

## EXHIBIT E

### PETITIONER'S BRIEF IN SUPPORT OF INCORPORATION OF XUNAA BOROUGH

This exhibit presents a statement explaining how the proposed incorporation of the Xunaa Borough and accompanying dissolution of the City of Hoonah satisfy the standards set out in Article X, § 1 and Article X, §§ 1 and 3 of Alaska's Constitution; AS 29.05.031; AS 29.05.100; 3 AAC 110.045-065, 3 AAC 110.280 and 300, and 3 AAC 110.900-990. The brief references each of these standards and explains why the proposed incorporation is good public policy and is in the best interests of the state as required by AS 29.05.100. The brief demonstrates that:

- a. The proposed incorporation promotes equal rights, opportunities, protections, and obligations among all Alaskans in accordance with Article I, § 1 of the Constitution of the State of Alaska.**

Some 47 Alaskans who have never been part of any municipality will now be part of and represented by a local government and thus enfranchised through Xunaa Borough incorporation. This will promote equal rights, opportunities, protections, and obligations for these Alaskans.

- b. Incorporation promotes maximum local self-government with a minimum of local government units in accordance with Article X, § 1 of the Constitution of the State of Alaska and 3 AAC 110.981(1).**

While the number of local government units stays the same (one first class city is dissolving and one home rule borough is forming), local government will be brought to 47 Alaskans and the communities of Game Creek, Elfin Cove and Funter Bay who currently have no organized local government at all. This net gain in the reach of organized local government will occur without any increase in the number of local government units. Moreover, the petition meets the standards of 3 AAC 110.981(1) in that borough incorporation would extend local government on a regional scale to a significant area of the now-unorganized borough.

- c. The boundaries of the proposed borough embrace an area and population with common interest to the maximum degree possible in accordance with Article X, sec. 3 of the Constitution of the State of Alaska.**

This is documented in Sections d and h, below.

- d. The social, cultural, and economic characteristics and activities of the people in the proposed borough are interrelated and integrated as required by AS 29.05.031(a)(1) and 3 AAC 110.045(a).**

As an overview, the proposed Xunaa Borough comprises three permanent communities and one seasonal community:

- Hoonah, located along Icy Strait, is Alaska's largest Tlingit Indian village;

- 8.9 miles by road from Hoonah lies Game Creek, an insular and largely self-sufficient religious community. Hoonah and Game Creek are the only communities within the borough that are connected to each other by road;
- Elfin Cove is a permanent fishing community located along the northern shore of Chichagof Island, 33 miles from Hoonah; and
- Funter Bay, on the western shore of Admiralty Island, is a seasonal community of vacation homes.

The entire proposed Xunaa Borough depends on three economic and social constants: subsistence harvesting, commercial fishing, and, in the 21<sup>st</sup> century, tourism. All of this occurs along a central highway, Icy Strait; its two termini (Chatham Strait and the Gulf of Alaska); and its great interior waterways, Glacier Bay and Lisianski Inlet. For hundreds of years, the village (now the city) of Hoonah has been the hub of this region, and even the proposed borough's most remote residents depend on Hoonah for supplies, support, and transportation.

To begin with, there is certainly “compatibility of urban and rural areas within the proposed borough.” 3 AAC 110.045(a)(1). While the City of Hoonah may seem numerically more “urban” than the borough's more remote communities, with a subsistence consumption rate of 898 lbs./household/year (*see subsection (i)(B), post*), it is hard to view Hoonah as “urban.” Moreover, the entire borough—including Hoonah—is classified as “rural” for the purpose of applying the rural subsistence preference of Title VIII of the Alaska National Interest Lands Conservation Act. 36 CFR §242.23(a).

Moreover, the City of Hoonah recognizes the more remote borough residents' desire to retain their independent lifestyles. 3 AAC 110.045(a)(2). To that end, and as noted in Section 11 of the Petition and **Exhibit F** (transition plan), the Xunaa Borough would not levy any property or sales tax (other than the 1% seasonal areawide sales tax described in Section 11.B of the Petition) on anyone outside the Hoonah Townsite Service Area, and it would leave every other borough community relatively free of regulatory oversight and unwanted municipal services.

And, although the Tlingit language is being aggressively preserved in the City of Hoonah, the English language is universal throughout the proposed borough. 3 AAC 110.045(a)(4).

Any discussion of the cultural and economic heart of the proposed borough necessarily begins by recognizing that the borough subsumes the ancestral lands of the Huna Tlingit, who still concentrate their subsistence fishing and hunting within borough boundaries:

**(i) The Proposed Borough Entirely Comprises the Ancestral Lands and Principal Subsistence Areas of the Huna Tlingit.**

A map of the Huna Tlingit's historic territory is appended as part of **Exhibit K**.<sup>1/</sup> To add narrative to that map, the corners of that territory can be described thusly:

- On the northwest, Huna Tlingit territory is bordered by Yakutat Tlingit territory at a line just north of Cape Fairweather. *Id.*;
- On the southwest, the territory subsumes the whole of Yakobi Island and meanders further south to a point just below the mouth of Lisianski Strait (Point Urey). *Id.* at 57;
- The southern boundary runs from Point Urey directly eastward across the upper portion of Tenakee Inlet, reaching Chatham Strait at Point Augusta. *Id.* at 60; and
- From Point Augusta, the border runs northward to include Point Couverden and all of Excursion Inlet. *Id.* at 54, 60 and Chart 8. And, as we shall see, the reach of the Tribe's traditional subsistence harvest includes portions of Admiralty Island's Mansfield Peninsula.

The proposed borough includes all of that territory, with one troubling exception: In 1974, the LBC allowed the Haines Borough to annex the Huna Tribe's historical portion of the Chilkat Peninsula, including the east bank of Excursion Inlet. This despite staff recommendations that the ties between Haines and the peninsula were too tenuous to warrant annexation. DRCA *Staff Report, In the Matter of Annexation of Adjacent Territory to the Haines Borough*, Feb. 28, 1974 at 11–12. And this also despite the fact that this portion of the peninsula, including Excursion Inlet, was exclusively Huna Tlingit territory onto which Klukwan (Haines) Tlingit would not enter. As ADF&G researchers have found:

*"The concept of territory came through repeatedly. . . . Respondents appeared to have a clear idea of where they should hunt, fish, and gather, and where they would be intruding in the territory of another community. . . .*

*Our research task was basically one of discovering the rather clearly demarcated territorial boundaries observed by Hoonah subsistence hunters, fishers, and gatherers. [For example,] Point Howard demarcates Hoonah territory from that of Haines and Klukwan on the Chilkat Peninsula.*

Schroeder and Kookesh, *Subsistence Harvest and Use of Fish and Wildlife Resources and the Effects of Forest Management in Hoonah Alaska*, Technical Paper 142, ADF&G 1990 ("*Tech Paper 142*") at 155. **Exhibit L**.

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<sup>1/</sup> The map is taken from Goldschmidt and Haas, *Haa Aaní / Our Land: Tlingit and Haida Land Rights and Use*, U.W. Press/Sealaska Heritage Foundation, 1998, Chart 8 ("*Haa Aaní*"). That map, and the Huna Tlingit chapter of *Haa Aaní*, are attached as **Exhibit K**.

Granting the current petition will not cure that injustice. But by folding the remaining Huna Tlingit territory into a single borough in which Huna Tlingit will have a voice, the LBC will be preventing a repetition.

Two aspects of this territorial discussion below warrant note. First, and as the above-quoted reference to the Chilkat Peninsula illustrates, Tlingit boundaries are far more than aspirational. They are bedrock cultural rules that command respect and deference.

Moreover, those boundaries maintain their currency. As ADF&G has found, “[t]raditional boundaries between Native communities appear to be maintained to the present time for subsistence.” **Exhibit L** at 189. As that report also notes:

*[T]he overall extent of Hoonah’s contemporary subsistence use areas is very similar to the traditional Huna territory that was occupied at the time of contact with western societies at the beginning of the colonial era.*

*Id.* at 188.

Territorial demarcation manifests itself in two ways: physical occupation and gathering subsistence resources. The following subsections treat those two in turn:

**(A) Physical Occupation, Cultural Ties, and the Glacier Bay Homeland**

As to the original settlement of Icy Strait and environs by the Huna Tlingit: “Tlingit oral history suggests human habitation of the Gustavus area up to 4,500 years ago when a Tlingit settlement existed in [Glacier Bay’s] Bartlett Cove.”<sup>2</sup> / For its part, hard archeological evidence of Huna occupation reaches back 500–900 years.<sup>3</sup> /

Any narration of the Huna Tlingit’s territorial reach necessarily begins with Glacier Bay. The Huna Tlingit “settled on the broad outwash plain that built up in front of the quiescent Glacier Bay glaciers, calling the area S’é Shuyee [land at the end of the glacial silt].”<sup>4</sup> / According to Goldschmidt and Haas’ lodestar treatise *Haa Aaní / Our Land*:

*[Glacier Bay] is the earlier home of the Hoonah people and was described as the “Hoonah breadbasket” or the “main place for the Hoonah people.” From it were obtained nearly every item in the economy of the Hoonah people. . . .*

**Exhibit K** at 54. The tribe maintained a significant village at Bartlett Cove, which was “the most important area in Glacier Bay” for the Huna Tlingit. *Id.* at 55. The Huna Tlingit also constructed a fort at Berg Bay, and Glacier Bay was intensely harvested for virtually every

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<sup>2</sup> / Alaska Division of Community and Regional Affairs, *City of Gustavus, Three Year Anniversary Review*, (“DCRA Review”) at 2.

<sup>3</sup> / National Park Service, *Glacier Bay: A History of Administration and Visitor Use in Glacier Bay National Park and Preserve*, Ch. 1 (Indigenous People) (undated). **Exhibit M.**

<sup>4</sup> / Crowell et al., *The Hoonah Tlingit Cultural Landscape in Glacier Bay National Park and Preserve: An Archeological and Geological Study* (“Crowell”), USNPS 2013 at 7, attached hereto as **Exhibit N.**

subsistence resource, with camps, smokehouses, and maintained gardens laced throughout it. *Id.*

Another permanent settlement occupied Point Carolus on Glacier Bay's western shore. *Id.* The Beardslee Islands were intensively used for berry picking, deer hunting, and sealing (*id.*), and seasonal fishing camps stretched well up-bay, such as the mid-bay camp of Chookanhéeni. **Exhibit N** at 8, 88.

