

IN THE STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

IN RE: PETITION BY THE CITY OF HOONAH)
FOR THE INCORPORATION OF THE XUNAA)
BOROUGH AS A HOME RULE BOROUGH)
AND DISSOLUTION OF THE CITY OF HOONAH)

**RESPONDENT ELFIN COVE’S RESPONSIVE BRIEF PURSUANT TO 3 AAC
110.580(F)**

Respondent community of Elfin Cove (hereafter “Elfin Cove”) opposes the Local Boundary Commission’s (hereafter “LBC”) decision to grant the petition to dissolve the City of Hoonah and incorporate the Xunaa Borough. Respondent Elfin Cove files this responsive brief describing in detail the facts and analysis to oppose the LBC’s decision to incorporate the Xunaa Borough, in accordance with 3 AAC 110.580(f).¹

Elfin Cove filed a request for reconsideration along with the City of Gustavus, in accordance with 3 AAC 110.580. Additional requests for reconsideration were filed by the Gustavus Visitor’s Association, the City of Tenakee Springs, and the City of Pelican. On January 21, 2025, the LBC granted the requests for reconsideration, and the LBC is reconsidering the decision to grant the City of Hoonah’s petition to dissolve the City of Hoonah and incorporate the Xunaa Borough. Elfin Cove understands that the LBC stated at the meeting on January 21, 2025 that it was going to reconsider whether the proposed

¹ Elfin Cove acknowledges that the LBC did not discuss the regulation allowing Respondents to file responsive briefs under 3 AAC 110.580(f) at the meeting on January 21, 2025. Elfin Cove files this responsive brief in accordance with 3 AAC 110.580(f). In a review of prior reconsideration procedures, Elfin Cove has identified that the LBC ordered responsive briefs by respondents in approving reconsideration IN THE MATTERS OF THE CONSOLIDATED ANNEXATION PETITIONS FOR THE CITIES OF DILLINGHAM AND MANOKOTAK, “Order Granting Requests for Reconsideration and Setting Briefing Schedule and Meeting Dates,” January 10, 2017.

Xunaa Borough met the required boundaries standard, and whether the creation of the Xunaa Borough is in the best interests of the State of Alaska.²

If a petition does not meet the Constitutional, statutory, or regulatory requirements for approval of a new borough, then approval of a petition is an abuse of discretion by the LBC. Under reconsideration of the petition, the LBC should undertake a re-examination of the standards and factors necessary for borough formation and may arrive at a different decision on the matter.³ If the proposed Xunaa Borough does not meet the boundaries standard, or is not in the best interests of the State of Alaska, the petition must be rejected.⁴ Based on the facts of the petition, and the comments and analysis provided by the LBC staff, the respondents, neighboring communities, and the public, Alaska law requires that the LBC reject the petition to incorporate a new Xunaa Borough and dissolve the City of Hoonah.

Elfin Cove hereby reasserts the basis for the LBC to deny the City of Hoonah's petition that were provided in the reconsideration requests that were filed. Elfin Cove refers the LBC to the substantive information provided in the requests for reconsideration for facts and analysis of why the proposed Xunaa Borough does not meet the standards required under Alaska law for incorporation. Elfin Cove also refers the LBC to Elfin

² The LBC did not address the other basis for reconsideration provided by Elfin Cove and the City of Gustavus, the City of Tenakee Springs, the City of Pelican and the Gustavus Visitor's Association. The LBC did not vote on whether to grant or deny the request for reconsideration under any of these other factors. Elfin Cove disputes that the LBC was not required to vote on whether to grant the requests under any of the other factors.

³ The LBC has done such re-examinations in the past. See for example, the January 30, 2017 decision reversing the approval of the City of Dillingham Annexation after reconsideration: *Statement of Decision on Reconsideration In the Matter of the January 3, 2017, request by respondents Native Village of Ekuk, et. al, for the LBC to reconsider the decision approving the City of Dillingham Annexation petition, with amendments, for the annexation of 279 square miles of land and water.*

⁴ Alaska Constitution, Article X Section 3; AS 29.05.100 (a) (best interests requirement); AS 29.05.031 (required standards to be found, including the boundaries standard at AS 29.05.031(a)(2)).

Cove’s respondent brief previously provided in response to the City of Hoonah’s petition. Elfin Cove does not want to duplicate information already provided or waste the LBC’s time. Elfin Cove files this responsive brief to highlight a few important things for the LBC to consider when examining the standards upon reconsideration.

