

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

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

Appellants,

v.

LOCAL BOUNDARY COMMISSION,

Appellee,

CITY OF HOONAH,

Appellee-Intervenor.

1JU-25-00604CI

**ORDER GRANTING MOTION  
FOR STAY**

**1. BACKGROUND**

On March 20, 2025, the Local Boundary Commission (LBC) approved a petition by the City of Hoonah to create the new Xunaa Borough.<sup>1</sup> The proposed borough's boundaries would include the City of Hoonah, the communities of Game Creek, Elfin Cove, Funter Bay, and Horse and Colt Islands. The area adjoins the City and Borough of Yakutat and the Haines Borough to the north, City and Borough of Sitka to the south, and the City and Borough of Juneau to the east, thus enclosing virtually the entire northern portion of Southeast Alaska within an organized borough, with the exception of the cities of Gustavus, Pelican, and Tenakee Springs.

An incorporation election is scheduled for July 15, 2025.

The City of Pelican, Community of Elfin Cove, City of Gustavus, and City of Tenakee Springs appealed the LBC's decision and have moved for a stay pending the outcome of the appeal. They argue that a stay will conserve state resources and preclude unnecessary elections, that they will suffer irreparable harm if the election goes forward, that the LBC and the City of Hoonah can be adequately protected, and that they have raised serious and substantial questions and shown probable success going to the merits of the case.

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<sup>1</sup> On that date, the LBC denied a motion for reconsideration of its December 20, 2024 decision.

The City of Hoonah intervened and opposed the stay. It argues that the appellants do not face irreparable harm, that the City of Hoonah cannot be adequately protected, that appellants have neither raised serious and substantial questions going to the merits of the case nor shown probable success, and that the requested stay is against public interest.

The LBC took no position on whether the stay was appropriate or in the public interest.

For the reasons stated in this order, the motion for stay is GRANTED.

## **2. LAW AND ANALYSIS**

### **2.1. General Discussion**

The court has “discretion to grant a stay concerning a non-monetary judgment.”<sup>2</sup> The court’s determination is guided by the “public interest.”<sup>3</sup> The standards for granting a stay pending appeal are the same as those for issuing an injunction.<sup>4</sup> A stay pending appeal may be granted if the moving party meets “either the balance of hardships test or the probable success on the merits standard.”<sup>5</sup>

The balance of hardships test requires that the movant face irreparable harm, that the opposing party is adequately protected, and that the movant raise serious and substantial questions going to the merits of the case.<sup>6</sup> It applies only where the injury resulting from the stay can be indemnified by bond or is slight in comparison to the movant’s injury if the stay is not granted.<sup>7</sup>

If the movant cannot satisfy these elements, a showing of probable success on the merits is required.<sup>8</sup>

### **2.2. The appellants face irreparable harm.**

Irreparable harm is an injury that “should not be inflicted and [that], ‘because it is so large or so small, or is of such constant and frequent occurrence, or because no certain

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<sup>2</sup> *Keane v. Local Boundary Comm’n.*, 893 P.2d 1239, 1249 (Alaska 1995).

<sup>3</sup> *Id.* See also AS 44.62.570(f)-(g), authorizing a stay under the Administrative Procedure Act unless “against the public interest.”

<sup>4</sup> *Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010).

<sup>5</sup> *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*



pecuniary standard exists for the measurement of damages, cannot receive reasonable redress.”<sup>9</sup> The appellants claim they will suffer irreparable harm in multiple ways.

2.2.1 *Their constitutional rights to the protections of Article X, Sections 1 and 3 of the Alaska Constitution will be rendered meaningless if the Xunaa Borough is created before the court addresses the constitutional and statutory issues upon which the LBC based its decision.*

The appellants initiated this appeal because they oppose the incorporation of the Xunaa Borough. The appeal will address their constitutional and statutory concerns. The appeal is their redress: whether they are successful and the LBC decision is vacated, or they fall short and the incorporation process continues, their constitutional rights will have been vindicated. With respect to this claim, the appellants have not made a showing of irreparable harm.

2.2.2 *The loss of potential federal funding for education or roads is important and irreplaceable.*

The appellants assert that they will lose federal funding because the new borough will substantially reduce the percentage of national forest land remaining in the unorganized borough. Communities in the unorganized borough are entitled to a proportionate share of national forest income, which must be used for public education and public roads.<sup>10</sup>

The City of Hoonah argues that, because this loss is monetary, it is not irreplaceable, and that, in any event, the loss is speculative.

The appellants concede that the precise amount of the loss is presently unknown, but that does not make it speculative: the regulatory and statutory scheme to which the appellants cite describes the source of the funds and a clear procedure for calculating the amount to be paid to communities located within the unorganized borough. Because the source of the funds is so specific, they cannot be replaced: money may be fungible, but the source of that money is not. With respect to this issue, the appellants have made a showing of irreparable harm.

2.2.3 *Allowing the incorporation decision to go to the voters denies Appellants and the public meaningful review.*

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<sup>9</sup> *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021)(quoting *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 n.5 (Alaska 1992)).

<sup>10</sup> AS 41.15.180; 3 AAC 132.010 *et seq.*

This argument is similar to the constitutional concerns raised above. The appellate process *is* meaningful review. That it occurs parallel to the incorporation process does not constitute irreparable harm.

*2.2.4 The appellants are harmed by the implementation costs of a sales tax system, and the possibility of future refunds.*

The appellants argue that residents of the unorganized borough will be harmed by trying to implement a sales tax system which will prove to be unnecessary if the appeal is successful. If the appeal is successful, they will be further harmed by the administrative costs of possible refunds of any tax collected.