Around 1700, in the depth of the Little Ice Age, advancing glaciers pushed the tribe to the edge of Glacier Bay. **Exhibit N** at 8. Three centuries later, the tribe was dispossessed from the bay in its entirety when Glacier Bay National Park was formed, and the Tribe's "summary expulsion remains a matter of concern and disappointment to the Natives." **Exhibit K** at 54.

Today, there are 20 Huna tribal member allotment parcels in and bordering Glacier Bay. **Exhibit R**. That limited population, however, was not the Tribe's idea. As the National Park Service explains:

*Glacier Bay National Park is the ancestral homeland of the Huna Tlingit who sustained themselves on the abundant resources found throughout the Bay prior to the Little Ice Age. Although villages inside the Bay were overrun by glacial advances in the 1700's, the Huna Tlingit re-established numerous fish camps and several seasonal villages soon after glacial retreat. The 1925 establishment of Glacier Bay National Monument (and later National Park in 1980) led to a period of alienation and strained relationships between tribal people and the National Park Service.*

Nat'l. Park Service, *Collaborative Milestone: Tribal House Project*, Feb. 27, 2019 at 2 (**Exhibit S**). Nor are the Huna Tlingit's ties to the bay simply economic and historical. To this day, the Bay forms the foundation of Huna Tlingit culture, the survival of which depends on tribal members' ability to maintain their rooted relationship with the area. On July 12, 2016, the Hoonah Indian Association (the federally-recognized tribe for the Huna Tlingit) and the National Park Service entered into a Memorandum of Understanding that created a formalized government-to-government relationship between the two that was intended, among other purposes, to launch an era where tribal history and local knowledge, use of tribal place names, and tribal cultural imperatives are integrated in NPS decision-making.<sup>5/</sup> In that MOU, the parties acknowledged the critical *present-day* interests at stake in the document:

*Glacier Bay encompasses much of the traditional homeland of the Huna Tlingit who sustained themselves for countless generations on the rich bounty of the area's marine and terrestrial environments.*

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<sup>5/</sup> *Memorandum of Understanding, Dept. of the Interior, Nat'l Park Service, Glacier Bay Nat'l. Park and Preserve and Hoonah Indian Assn.: Establish a Framework for Cooperative Government-to-Government Relationships (Exhibit T).*

*The unique human culture that developed with this landscape is replete with stories, songs, artwork, regalia, place names, and personal names which inextricably tie clans and individuals to particular places in Glacier Bay. Despite migrations away from homeland and periods of alienation, Huna Tlingit culture depends on an ongoing relationship to places of clan origin, epic battles, tragic and triumphant events, and resource gathering within the park. The Huna Tlingit were, and remain, cultural stewards of the lands and waters that now comprise Glacier Bay National Park.*

....

***The ongoing relationship between tribal members and the tangible and intangible resources of Glacier Bay are vital to the living Huna Tlingit Culture.***

....

*The Tlingit concept of “haa shagoon”—referring to a tribe’s origin or heritage (its ancestral past) as well as its destiny or fate—ties living Huna Tlingit to ancestral souls as well as future generations dependent upon the Glacier Bay homeland. The Huna people see themselves as part of, not separate from, the Glacier Bay ecosystem.*

....

***For the Huna Tlingit, a meaningful relationship with homeland is essential to sustaining the culture itself.***

*Id.* at 1–3 (emphasis added).

The endurance of the Tribe’s cultural ties to the Bay have translated into a significant physical presence in the Park as well. In 2016, the Xunaa Shuká Hít—a Huna Tribe clan house—was opened in Bartlett Cove within the park to a grand ceremony capped by the arrival of freshly-carved dugout canoes from Hoonah.<sup>6/</sup> Design and construction of the house was a collaborative NPS/Tribal effort, and today the house “is used for a range of cultural activities including language retreats, traditional memorial gathering, spirit camps, and Tribal Council meetings.” *Id.* The Park Service has worked with the Tribe to “develop educational programs for Huna youth, sponsor summer culture camps, and collect and preserve oral histories. Each year, the park sponsors a range of cultural trips which allow Hoonah youth, elders, and other tribal members the opportunity to reconnect with Glacier Bay and share their knowledge of, and experiences with, this place that figures so prominently in their spiritual lives.”<sup>7/</sup>

The Tribe was recently granted an FCC license to bring internet service to Glacier Bay after demonstrating to the FCC that it had the requisite “local presence” to qualify as Huna

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<sup>6/</sup> See generally, **Exhibit S.** Juneau Empire, *After Hundreds of Years, Huna Tlingit Return to Ancestral Homeland of Glacier Bay*, Aug. 31, 2016.

<sup>7/</sup> Nat’l. Park Service, *Glacier Bay Homeland*, April 6, 2020.

Tlingit “Tribal Land” under agency regulations. <sup>8/</sup> And, the Tribe, and indeed all borough residents, will continue to press for recognition and protection of their rural subsistence rights under Title VIII of Alaska National Interest Lands Act.

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Branching out from Glacier Bay, there were Huna Tlingit settlements throughout Icy Strait, as well as the outside waters from Cape Fairweather south to Lisianski Strait. For example:

- A Huna clan maintained a village at Dundas Bay on the north shore of Icy Strait named L’istee. <sup>9/</sup> A fort was built along the lower Dundas River, the remains of which have been carbon-dated to the 13<sup>th</sup> century. **Exhibit N** at 41;
- Along the outer coast north of Cape Spencer, the Huna Tlingit maintained a string of camps and shelters built to provide safe harbor on the perilous canoe journey from Hoonah to Lituya Bay. As Goldschmidt and Haas describe it:

*Among the more daring feats of the Tlingit hunters was the trip through the perilous Inian Pass and Cross Sound to equally perilous Lituya Bay in hand-made canoes. These trips were made after the highly prized sea otter. Informants were in close agreement that this area was the territory of the T’akdeintaan clan of the Hoonah people—a fact recognized as well by the Tlingits of Yakutat.*

**Exhibit K** at 56. There were two Huna villages at Lituya Bay, and several documented shelter camps along the outside coastal waters en route to the Bay. **Exhibit N**, 4, 15, 17, 26, 27, 90, 93;

- According to testimony gathered by Goldschmidt and Haas, “The whole of Yakobi Island was claimed by the Hoonah people. Soapstone Cove was a place where the T’akdeintaan used to have their houses, but this was long before our time. [The clan h]ad smokehouses and gardens and hunted deer.” **Exhibit K** at 57;
- According to the Division of Community and Regional Affairs:

*During 1805 to 1880, a clan house existed at Point Gustavus and approximately six fish and summer camps were located in the nearby Gustavus area. The clan house was inhabited until 1922 and played an important role in Wooshketaan Tlingit history.*

DCRA Review at 2; see also **Exhibit K** at 56.

- Evidence of Huna Tlingit homes, smokehouses, cemeteries, and villages are strewn throughout the proposed borough area, including Taylor Bay (winter village. *Id.* at 56); Point Couverden (village at Ashley entrance; cemetery. *Id.* at 54); Excursion Inlet

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<sup>8/</sup> 47 C.F.R. §27.1204(b);

<https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdmin.jsp?applID=12291106#>.

<sup>9/</sup> **Exhibit K** at 55.

(village; camp; smokehouses. *Id.*); Lemesurier Island (fort and village. *Id.* at 56); Icy Point (shelter camp. *Id.* at 56–57); Inian Islands (village with multi houses. *Id.* at 58); Mud Bay (village with houses. *Id.*); Idaho Inlet (summer camp. *Id.*); and Spasski Creek (smokehouses. *Id.* at 60).

### **(B) Gathering Subsistence Resources.**

Historically, and to this day, Hoonah remains heavily dependent on the harvest of subsistence resources. A 2012 ADF&G survey found that 76% of Hoonah's residents harvested subsistence food, producing an average annual household yield of 898 lbs. of usable weight. <sup>10/</sup>

That same study documented the Huna Tlingits' principal areas for subsistence hunting and fishing. The results show that, quite apart from activity occurring near the City of Hoonah, the outer reaches of the proposed borough are equally (and in some instances more) important for the subsistence harvest. For example:

- Concentrated subsistence deer hunting occurs throughout northeast Chichagof Island, including Whitestone Harbor, Freshwater Bay, and Tenakee Inlet. *Id.* at 163. Another ADF&G study found that concentrated subsistence deer hunting occurred along Idaho Inlet near Elfin Cove and at Funter Bay. **Exhibit L** at 161;
- Primary king salmon fishing areas include the west coast of Yakobi Island and around Point Augusta, as well as at Port Althorp, also near Elfin Cove. **Exhibit O.** at 147; and
- Hoonah residents harvest Pacific halibut throughout Icy Strait, east toward Chatham Strait and north past Cape Spencer, as well as in Port Frederick and Freshwater Bay. *Id.* at 152.

In *Haa Aaní* (**Exhibit K**), Goldchmidt and Haas described the Huna Tlingit's historical dependence on other areas for subsistence resources. They note, for example, that Lisianski Strait "was an important source of food for Hoonah people. It provided seal, halibut, king salmon, deer, clams, crab and gumboots. . ." *Id.* at 58. The Strait was also a source of wood for canoes. *Id.* And, of course, most of the physically settled sites described above were placed there because of the abundance of subsistence resources in those areas.

Offshore, The Fairweather Grounds, in the Exclusive Economic Zone off Cape Spencer, were a concentrated sea otter hunting area for the Huna Tlingit, who traded to pelts from their trading center and Dundas Bay and who aggressively enforced the exclusivity of their hunting rights to those Grounds. <sup>11</sup>

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<sup>10</sup> / Sill and Koester, *The Harvest and Use of Wild Resources in Haines, Hoonah, Angoon, Whale Pass, and Hydaburg*, Technical Paper 399, ADF&G 2012 at 126 (**Exhibit O**).

<sup>11</sup> / **Exhibit DD.** Langdon, *Events of 1880—extracts from Langdon/Grant clan presentation pertaining to unextinguished aboriginal rights outside of 3-miles* (Oct. 31, 2015).

