

Attachment to City of Gustavus Resolution CY24-05

I. COMMUNITY OF INTEREST (3 AAC 110.045)

*The communications media and the land, water, and air transportation facilities throughout the proposed borough **must** allow for the level of communications and exchange necessary to develop an integrated borough government. 3 AAC 110.045(c)*

Petition Section 6. “Hoonah is the hub of the region proposed for incorporation and even the proposed borough’s more remote residents make significant use of Hoonah’s infrastructure.” This fiction is repeated throughout the Petition; Exhibit E, pages 2, 10, 11 and disputed by the communities of Tenakee Springs, Pelican, Elfin Cove, Gustavus, and Juneau.

Hoonah is not a regional hub for Glacier Bay:

Gustavus is the gateway city to Glacier Bay and has the aircraft, ferry, and vessel services to Glacier Bay. The Park administrative headquarters, marine docks, and park visitor services hub at Bartlett Cove are entirely within the City of Gustavus, as is the Park entry road. Visitors to the Park travel by ferry or air from Juneau to Gustavus and reach visitor facilities at Bartlett Cove by road from central Gustavus. Supplies and US mail to the Park go through Gustavus. The Park’s electric power is generated in, and transmitted from, the Gustavus hydroelectric system. The Park phone land lines are on the Gustavus system. Park employees live and shop in Gustavus and use other Gustavus services, and their children attend the Gustavus School. Outside contractors working on major Park facilities are housed in Gustavus. Propane and fuel oil for Park facilities and residences is supplied by Gustavus businesses. The Park has mutual response agreements providing for response by the GVFD to fire, EMS, hazardous materials, and search and rescue calls at Bartlett Cove, including treatment and of cruise ship patients from the dock to the airport for medevacs. Glacier Bay National Park has no dependence on Hoonah, nor does Hoonah have the capability to serve as a hub for the region.

Regional transportation:

There are no transportation links between the proposed borough communities and Hoonah, including roads, the Alaska Marine Highway ferry service, and Alaska Seaplanes. Juneau is the regional shopping and medical center. Alaska Seaplanes delivers mail to communities but operates out of Juneau. Groceries, fuel, heating oil, and building supplies are provided from Juneau. Hoonah doesn’t have a hospital and residents travel to Juneau for medical and dental services. Medevac services are dispatched from Juneau. Transportation to the communities, including to Glacier Bay originates from Juneau, not Hoonah. Exhibit E, page 12 acknowledges that ferry and air service are between Hoonah and Juneau, and Sec. 6: “ferry service is limited to the City of Hoonah”. *“In determining whether communications and exchange patterns are sufficient, the commission may consider whether (1) all communities within a proposed borough are connected to the proposed borough seat by a public roadway, **regular scheduled airline flights on at least a weekly basis...**”*

Regional Communications:

Hoonah doesn’t supply telephone, internet, or public radio to the regional communities. There are no shared utility services with Hoonah, and Cordova Telecom Cooperative is connecting a submarine fiber network. Exhibit E observes that Sitka (KCAW) and Juneau (KTOO) have radio stations that reach Hoonah

and the regional communities which is of questionable relevance, and while Hoonah also has a radio station (KHOO) it does not serve the borough and is limited to the school district. A radio transmitter for Ham emergency operators has been inoperable for several years. An Elfin Cove resident noted that the limited filing of the Petition public notice at two locations in the City of Hoonah raises a concern about the ability of Hoonah to provide the level of communications necessary to develop an integrated government. Hoonah doesn't have a newspaper, and while Hoonah does have a Facebook page, it is not accessible without a Facebook account. The City's website does not offer a source for timely information regarding public notices, meeting agendas, meeting packets and minutes of Council meetings. The links to the City Council, and Government, City Council are conflicting and confusing and do not provide timely information about Council meetings.