The City of Hoonah notes that the appellants do not represent the residents of the prospective borough and that, with the exception of the Community of Elfin Cove, appellants are outside the prospective borough and therefore face no costs or administrative burdens associated with a borough sales tax. The City of Hoonah further argues that any such harm can be quantified (equipment and administrative costs) and redressed. This claim does not constitute irreparable harm.

**2.3. The City of Hoonah is adequately protected.**

“Adequate protection” means that the party opposing the stay can be indemnified by a bond, when financial harm is at stake; can be otherwise protected by some action; or is facing only a “relatively slight” harm compared to the potential harm the movant faces.<sup>11</sup>

The City of Hoonah asserts that the stay would cause it financial injury, describing the “considerable money” it has already spent on the incorporation process, and future costs for litigation, elections, creating and implementing a borough code, and “all the attendant government functions.” The sunk costs of money spent to date are unaffected by the stay request, but Hoonah also asserts that a stay would keep state funding available to newly incorporated borough governments “locked away” and that Hoonah would therefore “bear the full brunt of the costs of the incorporation process.” That state funding, however, only flows to the new borough after certification of the election favoring incorporation.<sup>12</sup> Hoonah could easily avoid this asserted injury by not taking further action toward borough formation until the appeal is decided; the injury is slight compared to the harm asserted by the appellants.

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<sup>11</sup> *Galvin*, 493 P.3d at 333 (quoting *Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d at 1273; *A.J. Indus., Inc.*, 470 P.2d at 540).

<sup>12</sup> AS 29.05.190



The City of Hoonah also speculates that voter turnout and confidence will be diminished if the scheduled incorporation election is delayed. But it also expresses confidence in its residents' "ability to understand judicial and democratic processes" and notes that it has "kept its residents apprised." The City of Hoonah asserts that a delayed appeal will "reduce the excitement, attention, and public engagement that drives democratic elections" and that it cannot be protected by a bond, or any conceivable action by the court.

The court need not invent an action to protect against the City of Hoonah's inchoate harms because it finds that the harm claimed by the appellants outweighs the minimal harm of any delay.

**2.4. The movants have raised non-frivolous issues going to the merits of the case. No showing of probable success on the merits is required.**

Because movants succeed on the balance of hardships test, no showing of probable success on the merits is required.<sup>13</sup> In *Metcalf*, a previous case dealing with an injunction of an election, the Supreme Court of Alaska noted that whatever decision they made relative to the requested injunction, one party's interests were guaranteed to be harmed.<sup>14</sup> However, *Metcalf* involved a candidate for United States Senator who sought to be listed on the ballot during a federal election, whereas the election in question is an incorporation election dealing with only a local issue. Unlike *Metcalf*, where "preventing the state from administering an election pursuant to its own election laws"<sup>15</sup> would be guaranteed to harm the state's interest, the City of Hoonah has not demonstrated such a harm to its interests. In the same way that "the City of Hoonah has kept its residents apprised" thus far, it may continue to keep its residents apprised of the delayed election.

**2.5. The stay is not against public interest.**

The City of Hoonah summarizes its arguments that a stay is against the public interest by asserting that the decision to incorporate the Xunaa Borough should be the public's decision, and that "[n]ot allowing the voters to decide is against the public's interest." This argument is better suited for the appeal; it does not speak to the public's interest in a stay. While the appeal process has the potential to take the decision to incorporate out of the hands of voters, the court's decision to grant a stay does not.

**2.6. No bond is required.**

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<sup>13</sup> *State v. Metcalf*, 110 P.3d 976 at 978 (Alaska 2005).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 979.

The City of Hoonah argues that the Community of Elfin Cove must post a supersedeas bond.<sup>16</sup> A supersedeas bond is presumptively 125% of the agency judgment.<sup>17</sup> The appellants argue that, because no monetary judgment has been entered here, a supersedeas bond is unnecessary and inapplicable. Indeed, 125% of zero is zero.

Stays involving money judgments are mandatory upon the issuance of a supersedeas bond.<sup>18</sup> The court, however, considering the public interest, has discretion to grant a stay concerning a non-monetary judgment, such as the LBC's decision.<sup>19</sup> "[U]nder AS 44.62.570(f)," which provides authority for the requested stay under the Administrative Procedure Act, "a court is neither required to nor barred from placing conditions upon its imposition of a stay." No bond is required.

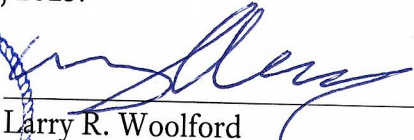
### 3. CONCLUSION

The motion for a stay is GRANTED. The Local Boundary Commission's decision approving the formation of the Xunaa Borough is stayed pending the resolution of this appeal. Neither the LBC, nor other agencies acting on its behalf, may take further steps toward the formation of the Xunaa Borough while the appeal is pending.

This order does not prevent the City of Hoonah from continuing preparations for the possibility of incorporation.

SO ORDERED at Juneau, Alaska, on June 13, 2025.



  
Larry R. Woolford  
Superior Court Judge

#### Certification

Copies Distributed  
Date 6/13/25  
To Appellants  
Att. Appellants  
Att. Intervenor  
By AS

<sup>16</sup> The City of Pelican, City of Gustavus, and City of Tenakee Springs are exempt from this bond requirement. App. R. 603(a)(2)(F).

<sup>17</sup> App. R. 603(a)(2)(C).

<sup>18</sup> *Keane v. Local Boundary Com'n.*, 893 P.2d 1239, 1249 (Alaska 1995)

<sup>19</sup> *Id.* See also App. R. 603(a)(2)(C).

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