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Granting the current petition will assure the Huna Tlingit a voice in the stewardship of its remaining ancestral lands, on which the Tribe still heavily relies in preserving its culture and subsistence tradition. Now that the Tribe has been denied such a voice in Excursion Inlet, it is doubly important to protect the remainder—before it, too, is potentially carved up into little pieces and taken away.

### **(ii) Hoonah’s Dependence on Commercial Fishing**

Major commercial fisheries and canneries sprouted throughout the Icy Strait area, including Hoonah, between 1880 and 1910. **Exhibit L** at 28. The Hoonah Packing Co. cannery opened in 1901. Since then, concentrated commercial fishing and processing within the proposed borough have continued unabated. *Id.* at 28–31.

According to Commercial Fisheries Entry Commission statistics, in 2021, 76 Hoonah limited entry permit holders held 117 limited entry permits yielding an ex-vessel catch value of \$2,547,165. <sup>12/</sup> Sixteen Hoonah fishermen hold lifetime commercial fishing access permits in Glacier Bay. <sup>13/</sup>

### **(iii) Other Borough Residents’ Dependence on Commercial Fishing**

Elfin Cove is a “small fishing communit[y] that [was] founded around commercial fishing and fish buying—economic activities that continue to be community mainstays.” **Exhibit L** at 26. Most businesses in Elfin Cove are directly linked to either commercial fishing or fishing charters. CFEC 2021 records list nine Elfin Cove limited entry permit holders with gross earnings of approximately \$378,191. <sup>14/</sup> Moreover, per capita consumption of subsistence-caught resources has averaged 264 lbs./yr. **Exhibit L** at 95. When commercial fishing was severely restricted in Glacier Bay, Elfin Cove received \$575,418.46 in compensation—nearly as much as did the City of Hoonah (\$701,488.50). <sup>15/</sup>

For its part, Funter Bay is primarily comprised of seasonal recreational dwellings, where the recreational activity centers on boating and fishing.

The following table demonstrates the 2017-2021 ex-vessel value of all commercially landed salmon, halibut and crab caught in proposed borough waters, and in certain offshore waters where the harvest has historically been sold principally within the proposed borough:

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<sup>12/</sup> <https://www.cfec.state.ak.us/gpbycen/2021/105183.htm>.

<sup>13/</sup> National Park Service, Response to City of Hoonah Freedom of Information Act Request, Oct. 27, 2022.

<sup>14/</sup> <https://www.cfec.state.ak.us/gpbycen/2021/105176.htm>.

<sup>15/</sup> <https://www.nps.gov/glba/learn/management/upload/2003CommFishArchive.pdf>.

### Harvest in Waters Within Proposed Xunaa Borough

Year	Species Group	Landed Weight	CFEC Value	Permit Count	Vessel Count	Processor Count
2017	Crab	228,596	\$707,653	10	10	8
2017	Groundfish	1,020,856	\$3,719,394	336	206	38
2017	Halibut	1,333,812	\$7,865,790	227	147	19
2017	Salmon	54,131,067	\$31,191,185	571	577	85
2018	Crab	393,441	\$1,192,198	11	11	7
2018	Groundfish	1,163,713	\$4,199,097	386	218	55
2018	Halibut	1,606,970	\$8,350,706	258	152	24
2018	Salmon	2,200,159	\$5,397,889	315	321	53
2019	Crab	255,998	\$761,061	18	18	9
2019	Groundfish	1,066,408	\$3,652,184	340	203	42
2019	Halibut	1,628,069	\$8,839,078	251	155	23
2019	Salmon	4,163,317	\$5,476,797	370	370	61
2020	Crab	691,616	\$1,158,610	22	21	9
2020	Groundfish	1,284,778	\$3,161,415	299	185	34
2020	Halibut	1,405,152	\$6,142,093	202	144	21
2020	Salmon	2,328,702	\$5,051,349	289	288	50
2021	Crab	255,348	\$1,085,291	21	19	10
2021	Groundfish	1,759,431	\$4,703,316	321	200	47
2021	Halibut	1,983,630	\$12,651,342	234	154	23
2021	Salmon	15,284,951	\$11,535,454	367	369	71

**Exhibit Q.** It is reasonable to assume that a significant percentage of that catch was landed by borough residents or by those using primarily Hoonah, and secondarily Elfin Cove, for fuel, supplies, or logistical assistance (see subsection (iv), below).

**(iv) Hoonah’s Role as the Hub of the Proposed Borough**

Hoonah has been the heart of this region, past and present:

**(A) Hoonah’s Historic Role as a Regional Hub**

At least since the Huna Tlingit’s forced exodus from Glacier Bay, Hoonah has been, as it were, the capital of the region included in the proposed borough. “Hoonah grew in importance as a central place for the Huna Tlingit Indian Tribe in the late 1800s with the establishment of schools, a post office and other services.” **Exhibit L** at 117. The town was a commercial fishing hub throughout the 20<sup>th</sup> century. <sup>16/</sup>

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<sup>16/</sup> Early in the 20<sup>th</sup> century, “Hoonah developed a strong commercial fishery fleet focused on seining and power trolling for salmon. This fleet has generally fished with the traditional territory of the Huna Tlingit when fishing regulations permit. Commercial fishing for halibut increased in importance after World War II.” **Exhibit L** at 30.

Hoonah became the center of the region's forestry industry in the 1980s. At the time, the USFS engaged in extensive logging in northern Chichagof Island, using two log transfer facilities near Hoonah. *Id.* at 53. Huna Totem began logging its nearby ANCSA village corporation land in 1982, constructing a log transfer facility a mile from the town. Sealaska Corporation began logging its nearby lands in 1987. As ADF&G summarized:

*In summary, 1979 through 1985 saw a relatively rapid development of the timber industry in the area near Hoonah, including construction of 159 miles of road in a previously roadless area, opening of three LTFs and number of large logging camps, the introduction of a logging population of about 400 persons, and the clear-cutting of 6,400 acres of timber within 20 miles of Hoonah.*

*Id.* at 56. Although personnel involved in the timber industry were often remotely housed at locations such as the now-closed Whitestone Logging Camp, the industry and its employees depended on Hoonah for a full range of municipal and private sector services, including provisions, fuel, emergency services, and transportation from the Hoonah airport or harbor to Juneau and then the lower 48.

**(B) Hoonah's Current Role as Regional Hub. 3 AAC 110.045(a), (c)-(d).**

*(1) Transportation*

Save for a connecting road between Hoonah and Game Creek, the "customary and simple [means of] transportation" [3 AAC 110.045(a)(3)] throughout the borough are boat and aviation. Hoonah lies at the heart of both.

With respect to vessels, the City of Hoonah (and, upon incorporation, the borough) owns and operates 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.<sup>17/</sup> That is the largest harbor travel lift in northern Southeast Alaska.

The harbor offers both short- and long-term moorage, with 30-50 amp power, for boats up to 62 feet in length. *Id.* The harbor's boatyard has a capacity of 25 vessels (up to 95 ft.) for both boat storage and maintenance, relying on two experienced local shipwright companies to conduct boat repairs. Hoonah's marina facilities are comparable to those that a much larger community might expect, and the harbor and shipyard are used extensively by non-Hoonah residents. For example, 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. Nonresidents rent slips, often on a longer-term basis, for boroughwide excursions such as permitted travel to Glacier Bay, fishing charters throughout Icy Strait, and tours/charters associated with the tourist facility at Icy Strait Point (see paragraph (4), below).

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<sup>17/</sup> / <https://www.cityofhoonah.org/harbor>.

There is also regularly scheduled Alaska State Ferry service between Hoonah and Juneau—twice weekly during the summer months. 3 AAC 110.045(d)(1).

With respect to aviation, Hoonah has the only wheeled aircraft-capable airport in the borough. *Id.* Alaska Seaplanes offers daily scheduled air service between Hoonah and Juneau. With its 3367-foot runway and instrument and nighttime landing capabilities, Hoonah's airport is available for emergency air medical evacuations. Hoonah's volunteer EMT team coordinates with the U.S. Coast Guard and Guardian Flight for medivac needs outside the city's boundaries. The team has, in fact, periodically assisted in medivacs from and near communities to either Hoonah's SEARHC facility (see paragraph (3), below) or Juneau and the lower 48.

Outside of Hoonah, the State of Alaska maintains a float plane base at Elfin Cove, providing air access to Hoonah, and the State dock at Funter Bay is likewise used for float plane access. Hoonah also has a seaplane base.

Roads plays a minor role in borough transportation. However, the Forest Service's Hoonah Ranger district does administer 350 miles of roads crisscrossing the borough. Of those, approximately 148 miles are maintained for passenger vehicles and another 49 miles for high-clearance vehicles. The remainder are currently not maintained; however, most water crossing structures remain in place so that those roads can be re-commissioned if a future need arises.

### *(2) Public Safety*

The Hoonah Police Department is the only local police department on Chichagof Island. As described in **Exhibit F** (the transition plan), the Hoonah Police Department is under contract with the U.S. Forest Service to provide routine police patrols and emergency response to an area covered by 120 miles of USFS roads outside city boundaries. Moreover, the Alaska State Troopers maintain a wildlife trooper in Hoonah whose patrol responsibilities cover virtually the entire borough coastline east of Cape Spencer. As noted in subsection (1), above, the city's EMT team coordinates with the Coast Guard, State Troopers, and the USFS in providing emergency response and evacuation within remote areas of the borough.

### *(3) Public health*

The Southeast Alaska Regional Health Consortium ("SEARHC") maintains a health clinic in Hoonah comprised of two nurse practitioners, two community health aides, a dental health aid specialist, a behavioral health clinician, and a drug and alcohol clinician.<sup>18/</sup> This SEARHC clinic would be the only health clinic within the proposed borough.<sup>19/</sup> The Hoonah SEARHC clinic regularly receives patients from outside the city.

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<sup>18/</sup> <https://www.cityofhoonah.org/hoonah-searhc-clinic>; see also <https://searhc.org/location/hoonah-health-center/>.