The proposed incorporation promotes maximum local self-government with a minimum of local government units in accordance with Article X, sec. 1 of the Constitution of the State of Alaska and 3 AAC 110.060(b)

Maximum local self-government:

The proposed borough would span over 10,000 square miles of which 60% is water and 40% is land held in unknown federal and state acreage. There are no local government units in the borough due to Petitioner's decisions to dissolve the City of Hoonah, to create the Hoonah Townsite Service Area in order to continue providing city-level services in the territory previously defined by the City boundaries, and to exclude the cities of Angoon, Pelican, Tenakee Springs, and Gustavus from the proposed borough. The resulting tax base supports a single Service Area community without providing services or benefit to the balance of the proposed borough. In essence, then, the proposal before the LBC is essentially the same as if the City of Hoonah were to seek annexation of "entire geographical regions or large unpopulated areas", essentially largely vacant land, which is inconsistent with 3 AAC 110.130 (b)(2). Also, including a vast area unsuitable for development as proposed is also inconsistent with the scope described in 3 AAC 110.130(b)(1).

Organized Volunteer Services:

In determining whether the social, cultural and economic characteristics and activities of the people in a proposed borough are interrelated and integrated, the commission may consider the *existence throughout the proposed borough of organized volunteer services such as fire departments such as fire departments or other emergency services.* 3 AAC 110.045 (a)(5)

Petition Sec. 14. This standard is not addressed in the Petition, except to state that the proposed borough will not provide emergency services outside of the Hoonah Townsite Service Area's boundaries.

Glacier Bay National Park and Preserve (GLBA):

While the Park has a small number of fire and EMS responders and a fire engine, it has no tanker or ambulance. The Park has a mutual aid agreement, however, with the City of Gustavus which requires that, in the event of a significant fire, EMS, Search and Rescue (SAR), or hazardous material incident, GVFD will respond in the lands and waters administered by GLBA. In addition, Gustavus has a fire protection agreement with the USDA, Forest Service for mutual aid in furnishing fire protection in the vicinity of the Tongass National Forest administered lands. The Petition does not provide, nor has Gustavus been able to determine the extent of proposed borough property that these agreements

would cover. GVFD also dispatches an ambulance and responders to the Park to transport cruise ship passengers from the dock to the airport for medevac. Although these emergencies will be taking place in the proposed borough, the Petitioner has not expressed any intention to provide police, fire, and EMS services outside of Hoonah. Further, the Petition is silent on whether there will be a transfer of responsibilities to the proposed borough or whether the proposed borough will enter into an agreement with GVFD for the cost of services, equipment, supplies, and manpower involved in these operations.

This is a significant omission in the obligation of the borough to provide emergency services within the proposed borough, and raises equity questions in its reliance on an excluded community to provide emergency services. Pelican, Elfin Cove, and Gustavus have provided mutual aid emergency response to each other in the past. If this mutual aid support continues, it will be provided to a community within the proposed borough (Elfin Cove) without financial support from the proposed borough, but instead with financial support from two cities (Pelican and Gustavus) excluded from the proposed borough. Furthermore, Elfin Cove will be taxed for services provided to the Hoonah Townsite Service Area which it will not receive.

II. POPULATION (3 AAC 050(a))

Petition Sec. 9. The estimated population discussion relies upon an erroneous regulation for a borough boundary change, not for initial incorporation. More significantly, however, the city or community listing in the table is also erroneous. 3 AAC 110.920(a)(1) defines a community as a settlement that is inhabited by at least 25 individuals; further 3 AAC 110.920(b)(1) creates the presumption that a population does not constitute a community if public access or the right to reside at the location of the population is restricted. Game Creek, Elfin Cove, and Whitestone Logging Camp do not constitute communities under the threshold population standard, and Game Creek is presumed not to constitute a community because of its restricted public residency and access and is described by the Southeast Conference as a separatist religious community with “purposefully limited contact with the larger community” (Petition Exh. F. Sec. 4.0).