I. The LBC cannot find that the Xunaa Borough met the required Alaska boundary standard for borough formation.

The petition does not meet all the required standards for borough formation under Alaska law and must be rejected pursuant to Alaska Statute 29.05.100(a), which specifically provide that incorporation 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 or 29.05.031, and is in the best interests of the state.”⁵ A petition must be rejected in accordance with the Alaska Constitution if it fails to meet the applicable statutory standard or commission regulations; this is true if even only one standard is not met.⁶

The required standards for a new borough in AS 29.05.031 includes the “boundary standard”: the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services.⁷ The proposed Xunaa Borough does not meet this boundary standard.

⁵ AS 29.05.100(a).

⁶ AS 29.05.100 (a).

⁷ AS 29.05.031(a)(2).

This is evident in reviewing the LBC Final Staff report⁸ and was also evident at the decisional meeting.⁹

The proposed Xunaa Borough does not comply with the Alaska regulations that apply the boundary requirement to the formation of a new borough.¹⁰ Hoonah has not provided sufficient evidence upon which the LBC could conclude that the proposed borough “included all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level.”¹¹ The Petitioners do not plan to provide services in new Borough area outside of the current City of Hoonah.¹² The proposed territory of annexation into the new borough includes more than is necessary to provide essential borough services on an efficient, cost-effective level within the City of Hoonah (as has been shown by the City of Hoonah’s success); there are no services being provided outside of the City of Hoonah, so the proposed territory of the new borough is more than necessary. The LBC upon reconsideration of the 2017 annexation of the City of Dillingham found that the proposed annexation territory “included more than necessary” when the proposed unpopulated area would not be provided services.¹³ The LBC denied the City of Dillingham’s petition for annexation

⁸ Final Staff report at 21-36.

⁹ Three commissioners agreed or did not disagree with the Chair that the Boundaries standard had not been met. (See 11/12/2024 Transcript, at 61-62, 99-100, 148.)

¹⁰ 3 AAC 110.060.

¹¹ 3 AAC 110.060.

¹² The LBC, in its written decision that is up for reconsideration added a requirement of platting, zoning, and planning to occur throughout the Borough.

¹³ See page 6, *Statement of Decision on Reconsideration In the Matter of the January 3, 2017, request by respondents Native Village of Ekuk, et. al, for the LBC to reconsider the decision approving the City of Dillingham Annexation petition, with amendments, for the annexation of 279 square miles of land and water.*

upon reconsideration, finding that the boundaries standard and best interests standard had not been met.¹⁴ The same reasoning applies to the proposed Xunaa Borough.

The proposed Xunaa Borough creates three impermissible enclaves.¹⁵ Alaska regulations contain a presumption that an area containing enclaves does not include all land and water necessary to allow for the full development of essential municipal services unless specific evidence proves contrary.¹⁶ There will be no services being provided outside the City of Hoonah, so there is no contrary evidence to rebut this presumption. The petition must be rejected on this basis.

The boundary problems demonstrate that the Petitioners did not design a true regional government as required by statute for the benefit of regional citizens and the best interests of the State. Elfin Cove objects to being locked into the Xunaa Borough boundaries and being precluded from possible future formation of a separate borough with the other three cities with whom they share more common interests.

II. The LBC cannot find that the Xunaa Borough is in the Best Interests of the State, which is required for approval.

The Alaska statutes allow for a new borough to be approved only when it has been found to meet all the Alaska standards and is in the best interests of the State of Alaska.¹⁷ 3 AAC 110.065 provides factors for the LBC to evaluate whether the proposed borough is in the best interests of the state, including whether the proposed borough:

¹⁴ *Id.* Elfin Cove understands that the LBC was reviewing the standard for annexation of cities (3 AAC 110.130); this regulation contains the same language that applies to the Xunaa borough, that it “must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.” (Compare with 3 AAC 110.060). The same analysis should exist with the proposed Xunaa petition.

¹⁵ The City of Gustavus, the City of Tenakee Springs, and the City of Pelican all will be bordered by existing boroughs.

¹⁶ 3 AAC 110.060(d).

¹⁷ 29.05.100(a).

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.¹⁸

The LBC staff did a thorough evaluation of the petition and found that approving the Xunaa borough was not in the best interests of the State.¹⁹ There is not sufficient basis for the LBC to grant the petition.