<sup>19/</sup> The communities of Pelican and Gustavus, which are near the Xunaa Borough, have a small SEARHC clinic, but each has resident only a single physician's assistant (Pelican) or nurse

#### *(4) Administration*

Aside from Glacier Bay National Park, most of the proposed borough lies within the Tongass National Forest. Almost all of that forest acreage is administered through the USFS' Hoonah Ranger District, which is headquartered in the City of Hoonah.<sup>20/</sup> Residents throughout the borough utilize Ranger District headquarters. For example, the USFS reports that it has issued the following permits for activities within the boundaries of the proposed borough: 7 outfitter/guide permits to Hoonah residents; 4 outfitter/guide permits to Elfin Cove residents, and 1 to a Game Creek resident; 12 non-commercial cabin permits issued under the Alaska National Interest Lands and Conservation Act; and 2 waterline permits at the entrance to Idaho Inlet that provide water to commercial lodges at Gull Cove (near Elfin Cove).

#### *(5) Tourism*

With the opening of Icy Strait Point ("ISP"), Hoonah has transformed into one of the two pillars of tourism with the borough—a magnet drawing visitors to the region as a whole.<sup>21/</sup> Built from a former cannery, ISP has become one of the region's premier tourist destinations. With over 30 tour options ranging from guaranteed whale watching to brown bear tracking; three restaurants; natural Tlingit arts and crafts; and (at a mile long and with a 1,330-ft. vertical drop) the largest ZipRider in the world, ISP has become a top-shelf destination for much of region's cruise ship trade. In 2022, there were 260 cruise ship calls at ISP, disembarking 447,180 visitors. As the Affidavit of Meilani Schijvens states: "Arriving passenger numbers more than doubled between 2013 and 2019 and are expected to nearly double again between 2019 and 2023 to more than a half million visitors. While the cruise season was cancelled in 2020, and reduced by 90% of normal in 2021, the sector had fully recovered by 2022." **Exhibit CC**, p. 2, ¶6.a.

ISP's owner, Huna Totem Corporation (the ANCSA village corporation for Hoonah), broke ground for ISP in 2001. In 2016, a joint State/Huna Totem-financed cruise ship dock opened, and by 2019, over 250,000 passengers were visiting ISP from 137 cruise ships.<sup>22/</sup> With the opening of a second cruise ship dock in 2020, and a return to robust tourism in 2022, ISP's visitor growth has been dramatic. *Id.*

In 2019, ISP employed 160 people, with 80% Native hire. In 2022, ISP had 220 employees.

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practitioner (Gustavus). <https://searhc.org/location/pelican-health-center/>;  
<https://searhc.org/location/gustavus-clinic/>.

<sup>20</sup> / A map of the coverage of the Hoonah Ranger District is appended as **Exhibit P**.

<sup>21</sup> / The other pillar, obviously, being Glacier Bay National Park.

<sup>22</sup> / See <https://www.ktoo.org/2019/05/03/icy-strait-point-to-add-megaship-dock-as-hoonah-readies-for-hundreds-of-thousands-of-cruise-visitors/>.

- e. The communications media and the land, water, and air transportation facilities throughout the proposed borough allow for the level of communications and exchange necessary to develop an integrated borough government as required by AS 29.05.031(a)(4) and 3 AAC 110.045(c).**

The proposed Xunaa Borough also has sufficient electronic media communications. Hoonah leases land to AT&T to provide cellular service to the residents of Hoonah. There are private communication sites on mountaintops throughout the Tongass National Forest, providing cellular service for much of the proposed Xunaa Borough. The Hoonah Ranger District administers AT&T's sites near Point Adolphus and Yakobi Island. AT&T currently provides either 4G LTE or 5G service to all of the inhabited areas of the proposed borough, illustrated on AT&T's coverage map. <https://www.att.com/maps/wireless-coverage.html>. SnowCloud Services provides internet service to the residents of Hoonah, and to outlying areas within the proposed Xunaa Borough, including areas bordering Bartlett Cove and Excursion Inlet. These communications and exchange patterns adequately facilitate interrelationships and integration of the people in the proposed borough.

Elfin Cove is served by the nonprofit public radio station KCAW. Headquartered in Sitka, KCAW is a member of CoastAlaska Inc., a consortium of public radio stations in Southeast, including KTOO in Juneau. KTOO also serves Hoonah (@ 91.9 FM), and its signal reaches Funter Bay as well.

Communication is also available through marine (VHF) radio.

Transportation connectivity is discussed in Section d.4.B.(1), above.

- f. The population of the proposed borough is sufficiently large and stable to support the proposed borough government as required by AS 29.05.031(a)(1) and 3 AAC 110.050.**

- (i) The borough's population is virtually at 1,000, and will likely exceed that level this year or next**

According to the 2020 Decennial Census, the proposed borough includes the following populations: <sup>23/</sup>

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<sup>23/</sup> The figures can found at:

Hoonah: <https://data.census.gov/cedsci/all?q=hoonah%20alaska>

Game Creek: <https://data.census.gov/cedsci/all?q=game%20creek%20alaska>

Elfin Cove: : <https://data.census.gov/cedsci/all?q=elfin%20cove%20alaska>

The Whitestone Logging Camp figures are drawn from

<https://live.laborstats.alaska.gov/pop/index.cfm>, as there are no Census Bureau reports for the camp.

City or Settlement	Population
Hoonah	931 <sup>24</sup> /
Game Creek	23
Elfin Cove	24
Whitestone Logging Camp	2

In addition, there are approximately 81 seasonal residents at Funter Bay. <sup>25</sup>/

3 AAC 110.050(b) arbitrarily presumes that a borough population of under 1,000 is incapable of supporting borough government. Application of that presumption to the Xunaa Borough, which is virtually at that threshold, seems especially unwarranted. In approving Skagway’s borough petition, the Commission determined that it was “uncertain” whether Skagway met the 1,000-person goal, and the LBC thus did not apply §050(b)’s presumption. This despite the facts that: (i) Skagway’s own petition counted only 825 residents; and (ii) the Decennial Census count was only 862. <sup>26</sup>/ Among the factors contributing to the “uncertainty” decision were: (i) the presence of a material number of seasonal residents; and (ii) optimism over Skagway’s continued growth. *Id.* at 31 *et seq.*

In Skagway’s case, the optimism was speculative. There is no need to speculate here. Attached as **Exhibit CC** is the affidavit of Meilani Schijvens, a former Executive Director of the Southeast Conference and economics instructor:

- whose 25-career has “specializ[ed] in Southeast Alaska economic analysis, publications, socioeconomic impact studies, survey research, and public outreach”;
- who has “authored hundreds of Alaska economic studies”; and
- who performed the economic analyses for the October, 2022 report for the Southeast Conference entitled *Hoonah by the Numbers*.

*Id.* at ¶¶1-5. <sup>27</sup>/ Schijvens concludes that, based on:

- ✓ a constantly upward-trending population since 2009 (with a 23% population increase between 2009 and 2019); and

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<sup>24</sup> / For Hoonah, the Department’s ArcGIS data report a 2021 population of 902, while the American Community Survey’s (“ACS”) 2020 rolling average population is 850. *Compare* <https://dced.maps.arcgis.com/apps/MapJournal/index.html?appid=8943a1811eab4783b27ecdb2e178f704>, with <https://data.census.gov/cedsci/all?q=hoonah%20city%20alaska> (various ACS databases). As discussed in Section 9 of the Petition, the Decennial Census is the most reliable source for total population figures.

<sup>25</sup> / There is no state or federal population estimate for Funter Bay. The basis for the estimate used here is explained in Section 11(A) of the Petition.

<sup>26</sup> / LBC, *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 30.

<sup>27</sup> / “*Hoonah by the Numbers*” is attached hereto as **Exhibit BB**.

- ✓ continued commercial growth, especially at Icy Strait Point,

“the proposed Xunaa Borough should exceed 1,000 residents by 2024. [Indeed], [t]he linear projection model [also portrayed in the affidavit] shows the area exceeding 1,000 residents even earlier.” *Id.* at p. 3, ¶6.b.

To re-enforce Schijvens’ conclusion:

- ✓ The Department of Labor reports a 2021 Elfin Cove population of 38, rather than the 24 found from the Decennial Census; <sup>28/</sup>
- ✓ City of Hoonah School District enrollment has increased steadily since 2014, while many Alaska school districts continue to lose enrollment. *See subsection (iii)(C), post*; and
- ✓ Among business leaders themselves, the economic outlook for Hoonah is brighter than for any other Southeast community. *See subsection (ii), post.*

The presumption in §050(b) is punitive; it is not recognized in statute; and it ought to be applied only if the LBC is confident that the petitioner will materially fail its test once the borough is formed and in full operation. That is not the case here.

Yet even were the LBC to apply the presumption in this instance, as a matter of fact, there is “specific and persuasive evidence” that Xunaa’s current population is plainly sufficient and stable enough support the proposed borough. And this for at least the following reasons:

**(ii) The applicable standard is not numeric, but capability-based; and, in Xunaa’s case, the proof is in the pudding**

The LBC has never overweighted the 1000-resident presumption. The reason is that the statutory population standard is not based on numbers, but rather on the capability of the residents (whatever their number) to “support borough government.” AS 29.05.01(a)(1). As the following table illustrates, the residents of the proposed Xunaa Borough are projected to have a significantly higher *per capita* capability to support borough government than in either of the other Southeast cases in which the LBC approved borough incorporation despite the proposed borough being well under the 1000-resident figure: <sup>29/</sup>

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<sup>28</sup> / <https://live.laborstats.alaska.gov/pop/index.cfm> Again, the Decennial Census is the most accurate measure of population, as it directly counts all individuals and households. *See* <https://www.census.gov/programs-surveys/acs/guidance/comparing-acs-data.html>

Nonetheless, the Department of Labor figure of 38 for Elfin Cove would increase the borough population to **994**, which, at a minimum, adds to the “uncertainty” of the borough’s actual population.

<sup>29</sup> / The Xunaa numbers are drawn from **Exhibit D**. The Skagway and Yakutat numbers are drawn from *Petition for Dissolution of the City of Skagway and Incorporation of a Skagway Borough*, Jan. 18,2001 at 6, 14; and *Petition for Incorporation of City and Borough of Yakutat...*, Dec., 1990 at 10, 15.

<b>Proposed Borough</b>	<b>Petition’s Projected Borough Population</b>	<b>Petition’s Projected Revenues in 1<sup>st</sup> Full Year (on a <i>Per Capita</i> Basis)</b>
Xunaa	980	\$5299
Skagway	825	\$2788
Yakutat	782	\$4189

In the *Yakutat Borough Decision*,<sup>30/</sup> the LBC approved borough formation despite the area’s small population in part because:

*...Yakutat would have substantially more revenue resources **per capita** than several organized boroughs. These resources should be sufficient to compensate for disadvantages caused by the small size and thin leadership of the population.*

*Id.* at 16; *emphasis added.* The same is true here, though one would be hard pressed to argue that Hoonah has “thin leadership.”