The proposed borough consists of a single community with no intention to provide government services to the isolated 49-member population other than seasonal taxation. In addition, the population table fails to include the following areas within the proposed borough boundary: Glacier Bay National Park (population 0); Lemesurier Island (population 1); Pleasant Island (population 0); Inian Islands (population 0); and Funter Bay (Sec. 11: no listed population). The 10,404 square mile area of the proposed borough (Petition Sec. 8) does not contain a population sufficiently large and stable to support the borough, and is designed as a tax base exclusively for the Hoonah Townsite Service Area. It would create in effect an annexation of vast and unpopulated territory for the City of Hoonah/Hoonah Townsite Service Area without justification or need, and fails to comply with the mandates of 3 AAC 110.130 (b)(1)&(2).

III. RESOURCES (3 AAC 110.055)

In accordance with AS 29.05.031(a)(3), the economy of proposed borough must include the human and financial resources necessary to provide the development of essential municipal services on an efficient cost-effective level. (3 AAC 110.055)

The proposed borough will not provide services outside of the Hoonah Townsite Service Area.

Petition Sec. 18. “The proposed borough will be providing all essential community services.” However:

Petition Sec. 6. It is “difficult if not impossible to provide those residing (in Funter Bay and Elfin Cove) with a full range of community services (and) “Game Creek has purposefully chosen an isolated, insular lifestyle. **The residents of these areas...desire only limited services....”**

Petition Sec. 14. **“Because of the remote area residents’ preference for an independent lifestyle, certain services will initially be provided only within the Hoonah Townsite Service Area....In the future, additional services may be provided to settled portions on a service area basis. Because none are currently anticipated, listing those services would be speculative.”**

Petition Exh. F. Transition Plan.4.0. **“(T)here does not appear to be any current demand for K-12 education on an areawide basis.”** Land use, zoning, and community development: “(R)esidents are keen to preserve a lifestyle as free as possible from government intrusion.” Local advisory committees will be formed to report on changes “*if any*” the residents desire.

5.0. No plans to provide borough police services, fire or EMT services beyond the Hoonah Townsite Service area. No plans to provide wastewater disposal, a community water system, solid waste disposal, and extension of the road system.

6.0. The proposed borough charter allows additional services to be provided outside the Hoonah Townsite Service Area but, as the Petitioner notes, **“any prediction regarding the location of any such area, or the services that might be provided, would be mere speculation at this time.”**

7.0. Funter Bay residents are responsible for their own power generation; Game Creek operates a diesel generator through volunteers; and Elfin Cove currently maintains a diesel generator through its non-profit corporation.

The outlying regional areas will be taxed to pay for the administration and collection of the 1% sales tax. Education won’t be necessary because the cities with schools have been excluded from the proposed borough, and planning and zoning will be delegated to local committees.

In Gustavus, the area-wide tax will be an economic burden on many businesses who operate on the waters within the proposed borough, within Glacier Bay National Park, USFS Pleasant Island, Lemesurier Island, or Inian Islands. These businesses and their customers would receive no services in return for the taxes they are forced to remit.

The Petition lacks information regarding its sole source of proposed borough-wide revenue:

There is insufficient information in the Petition to know how the tax will be assessed:

Point of Sale: The Hoonah City Administrator told a charter boat operator they will be assessed taxes prior to the season, although the point of sale is within Gustavus city limits.

Commercial fishing: There is no information about taxation of fishing, whether caught or landed, whether in state or federal waters.

Transiting vessels: how will taxation apply to vessels which pass through the proposed borough, such as commercial and charter fishing boats, whale watching and eco-tourism operators, fuel barges, and passengers on the state ferry. The Petition is silent on the scope of intended taxation of services.

How will the administration and collection of taxes be conducted in the proposed borough, of which 60% is in state and federal waters, and the land mass is largely governmentally-owned?

There is insufficient information in the estimated budget to know how the Petitioner will use the 1% sales tax to provide services to the entire area. Exh E, page 10; Exh. Q (ADF&G Catch & Value Statistics); and Exh. HH Financial Statements are based on 2021 financial data.