A. The proposed borough does not extend local government to a significant population of the unorganized borough.

For a proposed borough to promote maximum self-government, Alaska regulations provide that the proposal must extend local government on a regional scale to a significant area and population of the unorganized borough.²⁰ As already recognized by the LBC staff and the LBC, the population increase is negligible; the proposed Xunaa borough does not extend local government to a significant area and population.²¹ Less than one percent (1%) of the Hoonah's population would be added to the new proposed borough.²² At the decisional meeting the LBC recognized that the "population increase was negligible"²³ and brought in "so few additional residents."²⁴ There is no basis for the

¹⁸ 3 AAC 110.065.

¹⁹ LBC Final Staff report at 37-41.

²⁰ 3 AAC 110.981(1).

²¹ 11/12/2024 Transcript, at 64, 68. See LBC final staff report at 37.

²² LBC Final Staff Report, at 21.

²³ 11/12/2024 Transcript, at 64.

²⁴ 11/12/2024 Transcript, at 68.

LBC to determine that the proposed borough extends local government to a significant population of the unorganized borough.

In addition to not extending the local government to a significant population, the population that will be incorporated into the proposed Xunaa Borough have chosen to not join any established communities,²⁵ or have created their own communities, such as Elfin Cove. Incorporation into the new proposed borough does not give these residents of the unorganized borough a voice in local government, as the proposed borough only includes area-wide representation on the assembly.²⁶

B. The proposed borough does not relieve the state from providing services.

There is no net benefit to the government units by the creation of the Xunaa Borough. It does not incorporate any additional government units that would make creation of the Xunaa Borough efficient and reduce reliance on state resources.²⁷ It does not combine school districts. The petition does not meet this requirement. The proposed borough will not relieve the state government of the responsibility of providing local services.²⁸

C. The proposed borough negatively impacts Elfin Cove and the residents within it.

Elfin Cove will be negatively impacted by being in the proposed borough, which is not in the best interests of the state. This was laid out in Elfin Cove’s responsive brief,

²⁵ This would be the case for possibly a very few number of individuals who live year-round within outlying areas; the majority of private property is used for recreational and seasonal cabins and lodges.

²⁶ Proposed charter 2.03(B); See discussion in Final Staff Report at 41.

²⁷ The recreational cabin areas of Funter Bay, Horse Island, Colt Island are not “government units.” The religious group of Game Creek is also not a government unit. See www.seconference.org/game-creek/, last accessed on December 31, 2024. See also the comments by Game Creek. Elfin Cove is a non-profit corporation providing some government-type facilities, but is not a recognized Alaska city government unit.

²⁸ 3 AAC 110.065(c).

and in the request for reconsideration. Hoonah does not plan to take over any of the services currently provided by the community of Elfin Cove despite collecting sales tax within Elfin Cove. There has been a failure to acknowledge or address the administrative burdens on Elfin Cove to collect the new sales tax, as well as any impacts to sales.²⁹ Elfin Cove continues to have concerns regarding the State of Alaska Community Assistance Program (CAP) Funding, which Elfin Cove uses to help with the maintenance of community buildings, boardwalks, and harbors.³⁰ There was no evaluation about the possible impact the borough formation would have on this funding or on the maintenance of the community resources in Elfin Cove. The proposed borough will not add anything to the local community. The LBC must consider the negative impacts to the residents of Elfin Cove. There is no benefit to the Elfin Cove or the State by the Xunaa Borough formation.

III. CONCLUSION

The proposed Xunaa Borough can only be approved if it meets the Alaska statutory standards as required under the Alaska Constitution. The LBC staff found that this was not met.³¹ The petitioner has not proposed a true and inclusive regional government as required by the Alaska statutes. The petition does not meet the boundaries standard and is not designed in the best interests of the State. Elfin Cove respectfully request that the LBC deny the petition.

DESIGNATION OF REPRESENTATIVE:

²⁹ This is also true for any outlying businesses outside of Elfin Cove but within the new borough.

³⁰ Elfin Cove Responsive Brief, at 5.

³¹ Final LBC Staff Report, at 41.

The community of Elfin Cove has designated the following persons as their representatives for purposes of this responsive brief and all proceedings regarding the Petition by the City of Hoonah for the Incorporation of the Xunaa Borough as a Home Rule Borough and Dissolution of the City of Hoonah.

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DATED January 31, 2025

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