More broadly, and as discussed in Section (g), *post*: the residents of the City of Hoonah have for decades proven themselves remarkably capable of supporting the fullest range of municipal services. And, because of the libertarian nature of the proposed borough’s governance of its remote areas, those areas will add relatively little to the demands on borough government. As that section (and **Exhibit F** [Transition]) show, the city owns and operates a full suite of modern municipal facilities, yet it has run in the past, is running, and is projected to continue to run, budget surpluses. As **Exhibit D** shows: upon borough incorporation, this inarguably solvent condition will only improve. And this because, commencing in the first year after borough formation (assumed to be 2025), while annual expenditures owing to borough formation will run only \$171,421, revenues will increase by \$378,248 (owing to the 1% areawide seasonal sales tax).

In 2022, the Southeast Conference named Hoonah the Community of the Year, observing that:

*Hoonah was an economic leader during COVID recovery. In 2021, Hoonah added 18% more jobs to the community compared to 2020, while the region added 5% of jobs back. In 2022, Hoonah’s economy is experiencing prosperity unprecedented since the peak of the timber industry. Population is nearing a historic high. The unemployment rate for July of 4.5% was the lowest for any month of any year on record. Sales and head tax revenue will be the highest ever collected for the City of Hoonah.*

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<sup>30</sup> / See n. 52, *post*.

**Exhibit AA.** Moreover, economic indicators point to continued growth in the coming years. According *Hoonah by the Numbers*: “Hoonah’s business climate is even better than the region as a whole, with 71% having a positive view on the current economy, and 21% calling it very good — one of the strongest business climates in the region.” In its Community of the Year award, the Southeast Conference added:

*...Hoonah business leaders say things are only going to improve. Hoonah has the brightest business outlook of any community in the region, according to the annual Southeast Conference regional business climate survey. Half of Hoonah business leaders expect their business to do much better in the next year, compared to last year, with 86% expressing a positive outlook.*

**Exhibit AA.**

By their fiscal history, the residents of the proposed Xunaa Borough have demonstrated, with specific and persuasive evidence, their capacity to support borough government in accordance with every applicable standard—more so, Petitioners submit, than many of the borough governments that came before us.

**(iii) The considerations of 3 AAC 110.050(a) argue in favor of a finding of sufficiency**

3 AAC 110.050(a) lists a number of factors that the LBC may consider in judging the residents’ capability. These include:

**(A) durations of residents (a)(2) and historical population patterns (a)(3); census enumerations (a)(1)**

Available demography demonstrates the borough population’s stability. The population of Hoonah itself has steadily grown over the past decade: from 760 in 2010 to 931 in 2020. <sup>31/</sup> The population of Game Creek has grown from 18 in 2010 to 23 in 2020. <sup>32/</sup> Elfin Cove’s population has grown from 20 (2010) to 24 (2020). <sup>33/</sup>

Thus, the decennial census clearly shows that, over time, all three of the Xunaa Borough’s communities are not simply stable, but modestly growing.

There are other indicia of residential longevity: In a 2012 study, ADF&G found that 35.7% of Hoonah residents were born in Hoonah. <sup>34/</sup> And, in its 2020 compilation, the ACS found that 820 of Hoonah’s residents had lived in their homes for over a year. <sup>35/</sup> Of that number, 567 lived in a resident-owned home. *Id.* More recent data show that 68% of

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<sup>31/</sup> The 2010 census figure can be found at

<https://data.census.gov/cedsci/table?q=hoonah%20alaska&tid=DECENNIALPL2010.P1>.

<sup>32/</sup> <https://data.census.gov/table?q=game+creek+alaska&y=2010&tid=DECENNIALPL2010.P1>

<sup>33/</sup> <https://data.census.gov/table?q=elfin+cove+alaska&y=2010&tid=DECENNIALPL2010.P1>

<sup>34/</sup> **Exhibit O** at 116.

<sup>35/</sup> <https://data.census.gov/cedsci/all?q=hoonah%20city%20alaska>. Bear in mind that this figure is drawn from an incomplete ACS population estimate of 850 such that, according to ACS, 820 of Hoonah’s 850 residents have lived in their homes for over one year.

Hoonah's housing are owner occupied, "so Hoonah has normal/healthy proportion of rental housing." *Hoonah by the Numbers* at 9. Hoonah's 13% vacancy rate is "quite low compared to similar communities." *Id.*

Undoubtedly, Hoonah residents' longevity is traceable in large part to family and cultural ties, and the continued ability to practice subsistence traditions. But (and to underscore the discussion in Section g of this brief), the town's prosperity, and its \$70,781 median family income <sup>36/</sup> likewise help to root Hoonah's residents in their traditional home.

### **(B) age distribution (a)(5)**

Of the ACS's 850 residents, 540 were in the 20–64 productive working age cohort. *Id.* That reenforces the conclusion of a 1990 ADF&G study that "Hoonah thus has a very high proportion of its population in the economically active years. This contributes to the vitality of the community." <sup>37/</sup> In 2020, 64% of Hoonah residents were in the 18-64 year old working age range. *Hoonah by the Numbers, Exhibit BB* at 5. <sup>38/</sup>

### **(C) current and historical school enrollment (a)(6)**

As noted *ante*, Alaska's school-age population is shrinking dramatically, and Hoonah has not been immune. It's school population is significantly lower than its peak in the 1990's. *Id.* at 5. In Alaska, there is nothing unusual about that. What *is* unusual is that Hoonah's school age population has been increasing from low of 102 in 2014 to the current enrollment of 135. <sup>39/</sup> As the Schijvens' Affidavit notes, "[i]n the past 12 years, enrollment in Hoonah shools has increased six times...for overall growth of 15%. Regionwide, total student population decreased by 9% over the same period across Southeast Alaska as a whole." *Id.* at p. 6, ¶6.e. <sup>40</sup>

### **(iv) The Schijvens' Affidavit**

In Schijvens' professional opinion:

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<sup>36/</sup>

<https://dced.maps.arcgis.com/apps/MapJournal/index.html?appid=8943a1811eab4783b27ecdb2e178f704>. Only 66 Hoonah residents live below the poverty line. *Id.*

<sup>37/</sup> **Exhibit L** at 35.

<sup>38/</sup> Alaska is experiencing a profound aging of its population. Hoonah's statistics bear this out: in 2020, majority of residents in the *non-working* cohort were 65+, whereas, in 2000, the majority of that cohort were under 18. In that respect, Hoonah's numbers merely reflect a statewide phenomenon.

<sup>39/</sup> *Compare Hoonah by the Numbers* at 5 and **Exhibit F, §4**.

<sup>40/</sup> Under AS 14.25.025, a "best interest" determination from the Department of Education and Early Development is required for creation of a new school district with less than 250 students. Petitioner has sent multiple letters and emails to DE&ED stating that: (i) §025 does not apply to conversion of an existing city district into a borough school district, when that conversion occurs as a matter of law upon borough formation under AS 29.36.160 and AS 14.12.010(2); and (ii) in any event, conversion to a borough school district in this case is in the state's and district's best interest. **Exhibit EE; Exhibit FF; Exhibit F.9** (Transition; Consultation).

*It is my opinion that there is specific and persuasive evidence that, due to the sustained growth of the Hoonah economy since 2010, along with evidence that the economy will continue to prosper and expand long into the future, the population of the proposed Xunaa Borough is large and stable enough to support borough government.*

*Id.* at p. 1, ¶2. The factors underpinning that opinion include:

- continuous and firmly-rooted economic expansion, sparked by Icy Strait Point. As Schijvens points out:

*In 2023, arriving passengers in Hoonah are expected to spend \$52 million in the community. Hoonah's city sales tax is 6.5% and the city receives a portion of the State-collected Commercial Passenger Vessel Excise Tax, while Huna Totem collects additional revenue. In 2023, the last ship will depart Hoonah on October 26. By 2024, the first ship will arrive April 1, meaning the tourism season has been extended to a full seven months allowing the sector to attract year-round businesses and residents.*

*Id.* at p. 2, ¶6.a;

- a 23% population growth over the past decade, and a healthy, upward linear growth trend. *Id.* at p. 3, ¶6.b;
- a sharp decline over the past decade in the unemployment rate, reaching 3.6% in August, 2022 for the Hoonah/Angoon Census Area (an area that includes the economically challenged village of Angoon). "The decreasing unemployment rate is due to increasing jobs and employment opportunities in the community of Hoonah." *Id.* at p. 4, ¶6.c;
- the singularly-optimistic business climate in Hoonah, noted in subsection (ii), *post.* *Id.* at p. 5, ¶6.d; and
- steady growth in student enrollment, noted in subsection (iii)(C), *post.* *Id.* at p. 6, ¶6.e.

- g. The economy of the proposed borough includes the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level as required by AS 29.05.031(a)(3) and 3 AAC 110.055.

### **Southeast Conference**

#### **Southeast Alaska Community of the Year 2022 Winner: Hoonah**

The community of Hoonah won this year's award for its hard won success transforming the community's economy. Alec Mesdag, Southeast Conference presented the award at the annual banquet with the following remarks: "Hoonah was an economic leader during COVID recovery. In 2021, Hoonah added 18% more jobs to the community compared to 2020, while the region added 5% of jobs back. In 2022, Hoonah's economy is experiencing prosperity unprecedented since the peak of the timber industry. Population is nearing a historic high. The unemployment rate for July of 4.5% was the lowest for any month of any year on record. Sales and head tax revenue will be the highest ever collected for the City of Hoonah. However, Hoonah business leaders say things are only going to improve. Hoonah has the brightest business outlook of any community in the region, according to the annual Southeast Conference regional business climate survey. Half of Hoonah business leaders expect their business to do much better in the next year, compared to last year, with 86% expressing a positive outlook.