In addition, the most recent year the budget provided information for is 2021. Considering that the substantial Covid revenue provided by the federal government may artificially inflate and distort income data, the Petition lacks a basis for financial revenue and budget projections for the proposed borough. In the end, it seems increasingly evident that any notion that the proposed borough is being formed to serve a broad region beyond the Hoonah Townsite Service Area is also purely speculative.

IV. BOUNDARIES (AAC 110.060)

The boundaries of the proposed borough are not “on a regional scale suitable for borough government”. There are three population groups in the proposed borough totaling 49 people who do not reside in communities as defined in state regulations. The extensive unpopulated territory, minimal population, and lack of proposed services are not suitable on a regional scale for borough government.

Petition Sec. 7 & 8; Area proposed for incorporation. There is no explanation or justification for the massive 10,400 square-mile area of the proposed borough other than it is intended to maximize the capture of state municipal entitlement lands. The state would struggle to deliver un-reserved lands within the borough for municipal entitlement, and there may be a demand to deliver state or federal lands within the proposed borough boundaries. The proposed borough boundaries extend beyond the State’s 3 mile-territorial boundary and beyond the 12 mile US boundary. The proposed borough won’t be able to tax commercial fishing or other business operations in federal waters, and the area beyond State jurisdiction does not reasonably contribute to the acreage calculation of municipal entitlement lands.

Petition Exh. E. @ 25. The statements that “ Gustavus’s jurisdiction does not extend into the park” other than a “sliver of land”^{fn45/} and that Gustavus “suggested that, if forced to join the borough, it would resort to self-harm”^{fn47/} are not only untrue but comically histrionic. The courteous exchange of communications between Hoonah and Gustavus (Exhibits U & V), and the polite response from Gustavus declining the invitation to join Hoonah in forming the borough should be given the deference the respectful communication between the two communities deserves. Needless to say, the Gustavus City boundary includes the entrance road from central Gustavus, the NPS park headquarters, support facilities for maintenance and utilities, the Park Visitor Information Station and Visitor Center, Glacier Bay Lodge, the Bartlett Cove Dock and anchorage (hub for visitor entry to the park), extending into the waters Bartlett Cove from the dock, much of the Park Forecountry, and includes the celebrated Tlingit Tribal House.

The public comment section on the LBC website contains alternative boundary proposals from residents from communities, including Sitka, Gustavus, Pelican, Juneau and Idaho Inlet. This is an indication of the failure by the Petitioner to engage communities in deliberating the best means for providing actual government throughout the region. As noted above, it is an attempt to annex remote resources as a tax basis for a single community. **Amending the boundaries, however, will not cure the fatal flaw in the Petition in that the new borough as proposed is not a mechanism to provide government services for the region from a regional hub.**

V. BEST INTERESTS OF STATE (3 AAC 110.065)

Detrimental effect of proposed borough:

Incorporation of the borough is not in the best interest of the state because the borough encroaches severely on the communities of Gustavus, Tenakee Springs, Pelican, and Elfin Cove. In addition the City of Juneau partially opposes the proposed boundaries. The communities do not share common interests with Hoonah. The disparity of economic goals between the petitioner's focus on industrial development and cruise industry tourism is in stark contrast with the conservation-minded, resource-based economies and subsistence lifestyles of the region. The residents, who comprise half of the population of the region, will be adversely impacted by having the adjacent lands and waters critical to their lifestyles and economies controlled by the proposed borough. The three excluded communities are subdivisions of the State, and if their financial and cultural interests are not served, we believe the best interests of the State are also not served.

There are a number of concerns to Gustavus, despite its exclusion from the borough boundary, including the financial impact of the loss of Federal Payment in Lieu of Taxes (PILT) and State Forest Timber receipts. These two revenue sources constitute a significant portion of the annual income for Gustavus income (\$200,000) and the timber receipts are used to maintain our unpaved road system. We have been unable to determine the impacted acreage as a result of the borough boundaries, despite contacts to the State and Federal PILT administrators, the Bureau of Land Management, and the Local Boundary Commission. As a subdivision of the State, major depredation to a City's resources is not in the best interest of the State.

