Hoonah townsite area and the loss of such emergency services is not consistent with the best interests of the state.

35. The LBC erred by not ordering a Borough Formation Study or some other similarly detailed analysis to adequately examine and explain the serious economic impacts of granting the Xunaa Borough new taxing authority and rights to government benefits, (such as municipal grants, federal payments in lieu of taxes, and National Forest Receipts revenues), and taking such revenue sources away from Appellants, despite the LBC staff report identifying this as one of the most important information gaps in the process of evaluating Hoonah's petition.
36. The LBC erred by not adequately examining or explaining how granting the Xunaa Borough new taxing authority and rights to government benefits (such as municipal grants, federal payments in lieu of taxes, and National Forest Receipts revenues), and removing most of those benefits from Appellant communities, would benefit the Glacier Bay region as a whole or be fair to all the citizens.
37. The LBC erred by granting Hoonah's petition and granting the Xunaa Borough new taxing authority and rights to government benefits, (such as municipal grants, federal payments in lieu of taxes, and National Forest Receipts revenues), and taking such revenue sources away from Appellants.
38. The LBC erred by not adequately examining or explaining significant, unresolved issues related to the adequacy of regional transportation facilities and services (AS

29.05.031 and 3 AAC 110.045), despite ample evidence offered by Appellants and the public of the expense, difficulty, and danger of travel across the Glacier Bay region, both within and outside the proposed Xunaa Borough boundaries.

39. The LBC decision was procedurally suspect and flawed in multiple ways, including inappropriate use of Executive Sessions during decisional meetings in violation of the Alaska Open Meetings Act (AS 44.62.310-.312) and LBC regulations (3 AAC 110.570); failure to provide written transcripts of meetings to the general public in a timely fashion (if at all); failure of LBC decisions to adequately address in writing critical factors in their deliberations; and possible unlawful *ex parte* communications and contacts between Hoonah and the LBC (3 AAC 110.500(b)).

40. The LBC unlawfully denied the citizens of Appellants City of Gustavus, City of Pelican, and City of Tenakee Springs from a seat in any regional governmental decision-making despite being surrounded by the very waters and lands that petitioner claims are abundant and rich in resources.

41. The LBC violated the Alaska Constitution and Alaska statutes (AS 29.05.031 and AS 29.05.100) when it approved a petition with boundaries that severely disadvantage, harm, and permanently isolate as enclaves the Appellant cities of Pelican, Gustavus, and Tenakee Springs.

42. The LBC intentionally and unlawfully denied the citizens of Appellants Gustavus, Pelican, and Tenakee Springs their constitutionally guaranteed right to vote on

matters critical to their direct interests, specifically whether to form the Xunaa Borough as proposed, for the illegitimate reason that Hoonah asserted, and some LBC Commissioners believed, that residents of those communities would vote against the proposal.

43. The LBC, by excluding Appellants Gustavus, Pelican, and Tenakee Springs from the opportunity to vote on the formation of a regional borough, engaged in illegal gerrymandering and interference with a public election.

44. The LBC, by including Appellant Elfin Cove in the Xunaa Borough, but excluding its co-Appellants, other similarly situated and concerned communities, has effectively watered-down Elfin Cove's representation and denied it the opportunity for a fair election.

45. The LBC and/or LBC staff unlawfully engaged in ex parte communications which are prohibited by 3 AAC 110.500 and 3 AAC 110.435.

46. The LBC's decision to grant Hoonah's petition in violation of applicable law was an abuse of discretion, arbitrary and capricious.

DATED this 18th day of April, 2025

LAW OFFICES OF PAUL H. GRANT
Attorneys for Appellant City of Pelican

Paul H. Grant AK Bar No. 7710124



Paul H. Grant
313 Coleman Street
Juneau, AK 99801
Phone: (907)586-2701
Fax: (907) 586-2722
Email: paul@paulgrantjuneau.com

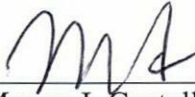
/s/ Steven E. Kallick

Steven E. Kallick, AK Bar No. 8506094
Of Counsel, Law Offices of Paul H. Grant
Email: steve.kallick@gmail.com

/s/ Marlyn J. Twitchell

Marlyn J. Twitchell, AK Bar No. 9406049
Of Counsel, Law Offices of Paul H. Grant
Email: marlynt1@gmail.com

FOGHORN LAW OFFICE, LLC
Attorneys for Appellants City of Gustavus and
Community of Elfin Cove



Megan J. Costello, AK Bar No. 1212141
P.O. Box 240378
Douglas, AK 99824
Phone: (907) 290-7004
Email: mjcostello@foghornlaw.com

DILLON FINDLEY & SIMONIAN, P.C.
Attorney for Appellant City of Tenakee Springs

/s/ John P. Wood

John P. Wood, ABA No. 0211056
1049 W. 5th Avenue, Suite 100

Anchorage, Alaska 99501
Phone: (907) 277-5400
Fax: (907) 277-9896
Email: jp@dillonfindley.com

Certificate of Service

On 4/18/25 a true and correct copy of the
STATEMENT OF POINTS ON APPEAL was served on the following attorney(s) of record:

U.S. Mail and Email:

Attorney General's Office:
Attorney General Treg Taylor
Alaska Department of Law
1031 West 4th Ave, Suite 200
Anchorage, AK 99501
Email: attorney.general@alaska.gov

cc:
Attorney General's Office
Alaska Department of Law
P.O. Box 110300
Juneau, AK 99811-0300

Local Boundary Commission
Commissioner of Alaska Department of Commerce and Economic Development
550 West Seventh Avenue, Ste 1535
Anchorage, AK 99501-3510
Email: dccd.commissioner@alaska.gov

cc: Local Boundary Commission
550 West Seventh Avenue, Ste 1640
Anchorage, AK 99501-3510
Email: LBC@alaska.gov

Attorneys for Petitioner City of Hoonah
James Sheehan
Andrew Juneau
Faulkner Banfield Law, P.C.
1 Sealaska Plaza Ste 300
Juneau, AK 99801
Email: jsheehan@stsl.com
ajuneau@stsl.com

Email only:

Attorneys for City of Pelican
Paul H. Grant
Steven E. Kallick
Marlyn J. Twitchell

Law Office of Paul H. Grant
313 Coleman Street
Juneau, AK 99801
Email: paul@paulgrantjuneau.com
steve.kallick@gmail.com
marlyntl@gmail.com

Attorneys for City of Gustavus
Megan J. Costello
Foghorn Law Office, LLC
P.O. Box 240378
Douglas, AK 99824
Email: mjcostello@foghornlaw.com

Attorneys for Community of Elfin Cove
Megan J. Costello
Foghorn Law Office, LLC
P.O. Box 240378
Douglas, AK 99824
Email: mjcostello@foghornlaw.com

Attorneys for City of Tenakee Springs
JP Wood
Dillon Findley & Simonian P.C.
1049 W. 5th Ave., Suite 100
Anchorage, AK 99501
Email: jp@dillonfindley.com

/s/ Leith Parson
Leith Parson