As the city grows its visitor economy, it has increased its local infrastructure capacity, which is not always glamorous. Current and recent city projects include

- Wastewater Treatment Plant capacity expansion
  - Sewer Lagoon Rehabilitation work
  - FEMA Storm Damage repair to damaged roads and culverts
  - Seawalk Project, constructing a new mile long sidewalk
  - Cargo Handling facility – working to allow for full tide access for ocean going freight barges
- Hoonah received the award for its sustained economic planning over the past two decades, coupled with a more than two decade private-tribal-public partnership that should act as a model for all of Alaska...

**Exhibit AA.** The expanded text of Hoonah's Community of the Year award is presented here, with some repetition with Section f., *ante*, because of the findings' relevance to both that section and this section.

Hoonah has effectively delivered municipal services within the city boundaries since original incorporation in 1946. The community of Hoonah has seen economic downturns, but with fishing, logging, and now tourism, the government of Hoonah has remained intact, with no record of fiscal mismanagement or exhaustion of operating funds. Hoonah currently supports a city government staff of 26 full time, 5 part-time and 4 seasonal employees, demonstrating an ongoing commitment to municipal government services. Aside from the mayor and 6-member City Council, there is an elected 5-member School Board, appointed 6-

member Harbor Board, appointed 7-member Liquor Board, and appointed 7-member Planning and Zoning Commission. As **Exhibit D** (projected budget) and **Exhibit F** (transition plan) document, borough staffing will increase as a result of borough incorporation.

As **Exhibit F, §5.A** demonstrates, the City of Hoonah also owns a full portfolio of modern public service facilities, including:

- a new, \$12.4 million wastewater treatment plant funded by grants from the U.S. Department of Agriculture Rural Development program and the State of Alaska;
- a 400,000/gallon/day water supply system—well in excess of actual current demand: and
- a solid waste disposal system that provides universal weekly collection and consistently receives high marks for performance, and which (like the water supply system) is fiscally self-sustaining.

In addition, in 2012 the Inside Passage Electric Cooperative opened a power generation plant with an approximate 3 megawatt capacity. Its construction cost was approximately \$4.5 million, which was funded by grants from the State of Alaska and the Denali Commission. Moreover, in August 2015, the IPEC brought online the 425 kW Gartina Falls hydro project. It was built at a cost of \$10 million. \$8 million was provided by a State of Alaska renewable energy fund grant, and the remaining \$2 million was financed by IPEC.

On the debit ledger: the Xunaa Borough would assume Hoonah's bonded indebtedness, which is relatively small. There is a remaining principal balance of \$660,000 on Hoonah's bonded indebtedness, along with \$169,000 in remaining interest. The City makes two annual principal payments of \$77,000 and \$15,000, respectively, with final payment to be made on September 1, 2031.

In the last pre-COVID year, 2019, the City of Hoonah experienced a budget surplus of \$26,354, and it expects a surplus for 2022 when final numbers are tallied. Even during the COVID pandemic years (2020-2021), the City fully maintained existing municipal services. The future economic outlook is bright. For example, the city has projected sales tax revenues of \$2,436,500 in 2023, with continued robust operations at ISP, while the proposed 1% areawide seasonal sales tax is expected to generate \$378,248 in revenue in its first year (assumed to be 2025). **Exhibit D.** Indeed, with the return of significant cruise ship visitation in 2022, the city expects a modest budget surplus in 2023, one the grows significantly in the first four years of the Xunaa Borough. *Id.* Forecasted total revenues for 2025 and beyond exceed 2023's budget revenues by nearly \$1 million. *Id.*

Hoonah's economic health, and bright economic prospects, are extensively documented in *Hoonah by the Numbers*. **Exhibit BB.** In 2021, 388 jobs yielded a total payroll of \$16,657,412—a 19% increase from 2015, and this in the last full COVID year. *Id.* at 2. And, as the years have passed, the economy has become less dependent on government employment and fueled more by the private sector—primarily the renewable tourism industry. *Id.* at 2, 4. “As we move further away from the covid-economy,” the report

concludes, “the proportion of Hoonah workforce earnings that are derived from tourism and transportation are expected to increase significantly.” *Id.* at 4.

- h. The boundaries of the proposed borough conform generally to natural geography, are on a regional scale suitable for borough government, and include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level as required by AS 29.05.031(a)(2) and 3 AAC 110.060(a). In accordance with 3 AAC 110.060(d), the area proposed for incorporation is contiguous and, in accordance with 3 AAC 110.060(f) the boundaries of the proposed borough do not include only a portion of the territory of any existing city government. The exclusion of Gustavus, Pelican and Tenakee Springs does not create “enclaves,” and there are compelling reasons for their exclusion.**

**(i) Generally**

As noted in Section 5 of the Petition, the proposed borough boundaries largely conform to the Department’s 1997 Model Glacier Bay Borough. On the north and south, the borough is bordered by the existing Cities and Boroughs of Yakutat, Haines and Sitka. The borough’s westerly boundary is the Gulf of Alaska, seaward to match the seaward extent of the City and Borough of Yakutat. The easterly boundary is the City and Borough of Juneau and, below Juneau, the currently unincorporated area of northern Southeast that is covered by the Department’s Chatham Model Borough. With these boundaries, virtually all of northern Southeast Alaska will be organized without leaving gaps between the six organized boroughs of the region (Yakutat, Xunaa, Juneau, Haines, Skagway, and Sitka).

Moreover, the proposed borough neatly follows natural geography, with its spine in the central corridor of Icy Strait, then reaching out through the Strait’s natural termini and tributaries—Stephens Passage on the east, the Gulf of Alaska on the west, Glacier Bay to the north and Lisianski Inlet to the south.

In addition to the borough’s similarity to the Department’s model boroughs, 3 AAC 110.060(b) invites the Commission to consider:

- REAA boundaries. Northern Southeast’s REAA—the Chatham School District—includes four non-contiguous schools, including Klukwan and Angoon, both of which are noncontiguous to the remainder of the proposed Xunaa Borough, and the latter of which is included in the Department’s Model Chatham Borough. The Commission has already acknowledged the unsuitability of REAA boundaries as guides in Southeast Alaska, <sup>41/</sup> and the same conclusion appends here;
- Federal census area boundaries. The prevailing federal census district here is the “Hoonah-Angoon” district. Drawing borough boundaries based on that census district would result in inclusion of much of the Chatham Model Borough within the Xunaa Borough, a move that would be culturally inappropriate;

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<sup>41/</sup> LBC Decision, *Incorporation of City and Borough of Wrangell*, Dec. 17, 2007 at 35.

- ANCSA boundaries. The Xunaa Borough includes all of the lands of Huna Totem Corporation, the only ANCSA village corporation affected by this Petition;
- Boundaries of national forests. As noted in Section d.iv.B.4, *ante*, the proposed boundaries include the entire Hoonah Ranger District of the Tongass National Forest;
- Embracing common interests. This factor is discussed in Section d, above;
- Promoting maximum local government. This factor is discussed in Section b, above; and;
- Creating “optimum” boundaries. Merriam-Webster defines an “optimal” decision as one that reflects the “greatest degree attained or attainable under implied or specified conditions.”<sup>42/</sup> The term recognizes that “optimizing” involves a balancing of competing interests. It is not a decision where everyone gets what they want. Petitioner, for example, would prefer to include Excursion Inlet in the new borough, while others might prefer exclusion from the borough. Given all of the “implied or specified” considerations at work here, Petitioner respectfully submits that the proposed boundaries “optimize” the goal of bringing “maximum local government” with a “minimum local government units” to this region.

**(ii) Gustavus, Pelican, and Tenakee Springs and the Model Glacier Bay Borough.**

As **Exhibits C** and **C1-3** to the Petition depict, the proposed borough boundaries exclude lands within and surrounding the cities of Gustavus, Pelican and Tenakee Springs. Under 3 AAC 110.060(d), “[a]bsent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that . . . contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.”

To begin with, the areas excluded from the borough are not “enclaves.” *Merriam-Webster* defines enclave as “a distinct territorial, cultural, or social unit enclosed within or as if within foreign territory.” “Enclosed,” in turn, is defined as “closed in or fenced off.”<sup>43/</sup> In declining to recommend further action against the Ketchikan Gateway Borough due to the borough’s failure to expand its borders to include Hyder, LBC staff relied in part on the fact that Hyder was not actually surrounded by Ketchikan, and thus not an “enclave”:

*“[E]nclave” might not be the correct term to use to describe Hyder. An enclave is an area that is entirely or mostly surrounded by another area. In Hyder’s case, it is bordered about equally by both Canada and the KGB. It is not entirely or mostly surrounded by the KGB or Alaska, so it is questionable whether it could be called an enclave.*

LBC Staff, *Analysis of Hyder’s Status Five Years after the KGB’s Annexation Was Approved, and What, If Anything, the LBC Should Do Next* (undated) at 6.

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<sup>42/</sup> <https://www.merriam-webster.com/dictionary/optimum>

<sup>43/</sup> <https://www.merriam-webster.com/dictionary/enclave>

None of the three excluded cities here would be “closed in our fenced off” by the borough. To the contrary, the excluded boundaries are purposefully drawn to give these communities direct and significant connection to other, existing boroughs that these cities may decide to join: a substantial portion of the Gustavus exclusion borders the Haines Borough, while roughly half of the Pelican and Tenakee Springs exclusions border the Sitka Borough.

In this way, the Petition affords these three communities the greatest possible flexibility in charting their municipal futures. All of which renders these excluded areas far less amenable to the “enclave” label than was Hyder. Hyder could not join British Columbia; its options were limited to inclusion in the Ketchikan Borough or long-term isolation. Not so here: each of the excluded areas has a third option of joining the contiguous boroughs of Haines or Sitka.

Yet even if the term “enclave” is bent beyond all recognition, there are “specific and persuasive” reasons for omitting these communities from the Xunaa Borough:

- (i) *Gustavus*. On June 23, 2022, the City of Hoonah wrote the City of Gustavus, advising it of the principal components of the proposed Xunaa Borough; asking Gustavus to share its questions and concerns; and inviting that city to join the borough. **Exhibit U**. On July 14, 2022, Gustavus responded. **Exhibit V**. It opposed inclusion in the borough, and it then went much further. As Section d(i) of this Brief demonstrates in great detail, Glacier Bay has been, for centuries, the Huna Tlingits’ homeland. It is the “main place of the Hoonah people,”<sup>44/</sup> and the National Park Service has recently been devoting long-overdue but welcomed resources to make amends for the Huna Tlingits’ dispossession from the Bay when the park was formed. Despite all this, and despite the fact that Gustavus’s jurisdiction does not extend into the park,<sup>45/</sup> Gustavus rather gratuitously opposed inclusion of Glacier Bay in the new borough. Its position, stated quite starkly, appears to be that “you people should stick to your side of Icy Strait.”<sup>46/</sup> Gustavus’s position makes it clear that inclusion of their city in the borough would be a shotgun wedding in which the two jurisdictions are unlikely to forge anything approaching a working relationship.<sup>47/ 48/</sup>

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<sup>44/</sup> **Exhibit K** at 54.