Enclaves:

Absent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that is noncontiguous or 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 basis." 3 AAC 110.060 (d)

Exh. B. Petitioner provides a dictionary definition of "enclave", however there are other definitions, including property which has no access to a public road and when considerable and unreasonable costs are required to gain access to a public road. The facts are as follows: The proposed borough encompasses 10,400 square miles, whereas Gustavus is a community of 56 square miles. It is the hub and gateway community to Glacier Bay National Park. The borough proposal creates a small landlocked area bordered by the Haines Borough and the Glacier Bay National Park. Gustavus has a growing population: between census decennial counts in 2010 and 2020, the population increased by 48% (442 to 655) and is considered one of the fastest growing communities in Alaska. The borough boundary creates an isolated enclave, impairing its potential for future economic growth and development.

The proposed boundary extends beyond the State of Alaska territorial waters, where the borough would have no taxing authority. The borough, while excluding the cities of Gustavus, Pelican, and Tenakee Springs, includes lands, waters, and resources that are critical to the lifestyles and economies of these communities, leaving them without sufficient area to accommodate population growth and the ability to develop resources to provide for their residents and visitors.

The Cities of Gustavus, Tenakee Springs, and Pelican, as subdivisions of the State, contend that the boundaries proposed are not in the best interest of the State because they infringe on areas vital to

the economies and lifestyles of those other communities. We concur with and support the objections by these communities and Elfin Cove regarding the encroachment of the proposed borough on lands and waters critical to their lifestyles and livelihoods. The Petitioner does not explain how the geographic isolation of three municipalities, which constitute 50% of the population of the area supports the mandate of the State's constitution, statutes and regulations to deliver municipal services on a regional basis.

A final note on ancestral land claims:

Petition Exh. E "The Proposed Borough Entirely Comprises the Ancestral Lands and Principal Subsistence Areas of the Huna Tlingit."

We do not dispute that the lands and waters in the borough's region were the ancestral home to the Huna Tlingit, despite Port Frederick being the current center of their culture. That history is honored with continuing provisions under federal law for Tlingit subsistence and cultural activities in Glacier Bay National Park, and the conveyance of Native allotment tracts at Point Gustavus and near Falls Creek in testimony to historical use of those sites. Tlingit cultural activities, particularly around the new Tribal House at Bartlett Cove which is located in the City of Gustavus, help to sustain Tlingit culture. They have brought a new dimension to the Glacier Bay story, now told by Tlingit interpreters for visitors from around the world. These vital activities will continue regardless of borough formation; however, we question that the 19th Century boundaries of Huna Tlingit occupation are legally relevant to setting modern borough boundaries serving the people living in the region today.

Beginning over a century ago other settlers homesteaded federal lands on the Gustavus forelands. What is now Gustavus, consisted of new land formed on a glacial outwash plain, some newly risen from the sea due to isostatic rebound. The homesteaders were the first permanent inhabitants on the lands and the present community of Gustavus has been built by their descendants and those who purchased land from the homestead families or from the State of Alaska. Glacier Bay is now a great national park, the pride of all Americans, equally. The history of occupation by the Huna Tlingit in what was then a river valley before the Neoglacial Ice advance is a vital part of the Glacier Bay story. But others who have been residents here for many decades now also call Glacier Bay "home." Likewise, the people of Tenakee and Pelican have built their own communities and have their own sense of place. We believe municipal boundaries in the 21st century should reflect the interests and occupations of 21st century inhabitants and their communities, with all involved having equal rights under current State of Alaska law. Pelican notes that the claim of ancestral land usage in Lisianski Inlet and Lisianski Strait is historical but not applicable to current community use and patterns of use. **The historical use does not provide an exclusive use.** The use by residents of Pelican is more customary and traditional to use for the purposes of meeting subsistence needs and its way of life economically. We agree and request that the Petition be denied.

Respectfully submitted,

February 20, 2024

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Mayor, City of Gustavus