<sup>45/</sup> Apart from a sliver of land encompassing park offices and the park lodge at Bartlett Cove.

<sup>46/</sup> “We believe success is best assured if the Xunaa Borough boundary does not extend beyond mid-channel in Icy Strait and excludes Gustavus, Pleasant Island and Glacier Bay National Park.” **Exhibit V** at 3.

<sup>47/</sup> Indeed, Gustavus suggested that, if forced to join the borough, it would resort to self-harm. Under AS 29.40.010(d), boroughs may delegate planning and zoning authority to cities within their borders, and the City of Hoonah advised Gustavus that it would so in Gustavus’s case. Gustavus’s response was that it would “almost certainly decline to take them,” causing zoning powers to “fall back to the Xunaa Borough.” **Exhibit V** at 2.

<sup>48/</sup> In this regard, the LBC approved the exclusion of the Greater Nanana area from the Denali Borough in part because:

- (ii) *Pelican*. On July 13, 2022, the Pelican City Council ceded a generous portion of its regular public meeting to the City of Hoonah, during which the parties engaged in a multi-part discussion on the consequences of Pelican's inclusion in the borough. **Exhibit F, sec. 9**. There thereafter ensued an exchange of correspondence in which the City of Hoonah suggested that inclusion in the borough could improve the financial security of the Pelican School, which is persistently facing the challenge of marginal enrollment. *Id.* Irrespective of this suggestion, on October 14, 2022, Pelican informed Hoonah that "[a]t this time, the Pelican City Council does not support being a part of the Xunaa Borough." *Id.* Apparently, the council felt that inclusion could interfere with its possible annexation of some adjoining land. *Id.*

The City of Hoonah disagrees. Under 3 AAC 110.090(b) and 3 AAC 110.130(d), if included in the borough, the City of Pelican would need to explain the value of annexation in light of the overlapping borough. However, the Xunaa Borough will be non-unified, and there is nothing in Alaska law that would prohibit Pelican from annexing additional territory.

That aside, and as with Gustavus, it would be quite difficult for the new Borough to coordinate the provision of public services with a governing body that is formally opposed to its inclusion.

- (iii) *Tenakee Springs*. On June 23, 2022, the City of Hoonah sent a letter, by both email and first-class mail, to the Mayor Tenakee Springs and the Tenakee Springs City Attorney. *Id.* The letter described the essential elements of the proposed borough and invited a dialogue on Tenakee's concerns and expectations regarding possible borough joinder. *Id.* Having heard nothing in response, on September 9 the City of Hoonah sent a second letter (also by email and first-class mail, and also to both the major and city attorney), advising that, if Hoonah heard nothing by month's end, it would be forced to conclude that Tenakee Springs is disinterested in joining the borough. *Id.* To this date, Hoonah has heard nothing back. Tenakee Springs' inability to provide so much as a *pro forma* response has left the petitioner here without any

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*...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 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 Commission v. Local Boundary Commission*, 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.

tools to begin fashioning a plan of transition that would include Tenakee Springs—much less a modicum of hope that any such plan might actually succeed. <sup>49/</sup>

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The proposed Xunaa Borough follows the contours of the LBC’s Model Glacier Bay Borough, and it closes the loop between the City and the Borough of Yakutat to the north and the City and Borough of Sitka to the south. The exclusion of these three municipalities, however, does depart from that model.

At one point, LBC’s regulations required that “[a]bsent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.” *Former 3 AAC 110.060(b)*. Currently, §060(b) provides only that the LBC “**may** consider...model borough boundaries.” *Emphasis added*. Even during the tenure of the stricter regulatory standard, the Commission approved borough boundaries for most of the Southeast Alaska boroughs that varied from model borough boundaries, including Haines, Skagway, Wrangell, Juneau and Ketchikan. <sup>50/</sup> As the Commission said in its Ketchikan decision, “the Commission takes the view that [despite the applicability of §060(b)] the lack of conformity to model borough boundaries is not an impediment to [city and borough] consolidation.” <sup>51/</sup>

The considerations that led to the exclusion of these three municipalities is simply a bow to reality and warrant a departure from the model borough, just as with virtually all of the other boroughs in our region.

### **(iii) The borough’s western boundary.**

The Xunaa Borough’s proposed western boundary extends into the Gulf of Alaska seaward of the 3-mile limit, into waters that historically were the fishing and hunting province of the Huna Tlingit. **Exhibit DD** (Huna Tlingit exercised significant and exclusive hunting rights to the Fairweather Grounds). As **Exhibit C** illustrates, in doing so Petitioner has simply followed the lead of the City and Borough of Yakutat, whose westerly boundary extends well beyond three miles from shore. That boundary, depicted on the Department map below, was approved by the LBC in the Yakutat borough incorporation decision: <sup>52/</sup>

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<sup>49/</sup> While, for reasons noted in **Exhibit F, § 9**, the City of Hoonah is not legally obligated to consult with the City of Tenakee Springs, the showing here of Tenakee Springs’ inability to communicate with the City of Hoonah in any fashion would plainly constitute sufficient grounds for waiving consultation under 3 AAC 110.900(f).

<sup>50/</sup> LBC Staff, *Local Government in Alaska* (2015) at 12, n. 5; *Statement of Decision in the Matter of the March 31, 1998 Petition for Consolidation of the City of Haines and the Haines Borough* (August 21, 1998) at 13 (noting in particular, approval of Juneau’s boundaries despite noncompliance with the model borough boundaries.)

<sup>51/</sup> *In the Matter of the Petition for Consolidation of the City of Ketchikan and the Ketchikan Gateway Borough* (April 27, 2001) at 9.

<sup>52/</sup> *In the Matter of the Petition to Dissolve the City of Yakutat and Incorporate the City and Borough of Yakutat* (undated, 1992) at 25. The version of the decision provided Petitioner by LBC staff is unsigned; however, staff surmised that it was “probably” accurate.



**Exhibit C6.**

The Commission did *caveat* that Yakutat’s seaward boundaries extend only to the limits of the State of Alaska’s jurisdiction under AS 44.03.010. *Id.* However, AS 44.03.010(2) recognizes that the State of Alaska’s jurisdiction (and by extension Yakutat’s) extends to the high seas (*i.e.* beyond the 3-mile limit) in order to reach conduct that has a “substantial effect within the state so long as the exercise of jurisdiction does not conflict with federal law.” *State v. Jack*, 125 P.3d 311, 319 (Alaska 2005) (Alaska could reach offense committed on state ferry in Canadian waters). By drawing Yakutat’s boundaries as it did, the LBC afforded Yakutat the authority to exercise that limited high seas’ jurisdiction, and Petitioner here asks for nothing more.

- i. The proposed borough will have the ability to extend services to the area proposed for incorporation in a practical and effective manner as required by 3 AAC 110.900.**

Please see **Exhibit D** to assess the financial capabilities of the borough and its ability to provide services, as well as **Exhibit F** (Transition Plan).

**j. In accordance with 3 AAC 110.910, incorporation of the proposed borough will not deny any person the enjoyment of any civil or political right because of race, color, creed, sex, or national origin.**

The petition and borough formation effort does not in any manner deny any person the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. Please see Section 17 of the Petition (Voting Rights Act Information).

**k. Incorporation of the proposed borough is in the best interests of the State as required by AS 29.05.100(a) and 3 AAC 110.065.**

3 AAC 110.060(1)–(2) essentially restates the constitutional goal of providing “maximum local government” with a “minimum of local government units.” These considerations have been addressed in Sections a. and b., above.

With respect to whether incorporation “will relieve the state government of the responsibility of providing local services” (3 AAC 110.060(3)), the extent of state services within the City of Hoonah will remain unchanged. The question is most germane with respect to the more remote settlements of Funter Bay, Game Creek, and Elfin Cove. The State of Alaska currently owns a public dock at Funter Bay and a seaplane base at Elfin Cove, and ownership would remain unchanged. However, the State would no longer be responsible for planning and zoning in the currently unorganized portions of the borough (AS 38.05.037); nor would it be responsible for the education of any school-age children in those communities, whose education would become the responsibility of the Xunaa Borough School District.

Today, the residents of the currently unorganized communities demand little in the way of public services. With time, however, that may change, and the responsibility for providing those services would fall on the borough.

The final listed criterion is whether incorporation “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.” 3 AAC 110.065(4). To begin with, the borough would be assuming negligible bonded indebtedness: only \$660,000 in remaining principal. *See* Petition, Section 13. Even if (i) the borough failed; (ii) no City of Hoonah was resurrected; and (iii) the State of Alaska found itself liable for some borough obligations (*see* AS 29.06.520), that liability would be neither unusual nor substantial.

The principal focus of §065(4), however, should be on the projected financial health and stability of the community. As Sections f and g, above, make clear, given the community's well-grounded prosperity and the stable population of the proposed borough, incorporation creates no material risk of future default.

**l. The Borough Will be Providing All Essential Community Services (3 AAC 110.670).**

As set out in Section 14 of the Petition and **Exhibit F** (transition plan), the Xunaa Borough will be providing:

1. all of the essential purposes listed in 3 AAC 100.670(b)(1)–(3) on an areawide basis; and
2. a full range of municipal services within the Hoonah Townsite Service Area.

Petitioner has determined that, at this point, there are no other essential services in the currently unincorporated portions of the proposed borough. This determination is driven by the desire of the residents of those areas—Elfin Cove, Funter Bay, and Game Creek—to live an independent life with little government involvement. They do not wish to be actively governed any more than they wish to be actively taxed, and the overall solvency of the proposed borough enables those residents to enjoy that luxury. Circumstances, of course, may change, and as those communities evolve, the communities themselves may come to desire additional services—services that can be provided on an areawide, non-areawide or service area basis.

But that time has not come yet, and there is no need to rush it in this Petition.

**m. Pursuant to AS 29.06.250(c), dissolution of the City of Hoonah will occur as a matter of law once the City’s powers become areawide powers of the Xunaa Borough**

Under AS 29.06.450(c), “[a] city is dissolved when all its powers become areawide borough powers.” Upon borough incorporation, all of the City of Hoonah’s powers will become areawide powers of the Xunaa Borough:

- “All existing powers of the City of Hoonah will become areawide powers of the Xunaa Borough.” *Petition*, §3;
- “Without in any manner limiting the foregoing, all of the powers heretofore possessed by the City of Hoonah shall, upon the Assumption Date, become the areawide powers of the Xunaa Borough.” *Proposed Borough Charter*, §1.04; **Exhibit I**. The “Assumption Date” is the date on which all of the rights, powers, assets, duties and liabilities of the City of Hoonah are formally assumed by the new borough and “become areawide rights, powers, assets, duties and liabilities of the Xunaa Borough, and the City of Hoonah is dissolved pursuant to AS 29.06.450(c).” *Id.* at §16.02.

Nothing is required to satisfy the LBC’s standards for dissolution under §250(c), other than a finding that the city’s powers are being assumed as areawide powers by the new borough. In the case of the Skagway Borough incorporation, the LBC first found that: “all of the powers of the City of Skagway will become areawide powers of the proposed Skagway borough,” and then concluded:

*Based on the finding above, we conclude that the Petition for dissolution of the City of Skagway and concurrent incorporation of the Skagway borough satisfies the City Dissolution Standard set out in AS 29.06.450(c).*

*Upon Remand in the Matter of the Petition for Dissolution of the City of Skagway and Incorporation of Skagway Borough*, Nov. 1, 2007 at 53-54. There was no further discussion or analysis of the dissolution issue.

The same result obtained in the case of the new Petersburg Borough. The borough's petition stated that "All existing powers of the City of Petersburg will become areawide borough powers practiced and applied by service area." *Petition to the Local Boundary Commission for Incorporation of the Petersburg Borough, a Home Rule Borough and Dissolution of the Home Rule City of Petersburg*, Oct. 6, 2010 at §4. <sup>53</sup>/ Since the petition thus fell squarely within §450(c), not one word of Petersburg's brief was devoted to the dissolution issue; nor did the LBC's decision analyze the dissolution issue at all. LBC, *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).

Given that all of the City of Hoonah's powers are expressly designated as areawide borough powers by both the Petition and the proposed borough charter, the dissolution issue warrants no deeper dive than that afforded in the cases of Skagway or Petersburg.

Nonetheless, it is the Petitioner's desire to reassure those concerned that the assumption of the city's powers by the borough will have no adverse effects. To that end, *and solely for informational purposes*, the Appendix to this brief describes the effect of the proposed transfer of power on the concerns behind the standards applicable to petition-based dissolutions under AS 29.06.450(a).

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<sup>53</sup> / Indeed, under the Petition many of Petersburg's services were to be provided on a service area basis, including light and power, police, fire, sewer, road maintenance. *Id.* at 49.

## APPENDIX TO THE BRIEF

Petitions for dissolution under AS 29.06.450(a) are subject review under 3 AAC 110.280 and 300. And while those standards are not applicable in case, they do offer an agenda for discussing the impact of assumption of the city's powers by the new borough.

### (i) The standards under 3 AAC 100.280

For starters, it is worth noting that the proposed Xunaa Borough Charter (**Exhibit I**) goes to lengths to assure that assumption of these powers will not result in any interruption or diminution of any service or obligation. The pertinent clauses include:

#### **Assets, Powers, Rights, Duties and Liabilities:**

*At the Assumption Date, the borough, as a home rule borough, succeeds on an areawide basis to all the assets, powers, rights, duties and liabilities of the previously existing City of Hoonah.*

Sec. 16.09.

#### **Personnel:**

*All employees of the City of Hoonah and the Hoonah City School District shall continue in employment unless and until the borough assembly provides otherwise or the employee's contract term expires. Salaries and benefits enjoyed by current City of Hoonah and Hoonah City School District employees shall continue unless provisions are made to the contrary.*

Sec. 16.06.

#### **Actions:**

- A. *School District. Neither the adoption of this Charter nor the Assumption Date shall abate or otherwise affect any action, cause of action, claim, proceeding, civil or criminal, by or against the Hoonah City School District and which had accrued at the time of the effective date of this Charter. The applications, petitions, hearings, and other proceedings pending on such dates shall be continued, and the Xunaa Borough School District shall be substituted as the real party in interest.*
- B. *Municipality. Neither the adoption of this Charter nor the Assumption Date shall abate or otherwise affect any action, cause of action, claim, proceeding, civil or criminal, by or against the City of Hoonah and which had accrued at the time of the effective date of this Charter. The applications, petitions, hearings, and other proceedings pending on such dates before the City of Hoonah is to be dissolved shall be continued and the Xunaa Borough shall be substituted as the real party in interest.*

Sec. 16.10.

### City Laws:

*To the extent not inconsistent with the Charter, and upon the Assumption Date, ordinances and resolutions and orders of the former City of Hoonah shall continue in full force and effect within the Hoonah Townsite Service Area as ordinances and resolutions of the Xunaa Borough until no later than two (2) years after ratification of this charter when they shall expire, unless, after substantive review by the Assembly, each ordinance, resolution, or order has been expressly reaffirmed, revised or repealed. The borough manager and borough attorney shall, eighteen months after ratification of this charter, submit a comprehensive substantive study of remaining pre-unification ordinances and resolutions to aid the Assembly in the adoption of an integrated code.*

A proposed dissolution meets the standard of 3 AAC 110.280(a)(3) if the city is “included within an organized borough that assumes, on an areawide, non-areawide, or service-area basis, all the rights, powers, duties, assets, and liabilities of the city.” That is precisely what is occurring here.

With respect to 3 AAC 110.280(a)(2), **Exhibit D**, and Subsections f. and g. of the Brief, demonstrate that debts of an inarguably solvent city will be assumed by an even more solvent borough, and thus there will be a satisfactory method of repaying those debts. <sup>54/</sup>

The Petition’s consistency with 3 AAC 110.280(a)(1)’s “best interest” test for dissolution is self-evident. Given the comprehensive assumption language of the Charter, upon the borough’s incorporation, the city (if it is not dissolved) would only be a paper fiction. And as such, it would be worse than useless--serving, in all likelihood, as a source of confusion and mischief.

#### **(ii) The standards under 3 AAC 100.300(a)**

The “best interest” test is flushed out in 3 AAC 110.300(a). Among those factors:

- ✓ The city will no longer be providing any services, receiving revenue, or incurring debt. § (a)(1);
- ✓ The Xunaa Borough is not just “willing” to take on the city’s functions; the Charter mandates it. § (a)(2). Indeed, that is the whole point of this Petition; and
- ✓ Dissolution of the city will have no adverse public health or safety effects. For example, and as discussed at length in **Exhibit F**: (i) Hoonah’s SEARHC clinic will remain open to all borough residents; (ii) the borough will continue to provide all of the public safety services (police, fire and EMT services) that are currently being provided by the city; and (iii) Hoonah’s airport, boat harbor and other infrastructure will remain available to all borough residents.

With respect to the remaining considerations of §300(a):

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<sup>54/</sup> A copy of the City of Hoonah’s 2021 independent audit is enclosed as **Exhibit HH**. See 3 AAC 110.280(c).

### **§300(a)(4) Effect on community harmony.**

Dissolution of the city, and assumption of its powers by the borough, will certainly not cause disharmony within Hoonah. As evidenced the support of both Huna Totem Corporation (**Exhibit X**) and the Hoonah Indian Association (**Exhibit Z**), support is widespread if not virtually universal.

With respect to Funter Bay, Petitioner has held a lengthy video conference with a large number of its seasonal residents (**Exhibit F, Sec. 9**), and, while these residents will speak for themselves in comments on the Petition, our impression is that, especially because the borough will not be imposing a property tax or (without future consultation) any zoning restrictions, there will be general support within the community.

Finally, Petitioner has consulted with both Game Creek and Elfin on multiple occasions. *Id.* To date, we have not received any statement of opposition or concern. And, since neither of these communities would, in any event, be affected by the *dissolution* of the City of Hoonah in-and-of-itself (*see below*), one would doubt that any future expression of concern was prompted by dissolution, as opposed to borough incorporation.

Finally, it bears stressing that Petitioner excluded the three communities of Gustavus, Pelican and Tenakee Springs in order to avoid disharmony.

### **§300(a)(5). Social and economic impact on other communities.**

Although residents of these other communities make considerable use of resources within the City of Hoonah, most of those resources—such as the SEARHC Clinic and the Hoonah airport—are owned by the state or other third party entities.

The Hoonah boat harbor is municipally-owned; however, even in the absence of borough incorporation, it is inconceivable that, even in the event of stand-alone dissolution, an entity would not acquire and continue to operate this considerable capital investment.

Here, however, dissolution is not stand-alone. Thus, even if residents of these communities were dependent on City of Hoonah services, all of those services are being assumed by the borough. As a result, dissolution will have no effect on other communities' social and economic fabric.

### **§300(a)(6). Long-term impact on state and other municipalities' finances.**

The issue raised by this paragraph is whether the state, or some other municipality, may find itself bearing some financial burden because of dissolution. Here, however, the Xunaa Borough will be assuming all of the duties and obligations of the dissolved city, and Petitioners have already discussed whether dissolution/assumption “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.” 3 AAC 110.065(4). Section k. of the Brief, *ante*.

With respect to municipalities: there are no other municipalities within the proposed borough. More importantly, there is no municipality which, by law, equity or imagination might find itself liable for any former municipal liability in the event of borough default.

Were the borough itself ever to seek dissolution, it would necessarily undergo a more searching dissolution analysis, and, *at that time*, more attention would plainly to be paid to any orphaned liability.

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Assuming, of course, that the LBC finds that borough incorporation itself meets all applicable legal standards, it is manifest that the assumption of all of a city's powers and liabilities by the new borough satisfies the concerns over dissolution raised by §§280 and 300. All of which underscores the legislature's wisdom in providing for dissolution under AS 29.06.250(c) in these instances. And it is that subsection that governs here.